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Judgment
13, 1965

IN THE PRIVY COUNCIL

No.37 of 1964

ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO

B E T W E E N :

KELVIN LUCKY
(Defendant)

Appellant

- and -

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJ SINGH
(Plaintiffs)

Respondents

RECORD OF PROCEEDINGS

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6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant.

J.N. MASON & CO.,
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Temple Avenue,
London, E.C.4.
Solicitors for the Respondents.

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G 198.2.

UNIVERSITY OF LONDON
INSTITUTE OF SCIENCE AND TECHNOLOGY
- 3 FEB 1966
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LONDON, W.C.1.

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IN THE PRIVY COUNCILNo.37 of 1964

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B E T W E E N :

KELVIN LUCKY
(Defendant)

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- and -

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJ SINGH
(Plaintiffs)

RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

No.37 of 1964

ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO

B E T W E E N:

KELVIN LUCKY
(Defendant)

Appellant

- and -

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJ SINGH
(Plaintiffs)

Respondents

10

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No.1498 of 1961

In the High Court

No.1

Writ of Summons
8th November
1961

BETWEEN

In the Matter of the Estate of Peter
Chandroo of La Romain in the Ward of
Naparima in the Island of Trinidad.

20

PANDIT DINANATH TEWARI

. AND

JOSEPH CHANKRAJ SINGH Plaintiffs

- AND -

KELVIN LUCKY Defendant

ELIZABTH THE SECOND, by the Grace of
God. Queen of Trinidad and Tobago
and of Her other Realms and Terri-
tories, Head of the Commonwealth.

In the High Court

No. 1

Writ of Summons
8th November
1961
continued

TO Kelvin Lucky of No.23 Edward Lee Street,
San Fernando in the Island of Trinidad.

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 PANDIT DINANATH TEWARI and JOSEPH CHANKRAJ SINGH and take notice that in default of your so doing, the Plaintiff may proceed therein, and judgment may be given in your absence.

10

WITNESS: The Honourable Mr. Justice A.H. Mc Shine, Acting Chief Justice of our said Court at Port-of-Spain, in the said Island of Trinidad, this 8th day of November 1961.

The Plaintiff claim to be the Executors named in the Last Will and Testament of the deceased Peter Chandroo dated the 7th day of September, 1960 who died on the 5th day of October, 1960 and to have the said Will established.

20

This writ is issued against you the said Kelvin Lucky because you have entered a Caveat to the application for probate on the 20th day of September, 1961.

A sufficient affidavit in verification of the endorsement on this Writ to authorise the sealing thereof has been produced to me this 8th day of November, 1961.

George Benny
Ag. Dep. Registrar.

30

Solicitor for Plaintiff.

And \$ (or such sum as may be allowed on taxation) for costs, and also, in case the plaintiff obtain an order for substituted service the further sum of \$ if the amount claimed is paid to the plaintiff or his Solicitors or Agent within four days of the service hereof, further proceedings will be stayed.

This writ was issued by L. LLEWELLYN

40

ROBERTS whose address for service is No.25, St. Vincent Street, Port-of-Spain, Trinidad. Solicitor for the said Plaintiff who reside at La Romain in the Island of Trinidad and are Proprietors.

In the High Court

No. 1

Writ of Summons
8th November
1961
continued

L. Llewellyn Roberts.
Solicitor for Plaintiff.

10 This writ was served by me at on the
Defendant on
the day of
Endorsed the day of

No. 2

AFFIDAVIT OF PANDIT D. TEWARI and
JOSEPH C. SINGH.

No. 2

Affidavit of
Pandit D. Tewari
and Joseph C.
Singh
8th November 1961

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD
AND TOBAGO

No. 1498 of 1961.

20 In the Matter of the Estate of Peter Chandroo late of La Romain in the Ward of Naparima, in the Island of Trinidad, deceased.

BETWEEN

PANDIT DINANATH TEWARI
and
JOSEPH CHANKARAJ SINGH Plaintiffs
- and -
KELVIN LUCKY Defendant

30 We, PANDIT DINANATH TEWARI and JOSEPH CHANKARAJ SINGH both of La Romain in the Island of Trinidad, Proprietors, make oath and say as follows :-

In the High Court

No. 2

Affidavit of
Pandit D. Tewari
and Joseph C.
Singh
8th November 1961
continued

1. That we are the Executors named and appointed in the last Will and Testament of the late Peter Chandroo

(a) AND I the said JOSEPH CHANKARAJ SINGH for myself make oath and say that the said Peter Chandroo did on the 11th day of February 1957, sign in my presence and publish a Will to which I subscribed my signature as a witness thereto.

(b) By the said Will Kelvin Lucky the Defendant herein was one of the Executors therein named. I do not know in whose possession the said Will is now reposed. 10

(c) Other than the Will or paper-writing referred to in the preceding paragraph of this affidavit I know of no other paper-writing being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of Peter Chandroo late of La Romain in the Ward of Naparima in this Island, deceased; has at any time either before or since his death come to my hands possession or knowledge or the hands possession or knowledge of my Solicitor in this action as far as is known to me save and except the true and original last will of the deceased lodged and remaining in the Registry of the Supreme Court (Probate Division) of this Island; the said Will bearing date the 11th day of September, 1961. 20 30

2. AND I, the said PANDIT DINANATH TEWARI for myself make oath and say that no paper-writing being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of Peter Chandroo late of La Romain in the Ward of Naparimā in this Island, deceased, has at any time either before or since his death come to my hands possession or knowledge or to the hands possession or knowledge of my Solicitor in this action as far as is known to me this deponent save and except the true original last will of the deceased now lodged and remaining in the Registry of the Supreme Court (Probate Division) of this Island; the said will bearing date the 11th day of 40

September 1961.

In the High Court

Sworn to at 25 St.Vincent)
St. in the Island of)
Trinidad; this 8th day of) Pundit Dinanath
November, 1961.) Tewari

No. 2

Affidavit of
Pandit D. Tewari
and Joseph C.
Singh
8th November 1961
continued

Before me
G. T. Collier
Commissioner of Affidavits.

10 Sworn to at 25 St.Vincent)
Street in the Island of)
Trinidad; this 8th day of) J. Chankaraj
November, 1961.) Singh

Before me
G. T. Collier
Commissioner of Affidavits.

No.3

No. 3

STATEMENT OF CLAIM

Statement of Claim
27th January 1962

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD

20 AND TOBAGO

No.1498 of 1961

Writ issued the 8th day of November,1961.

BETWEEN

PUNDIT DINANATH TEWARI
and
JOSEPH CHANKARAJ SINGH Plaintiffs

- and -

KELVIN LUCKY Defendants

STATEMENT OF CLAIM

30 The plaintiffs are the executors appointed

In the High Court

No. 3

Statement of Claim
27th January 1962
continued

under the Will of Peter Chandroo late of La Romain Village in the Ward of Naparima who died on the 5th day of October 1960 the Will bearing date the 7th day of September 1960.

The Plaintiffs claim:-

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

E.H. Wells
Of Counsel.

Delivered on the 27th day of January, 1962 by Lewis Llewellyn Roberts, of No. 25 St. Vincent Street, Port-of-Spain, Solicitor for the Plaintiffs.

10

L. Llewellyn Roberts
Plaintiffs' Solicitor.

No. 4

Defence and
Counterclaim
23rd March 1962

No.4

DEFENCE AND COUNTERCLAIM

TRINIDAD:

IN THE SUPREME COURT OF TRINIDAD
AND TOBAGO

20

No: 1498 of 1961

In the Matter of the Estate of Peter Chandroo, late of La Romain in the Ward of Naparima, in the Island of Trinidad, deceased.

BETWEEN

PANDIT DINANATH TEWARI
and

JOSEPH CHANKARAJ SINGH

Plaintiffs

- and -

KELVIN LUCKY

Defendant

30

DEFENCE AND COUNTERCLAIM

1. The Defendant says that the Will propounded

by the Plaintiffs herein and alleged to be the last Will of Peter Chandroo, late of La Romain Village, in the Ward of Naparima, in the Island of Trinidad (hereinafter called "the deceased") was not made or executed by the deceased either on the 7th day of September, 1960 or at all.

In the High Court

No. 4

Defence and
Counterclaim
23rd March 1962
continued

2. If the deceased did make and execute the said alleged Will (which is denied).

- 10 (a) The same was not duly executed in accordance with the provisions of the Wills and Probate Ordinance, Chap: 8 No.2; and
- (b) the deceased at the time when the same purports to have been executed did not know and approve of the contents thereof.

SUBSTANCE OF THE CASE

1. Under paragraph 1 of the Defence the Defendant says that the said alleged Will was, and is a forgery.

20 2. Under paragraph 2 (a) of the Defence the Defendant puts the Plaintiffs to the proof that the provisions of the said Ordinance were duly complied with.

3. Under paragraph 2 (b) of the Defence the Defendant alleges that the deceased gave no instructions for the said alleged will and the same was not read over or explained to him either properly or fully or at all, nor did he read it himself, and he was unaware of the nature and effect thereof.

30 AND BY WAY OF COUNTERCLAIM:

4. The Defendant says that the deceased duly executed his true last Will on the 11th day of February 1957 and thereby appointed Joseph Chankarajasinh (being the second named Plaintiff and describing himself herein as Joseph Chankaraja Singh), Joseph Motilal and the Defendant to be executors thereof.

40 5. The said Will dated the said 11th day of February 1957 was never revoked by the deceased and the same was at the time of his death

In the High Court

and is, a valid and subsisting Will.

No. 4

THE DEFENDANT, THEREFORE, COUNTERCLAIMS:

Defence and
Counterclaim
23rd March 1962
continued

- (a) That the Court shall pronounce against the Will propounded by the Plaintiffs;
- (b) That the court shall pronounce for the said Will dated the said 11th day of February, 1957 in solemn form of law;
- (c) Such further and/or other order as may be just.

10

H. A. S. Wooding
of Counsel

Delivered this 23rd day of March, 1962, by Mr. George Andrew Tsoi-A-Sue, of No:22c Harris Promenade San Fernando and whose address for service in Port-of-Spain is in the care of Mr. Edward Lai-Fook at No;41 St.Vincent Street, Port-of-Spain.

George A. Tsoi-A-Sue
Solicitor for the Defendant.

20

No.5

No.5

Reply and
Defence to
Counterclaim
30th April 1962

REPLY AND DEFENCE TO COUNTERCLAIM
TRINIDAD
IN THE SUPREME COURT OF TRINIDAD
AND TOBAGO

No.1498 of 1961

In the Matter of the Estate of Peter Chandroo late of La Romain in the Ward of Naparima, in the Island of Trinidad, deceased.

30

BETWEEN
PANDIT DINANATH TEWARI
and
JOSEPH CHANKARAJ SINGH Plaintiffs

- and -

KELVIN LUCKY

Defendant.

In the High Court

REPLY AND DEFENCE TO COUNTERCLAIM:

No.5

REPLY

Reply and
Defence to
Counterclaim
30th April 1962
continued

1. The Plaintiffs deny each and every allegation contained in paragraphs 1 to 3 of the Defence and join issue.

DEFENCE TO COUNTERCLAIM

10

2. The Will referred to in the Defendant's Counterclaim was revoked by the said true last Will of the deceased dated the 7th day of September, 1960.

E.H.HAMEL WELLS
OF COUNSEL.

Delivered this 30th day of April 1962, by Mr. Lewis Llewellyn Roberts of No.25, St. Vincent Street Port-of-Spain, Solicitor for the Plaintiffs.

L. Llewellyn Roberts
Plaintiffs' Solicitor.

20

No.6

No.6

AFFIDAVIT OF KELVIN LUCKY

TRINIDAD AND TOBAGO:

Affidavit of
Kelvin Lucky
5th December 1962

IN THE HIGH COURT OF JUSTICE

No: 1498 of 1961

In the Matter of the Estate of Peter Chandroo late of La Romain, in the Ward of Naparima, in the Island of Trinidad, deceased.

BETWEEN

30

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJH SINGH

Plaintiff-
Appellants

- and -

In the High Court

KELVIN LUCKY

Defendant-
Respondent

No.6

Affidavit of
Kelvin Lucky
5th December 1962
continued

I, KELVIN LUCKY, of the Town of San Fernando, in the Island of Trinidad, the defendant in this action, make oath and say that no paper or parchment writing being or purporting to be or having the form or effect of a Will or Codicil or other testamentary disposition of Peter Chandroo late of La Romain in the Ward of Naparima in the Island of Trinidad, deceased, the deceased in action, or being or purporting to be instructions for or the draft of any Will Codicil or other testamentary disposition of the said Peter Chandroo has at any time either before or since his death come to the hands possession or knowledge of my Solicitor in this action so far as is known, to me this deponent save and except the true and original last Will of the said deceased hereto annexed and marked "A" the said Will bearing date the 11th day of February, 1957.

10

20

SWORN to at the Court)
House in the Town of)
San Fernando, this) Kelvin Lucky
5th day of December,)
1962)

Before me,

Sgd: Mandah

30

Commissioner of Affidavits.

No.7

In the High Court

COURT NOTES

No.7

TRINIDAD AND TOBAGO

Court Notes
8th January 1963

IN THE HIGH COURT OF JUSTICE

No.1498 of 1961

BETWEEN

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJ SINGH Plaintiffs

- and -

10 KELVIN LUCKY Defendant

JUDGE'S NOTES OF EVIDENCE

Wells and Ming Huang for Plaintiffs

Butt Q.C. and Wooding for Defendants.

Wells opens:

Will of 11th February, 1957 was duly executed but main issue is whether or not there was a later valid will.

20 Witness will say he was called into house where he was handed paper on which he wrote down what was called out by Chandroo. He read it once to deceased who also read it. The Plaintiff Tewari was present. Deceased then signed Will and 2 witnesses signed. After that deceased wrote his signature again.

In the High Court

PLAINTIFFS' EVIDENCEPlaintiffs'
Evidence

No.8

FRANK DUFF

No.8

Frank Duff sworn states:Frank Duff
8th January 1963
ExaminationLive Adela Estate, Chaguanas.
Transport overseer.

I met Peter Chandoo on only one day. That was 7th September, 1960, I did not know him before. I never met him after that day. On that day I met him at his home in La Romain. It was early in the morning - very near to 7 a.m. He was sitting on a Morris chair in the drawing-room of his home. Pandit Tewari was present.

10

I went into the house and met them there. Tewari told me that Peter Chandoo wanted me to write a Will for him. Chandoo said "Yes. Chandoo handed me a Will of Pandit Tewari's. I mean it was Tewari's Will. Chandoo told me he would like it written like that Will. I read the document. (Shown document). This is it. (Tendered Admitted. Put in F.D.I.)

20

After I read the document I returned it to Chandoo. I said I would write the Will for him. He said to look on the drawing room table by the front window and I would find some writing paper. I looked there and took a single piece of paper. I went to the centre table near to where Chandoo was sitting. It was a round table. A type on which ornaments are put. I pulled a chair to this table and sat. I took out my pen and according to how Chandoo called out to me I wrote on the paper. When he was finished I read it over to him. He said that was what he wanted. I handed him my pen and he signed his name on the same paper I wrote on. After he signed than Pandit Tewari signed. Chandoo took it back and signed it I think under ours but I did not really see where. When he signed Tewari and I were both present. Tewari was present when Chandoo was dictating. When I signed Tewari and Chandoo were present. When Tewari signed Chandoo and I were present.

30

40

After Chandroo signed the second time he folded the paper and kept it, he handed me back my pen. I remained for a few minutes. Then I said to Tewari "Lend me that car as I had asked you". I took the car and went out. I returned about an hour later. I blew the horn. Tewari came out and made a sign for me to wait. Shortly after he came out and we went to Cunupia to his home.

In the High Court

Plaintiffs'
Evidence

No.8

Frank Duff
8th January 1963
Examination
continued

10 (Shown document) This is the Will I
F.D.2. wrote. (document tendered. No. Objection
7/9/60.F.D.2.) I see some stamps on it. I do not
know anything about them. When I left it
with Chandroo they were not there. Below
where they are was blank. The front is in my
handwriting. There is a signature at bottom.
"Peter Chandroo". That is the signature
Chandroo wrote in my presence. Apart from
that signature the rest of handwriting on
20 front is in my writing.

On back the top two lines and my signature is where Pandit Tewari signed in my presence and that of Chandroo. Below that is where Chandroo signed after he took back paper.

30 Between 7th September, 1960 and today I have not seen this document. Pandit Tewari had told me on previous day that he was Chandroo's brother-in-law. I have been friendly with Tewari for about 30 years. I subsequently came to find out that Dr. Omar Maharaj was related to Chandroo. I know Dr. Maharaj personally. Those are the only two relatives of Chandroo that I knew then. Since then I have not seen any of them.

The house in La Romain is still there.

Cross-examined by Wooding:

Cross-
examination

40 I live at Adella, I have been living there for about 8 months. Prior to that I was living at Woodford Lodge Estate from February 1961 up to when I went to Adella Estate. Prior to February, 1961 I was living on David Toby Road, Cunupia. I lived there for about a year and a month. I had

In the High Court

Plaintiffs'
Evidence

No.8

Frank Duff
8th January 1963
Cross-
examination
continued

not lived in Cunupia before. I lived in Chaguanas for many years. On 7th February, 1960 I was living in Cunupia. Pandit Tewari also lived in Cunupia on Southern Main Road about 3 miles from me. I was living on his premises. He did not. I did not pay any rent. I had privilege of living on his premises.

I have been friendly with him for about 30 years. Sometimes I saw him twice or three times a week, sometimes once a month, sometimes once in three months.

10

I went to his house in Cunupia on 6th September, 1960 because I heard he was ill. I went to see him. I heard so on 5th. When I went on 6th he was in bed. Do not know what was wrong with him. I did not ask. He did not tell. He was in pyjamas and said he was not feeling well. He did not say how long he had been in bed. I asked him how he felt. He said not well. I did not ask him how long. I did not ask him any further questions about his illness. We talked about other things. He said he was glad I had come along as he had got a message that his brother-in-law at La Romain wanted to see him. He asked if I would drive him there. He drives but said he was not feeling well enough to drive that distance. I cannot say how far it is. It is more than 20 miles - less than 100 - less than 50. I have passed through La Romain on many occasions. Cunupia to Port of Spain is about 16 miles. Do not know if Cunupia is further from Port of Spain or La Romain. I cannot count myself.

20

30

Tewari did not say what his brother-in-law wished to see him about. I did not ask. I agreed to take him. He said he wanted to leave early in morning. I reached his home about 6 a.m. and we left immediately. On way Tewari did not say why he was going. I was merely going as a friend to drive. When I got to the home in La Romain Chandroo was sitting in Morris chair in drawing room. There in a gallery. Tewari went in alone. He told me to wait awhile. I remained in car. He was in there for 5 or 10 minutes. He came out to car and asked me to come in. I now say he

40

called from gallery. He introduced me to Chandroo.

In the High Court

Plaintiffs'
Evidence

No.8

Frank Duff
8th January 1963
Cross-
examination
continued

At that time I was not working for about 2 or 3 months. I remained unemployed for 4 months after that. After introduction Tewari said Chandroo wanted me to make Will. Not immediately. I spoke to Chandroo before. I saw Chandroo in pyjamas. I saw left hand damaged. I asked if he had had an accident. He raised arm and said that his arm had been injured some years ago when he went to arrest a man on the estate at Moruga. He said the man had made a chop at his head and he parried with his arm. It was left arm.

A couple of seconds after that Tewari said Chandroo wanted me to write his Will. I was surprised. I had never written a Will before. I had never witnessed a Will before, nor been named executor. Never had any connections with a Will before. Had not made one for myself. Chandroo said he wanted the Will drawn up in the form of the Will he had there. Tewari can write. I had never seen Chandroo write apart from signing his name. He took his time to sign. He did not appear to be writing like an illiterate man. So far as I know it was physically possible for either of them to have written the Will.

Chandroo dictated to me what he wanted me to write. I wrote it. He sat in chair, held Tewari's Will in his hand while dictating to me. I made no suggestions about changes or adding anything or taking out anything. I took no part in language of Will; nor did Tewari. Throughout whole transaction I merely acted as a scribe. I read it over. He did not ask me. I read it for him to see if I had made any mistake. I should think I read it because it was my duty to do so.

Everything on F.D.2. in my handwriting was put down from beginning to end as Chandroo spoke. I only wrote once apart from signatures. After I had written all, Chandroo signed his name. Chandroo asked me to sign document. He also asked Tewari to sign. Chandroo was in complete charge of the Will making operation. He did not expect me there

In the High Court

Plaintiffs'
Evidence

No.8

Frank Duff
8th January 1963
Cross-
examination
continued

that day. I never knew him before. Tewari told me Chandroo had asked him to come on that morning. He did not say why he was asked to come that morning. He never told me later.

I first saw the Tewari Will when Chandroo handed it to me. I had not heard about it before. Chandroo had it folded in his hand when I came in. He held it during early conversation. I heard someone speaking in back of house but I did not see anyone except Chandroo and Tewari. I came to conclusion there were other people on premises.

10

When I left I told Tewari I was going to see my cousin where he works at Forest Reserve. His name is George Duff. I did not see him. He was not there. He had been at his job that day. I was away about $\frac{3}{4}$ of an hour. Do not know distance to Forest Reserve. I am unable to give an estimate. I do not know the mileage. When I came back I did not tell Tewari I had not seen my cousin. I touched horn of the car. He made sign. When he came to car he had nothing in his hand. He did not have the Tewari Will in his hand. Do not know where it was. He may have had it on him.

20

While Chandroo was dictating to me he had the Tewari Will in his hand. After dictation I do not know what happened to it. I think he may have put it on table.

We went back to Tewari's home at Cunupia. I did not stay there. I left on my bicycle. On way back we did not discuss the Will at all. Tewari did not say that was the reason why Chandroo wanted him to go and see him. Chandroo did not make any mention of any previous Will - nor that he wanted to change a Will.

30

I next saw Tewari may be a couple of days after. He was not fully recovered. I saw him at his home. Not in bed. In the hall sitting. We had general conversation. No mention of Will. I saw him regularly. I cannot say when he recovered from illness. I would say he was better by October as he drove up to my house. Cannot say if it was early October but sometime in October. He appeared to be perfectly well. He did not complain to

40

me. During October he may have been to my home 2 or 3 times. In November he came to my house on more than one occasion. In that month he asked me to come to Port of Spain to solicitor in connection with Will. I came and swore to affidavit. Tewari accompanied me. He had Chandroo's Will. I came for purpose of swearing to affidavit because I had attested that Will. I came with Tewari in one of the Chandroo's cars. Do not know which.

In the High Court

Plaintiffs'
Evidence

No.8

Frank Duff
8th January 1963
Cross-
examination
continued

Tewari told me he wanted me to swear affidavit so that Will could be probated. I thought he had sworn to affidavit. He did not explain why he had not. I never knew he had not. Tewari introduced me to two of Chandroo's sons in car. One was George. Other I cannot remember. Also to a man called Chankarjasingh who is Executor in Chandroo's Will. Do not know if he and Tewari swore affidavits on that day. They were in solicitor's office with me. That was on 16th November. Tewari sent to call me same morning and said he wanted me to go to Port of Spain. I met Chankarjasingh at Tewari's home with two Chandroos. Do not know if the Will was at Tewari's home. I first saw it on 16th when Tewari handed it to Mr. Roberts, Solicitor. Do not know when Tewari arranged with Chankarjasingh to meet him. Do not know where Chankarjasingh was. He did not say he was surprised there was a Will. I never heard him ask to see it.

When I went to swear affidavit I left Tewari and Chankarjasingh in Robert's office. I went to part of office where Commissioner of Affidavit is. I never heard Chankarjasingh make mention of any other Will. He never said he had been Executor under a previous Will. I went back to Roberts' office on first day of hearing of this matter. I think that was 10th December 1962. Never went back to swear any other affidavits.

On 7th September, 1960 I should think Chandroo's mind was perfectly clear as he could explain things to me. He dictated to me. I would say he was in charge of the events at his house.

In the High Court

Plaintiffs'
Evidence

No.8

Frank Duff
8th January 1963
Cross-
examination
continued

When I said earlier that I had not seen Will since 7th September, 1960 I meant I had never handled it or read it. I did see it at Roberts' office.

Not re-examined:

Court rises. Resumes 11.05 a.m.

Deed No.14357 of 1960 from Registrar General's office agreed by Counsel and put into evidence. Dated 26th September 1960 between Peter Chandroo and Aubrey Cummings (Marked "X").

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No.9

Pandit Tewari
8th and 9th
January 1963
Examination

No.9

PANDIT TEWARI

Pandit Tewari sworn. states:

Live Southern Main Road, Cunupia.
Hindu Priest.

I knew Peter Chandroo. He ~~was married~~ to my cousin. On 7th September, 1960 I went to his house at La Romain. I travelled in my car driven by Frank Duff. We reached La Romain about 6.30 a.m. to 7 a.m.

20

When we got there I went inside. Duff waited in the car in yard. I met Chandroo sitting in drawing room. I spoke to him in connection with a Will. I said I had brought my Will for him to see. He took it. (Identifies F.D.1.) He read it. He said that is how he would like to have his Will made. He asked me to write it out for him. I told him I was not feeling well but I have a very good friend in my car who came down with me and if he liked I could call him in and he can write it out for me. Chandroo said yes.

30

I went to car and called Duff inside. Duff came in. I introduced him to Chandroo. Chandroo offered him a seat. He sat. Then

I told Duff that Chandroo would like him to write out a Will for him. Chandroo asked Duff if he could write it out for him. He said yes. Chandroo told Duff to go to South-west corner of my drawing room and he would find some paper on a table. It was many sheets, of writing paper. Duff went there and got the paper and came back to the seat where he had been sitting. Duff pulled the centre table to him and Chandroo dictated to him from the Will while Duff wrote what he said.

In the High Court

Plaintiff's
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Examination
continued

10

When he was finished Duff read the Will for him that he had written. He handed it to Chandroo. Chandroo read it and said it was quite alright. Then Duff put the centre table in front of Chandroo. Chandroo placed Will on it. He took Duff's pen and signed the Will. I was present. So was Duff. Then Duff signed. Then I signed. Then Chandroo signed again. (Identifies F.D.2.) When Duff and I signed Chandroo was present.

20

After Chandroo signed second time he gave Will to me. He asked me to keep it in my possession and not to tell anyone of the children anything about the Will. I left with the Will and kept it in my possession until I handed it to solicitor on 16th January, 1961 I think. I went on 15th January to La Romain to meet the children, but did not. It was the next day I took Will to Solicitor. I came to Port of Spain.

30

When Chandroo signed the Will on 7th September he was quite normal but not too well. He said he was not feeling well. He was sick sometimes and well sometimes. His physical and mental condition were alright.

Cross-examined by Butt, Q.C.:

Cross-
examination

40

Before 6th September, 1960 I had a talk with Chandroo about his Will. That was on 4th September 1960. He said he had a will prepared by Mr. Chadee and he is not satisfied with that Will because a certain percentage of the estate in that Will will be going to his girl children and if in case any of the girls were to die their share of the estate will go to

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Cross-
examination
continued

sons-in-law and they can give his children a bit of trouble. He said the last Will was prepared by Chadee. I asked him why he did not prepare a deed in favour of his children rather than make a Will. He accepted my suggestion, and called 2 of his daughters, Stella and Ethel. He told them to see Mr. Cameron, Solicitor and tell him to come and prepare a deed - not Mr.Chadee as he had already condemned Mr.Chadee saying he did not want that rogue. I now say he did not say anything against Chadee I do not know Chadee had drawn Wills for him in the past and he changed them on his instructions. He did not say Chadee had been in touch with him up to that day. He did not say he had been his good friend and adviser up September for the whole year and before that. I do not know now that that is so. I do not know that on 26th September, 1960 Chadee prepared a deed for Chandroo. He gave no reason why he should not send for Chadee. 10 20

The 2 daughters left for San Fernando to get Cameron. Chandroo's friend Chankarja-singh who was present also left. I was there alone. Chandroo told me that although he had sent for Cameron it was still not his desire to make a deed because the children will get to know either from Cameron or his clerk and they will worry his life. I suggested to him he could have a Will prepared in favour of children to suit him. I did not suggest Cameron. Chandroo was the one to say who he wanted. He was afraid it would get to knowledge of children. As far as I understand the children were using all kinds of language to him. The girl children. I do not know about George. I did not ask what language they were using. I do not know what George got under the old Will. 30 40

I told him I had a Will and if he wanted I could bring it for him to look at and if he liked it he could have his prepared the same. He said alright. I arranged to bring it for him on 7th September. I left.

On 4th September 1960 I was not too well. I was better then on 7th September. I was worse than I am now. I next saw Chandroo on

7th, that is next time we spoke. I did not communicate with him between. When I went on 7th I did so because of arrangement. I had made on 4th and for no other reason.

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Cross-
examination
continued

10 I cannot say exactly how far Chandroo lives from me - about 18 or 20 miles. Duff drove me. I had arranged with him on 6th. He came to see me. He said he had been told I was not feeling well. I said I was not feeling well. I cannot remember if I was in bed. I was dressed either in shirt and pants or in my dhoti. Cannot remember which. Duff may have asked me what was wrong. We spoke about my not being well. He must have asked me what was wrong. I did not say how long I had been in bed. Do not remember if I was in bed.

20 I told him I had an appointment with my brother-in-law at La Romain next morning. Duff is a very good friend of mine. I asked if he could do me the favour of driving me to La Romain. I did not tell him what the appointment was about. We must have spoken on the way. I did not tell him what I was going about.

30 I went into house and gave Chandree copy of Will. He read it and said he liked it. He asked me to write a Will for him. I did not ask him why he did not get a lawyer. I said I did not wish to write it as I was feeling ill. I was feeling my body. At that time Chandroo was quite well. I said I had a friend in car. I went to car and brought in Duff. I went to left front door and spoke to Duff through window. I told him to come inside and meet my brother-in-law. I did not say why. At that time Duff was employed at Woodford Lodge Estate. I knew that. I now say he had just recently lost his job. He was living in my house at David Toby Road rent free. I did not think of charging a friend rent. I had known him a long time. As long as he lived in my house I never charged him rent. He was there about 6 or 8 months.

40 He got out of car and we went in together. I have a clear recollection of that. I introduced him to Chandroo. I told Duff that

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Cross-
examination
continued

Chandroo wanted him to write out a Will for him. Duff said he would write it. I had given my Will to Chandroo. He kept it from that time. He gave it to Duff who read it. I think Duff read it. Duff gave it back to him. I think Duff read it. Chandroo then dictated. No one but Chandroo took any part in wording of Will. No suggestions. All that Duff did was write what was dictated. No discussion about how it should be done. I do not know why Chandroo gave Duff Will to read. Do not remember if Chandroo gave Duff the Will to read.

10

After Will was dictated Duff read Will and handed it to Chandroo who read it and said it was quite alright. I am sure both read it. It was not that Duff read it and then Chandroo signed it. When Duff read it Chandroo accepted it as being alright. Chandroo read before he signed.

20

Chandroo handed me back my Will immediately after we had all signed his. He handed me his Will at same time. He was then sitting in Morris chair. I was sitting in a chair. Duff was also. Chandroo said "Pandit, do not let my children know anything about this Will until after my death or they will trouble me." I do not remember if Duff had left already, he said it openly. I now say I cannot remember if Duff was present when Chandroo handed me Will.

30

There was no one there but the three of us. Family was in house in other part. Chandroo's wife and I think, one of the daughters and her children.

I had never been a witness to a Will before - nor prepared one. I do not know how to prepare one or what were the requirements for a proper Will. Did not discuss it with Chandroo. As far as I know none of the others knew what was requested. I do not know now what they are. I did not know if there were any requests. Once a Will is prepared by a person in favour of his family it is valid. I signed the Will once. As far as I know there was no necessity or advantage in signing

40

twice. I did not expect Chandroo to sign twice.

In the High Court

Plaintiffs'
Evidence

No.9

Duff handed Chandroo pen. He signed, Duff signed. I signed. He handed it back to Chandroo. He signed again. 'Nō-onē' asked why. I understand a document needs only one signature, I knew he was not a mad man and knew what he was doing.

Pandit Tewari
8th and 9th
January 1963

Cross-
examination
continued

10 Duff left me there to go to Oropouche to meet some of his family. Do not know where or what family. He asked me to let him use my car to go to Oropouche to meet some of his family. He may have told me it was a cousin. Do not remember if he said Forest Reserve. He said working at Forest Reserve but living at Oropouche. He was away for about $\frac{3}{4}$ hour.

20 On our way home we spoke normally but not about anything special. Do not remember speaking about Will or what happened at house. We did not speak of Chandroo wanting to change Will because of family. Do not remember if I told Duff that Chandroo asked not to mention the Will to anyone. I know it would be no good for me to keep the secret if Duff spoke about it. I told Duff at Chandroo's home that Chandroo would not like any of his children to know of Will. This was after the signing of the Will and before Duff had left to go out. I think Chandroo had told me so before Duff
30 left. When he told me so we were all still sitting on chair.

40 Chandroo died on 5th October, 1960. Later on I heard about a Will made by Chadee. Chandroo had told me so. I know who Chadee was and that he could be found in San Fernando. I knew how to get in touch with him if I wanted to. I did not as I had no reason to do so. On 5th October 1960 when Chandroo died I was very sick and could not attend funeral. After that day I saw Duff often. Do not remember if I went to his house in October. I did not go to his house before the 16th November. If Duff says so I think he would be mistaken. During that period I was not out and about visiting his house. I was lying in bed sick. Not all the time. I made

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Cross-
examination
continued

no effort to discuss the existence of the Will to anyone. Do not remember if I saw Duff during that period. I may have. I sent no message to him about the Will as it was not to be revealed. I told Mrs. Chandroo to tell the boys. I would like to see them. I said nothing about the Will to anyone because I had promised Chandroo not to say anything until after his death.

Executors of the Will were Chankarjasingh and me. I told him on 16th November. I tried to see him and the boys on 15th but failed. I left word with Sonny Chandroo at La Romain. I said his father had left a Will and he must bring along Chankarjasingh next day as he was named Executor. He lives on Southern Main Road at La Romain. I have tried to get a message to him before as I was sick. I intended Sonny Chandroo to tell the others about the Will.

10

The first time I spoke to Chankarjasingh was on 16th November. I did not recover from my illness over night.

20

I do not know that on 15th November, Chankarjasingh as Executor under a previous Will authorised application for a theatre license. I knew he was an Executor under first Will. I think Chandroo told me so before the preparation of my Will. I did not think it right to get in touch with him. I was sick. I came to town with him on 16th. He did not say he had been acting Executor under previous Will. He did not say he was surprised about this Will because Chandroo told him he wanted another Will prepared. He did not mind him knowing. Chankarjasingh did not say it was funny I waited so long to tell him about Will.

30

I went to Mr. Roberts to apply for probate. I did not have to get instructions from anyone. I chose Mr. Roberts as he is a respectable man. I did not go to Chadee or Cameron. I preferred to go to Mr. Roberts. Anyone does my legal work for me. Not Mr. Roberts. I preferred to go to him this time. He told me I would have to swear to an affidavit. He said that Chankarjasingh and Duff also had to swear to affidavits.

40

I swore to an affidavit the same day. It is not correct I swore to it in August. I swore at Robert's office. I swore to one Affidavit. (Shown document) This is my signature. That is the Affidavit, I swore to. That is another one that was sworn to in front of a J.P. at Cunupia. I cannot remember how many affidavits I swore to. (Shown document That is Duff's affidavit sworn to on 16th November. I do not remember if I swore to one on the same day. I did not bring Duff down on that day so as to make him commit himself. Do not remember if the application for probate was not made until 22nd August, 1961. It was done on my instruction.

In the High Court

 Plaintiffs'
 Evidence

No.9

 Pandit Tewari
 8th and 9th
 January 1963
 Cross-
 examination
 continued

I told Sonny Chandroo on 15th November about Will. I did not see any of the children after that in November. I saw some of the boys in December. Do not remember who or where. I wrote to Pearl Lucky on 3rd January, 1961. I did not tell her there was a Will. It is true I told the boy about the Will on the 15th November. I wrote Pearl Lucky a courteous letter to attend a conference. I intended to put the Will before them. I did not know the Executors were proceeding with probate of the earlier Will. I had not made any application for probate of my Will as I was sick. Chankarjasingh had suggested we wait until January as the Xmas Holidays were coming on. I did not know steps were being taken about other Will. (Letter to Pearl Lucky put in P.T.I.

9th January, 1963.

Appearances as before.

Pandit Tewari (Continuing to Butt Q.C.)

The meeting was held on 8th January, 1961. Singh was present Ethel Massamood, Stella Motilal. Maud Lalbeharry. Byron Chandroo; Claude Chandroo. All related to Chandroo, except Singh. Charles Chandroo was present also. Pearl Lucky, wife of defendant. George Chandroo was there. I had the Will. It was a copy of the Will.

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Cross-
examination
continued

I did not read it out. I gave it to Claude. I had not been recommending his interests to Chandroo. I thought it was better for me to give him the Will. For no reason, because it belongs to him. I had witnessed it and given instructions for probate, I had been given Will to keep and not to disclose it until proper. I thought it better the children should read it among themselves. No prayer was said by Singh.

I called the meeting. When they were all gathered I gave the Will to Claude. I said "Children this is a Will left with me by your father and I give it to one of you to read". The meeting ended very stormy. It is not true I did not read the Will because I said I had forgotten my glasses. My attitude was not to ask the family to make peace. No one said they wished to see the signature on the Will. The copy was typewritten. No one mentioned about any signature.

10

20

The row was because Charles began to use some filthy language. I do not know if he was getting a bigger interest under this Will. I do not know even now the provisions of the earlier Will. I was not interested. Chandroo told me he did not like that Will because some of the girls were coming in to own part of the property. Under my Will the boys shared the property alone and the girls got \$5000.00 each. I never asked Chandroo about the earlier Will and what was the difference. I was not interested.

30

I do not know that George Chandroo was on bad terms with his father. Do not know that in the earlier Will he got only life interest. Do not know George ran Empire Cinema for his father. Do not know father complained George did not account to him. Do not know it was with difficulty that father was persuaded by Chadee to give George anything at all under earlier Will and eventually consented to give him only life interest.

40

Chandroo told me there was an ealier Will. I believed him. Do not know Chadee was in course of getting probate of that Will. Never saw any advertisements of it. I read the

newspaper sometimes. Do not know if the advertisement appeared in October and November.

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Cross-
examination
continued

10 I know that the other people did not know about the Will I had. I did not expect anyone to be seeking probate of an earlier. I know Chankarjasingh. I was not seeing him regularly. I saw him on 16th November. He told me he had given instructions about the
15 cinemas the day before. He said he had signed some papers about cinemas but I cannot remember all he said. I did not know what he was talking about. From what he said I got the impression that the signing of the papers was a proceeding with a past Will.

20 At the meeting of 8th January, 1961 Stella did not ask why so late as three months after I just came up with this document. Mr. Lucky said the papers I had brought were false and bogus. The meeting broke up because the family was saying this was not a correct Will and I should have brought it before. I said I was sick and I sent several messages to them. I sent one by Maud Chandroo to all the children. Later by Mrs. Chandroo (wife) to tell the children I would like to see them. I did not say to tell them I had a Will because I wanted to call them together as I could put the Will in their hands. I did not tell
30 Singh because I did not see him. I told him on 16th November but did not tell him to tell the family. I suggested to him we should have a meeting with the family. He said to wait until after the Xmas holidays as he was being ordained. At meeting of 8th January, 1961 I said I had not told them before as I was sick. I think I told them that Singh had suggested to me to wait.

40 I did not make two efforts to get Chandroo to change his earlier Will which he refused. It is not true that in August 1960 I was trying to induce Chandroo to give consent to his son Byron marrying a girl related to me. It is not true question of cinemas came up. It is not correct that in September 1960 I went to his

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Cross-
examination
continued

Re-examination

house and discussed Byron and this girl. It is not correct that Byron and he would not join hands with this girl as she was not a Christian. I did not raise the question of the Will and say Byron should be getting a larger share as he had helped his father. Chandroo did not refuse. Do not know that two days before Chandroo died George brought Mr. Cameron to persuade him to change his Will and Chandroo refused.

10

I gave instructions to Mr. Roberts to probate Will on 16th November. That was in writing. (Butt asks for it. Wells produces it. Counsel agree that a copy should be made of the entry in the book). That is my signature. It is not true I went to see Charles Chandroo regularly after his father died.

Re-examined:

Peter Chandroo had 5 sons. Those are the ones mentioned in the Will I got. He had 4 daughters. Those are the ones mentioned in the Will. The daughters are all married. The husbands names appear. The defendant in this case is married to Pearl. Peter Chandroo's wife is Lillian. She is alive.

20

I got on very well with Peter Chandroo. I lived about 20 miles from him. Used to visit him sometimes once a year. Sometimes he came to my home. We met once or twice a year. We never used to have discussions about the family. Sometimes the children used to come to my home. I used to see them; more than father All of them. When they were passing my way they stopped. Up to Chandroo's death I was on good terms with all children. I was not connected in any financial way with Peter Chandroo. Had no business with him. Not with children. Do not owe them money. Nor they me.

30

I worked for Woodford Lodge Estate as an overseer. Now that I am retired I am still paid by them. I own the house I live in. Also own Duff lived in. I owned an estate at Fyzabab of 14 acres given me by my father. It is sold.

40

On 5th September Chandroo sent Ethel and Stella to call Cameron. He told them to tell Mr. Cameron to come there on 7th to prepare a deed for him. They left immediately and went. Neither protested. I was not present when they returned.

I am not making any charges against Chadee.

10 I showed Chandroo my Will on 7th September. (Shown F.D.I.) This is it. The witnesses are Pandit Jaggernauth and Mr.M.A. Ghany, barrister-at-Law. He prepared it. Chandroo knew that.

20 After preparation of Will I got very sick I suffer from my heart. I get pains from it. Sometime in 1961 I was stabbed 3 times in my back by a man. That was towards end of 1961. Cannot remember how long after Will about a month or two after preparation of Will. I was taken to San Fernando Hospital and stayed there six days. When I went home I was not well. I went back to hospital every week for treatment for about 1½ months. I did not go to Chandroo's funeral because I was sick with my heart. That was before stabbing. I was ill on that occasion for about 2 weeks. I had to be in bed most of time. I did not visit Claude during that period.

30 By 15th November I was feeling much better. I went to La Romain and to Mr. Roberts.

40 On 16th November I told Chankarjasingh about my Will. He went to Mr.Roberts with me and signed Mr.Roberts' book. I signed only book on 16th November. A paper was brought to me while I was sick at home on 22nd August, 1961. I also signed a paper at Inland Revenue Department. Do not remember when. No other documents.

On day the Will was read at family meeting the ones making a row were Charles, Pearl Lucky, Ethel Massamood. Only those three. The others kept quiet or were trying to make them quiet.

In the High Court

Plaintiffs'
Evidence

No.9

Pandit Tewari
8th and 9th
January 1963
Re-examination
continued

In the High Court

No.10

Plaintiffs'
Evidence

JOSEPH CHANKARAJ SINGH

Joseph Chankaraj Singh sworn. states:

No.10

Joseph Chankaraj
Singh
9th January 1963
Examination

Live La Romain. Minister of the Gospel. I was born in India and came to Trinidad in 1908. I speak English Poorly. I have known Chandroo for over 40 years. We lived nearby and visited almost every day. I am on good terms with his children. He used to discuss his private affairs sometimes. In 1957 I was named Executor in a Will he made at Kelvin Lucky's home. Peter Chandroo dictated the Will and Mr. Chadee wrote it. Chadee and I signed as witnesses. On the day it was signed I did not know what was in it. That was in 1957 at Lucky's house. Chandroo never discussed it with me afterwards.

10

Later he spoke of turning his whole estate into a company. Never did. Then he decided to make a Will. On 4th September, 1960 I was called to his home. When I got there I met Pandit Tewari. I did not know him before. I was introduced in the drawing room. He took us into bedroom. Do not remember if anyone else in drawing room. In bedroom were Chandroo, Tewari and me. Chandroo spoke of making Will. Tewari suggested making a deed. Chandroo said he had no time now to make a deed. He said he thought it best to make a Will right away. Do not remember how talk came up. There was no discussion about a deed. Chandroo decided to call another lawyer - Mr. Cameron. He called his daughters Ethel Massamood and Stella Motilal. He told them to call Mr. Cameron as he wanted to make a Will. They left. It was getting late for my service and so I left and went away. I think it was a Sunday, I cannot remember exactly. Chandroo told daughters merely to get Cameron to make a Will - no more.

20

30

40

On 30th September 1960 I was called again. Ethel Massamood came. I went. Chandroo was in bedroom. He told me he had given all his property to his 5 boys. I asked what about the girls. He said the girls have. There

was a window next to his head. Ethel was reading a paper. Stella was leaning on window. Ethel left paper and rushed to father. I said to girls "You hear what your father said". Ethel asked her father if he said he had given all to the boys. Chandroo looked at me and put his finger to his lips. He did not answer. Ethel took it very hard and murmured and grumbled. Stella and two others were talking. Ethel was very much cut up. I think I left.

10

The next Saturday Ethel came to my house and asked me to speak to her father. Chandroo was still alone. She took me to him. I told him "Brother, you should consider again to give something to the girls". He said "Do not give me any headache" and turned his face. Ethel was present.

20

Chandroo was ailing for sometime. He got a stroke on Sunday day after Ethel spoke to me. He could not speak after that.

Resumed 11.15 a.m.

Continuing:

Much later I learnt from Tewari about a Will. I think that was 16th November. Early on 16th I received a message Tewari wanted to see me. I went to his house at Cunupia. He showed me a Will signed by Peter Chandroo. I came to Port of Spain with Tewari to Mr. Roberts. George and Chandroo and Duff came too. I spoke to Mr. Roberts and signed instruction book. I returned home.

30

(Shown F.D.2.) I see Peter Chandroo's signature here. I knew Peter Chandroo's signature before. I know it well.

I was present at a meeting at Chandroo's home in January. Tewari invited me. It was to read Will. I had been to Roberts in November at that time my ordination was coming up. I was very busy and had said I could not be at the meeting until January. I am a Presbyterian Minister and was due to be ordained.

40

In the High Court

Plaintiffs'
Evidence

No.10

Joseph Chankaraj
Singh
9th January 1963
Examination
continued

In the High Court

Plaintiffs'
Evidence

No.10

Joseph Chankaraj
Singh
9th January 1963
Examination
continued

I went to meeting after lunch. Present: All children except Mrs. Lucky. Do not remember her there. The husband of the girls were there. I think Kelvin Lucky was there. It is long ago. The son's wives were not there. Do not remember if Chandroo's widow was there. She would hardly be there.

While Claude Chandroo was reading Will Ethel Massamood jumped up and said "This is a lie, this is not a Will". Talk opened and confusion began. The rest of us had to keep quiet. After the row was going on I cannot remember anyone remaining. We had to go away. Charles was supporting Ethel. It is so long I cannot remember anything. Hector Chandroo was not present. I know all of Peter Chandroo's children. His relationship with them was very good except that now and again he had rows with them usually caused by the influence of Mrs. Lucky against the others. I was usually brought in and I tried to make peace. It was very simple things - if news came about any of the children. Pearl Lucky used to bring the news which led to the rows. There were no serious quarrels with any of the children. George's wife is not an Indian. Peter's relationship with him was not very pleasant. They still exchanged visits. The East Indian customs is to look more for sons than daughters.

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I know the contents of the Will.

Cross-
examination

Cross-examined by Wooding:

I knew Chandroo over a long period of time. I do not know of any serious quarrel between him and his sons. I know of no reason why he should prefer one son to another.

In 1956 George was managing Empire Cinema, Fyzabad. Chandroo never told me that George was not accounting for the money and he was dissatisfied. I know of the Will of 1957. I remember it being read. In it there was a distinction between George and the others. George got less. That was because Chadee told Chandroo that George had married a negro and no family would quarrel. George's share was

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life interest; all other sons got absolute interest. I asked Chandroo to also give George's wife a life interest. Chandroo did not wish to leave George out entirely. He did not give him life interest only because I pleaded for him.

In the High Court

Plaintiffs'
Evidence

No.10

10 I heard that Chandroo had made a Will before 1957. I did not know contents of it. The Will of 1957 was signed at Lucky's house. Chandroo was sick then. I used to visit often. He had been ill for about a month. He was much better when he made Will. He could walk about a little. Do not remember if he used a stick. He could not go out into yard. He could go for a drive. Do not know if he could have visited friends.

Joseph Chankaraj
Singh
9th January 1963
Cross-
examination
continued

20 Chandroo dictated the Will. He said what he wanted and Chadee took it down. Then Chandroo signed it I witnessed - so did Chadee. Chandroo asked Chadee to keep it in the office. Chadee wrote Will with pen. The paper was foolscap. Do not remember where it came from. That was the Will of 1957 in which George got life interest. It was not signed at Chadee's office - I now say it was dictated at Lucky's house. We signed at Chadee's office. The Will was afterwards type-written. (Shown document) This is my signature. If I said it was signed at Lucky's house I made a mistake. (Document put in J.C.I.)

30 It was signed about a week after the dictation. I went in car with Chandroo from Lucky's house. A Will is made when it is signed but when I said it was made at Lucky's house I meant it was dictated.

40 On 4th September, 1960 Chandroo, Tewari and I had a discussion in bedroom. Chandroo sent 2 girls to bring Mr.Cameron to make a Will. Before they made Will I left. On 30th September, 1961 Chandroo said the girls had already. I understood that to mean he was not giving them a share equal to the boys. I presumed he had made a Will as a result of what he had said on 4th September, 1960. When he put his finger to his lips I did not take it as a further indication he had made a new Will.

In the High Court

Plaintiffs'
Evidence

No.10

Joseph Chankaraj-
Singh
9th January 1963
Cross-
examination
continued

On 1st October, 1960 I told Chandroo he should consider again giving something to girls. He said not to give him a headache. I did not think he had made a new Will. I had already formed opinion he had made a new Will. I did not change that opinion.

Tewari sent for me on 16th November. I had not seen him since Chandroo's death. I remember he had been at Chandroo's house on 4th September 1960 when told of making new Will. 10
During period I had tried to discover from Tewari if Chandroo had made Will. Had no interest to enquire from anyone. I had my own duties to do. Do not remember if I attended to any of Chandroo's duties.

Under the 1957 Will Executors were Kelvin Lucky, Joseph Motilal and me. I went to Mr. Tsoia-Sue's office with them and gave instructions to probate that Will. I did so because I thought it was the last Will of Chandroo. I 20
dealt with Chadee. I did not tell him that I thought Chandroo had made another Will. (Shown document) This is my signature. Those are the instructions (Put in J.C.2.) It is dated 17th October, 1960.

Before that day I had gone to Chadee and asked for the Will of deceased. It was a couple of days before. I think a day was fixed for reading Will. I asked that copies should be made and sent to the parties interested. 30

George used to run Empire Cinema at Fyzabad; Claude ran one at La Romain. I signed instructions with him on 15th November, 1960 with respect to licence. I signed as Executor of Will of Chandroo. (Shown document) This is it. (Put in J.C.3.)

On 16th November 1960 I heard of Will of 7th September 1960. A few days later I told Chadee there was another Will and I did not sign any papers under old Will. I was passing his 40
office. I did not think it so important. I did not give him anything in writing. I went by myself. Do not remember if I told other executive about new Will. I did not think it important to tell them. I thought Chadee would like to know. I told Chadee in same week. He asked me nothing about it at all. He did not

ask why I had waited so long. No conversation at all. I said I was not able to continue with the old Will. That was all. Chadee did not say that the authority to George and Claude would have to be given by new Executors.

In the High Court

Plaintiff's
Evidence

No.10

10 On 16th November I arrived at Tewari's house between 7 to 8 a.m. Duff was there and Tewari's family. We came to Port of Spain in Peter Chandroo's car. George, Claude and I had come in it from La Romain. On that day I first saw the Will at Tewari's. I did not say I was surprised I was not surprised because I had heard talk of making a Will. I asked Tewari why he had not got in touch with me before. He said he was very sick. I did not ask why he had not sent a message. When he said he had been sick I left it there. I did not tell him I had
20 been acting under the old Will. I may or may not have mentioned old Will. He told me about new Will and that I was an Executor. I did not ask him when it was made. I think he said he was present when it was made. He must have been present when it was made.

Joseph Chankaraj
Singh
9th January 1963
Cross-
examination
continued

At Tewari's house he showed me the new Will and said I was Executor. I think he said the boys had got 100% and girls \$5000.00. I think that was all conversation. I do not
30 remember asking anything about how it was made.

It is true I went and told Chadee about the new Will. I attended funeral of Mr. Debi in February, 1961. I do not remember seeing Chadee there. I did not speak to him about the Will.

I cannot remember why I had not the time to tell the family about the second Will. On
40 16th November Tewari told me we should tell members of family. I said I was too busy. I did not suggest he should do so as it was a long distance. I was ordained on 8th December, 1960. I do not consider the question of the Will important where my work is concerned. I had to prepare for Xmas. I thought the people named in the Will should know about it. Tewari wrote to family in January. I cannot say why he did. When I

In the High Court

Plaintiffs'
Evidence

No.10

Joseph Chankaraj
Singh
9th January 1963
Cross-
examination
continued

saw Clause I did not think to ask him to let Executors. I had asked Tewari why he had waited so long, to inform me. I considered it important he should let me know. I did not think if it was important to let the others know because I was busy.

I got written invitation to the family meeting. Do not remember if it said that Tewari had not been able to attend this funeral because he was sick. Only remember it said date of meeting and place. My invitation may have said I was invited as Executor. I take it that is why I was invited. That was the first time I knew there was to be a family meeting. I may have discussed with Tewari a date for conference. We had agreed Tewari should fix a date and let us know.

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Adjourned.

10th January, 1963. Appearances as before.

Wooding does not wish to cross-examine further.

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Re-examination

Re-examined:

George Chandroo was to receive a life interest under Chandroo's Will. There was talk about George's wife. As far as I can recollect Chadee said that if she got an interest it would lay it open for her family to come in. Do not remember if Chandroo had previously expressed what he intended to give George.

Peter Chandroo owned 2 cinemas. Do not know if he owned lands, near San Fernando. While he was very well he managed his affairs himself but when he got ill George looked after one cinema, Claude another and Byron the estate.

30

On 15th November 1960 I went to Chadee's office to sign paper about cinema. After that date I did nothing under old Will. There was other Executors to that Will. I signed a form with them authorising Tsoi a Sue to act. Lucky was making arrangements about everything and when I had to sign I was brought in.

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No.11

STELLA MOOTILALStella Mootilal sworn. states:

Live San Fernando. Daughter of Peter Chandroo Beneficiary under both Wills.

10 Do not remember anything happening with my father in August 1960. Once when he was ill at Mrs.Lucky's place he told me he had made a Will. Do not remember what year that was. He went there twice. That was second time. It was some minutes before his death.

20 He told me he had made a Will which was in Mr. Chadee's keeping. He told me that my husband, Ethel and Chankarajsingh were Executors. He said his boys and girls had shares. He said it was 15% for the boys and 7% for girls and I think he said one of the girls, I believe Maud, got a lower percentage and one of the boys, I think Charles, got a lower percentage. That was all he said. That was about 2 years before he died.

30 In August, 1960 my father sent for me, Pearl Lucky and Ethel Massamood. I went to his house the next day with Ethel. Pearl did not go. The boys were there, George, Claude and Byron. My father said he intended to hand over the entire estate to 5 boys. He did not say why. He was well. He said he would leave something to hold while he was alive. George said they would make him attorney over entire estate. Ethel asked my father if he was giving the boys everything. He said yes. Ethel and I left.

40 Next morning Mrs.Lucky called at my house about 8.30. We spoke. I went to La Romain with Ethel Pearl also went separately. We met there. We went to my father's house. He was in the sitting room. Pearl Lucky told him she understood he was giving the boys everything. She began to abuse him. She was angry. She asked if the girls had fallen from a tree. She said the girls looked after him when he was sick and none

In the High Court

Plaintiffs'
Evidence

No.11

Stella Mootilal
10th January 1963
Examination

In the High Court

Plaintiffs'
Evidence

No.11

Stella Mootilal
10th January 1963
Examination
continued

of his daughters-in-law did not even his negro one, she said if she had to go on the street to mind him she would do so. My father did not say a word. Pearl said he should die and people spit on him. I saw tears in my father's eyes. I left. The other 2 girls remained. I had no conversation with him that day.

On 4th September 1960 my father called Ethel and me and told us he intended to make a deed for the boys. He was in his sitting room. Tewari and Singh were there. They went with my father into bedroom. My father came back out and told Ethel to go and get Mr. Cameron to come on 7th September 1960. She and I went. I went to my home and she went on. I returned to my father's that night. I do not know if Mr. Cameron went. My father did not speak to me about them.

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On 7th September 1960 Ethel and I went to my father. Ethel told him Mr. Cameron could not come until about 2 p.m. Tewari and my father were in the sitting room. My father said not to worry that when he is ready he will let us know. Ethel left to go to Cameron. I went into kitchen to help my mother.

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On 30th September 1960 I was sitting in gallery by my father's window. Ethel was there. My father sent for Singh. I was in gallery outside window. Singh came. It was in afternoon. He went into bedroom. From where I was I heard my father tell Singh he had given the boys everything. Singh asked what about the girls. He said the girls have. Singh came out and asked if we had heard. Ethel went in bedroom with Singh. I remained by window. Singh asked my father if he had given boys everything. My father put his finger to his lips. Ethel remain standing.

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When my father suggested calling Mr. Cameron to make deed Ethel asked him what about Mr. Chadee. My father said he did not want him as he had lost confidence in him. He did not say anymore. Two weeks before my father died he told George to go to Chadee and

get the Will. He did not say why. He told George to destroy it. Ethel was also present. George said he would go.

In the High Court

Plaintiffs'
Evidence

No.11

Stella Mootilal
10th January 1963
Examination
continued

10 In January 1961 I went to La Romain for Will to be read. All family present except Hector in England. Maud came in late. The Will was read. Ethel and Pearl said they were going to contest. They were quarrelling among Ethel, Charles and Pearl. They did not like contents of Will. The others were trying to get them to be quiet. The boys were trying to explain to girls. In end the 3 left. (Shown F.D.2.) I see signature at bottom of front page. It is my father's handwriting. I knew his writing.

Cross-examined by Wooding:

Cross-
examination

I see the writing on front of this document. (F.D.2.)

To Court:

20 All of the handwriting on the front page is in my father's.

Continuing:

30 My father told George to go to Mr.Chadee and get the Will of 1957 and destroy it. George said he would go and tell Chadee. Chadee did not give it to my brother. I was present when George told my father Chadee had refused to give it to him. It was the same day my father said it did not matter. He was angry. He said that when he felt a little better he would see Chadee and see that the Will was destroyed.

40 On 4th September 1960 it was clear he wanted to make a new Will. That is why he gave instructions for Mr. Cameron to come on 7th September 1960. On 30th September 1960 when I saw him put his finger to his lips I did not think he had made a new Will. I thought he knew that if he said anything the girls would make a fuss about his handing over everything to boys. On that day he was saying he had made a different arrangement for the

In the High Court

Plaintiffs'
Evidence

No.11

Stella Mootilal
10th January 1963
Cross-
examination
continued

boys. I thought he must have done something. I thought it might have been a Will.

Joseph Mootilal and I are husband and Wife. We are on good terms. I had been seeing my father regularly from August till his death. I told my husband about some of the conversations. I may have told him about the one on 30th September 1960. He was never interested in my father's business. I must have told him of conversation of 30th September 1960. I knew he was an Executor under first Will. I realised he had a responsibility to put that Will forward. I never told him I thought he should not do so as there was a later Will.

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There was an arrangement for Mr. Cameron to come on 7th September 1960. Ethel and I went to my father's about 9.30 a.m. My father would have been expecting Mr. Cameron. Ethel knew Cameron could not come until afternoon. We went in morning to tell my father. Tewari was there. Ethel asked my father if he had changed again after making arrangement. He said when he was ready he would let us know.

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I saw Tewari leave. I came out into gallery. My father in sitting room in pyjamas. Did not see my father give anything I now say I was in the back with my mother. Do not know how Tewari left. I heard a car horn blowing but did not come out to see. Many cars came into yard. When the horn blew Tewari was talking to me and my mother in back. I offered him some lunch before he left.

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Re-examination

Re-examined

After the horn blew he went into the gallery. He came back into dining room. I took some lunch in there for him. GEORGĒ, Tewari and I ate lunch together. Then Tewari left.

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My father had arthritis. Sometimes his fingers were swollen and he could not hold the pen properly. When he did not have arthritis he had a bold handwriting.

(Wells asks that witness be allowed to leave Court. Does so. Wells says he thinks witness did not understand what she was saying about handwriting on Will as she was trying to say more. Asks it be put to her again. Court consents).

Witness to Court:

10 I see this document. I see the writing (Pause) I do not think it is my father's (Long pause) the only thing in my father's handwriting is signature. Sometimes when he had arthritis he wrote differently (Long pause) This is not his writing.

No.12

GEORGE CHANDROO

George Chandroo sworn. states:-

Live Fyzabad. Manager Empire Cinema, Fyzabad. Married to a negro.

20 During my father's lifetime he and I were on good terms. His estate has been valued for probate at approximately \$300,000.00. He had 2 cinemas. My brother manages the one at La Romain. My father also owned about 150 acres of land at La Romain. Cannot say value of it. Part of it is valuable as it is near road and cut out in house lots. My father rented out some and sold some.

30 My father had 2 or 3 illnesses. The cultivation was carried on by Byron who also looked after houses.

My father and I had 2 misunderstandings about money. One was about a cheque in 1960. We patched it up. Another was about a battery charger. That was later but do not remember date. We patched that up. It is not true we had any row about the receipts of cinema.

His first Will was in 1956. The one in 1957 I did not know anything about until Chadee

In the High Court

Plaintiffs'
Evidence

No.11

Stella Mootilal
10th January 1963
Re-examination
continued

No.12

George Chandroo
10th January 1963
Examination

In the High Court
Plaintiff's
Evidence

No.12

George Chandroo
 10th January 1963
 Examination
 continued

told me. In 1956 my father was at hospital. All family present. Chadee took notes and prepared Will there. Shah signed as witness. My father was ill.

I first learnt about the 1957 Will about 2 weeks before my father died. My father called me with Ethel and Stella. He told me to go to Chadee and ask him for the Will and tear it up I did not know about that Will until that day. I went to Chadee next morning at his office. I said my father had sent me for the Will he left in his care. He asked me who had told me about that Will. I said my father. He said he could not do so then as he was going to town. He said he would have to get Tsoi a Sue to go down to La Romain with him sometime later. I told my father. Chadee was not a visitor at my father's house. He had been there once to get a deed signed. Do not remember when. About 2 weeks before my father died. About same time I went for Will. I think he came after I went for Will. I was not present. My father told me.

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Adjourned. Resumed 11.15 a.m.

Continuing:

At one time Mr.Cameron used to be my father's solicitor. That was just before he got ill in 1956. After that Chadee used to do our work. I only learnt four days ago that Chadee is not a solicitor. Chadee did all my father's legal work. It related only to the parcels of land he was selling. Chadee had nothing otherwise to do with the sales. One piece was mortgaged to Barclays Bank and one to Pooran. They are still in existence. Chadee in acting for Pooran. Sallier & Co. for Barclays Bank. In every deed Salliers made release.

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About August 1960 my father wanted whole family to a meeting at his home. Present were all children except Hector, Charles, Mrs. Lucky. Maud came late. Singh was also there. Ethel objected to Singh being there as he is not a member of family. Father

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said he was an old friend and he was allowed to remain. My father said he intended to give entire estate to his 5 boys. He said nothing about the girls. Singh asked what about them. My father said they have enough. There was some more talk and meeting ended. The next thing is when my father sent me to Chadee. I had no further talk with my father about his property except when he told me that Chadee brought a deed for him to sign and he did not sign.

In the High Court

Plaintiffs'
Evidence

No.12

George Chandroo
10th January 1963
Examination
continued

After his death I heard about another Will. On 15th November 1960 Tewari came and told my brothers and me that my father left a Will in his possession and that Singh was Executor. He said to bring Singh. Next day we went to Tewari's and to Mr. Roberts' office.

The 1956 Will is in Chadee's possession. (Wooding says he is instructed it has been misplaced). By that George, Byron, Claude and Hector were to get 20%. Charles to get 10%. The girls were to get 3% each except Maud who was to get 1%. My Mother was to have use of house and cash. I was present when my father dictated it.

Cross-examined by Wooding:

Cross-
examination

(Shown F.D.2.) That is dated 7th September 1960 and is witnessed by Tewari. I saw him at my father's home that day. When I arrived Tewari and my father in hall. My Mother and servant in kitchen. No one else. I stayed until 1 p.m. While I was there Stella and Ethel came. I was present when Ethel left - not sure about Stella. I saw Tewari leave. Ethel had already left. Stella was there. She was in dining room. Stella, Tewari and I ate together in dining room. My mother was in kitchen. Tewari went and told her goodbye. My father may have been in bedroom. I do not remember.

I walked with Tewari to gallery. Left Stella clearing dishes. I do not think she came to gallery. Tewari left in car. There was a brown skinned man in the car. I heard car arrive. Tewari spoke to me and to Stella

In the High Court

Plaintiffs'
Evidence

No.12

George Chandroo
10th January 1963
Cross-
examination
continued

and my Mother. Do not know about Ethel. I did not walk down to car. Nothing was said to me about a Will being made that day. Stella does not live there. Do not think she said why she was there that day. She comes there often. As far as I know she was paying a casual visit that day. Same with Ethel.

I arrived about 10 a.m. Tewari stayed until after lunch. Lunch finished a little after 12 noon. He may have left about 1 p.m. Did not look at time. 10

About 2 weeks before Chandroo died he told me to ask Chadee for Will and to tear it up. I went back to his house in afternoon. I saw my father in the house, also my mother. Do not remember anyone else. I told my father what Chadee said. We were alone then. When I told him what Chadee said he said alright. That is all he said. I left.

In August 1960 there was a meeting. Singh present. Do not know how he came to be there. Ethel objected. My father did not say if he had asked him. I would think that was an important meeting. Singh would know that. He asked what about the girls. He did nothing else. I am sure he was there. 20

Stella told me of a conversation she had on 30th September 1960 with Singh and Chandroo. She told me Chandroo had sent Ethel for Singh. Ethel had gone and she remained. When Singh came he went in room. She was by window. Chandroo told Singh he had given estate to 5 sons. Singh asked about girls. Singh came out and told them. Ethel went into room to Singh. Singh put some question. Chandroo put finger to his mouth. I think he told me so before. My father died but after he had stroke. I had already been to Chadee. I thought Chadee had a Will in which my father had given the boys everything. I know about the second Will before Stella spoke to me as my father had said to destroy it. I did not think from what Stella told me that my father had made a third Will. I did not think there was anything in what she said to indicate that. She did not say she thought so. At my father's death I thought 30 40

the second Will was the last. I thought so up to 15th November.

In the High Court

Plaintiffs'
Evidence

No.12

George Chandroo
10th January 1963
Cross-
examination
continued

10 I knew that Mootilal, Lucky and Singh were acting under that. I raised no questions. I signed the papers about cinema at Chadee's office I went to him and said it was time to apply. I got that authority before midday. It was in afternoon I heard from Tewari. He came to me and said he had a Will from my father. He came to my father's place. Present were Claude, Byron and me. He did not drive into yard. He walked in. He said Singh was named as Executor. Byron went to get Singh. Tewari waited. When Byron came back without Singh Tewari said to send him a message to come to his house next morning. He also told me to come to his house. He left.

20 Singh lives in La Romain about $\frac{1}{2}$ mile from my father. I have no doubt I spoke to Tewari on 15th November. At Tewari's house on 16th I saw Will but did not examine it. I did not say I was surprised about that Will. I did not hear anyone say so. I did not ask how it came to be prepared. No one did. I did not tell Tewari that yesterday I had received authority from old Executor. Did not tell anyone.

30 I thought the Will was a serious matter and concerned the whole family. On 16th November I realised Chadee had nothing to do with that Will. I learnt that the Executors were different from those under previous Will. I discovered I was getting absolute interest whereas I only got life interest under prior Will and that the girls' share was changed. There were substantial changes from previous Will.

40 I am eldest son. Ethel is eldest child. Then Stella, then me. Byron, Charles, Claude and one of girls. In January 1961 I received a letter inviting me to a family meeting. It was like this. (Identifies P.T.1.)

On 15th November 1960 Tewari told me he had the Will. He was hoping he would have

In the High Court

Plaintiffs'
Evidence

No.12

George Chandroo
10th January 1963
Cross-
examination
continued

met everyone there. He said so. He did not ask me to tell any of them. I did not tell them about it. On 15th I told Stella and Joseph Mootilal. Same day I told Chadee. Tewari had not told me to do so. I did because I used to handle all my father's business with Chadee. Did not tell anyone else. I did not happen to go to anyone else.

I told Chadee that Tewari had a Will supposed to be my father's last Will. He said to bring it to him to probate as he had authority to probate all his Wills. I did not tell Tewari as the Will had already been given to Mr. Roberts. Did not meet Tewari again for a long while - not until December. I had known for a long time. Had not seen him in October. Did not see him between 7th September 1960 and 15th November 1960.

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I did not tell Chadee to tell other members of family.

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I went to Mr. Roberts on 16th November 1960. Claude went too. We just sat. Did not give any instructions. On 16th November 1960 Tewari had a car. We went to Roberts' office in my car. I know now we went there to give instructions to probate the Will of the 7th September 1960. Do not know why Tewari took Claude and me to Mr. Roberts.

My relation with my father was the same all time. Chadee was not a good friend of my father. He was not an adviser to my father. After 1956 he did legal work for my father. He prepared Will in 1956, and 1957. On 26th September 1960 he prepared deed. The deed was left by Chadee on table in my father's room. Next day my father asked me to give it to him. He read it and said it was alright. I had told Chadee more than once before 26th September to come and see my father as he wished to get his papers. I mentioned Will. That was about February. When he came on 26th September I was not present. I had instructions from my father to call him in February 1960. Up to then my father had confidence in him. Not up to September 1960. My father signed deed next day. It was witnessed in Chadee's office by Tsoi a Sue. I took it to Chadee's office. My

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father said he had told Chadee he was not signing anything unless one of his sons signed it. It is not correct Chadee took the deed there and my father signed and Chadee witnessed.

In the High Court

Plaintiffs'
Evidence

No.12

Re-examined.

I saw Chandroo sign the deed in his room. I did not see Chadee sign. I took it to Chadee's office. Only Chandroo's signature on it then.

George Chandroo
10th January 1963
Cross-examination
continued

10 (To Wells with leave) (Shown F.D.2.) I see the signature at bottom of front page. It is my father's. On back I see signature of Frank Duff, and Pandit Tewari and then my father's signature.

Re-examination

Not cross-examined:

Case for Plaintiff closed.

Adjourned.

Resumed. 11th January, 1963.

DEFENDANT'S EVIDENCE

Defendant's
Evidence

20

No.13

No.13

DALTON CHADEE

Dalton Chadee
11th January 1963
Examination

Dalton Chadee: sworn. states:

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Proprietor. Live Gransaul Street, San Fernando. Have been solicitor's clerk for about 40 years and retired in 1953. I have an office in office of George Tsoi a Sue, Solicitor, in San Fernando. I assist his clerks. I am also Commissioner of Affidavits. I have taken part in public life here for over 30 years. Councillor and Alderman in San Fernando for 21 years. I was Deputy Mayor of San Fernando and acted Mayor for short time. I was Justice of Peace from 1940 to 1949 when I voluntarily gave up commission. I have

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Examination
continued

rendered a number of public services for which I was awarded O.B.E. I am also holder of King George Medal.

I know this action concerns Will of Peter Chandroo with whom I was intimately connected for over 40 years. I assisted him in his legal work and affairs from time to time. I was his close confidant.

On 10th November, 1956 he was at San Fernando Hospital. I received a message and went to see him there. He gave me instructions for preparing his Will. I prepared one. He signed it in presence of Neamath Shah, Bailiff and of me. He asked me to keep it for him. I did so. It was sent to counsel late in 1961 for an opinion and I have not been able to find it since.

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On 12th November 1956 I received message. I went to Kelvin Lucky's residence with Neamath Shah in his car. I met Chandroo there. Chandroo was then living at La Romain. She said he had left Hospital day before and had gone to Lucky's to recuperate. Lucky is his son-in-law. Chandroo said he wanted to change his Will. From what he told me I thought a Codicil would be sufficient. I prepared one and it was signed in presence of Shah and me. At Chandroo's request I kept it. It was with the Will I sent to Counsel.

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On 11th February, 1957 I saw Chandroo at Tsoi a Sue's office. He came there with Chankarajsingh. He was living then at La Romain. I did not go that day to see Chandroo or Singh at Lucky's house. I never went to Lucky's house with Singh. I never took dictation of Will from Chandroo at Lucky's home on 11th February, 1957 or at any time.

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I know Singh for over 30 years as a Catholic. He lived at La Romain near to Chandroo. On 11th February, 1957 they came to office in Chandroo's car driven either by Mootilal or a son. Chandroo asked me to get his two Wills as he wanted to make a change. I read both over to him in presence of Singh. Chandroo said he wanted to make a new Will and give

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girls more than he did in former Will as they had been very kind to him. He said he was not leaving anything for his son George. He said that George was not accounting to him for the takings at cinema. Singh said "No brother Peter, do not leave him out altogether". The two of them discussed for a long time. Chandroo eventually agreed to give George a life interest. Chandroo and Singh discussed Executors and agreed on Singh, Mootilal and Kelvin Lucky. I prepared Will. It was executed in presence of Singh and me. We were both present when he signed it. We both witnessed it in his presence and in presence of each other. It was typewritten.

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Examination
continued

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(Shown J.C.1) (Identifies it).
Chandroo asked me to keep it. I did so. Singh said he was going to make a note in his diary. He did so. Chandroo said "Now, Cathecist, do not let any one know the contents of this Will". Singh said "That is all right."

Later in year Chandroo got into financial difficulties. He turned to me. I helped him and signed a note on his behalf. I assisted him in all his affairs from that date to his death. He sold certain land to get out of his financial difficulties. I acted for him in all these transactions.

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Early in 1960 Chandroo fell ill at his house in La Romain. Two sons, George and Claude, came to me. I saw George several times after that. He told me something about Chandroo's Will. In consequence I went to Chandroo's on a Sunday - either last Sunday in August or the first in September. I told him George said he wanted to see me in connection with his Will. He said he never told George anything of the kind, and that George was anxious to know what was in that Will and I must not disclose it.

In September I saw George again. In consequence of what he told me I went to Chandroo's taking the Will and Codicil. I also took a deed of conveyance from Chandroo to Cannings. That was 26th September 1960. He

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Examination
continued

was in bed. I told him that George had told me he wanted me to bring the Will and make a change. He said "I never told George that. Take back the papers. They only want to get my property and not give me nourishment. No document was signed in my presence that day.

(Shown deed X) This is the deed I took. Because he was so annoyed I said I would leave the deed with him and that Tsoi a Sue and his clerk would call on them and he could sign the deed at his leisure. These signatures of witnesses to deed are of Tsoi a Sue and his clerk. Before I left I said He was not looking well and would he like to go to hospital. He said "My sons want to know who will pay". He asked me to tell Pearl Lucky he wanted to see her. I did so.

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On 2nd October 1960 he got a stroke and died on 5th October 1960.

On 15th October 1960 at Tsoi a Sue's office I saw certain persons. I have a note of what happened. I would like to refresh my memory. This is the note I took. My memory is bad. I do not trust it. (Refreshes from document) Singh was present, also Mootilal, George Chandroo and Ethel Massamood.

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I got the Will from vault. I read it. Questions were asked about what was to be done. I showed Singh his signature and asked him if he recognised it. He said "Yes, that is the Will". No one suggested existence of another. They requested a family conference. I said they would have to arrange date with Tsoi a Sue. Singh asked that a copy be sent to all named. George asked that a copy be sent to Dr. Maharaj.

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George was to get only a life interest. He said he did not want it and asked if he could give it back. Instructions were later given to probate Will. Advertisements were inserted in Guardian newspaper. This is the form. (Agreed. Put in D.C.I.) At request of Executors I asked Adjodhasingh to value estate.

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On 15th November, 1960 I got a written authority to George Chandroo and Claude Chandroo to manage estate of deceased. (Identifies J.C.3.)

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Examination
continued

(Shown P.T.1.) I saw this letter the day before meeting. I first got to know of existence of another Will on afternoon of day meeting held. Up to that time I used to see Singh well. I never saw Tewari. I know him. He knew me and how to get in touch with me.

It is not true that Singh told me a few days after 16th November 1960 about the Will. It is not true George Chandroo told me.

Cross-examined by Wells:

Cross-
examination

I am presently a Commissioner of Affidavits and I assist Tsoi a Sue when he asked me to, he has asked me to assist him in this case. I would consider myself in the role of instructing solicitor in this case. It is not true that notes were taken in this Court and handed to me. I have a lot of experience in legal matters - over 40 years. I have been in several probate matters. I know the issues in such matters. It is solicitor's duty to prepare an affidavit of scripts and file it within 8 days after appearance. I will accept it that appearance in this case was on January 1962 and script filed in December 1962. I was away in January, but returned on 26th January 1962. I returned to work about end of March 1962. Do not remember if I assisted in preparation of defence. I did not leave statements for use in preparation of defence. Do not remember having to do with preparation of defence. I would remember as important plea like forgery if I prepared defence. I have no recollection of them. I do not think I gave statement before the filing of affidavit of script on 5th December 1962. I do not remember having anything to do with affidavit of script. My impression is that counsel did that. I do not know if Tsoi a Sue gave instructions. I cannot say why only a single testamentary document is referred to. I agree that other testamentary documents should have been referred to.

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Cross-
examination
continued

I took instructions in writing for Will of 1957. These are they. (Produces document. Put in D.C.2.) I wrote out the whole Will with changes straightaway. I would not say Chandroo dictated. That is what I drafted after understanding what he Chandroo, Singh and I agreed to. When I say I agreed I mean I explained what was a life interest and so forth. Those are the conclusions to which we came. It is not correct that I "advised" the life interest. I did not say it was because George had married a negro. Chandroo stated that as one of his reasons. I did not say so before because counsel stopped me at that part. Chandroo said he would not like anything to go to the woman who had openly insulted him. The other complaint was that George had got enough dishonestly. I do not know where he had got it. Chandroo did not tell me he was speaking to Singh. He did not give me any details of dishonesty. He said that George had not accounted. Whatever was said was in presence of Singh and me. Chandroo did not indicate how much money was missing. Chandroo was talking to Singh not to me. Singh was pleading not to leave out George. I have no idea how large the defalcations were.

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Chandroo looked after his own business when he was well as far as I knew. Chandroo was like a father to me. He was close to me he used to come to see me very often. In spite of the failure to account he kept on George at the Cinema. He never discussed it with me. I do not know if he could have put another son in charge of the cinema.

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These instructions in writing were taken at Lucky's house. I remember because that was only the second time I had been to Lucky's house. The Will was signed same day.

Chandroo stressed secrecy of the Will. His earlier Will was made at hospital. I would not say he was very ill, he left next day. The family were at hospital but not in room. I asked them to leave. He did not ask me to keep the contents secret. It is not correct it was made openly in presence of family. I do not know what George could have

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heard from outside when I was reading Will. As far as I remember I asked Chandroo questions of how he wanted to dispose of his estate and I was writing down answers. Then I sat at little table and wrote out Will. It was signed there and then. I kept it. I have not got a copy of it but counsel may have. (Counsel produces documents). I would say that this is exact copy of Will and Codicil because there is note in my handwriting at top of it. They appear to have been prepared at same time, on same typewriter. I cannot say when or how many were made. I have searched counsel's chambers and not found the original. (Put in. D.C.3).

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Cross-
examination
continued

Under this Will he gave 20% to George, Byron, Claude and Hector To Charles 10% and to Stella and Pearl 2%, to wife 3% and 1% to Maud. Ethel Massamood was Executor under Will and removed by Codicil. Under Codicil he increased share to wife and apart from that confirmed Will. No children were present at Codicil - nor Singh. I kept it. The children know of Codicil but not contents. No one but Singh and I know contents of Will. I had conversations with George about Will. He said his father said to bring Will and come. Father denied having told George to tell me to come. It would surprise me very much that he sent for Mr.Cameron about 4th September 1960. I had advised Chandroo to retain Cameron to do some work at Rent Board. Some years before. He did so because the solicitor I was with did not appear there. It would surprise me he got Cameron to do anything else for him. Cameron may have worked for him before me.

I assisted Chandroo in getting mortgage. He was short of money. Barclays Bank had first mortgage. My client, Pooran, had second. It is not correct that it was only after the mortgage I began to work for Chandroo. Do not know if Pooran has called in Mortgage.

Adjourned. Resumed at 11.10 a.m.

Continuing: Under 1957 Will Chandroo first of all wanted to exclude George and then gave him life interest. When I went to him later he

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Cross-
examination
continued

said he never told George to call me. He said his sons were not giving him nourishment. The conclusion I came to on relationship between George and father is that George was pressing him. One matter related to cinema and one to land. Chandroo said George was pressing him because he owed George money. I do not know for what. I know he did as I signed as a witness to a document. I think it was about \$11,000.00. The document was given for money owing long before. I would say some time before.

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(Shown document) This is in my writing. It is dated 16th September. This is not a renewal of an earlier note made by me for a similar amount. He asked me to prepare his note and I did so but it was not signed for some time and I had to change the date. It could be this money was lent at sometime I assisted him. (Document put in D.C.4). I did not know who it was lent.

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I took the deed to La Romain. I am not certain if date was written in when I took it there. I took it because Mr. Cameron who was acting for Purchaser was anxious to get it executed. That is one of the reasons I went. I did not let Tsoi a Sue go with it because George had said Chandroo wanted to see me. Tsoi a Sue is my son-in-law. I was free at the time. Tsoi a Sue was preparing documents for other Chandroos to sign. I left the deed with Chandroo for signature. It was not returned to me by George Chandroo next day. George came to me next day and asked why I had gone to his father without him. It is not true he brought me deed with only his father's signature.

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I advertised after Chandroo's death. I asked Adjodhasingh to make valuation. It was completed. He gave it to George Chandroo. I also attended to the forms for cinema License. I did not make application for License. I prepared statement for Adjodhasingh showing various parcels. I have not got copy. That was after cinema license. That was November. Do not remember date. I am sure it was after - could be about a week.

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I received claims from creditors. The date of latest claim is 26th November 1960. I have no document which would show that. I did work in connection with the estate after 17th November 1960 except correspondence with creditors. I took no major steps as I was awaiting the valuation. I do not know if that same valuation was made in respect of the other Will.

10 It is not true that Singh told me of later Will within one week after 18th November. Nor is it true George Chandroo told me so about 17th November. I did not tell George he must bring Will to me to probate it. I did not say I had a paper from Peter Chandroo to say I must prepare his probate papers.

20 I have always been on good terms with George. Also with Singh. I see him very seldom. I would say Peter Chandroo and Singh were very friendly. As far as I know that was always so. The Will dispute has split family. Difficult to know who is on one side. Pearl Lucky has not been of any assistance to me. Ethel has given me a statement. So has Charles. None of others.

Not re-examined.

Case for defence closed.

In the High Court

Defendant's
Evidence

No.13

Dalton Chadee
11th January 1963
Cross-
examination
continued

In the High Court

No. 14.

No.14J U D G M E N TJudgment
4th May 1963

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No.1498/61.

BETWEENPANDIT DINARATH TEWARI
& OR.

Plaintiffs

- and -

KELVIN LUCKY

Defendant

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J U D G M E N T

By their Statement of Claim delivered in this action the Plaintiffs claimed to be the Executors named in the last Will and Testament of Peter Chandroo deceased, dated 7th September, 1960, and they sought to have probate of the said Will granted in solemn form. By way of defence, the Defendant pleaded that the Will propounded by the Plaintiffs was not made or executed by the deceased either on 7th September, 1960, or at all. He further pleaded that if the deceased did make and execute the said Will then:

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- (a) the same was not duly executed in accordance with the provisions of the Wills and Probate Ordinance and;
- (b) the deceased at the time did not know and approve of the contents thereof

He alleged that the said Will is a forgery that the deceased was unaware of its contents, and he put the Plaintiffs to proof of due execution. By his Counter-Claim the Defendant propounded a Will dated 11th February, 1957,

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and asked the Court to pronounce in favour of this Will

In the High Court

No.14

Judgment
4th May 1963
continued

The facts which are not in dispute are that Peter Chandroo lived at La Romain and had a wife, 4 daughters and 5 sons. On 11th February, 1957, he made and executed a Will under which the wife and all of the children were to obtain some share of his estate. Chandroo died on 5th October, 1960, and some time after his death the existence of another Will dated 7th September, 1960, was revealed. By this Will the Plaintiffs were named executors.

What is disputed, however, is whether this Will was duly executed and whether the testator knew and approved of its contents.

It may be said at the outset that no evidence was led in support of the allegation of forgery and so this is treated as abandoned.

The onus of proving due execution of a Will is, in the First instance, upon the person propounding it and it is for him to "satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator" Barry v. Butlin (1838) 2 Moo. PC. 480, but the onus is a shifting one and where a "prima facie" case has been established by proving due execution the onus is discharged unless and until, by cross-examination of the witnesses or by pleading and evidence the issues are raised. If the party contesting the due execution or testamentary capacity succeeds in raising a doubt about these facts then the onus shifts back to the person propounding.

In the instant case the Plaintiffs led evidence which, on the face of it, establishes that on the 7th September, 1960, Peter Chandroo having dictated his Will and approved of its contents duly signed it in the presence of Pandit Tewari and Frank Duff who both signed as attesting witnesses in his presence and in the presence of each other, in other words, that it was duly executed, so that, the onus then shifted to the Defendant to

In the High Court

No.14

Judgment
4th May 1963
continued

cast doubt on the evidence of these witnesses and on the circumstances in which the Will was executed. If he can do so then the Plaintiffs must show affirmatively that the testator knew and approved of the contents of the Will. Cleare v. Cleare (1869) 1. P. & O. 655).

The question now is, "Has the Defendant destroyed the evidence of the Plaintiffs witnesses?" In my view, he has.

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In the first place, several differences appeared in their evidence as to details, e.g.

- (a) as to who was at Chandroo's house on the day the Will was signed; the sequence of events surrounding the eating of lunch; the circumstances relating to Duff's departure from and return to Chandroo's house. There were others too.

These, taken individually, may appear to be minor, but they take on greater importance when the evidence is considered as a whole, and in the light of some of the behaviour of Pandit Tewari which it is, to say the least, somewhat difficult to understand.

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- (b) Two illustrations of such behaviour are the long delay in informing the co-executor of the existence of the Will, and the way in which he went about making the application for Probate.

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It was urged on behalf of the Plaintiffs that no positive evidence had been led and no direct suggestions made, to contradict their evidence, but this seems hardly to be necessary in dealing with witnesses who are so patently unreliable and who have contradicted themselves and each other.

It was submitted by Counsel for the Plaintiffs that the whole of the cross-examination was directed towards challenging the credibility of the witnesses to the Will and that this is not evidence of suspicious

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circumstances. With this general proposition, I agree but, that situation does not arise in this case. Here there is not only direct evidence of suspicious circumstances, as I shall endeavour to show, but there is abundant justification for saying that the witnesses Tewari and Duff are shown by cross-examination to be completely unreliable. If I do not believe their evidence, how can I be sure of the circumstances in which the Will was executed, especially as I think it is extremely unlikely that a layman could write a Will in the terms of this one merely on listening to a testator express his wishes. It should be noted that, there are no alterations in the Will, and that, according to Duff Chandroo was holding the Will that was being used as a guide.

In the High Court

No.14

Judgment
4th May 1963
continued

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Moreover, the Defendant has led positive evidence which casts suspicion on the execution of this Will. Dalton Chadee had been for many years the person who had attended to the legal affairs of Peter Chandroo. It was he who had gone to see Chandroo in the Hospital in November, 1956, and received instructions to prepare a Will, which when executed, was handed to him for safe keeping. He was the one who had prepared for Chandroo the Will of 11th February, 1957, which he had been instructed to keep. It was admitted by George Chandroo that about 2 weeks before his father died Chadee had gone to his house to get a deed signed. Chadee has said that on this occasion (which was 26th September, 1960) he told Peter Chandroo that George had said he (Peter) wished to change his Will and that Peter had replied "I never told George that. They only want to get my property". I accept this evidence of Chadee's entirely, and find that in all these circumstances, it is very difficult to believe that Peter Chandroo should wish to have someone other than Chadee prepare a Will for him in September 1960. Why should he suddenly wish to abandon Chadee who had prepared the earlier Will and had it keeping. To explain this, Pandit Tewari attempted to give evidence to the effect that Chandroo had referred to Chadee as a rogue, but he retracted it at once, and Stella Mootilal quoted him as saying that he had lost confidence in Chadee. I do not

In the High Court

No.14

Judgment
4th May 1963
continued

believe either of these statements and can see no reason to conclude that if Chandroo wished to alter his Will in September, 1960, he would have turned to anyone but Chadee.

It is well established that certain circumstances of suspicion may cause a Court to refuse probate. One such circumstance was mentioned by Parke, B. in Barry v. Butlin (Supra) as being "If a party writes or prepares a Will under which he benefits." The rule was amplified by Davey L.J. in Tyrell v. Painton (1894 P. at p.159) as follows:

F. "It must not be supposed that the principle in Barry v. Butlin.

(2) is confined to cases where the person who prepares the Will is the person who takes the benefit under it - that is one state of things which raises a suspicion; but the principle is, that wherever a Will is prepared under circumstances which raise a well-grounded suspicion that it does not express the mind of the testator, the court ought not to pronounce in favour of it unless that suspicion is removed."

G. In Re R. the question arose as to what sort of circumstances could be taken into account in arousing such suspicions as could lead a Court to refuse probate. After considering the authorities, Willmer, J. (1950 2 All E.R. at p. 121) concludes:

H. "In dealing with a question of knowledge and approval of the contents of a Will the circumstances which are held to excite the suspicions of the Court, must be circumstances attending, or at least relevant to, the preparation and execution of the Will itself. This view is, I think confirmed by the decision of the Court of Appeal in In the Estate of Musgrove, where it was held that a suspicion engendered by extraneous circumstances, arising

I. subsequent to the execution of the Will, was not a sufficient reason for rebutting

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the presumption of due execution of a Will regular on its face. In the course of an exhaustive judgment Lord Hanworth, M.R., said (1927 P. at p.280);

In the High Court

No.14

'What of the suspicion? It is not such as attaches to the document itself in the sense in which Sir James Wilde uses the term in Guardhouse v. Blackburn, or as it arose in Tyrell v. Painton in the preparation of the Will.

Judgment
4th May 1963
continued

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The wide definition of suspicion stated by Lindley, L.J., in the latter case, that it "extends to all cases in which circumstances exist which excite the suspicion of the court," appears to have been used in reference to the preparation of the Will, its intrinsic terms, and the circumstances surrounding its preparation and execution, and Davey, L.J., seems to have had the same matters in mind. Their judgments were not intended to alter, but to affirm the principles laid down in the cases I have cited."

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In all the circumstances of this case, I have grave doubts that the testator knew and approved of the contents of this Will. The situation is not saved by the application of the principle that a Will which is shown to have been executed and attested in manner prescribed by law is presumed to be that of a person of competent understanding, for as I have stated, I do not accept that the Will was duly executed, since I do not believe the attesting witnesses and since I find that the circumstances attending its preparation and execution are suspicious.

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I find, therefore, that the Plaintiffs have failed to discharge the onus, which has been shifted back to them, of establishing that the Will of 7th September, 1960, was duly executed, or that the testator knew and approved of its contents, and I pronounce against this Will.

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The Defendant will be entitled to his costs on this claim to be paid by the Plaintiff Pandit Tewari alone.

On the Counter-claim, I am satisfied that

In the High Court

No.14

Judgment
4th May 1963
continued

the Defendant has established that the Will on 11th February, 1957, was duly executed and with knowledge and approval of the testator and I pronounce in favour of that Will.

No costs on counter-claim.

Stay of execution six weeks to continue on appeal.

M.A. Corbin,
Judge.

Dated this 4th day of May, 1963.

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No.15

NO.15

Order
4th May 1963

O R D E R

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1498 of 1961

In the Matter of the Estate of Peter Chandroo. Late of La Romain in the Ward of Naparima, in the Island of Trinidad, deceased

BETWEEN

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PANDIT DINANATH TEWARI

and

JOSEPH CHANRARAJ SINGH

Plaintiffs

and

KELVIN LUCKY

Defendant

Dated and Entered the 4th day of May, 1963
Before the Honourable Mr. Justice Maurice Corbin

The Judge, having taken the oral evidence

of the witnesses produced on behalf of the Plaintiffs and the Defendant, and having heard Counsel thereon on their behalf, pronounced for the force and validity of the last Will and testament of Peter Chandroo, the deceased in this action, being the script, bearing the date the 11th day of February, 1957, now remaining in this Court referred to in the affidavit of the Defendant and marked "A" and propounded in this action on behalf of the Defendant therein named, and on further application of Counsel for the Defendant ordered that the costs of defence of the Defendant on the claim be taxed and paid by the 1st named Plaintiff, Pandit Dinanath Tewari to the Defendant, and that there be no order as to costs on the Counter Claim, and on further application of Counsel for the Plaintiffs ordered that execution herein be stayed for six weeks from the date hereof, and if within that time the Plaintiffs give Notice of Appeal and file same, execution herein be further stayed until the determination of such appeal.

Acting Deputy Registrar.

In the High Court

No.15

Order
4th May 1963
continued

No.16

NOTICE AND GROUNDS OF APPEAL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal Action No.32 of 1963

BETWEEN

PANDIT DINANATH TEWARI and Plaintiffs-
JOSEPH CHANKARAJ SINGH Appellants

and

KELVIN LUCKY Defendant-
Respondent.

In The Court
of Appeal

No.16

Notice and
Grounds of
Appeal
7th June 1963

TAKE NOTICE that the Plaintiffs Appellants being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the

In the Court
of Appeal

No.16

Notice and
Grounds of
Appeal
7th June 1963
continued

judgment of the Honourable Mr. Justice Corbin dated the 4th day of May, 1963, do hereby appeal to the Court of Appeal upon the grounds set out in paragraph 5 and will at the hearing of the appeal seek the relief set out in paragraph 4 : AND the Plaintiffs Appellants further state that the names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

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2. The Judge having taken the oral evidence of the witnesses produced on behalf of the Plaintiffs and the Defendants, and having heard Counsel thereon on their behalf, pronounced for the force and validity of the last Will and Testament of Peter Chandroo, the deceased in this action, being the script, bearing the date the 11th day of February, 1957, now remaining in this Court referred to in the affidavit of scripts of the Defendant and marked "A" and pro-
pounded in this action on behalf of the Defendant therein named, and on further application of Counsel for the Defendant ordered that the costs of defence of the Defendant on the claim be taxed and paid by the first named Plaintiff, Pandit Dinanath Tewari to the Defendant, and that there be no order as to costs on the Counter Claim, and on further application of Counsel for the Plaintiffs ordered that execution herein be stayed for six weeks from the date hereof, and if
within that time the Plaintiffs give Notice of Appeal and file same, execution herein be further stayed until the determination of such appeal.

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3. GROUNDS OF APPEAL:

- (a) The judgment is against the weight of evidence.
- (b) The learned Judge mis-directed himself in holding that there were special circumstances surrounding the execution of the Will which would excite the vigilance of the Court as to whether there had been knowledge or approval of the contents thereof by the testator.
- (c) The learned Judge failed to appreciate or to pay due regard to all the evidence, other

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In the Court
of Appeal

No.16

Notice and
Grounds of
Appeal
7th June 1963
continued

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|-----|-----------------|-------------------------------------------------------------|----|
| (i) | ETHEL MASSAMOOD | 81, Drayton Street,
San Fernando. | |
| (j) | STELLA MOTILAL | 2, Kelshall Street,
San Fernando. | |
| (k) | PEARL LUCKY | 23, Edward Lee
Street, San
Fernando. | |
| (l) | JOSEPH MOTILAL | 2, Kelshall Street,
San Fernando. | |
| (m) | LILIAN CHANDROO | c/o La Romain Post
Office, La
Romain. | 10 |
| (n) | MAUD LALBEHARRY | c/o Ethel Massamood,
81 Drayton Street,
San Fernando. | |

Dated this 7th day of June, 1963.

L. LLEWELLYN ROBERTS

Solicitor for the Appellants.

To: The Registrar of the Supreme Court of
Judicature.

20

And to: Mr. George A. Tsoi-a-Sue,
c/o Mr. J. Edward Lai Fook;
41, St. Vincent Street,
Port of Spain,
Solicitor for the Respondent.

No.17

In the Court
of Appeal

JUDGMENT of McSHINE J.A.

No.17

TRINIDAD AND TOBAGO:

Judgment of
McShine J.A.
23rd March
1964

IN THE COURT OF APPEAL

Civil Appeal
No.32 of 1963.

BETWEEN

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In the Matter of the Estate of Peter
Chandroo of La Romain in the Ward of
Naparima in the Island of Trinidad.

PANDIT DINANATH TEWARI
and
JOSEPH CHANKARAJ SINGH

Plaintiffs/
Appellants

- and -

KELVIN LUCKY

Defendant/
Respondent.

BEFORE: The Hon. Mr.Justice A.H.McShine, J.A.
" " Mr.Justice I.E.Hyatali, J.A.
" " Mr.Justice C.E.Phillips, J.A.

20 March 23, 1964.

Messrs. J.A.Wharton, Q.C. and E.Hamel-Wells for
the Appellants.

Mr. H.A.S. Wooding for the Respondent.

J U D G M E N T

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This is an appeal against a decision of
Corbin J. dated 4th May 1963, wherein he pro-
nounced against the validity of the Will of
Peter Chandroo dated 7th September 1960, on the
ground that the Will was not duly executed
according to law and that the Testator did not
know and approve of its contents.

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On a counterclaim in the same action the learned judge pronounced in favour of an earlier Will of the said Peter Chandroo dated 11th February 1957 and admitted it to probate in solemn form.

The appellants Pandit Tewari and Joseph Chankaraj Singh who were the Plaintiffs in the probate action are the Executors named in the Will of 7th September 1960 and move to set aside the judgment on the ground substantially, that the judge misdirected himself on the facts and circumstances of this case. 10

The Appellants seek to have this Court pronounce in favour of the Will of 7th September 1960.

On 5th October 1960 Peter Chandroo died leaving a large estate consisting of real and other property estimated to be worth about \$330,000 gross.

The Appellants claimed to have the Will dated 7th September 1960 established and for that purpose issued a Writ on 8th November 1961. Kelvin Lucky who was one of the Executors named in a Will of the said Peter Chandroo dated 11th February 1957 having entered a caveat to the Will of 1960 was named Defendant in the action. 20

In answer to the claim of the Plaintiffs (hereinafter called the Appellants) viz 'that the Court shall decree probate of the Will bearing date 7th September 1960 in solemn form of law', the Defendant (hereinafter called the Respondent) pleaded in substance (a) that the Will of 7th September 1960 was a forgery; (b) that the same was not duly executed in accordance with the provisions of the Wills and Probate Ordinance Cap.8 No.2 and (c) that the deceased at the time of the execution of the said Will did not know and approve of its contents. 30

It was disclosed in the evidence that on 7th September 1960 the deceased after expressing his desire to make a new Will was handed a copy of the Will of Tewari which he read. The deceased then expressed the view that "that is how he would like to have his Will made" i.e. on the pattern of the Tewari Will. Frank Duff who witnessed the Will 40

was asked to write at the dictation of the testator and his evidence was that he wrote in his own handwriting all and exactly what the deceased dictated. At the end of the dictation Duff testified that he read over the Will to the deceased and handed him the document which the deceased himself read, then stated that it was alright and that was what he wanted. There-
 10 upon the Testator signed the Will in two places in the presence of both Tewari and Duff both present at the same time and that they attested and subscribed the Will in the presence of the Testator and of each other.

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All this took place at the home of the deceased and on the completion Tewari was asked to keep the Will "and not to tell anyone of the children anything about the Will".

On the 16th November 1960 Tewari took the Will to Mr. Roberts a Solicitor and gave in-
 20 structions for obtaining a grant of Probate.

On the 15th January 1961 Tewari went to La Romain to meet and inform the "children" of the Will of their father the deceased. This disclosure caused unpleasantness to Pearl Lucky, the wife of Respondent, but Tewari explained that he had been ill and could not have informed all the 'children' sooner. George Chandroo however had known of this Will since 15th November, 1960. On the application for the said
 30 grant, the Respondent filed an answer and counterclaimed that the Court pronounce instead for a Will dated 11th February 1957.

It is to be observed that the Appellant Chankaraj Singh was named as an Executor in both Wills. There was no evidence whatever that Tewari ever knew of the contents of the Will 11th February 1957, and he did not stand to benefit at all under the Will of 1960. Frank Duff who wrote the Will of 1960 and was
 40 an attesting witness derived no benefit under it, he was unknown to the deceased or any member of his family.

On the first issue raised in the pleadings of the Respondent, Counsel for the Respondent stated to this Court that the allegation of

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forgery was not 'pressed' and the trial judge stated in his judgment that "no evidence was led in support of that allegation and so this was treated as abandoned". It is only right to say that each witness when asked, was compelled to admit that the signature 'Peter Chandroo' appearing on the 1960 Will appeared to be that of the deceased, and none could cast any doubt as to its genuineness and validity.

The issues at the trial were of due execution according to law and the want of knowledge and approval of the contents of the 1960 Will. 10

The evidence for the Appellants was that the deceased read and considered Tewari's own Will which had been brought as a sort of a pattern and after the deceased had expressed approval of its form, and of the manner of distribution, dictated his own Will on that pattern to Duff who wrote exactly what the deceased directed. When one compares the Will of the deceased with the Tewari Will, it may be seen that 'mutatis mutandis' the pattern was almost too studiously followed. At the end of the dictation the evidence was that Duff read over to the testator what he had written, then the testator read the document himself expressed his approval and signed it as his Will. The signature and will was then attested by Tewari and Duff in accordance with the provisions of the Wills and Probate Ordinance and further the testator again signed below the attestation clause. 20 30

The only witness called by the Respondent to contest the issues raised was Mr. Dalton Chadee O.B.E.

Mr. Chadee was for over thirty years a Solicitor's chief clerk but has now retired. He was a prominent figure in the municipal life of the Borough of San Fernando for over thirty years. For thirty years or more Chadee and the deceased Peter Chandroo had been friends and the evidence disclosed that the deceased had from time to time taken legal advice from Chadee, and that Chadee had at least supervised most of the legal transactions into which the deceased had entered from 1956. 40

On 11th February 1957 the deceased and Chankaraj Singh visited the office of Mr. Tsoi-a-Sue a solicitor where Chadee was to be found. The deceased there asked Chadee to get his two Wills (a Will dated 10.11.56 and Codicil dated 12.11.56) as he wished to make a change. The deceased stated he wanted to make a new Will in order to "give the girls more than he did in former Will as they had been very kind to him". It is the evidence of Chadee that the deceased also stated that he would leave nothing to his son George as he (George) was not accounting to the deceased for 'takings' at the cinema owned by the deceased. After a discussion with Chankaraj Singh, the deceased agreed to leave to George a life interest in a portion of his estate. The Will of 11.2.57 was then prepared by Chadee, the Will was signed by the deceased and was duly attested by Chadee, and Chankaraj Singh. It was this Will that the Respondent in his counterclaim asked that the Court pronounce for in solemn form.

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The trial judge granted that the evidence of Pandit Tewari and Frank Duff 'prima facie' established that the Will of 7th September, 1960 was duly executed, "so that, the onus then shifted to the Defendant to cast doubt on the evidence of these witnesses and on the circumstances in which the Will was executed. If he can do so the Plaintiffs must show affirmatively that the testator knew and approved of the contents of the Will. Cleare v Cleare (1869) L.R.1. P. & D. 655."

The learned judge then posed the question to himself, whether the Defendant had destroyed the evidence of the Plaintiffs' witnesses, and answered it in the following way.

I quote :-

"In the first place, several differences appeared in their evidence as to details, e.g.

(a) as to who was at Chandroo's house on the day the Will was signed; the sequence of events

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surrounding the eating of lunch; the circumstances relating to Duff's departure from and return to Chandroo's house. There were others too.

These, taken individually, may appear to be minor, but they take on greater importance when the evidence is considered as a whole, and in the light of some of the behaviour of Pandit Tewari which it is, to say the least, somewhat difficult to understand.

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- (b) Two illustrations of such behaviour are the long delay in informing the co-executor of the existence of the Will, and the way in which he went about making the application for Probate.

It was urged on behalf of the Plaintiffs that no positive evidence had been led and no direct suggestions made, to contradict their evidence, but this seems hardly to be necessary in dealing with witnesses who are so patently unreliable and who have contradicted themselves and each other."

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It was submitted on behalf of the Appellants that the learned judge failed to make the proper approach to the determination of this matter.

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It was contended that the judge ought to have dealt with the case as a matter of fact as in any other ordinary case. Depending on the conclusions arrived at, it was for the judge then to determine whether the true probate position had arisen and if so, apply the established law as adumbrated in Barry v Butlin (1838) 2 Moo. P.C.C. 480, Fulton v Andrew (1875) L.R. 7 H.L. 448 etc.

It must be borne in mind that in this instant case neither fraud nor undue influence was alleged. There was no evidence that on the 7th September 1960 when the deceased signed what purports to be his last Will that he was in any

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way affected in mind so as to be incapable of appreciating the nature, extent and effect of his act. Indeed there was evidence that on 26th September 1960, the deceased carried through and signed a deed of sale in the presence of a solicitor, Mr. Tsoi-a-Sue, and Mr. Chadee, and no suggestion is made that the deceased was not in a fit state mentally to have appreciated that act.

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10 Now the judge in this instant case gives, apart from the minor differences in the testimony of Tewari and Duff, his reason for considering these witnesses "patently unreliable". He states that "the Defendant has led positive evidence which casts suspicion on the execution of the Will." This must obviously have come, if at all, only from the testimony of Chadee, but all the evidence of Chadee was dehors the execution. The factors in the evidence of Chadee which it
20 Chadee had been for some time the person who had attended to the legal affairs and was a close confidante of the deceased.

The judge accepted this evidence and inferred first that "it is difficult to believe that Peter Chandroo should wish to have someone other than Chadee prepare a Will for him in September 1960."

30 In their evidence Tewari and Stella Moonilal suggested the explanation for this in saying that the deceased had lost confidence in Chadee. The judge did not accept this as a satisfactory explanation and preferred "to accept the evidence of Chadee entirely".

40 Another factor it would appear loomed large in the view of the judge. It is secondly that, he considered it "extremely unlikely that a layman could write a Will in the terms of this one merely on listening to the testator express his wishes". The judge adds "that it should be noted that there are no alterations in the Will". Patently the judge overlooks the fact that this layman wrote from dictation.

It was argued that the facts and circumstances in this case did not warrant the acceptance of Chadee's evidence or justify the

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inference or the conclusion which the judge has drawn. The first did not follow and the second was on the evidence false.

One fully appreciates that the findings of fact of a judge who has had the advantage of seeing and hearing the witnesses is not lightly to be set aside. But in this case he has given his reasons for coming to his conclusions; the material facts are not really in dispute and the feature of the manner and demeanour is not one of the reasons which prompted him in any way to arrive at his findings. In critically examining the facts in this case this court in my view even if it comes to a different conclusion is in no way diminishing the value of the right of the judge to arrive at conclusions on the facts.

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Notwithstanding the fact that Chadee was (so to speak) the legal adviser of the deceased, and knew of the testamentary instruments of 1956, this whole case went through without full disclosure in the affidavit of scripts, as is required by the contentions Probate Rules; see O.30 r.3, n. The circumstances surrounding the failure of Chadee to inform the Respondent of the documents of November 1956 purporting to be or having the form and effect of a Will was at the least open to question.

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The real burden of the argument of counsel for the Appellants in this matter is that the whole finding of the learned judge is based on inferences and reasoning which in themselves must be fallacious because they are based upon a speculative and false premise, and the false premise on which apparently he relies, is the premise that the judge appears to have had in his mind that the testator must have consulted Chadee if he proposed entering into any transaction of a legal nature.

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This argument appears to me to be sound, for the evidence on behalf of the Respondent not only does not challenge the principal and important testimony of Tewari and Duff, but in so far as the judge thought that the testator would not have made a legal instrument without consulting Chadee, there is contradiction in the evidence that the testator on 4th September 1960 expressed

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the "intention to hand over the entire estate to the five boys", i.e. to his sons and for that purpose the testator asked his daughter Ethel to get Mr. Cameron a solicitor who did all the legal work for the testator up to 1956, to come and see him at his home on 7th September 1960 so that a deed should be made. The evidence of Chankaraj Singh is that the testator on 4th September 1960 sent two of his daughters "to bring Mr. Cameron to make a Will". This then was direct and uncontradicted evidence which completely falsified the premise upon which the judge inferred that it was "difficult to believe that the testator should wish to have some one other than Chadee prepare a Will".

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I am of the view that the findings of the judge must be wrong because they are based not so much on the assessment of the evidence which was given before him, but on reasoning and inference which must be imperfect reasoning because it was founded on a basis which in itself was a false one.

The true position then was that on 4th September 1960 the testator had a discussion in his home with Pandit Tewari, his brother-in-law. His life long friend Chankaraj Singh the catechist was also present, and the talk centred around making a Will, or perhaps a deed intending to benefit his five sons rather more than they would have benefitted under any former disposition. With this in view he instructed his daughters Stella and Ethel to ask Mr. Cameron to come to him on the 7th September.

On the 7th September in the early morning Tewari returned to the home of the testator. It was the evidence of Stella Motilal that on that morning Ethel told her father that Mr. Cameron could not come to him till about 2 p.m.

Tewari on that morning produced a copy of his own Will for the inspection of the testator. It is correct to say that Tewari since the 4th September had known that the testator wished to make a Will, but there is no evidence from which it can be said that before 4th September 1960 Tewari knew that the testator had already made a Will which was in the keeping of Chadee.

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Be that as it may the testator after reading Tewari's Will decided that he should make his own after that fashion, and did not await the arrival of Cameron. Thereupon Duff at the dictation of the testator wrote the Will of 7th September 1960.

The question of forgery was out, and there was neither plea nor proof of fraud or undue influence. At the trial no question whatever arose as to the attestation as a fact, of the Will of the 7th September 1960 to permit of any submission that the attestation was not in accordance with the provisions of sec.42 of the Wills and Probate Ordinance.

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Whatever tests may be applied, here was a document in writing purporting to be and having the form of a Will containing the valid signature of the testator and attested by two witnesses in accordance with the statutory requirements, and in which neither attesting witness stood to benefit. I cannot see how on the facts of this case it can be said that this Will of this capable testator was not duly executed.

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In the testimony of the attesting witnesses it is true that there were minor differences, but in a case of this kind where a capable testator is performing a solemn act as indicating what might be his final intentions regarding his estate, such minutiae as to events surrounding lunch or relating to Duff's departure from and return to Chandroo's house, testimony given two years and four months after the events, seem in my view so insignificant and so unconnected with the substance of the transaction that it was wrong to make that any part of a basis for holding that there was not due execution of this Will.

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Even if the learned judge was disposed to accept the evidence of Chadee, which I doubt he should have done so implicitly and entirely, there was nothing in the evidence of Chadee, to cast the slightest doubt that any of the provisions of the statute had not strictly been complied with. Here it may be observed that the approach to this problem was misconceived, for had the learned judge approached the matter

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first by critically examining the document and the circumstances surrounding its preparation and execution rather than start with the witnesses, he would have perceived that on the face of it the document bore the hall mark of a genuine Will.

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Counsel for the appellant submits also that the principle 'omnia praesumuntur rite esse acta' applies in this case as in all cases where the Will is regular on the face of it, with an attestation clause and the signatures of the testator and witnesses in their proper places, and authority for that proposition is to be found in the case, In the Estate of Musgrove, Davis v Mayhew (1927) p.264 C.A.,

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In the present case from the very appearance of the Will it seems to me that the observance of the legal formalities required is proved by the evidence and the presumption has no place. In Harris v Knight (1890) 15 P.D. 170 decided by the Court of Appeal, at p.179 Lindley L.J., said :-

"The maxim, 'Omnia praesumuntur rite esse acta,' is an expression, in a short form, of a reasonable probability and of the propriety in point of law of acting on such probability. The maxim expresses an inference which may reasonably be drawn when an intention to do some formal act is established; when the evidence is consistent with that intention having been carried into effect in a proper way; but when the actual observance of all due formalities can only be inferred as a matter of probability. The maxim is not wanted where such observance is proved, nor has it any place where observance is disproved."

At the trial no contest arose in opposition to the Will of 1960 on the ground that the statutory requirements as to due execution as such had not been complied with. The real challenge seems to have been that the Will had never been made at all, and it would seem that the conclusion arrived at by the learned judge amounts to a finding of forgery and/or fraud. The purpose

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of the statutory requirements as to due execution is the prevention of fraud. "Forgery was abandoned" as the judge himself points out and fraud was not pleaded and never was an issue in the case. I am firmly of the view that on this aspect of the case the learned trial judge misdirected himself and drew an improper inference from the fact that because the testator did not on the occasion of making his new Will on 7th September 1960 consult with or have Chadee make it for him, he could not therefore have made it at all. This conclusion cannot stand.

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It is essential to the validity of a Will that the testator should have known and approved of its contents at the time of its execution.

"In Halsbury's Laws 3rd Edn. p.206 para.367 it is stated that "In the absence of fraud, it may be laid down as a general rule that the fact that his Will has been duly read over to a capable testator on the occasion of its execution, or that its contents have been brought to his notice in any other way, is conclusive evidence that he approved of, as well as knew, the contents thereof." Judicial acceptance of this proposition is to be found in Guardhouse v Blackburn (1866) L.R. 1 P. & D. 109.

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Sir J.P. Wilde in Atter v Atkinson (1869) L.R.1 P. & D. 655, at 668 said that a judge "ought to be well satisfied from evidence calculated to exclude all doubt, that the testator not only signed it (the Will) but that he knew and approved of its contents".

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In that case, he was dealing with a Will in which the person who made it, himself took a large benefit. But later at p.670 Sir J.P. Wilde said "Once get the facts admitted or proved that a testator is capable, that there is no fraud, that the Will was read over to him and that he put his hand to it, and the question whether he knew and approved of the contents is answered."

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The situation in which the plea of want of knowledge and approval is commonly raised is when the circumstances attending the execution of the Will are such as to raise suspicion under

the rule laid down by the Privy Council in Barry v Butlin (supra). In that case the deceased's solicitor who prepared the Will was himself a substantial beneficiary under it and the question was whether the suspicion engendered by this circumstance, as well as by the provisions of the Will itself have been satisfactorily dispelled by the party propounding the Will.

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10 In advising Her Majesty Parke B. enunciated two rules which have been universally accepted and applied as governing cases of this character.

20 The first rule is (at p.482) "that the onus probandi lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator". Later (at p.484) Parke B. explained that the onus "is in general discharged by proof of capacity and the fact of execution, from which the knowledge of an assent to the contents of the instrument are assumed". The second rule which in effect deals with situations where a party writes or prepares a Will under which he takes a benefit, calls upon the Court to be most vigilant and jealous in examining the evidence in support of the instrument. This latter rule however has no bearing on the matter in hand as neither of the witnesses Tewari or Duff who assisted in the preparation and attested the Will of 1960, stood to benefit under it. With one exception, (that was in Tyrell v Painton (1894) p.151) in all the subsequent cases in the reports in which the rule in Barry v Butlin has been applied the circumstance giving ground for suspicion has been the fact that the Will was prepared or its execution produced by a person taking a benefit under it.

40 True enough in Tyrell v Painton, (supra) where the Will was prepared by the son of the Defendant, the person in whose favour the Will was made, the Court of Appeal held that the rule in Barry v Butlin is not, (and I quote the words of Lindley L.J. at 157) :-

"confined to the single case in which a Will is prepared by or on the instructions of the person

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taking large benefits under it, but extends to all cases in which circumstances exist which excite the suspicion of the Court".

Lindley L.J. however went on to make it clear that the circumstances to which he was referring must be circumstances attending the preparation or execution of the Will.

With these principles in mind I turn to the facts of this case surrounding the preparation and execution of the Will of 7th September 1960, in order to determine whether the testator knew and approved of its contents. 10

I have already stated and hold on the evidence that the deceased on 7th September 1960 was in no way affected in mind and so was on that day capable of knowing and approving of the contents of the Will. The question then merely is whether in fact he did know and approve. 20

The literacy of the deceased is not questioned. It was the evidence of Duff that after the deceased had read the Tewari Will the deceased said he would like it (his Will) written like that Will, Duff then read the Tewari Will and returned it to the deceased.

Duff was then told by the deceased where to obtain writing paper and when he got his pen the evidence is that Duff wrote the Will of the 7th September 1960 at the dictation of the deceased. 30

Duff testified to the fact that at the end of the dictation which the testator gave whilst holding and looking at the Tewari Will, he Duff then read over what he had written then handed the document to the deceased who read it himself and said "that was what he wanted", and with Duff's pen signed his name to the instrument.

The evidence of Tewari is quite to the same purpose and effect and almost in the same terms as to the circumstances surrounding the preparation of the Will. 40

Frank Duff a transport overseer was a

complete stranger to the deceased and his family and came to be at the home of the deceased at La Romain because he had been asked by Tewari to drive him that day from his home at Cunupia to La Romain. Pandit Tewari a Hindu priest of Cunupia was the brother-in-law of the deceased and lived at Cunupia 20 - 25 miles distant from La Romain where the deceased lived.

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10 On 4th September 1960, Tewari had visited the deceased and during that visit the deceased had stated that he had a Will prepared by Chadee but was not satisfied with that Will as a certain percentage of the estate in that Will will be going to his girl children and on their death their share would go to sons-in-law and they may give his children trouble.

20 Since Mr.Cameron could not be there the deceased on that morning then proceeded to make his Will in the presence of Tewari and Duff in the circumstances related above.

There was no evidence that Tewari or Duff or either of them had been aware of the contents of any former Will of the testator, nor was there evidence that they had been in consultation with any member of the family of the deceased. All this evidence was uncontroverted.

30 The learned judge seems to have taken as circumstances arousing suspicion (a) "the long delay in informing the co-executor of the existence of the Will" and (b) "the way in which he (Tewari) went about making the applications for Probate".

40 It is enough to say that the learned judge has again misdirected himself in that these factors may have contributed to the proof of fraud which was not pleaded and that neither of these factors came within the principles of law as adumbrated in the authorities noticed above and to which the judge had directed his mind. In effect his appraisal of the evidence substantially negatived the law which he had drawn to his own mind.

It may indeed be said that the stage for the application of these principles regarding

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suspicion had hardly been reached in this case.

This judgment on a question of fact, of necessity has had to be rather more than brief and I shall not burden it further either with a review of well-established principles as laid down In the Estate of Musgrove (supra) or in Mungaree v Mahabaldas v Vol.4 Judgments of Supreme Court of Trinidad and Tobago 138 or with a detailed analysis of the change in the manner of distribution of his property by the testator. 10
It is sufficient to notice that no one who had claims to the bounty of the testator had been overlooked and if the sons of the testator benefitted more largely in the 1960 Will than in the 1957 Will to the detriment of the daughters it was only the right of a free and capable testator who expressed reason for so doing. In the absence of fraud any court should give effect to his wishes if it is at all possible to do so.

As a final reflection on this aspect of the case this change in the disposition by the testator which in many respects kept so close to the dispositions contained in the 1957 Will, the provisions of which were unknown to Tewari and Duff, strongly assists in the discharge of the onus on the appellants, that the testator knew and approved of the contents of the Will of 1960. 20

On the evidence in this case there has been no proof whatever that the signature of Peter Chandroo was a forgery. There was evidence of fact of execution in accordance with the provisions of sec.42 of the Wills and Probate Ordinance. Neither fraud nor undue influence was pleaded in this case and there was no issue at the trial on those matters. 30

"When therefore the person propounding the Will has once proved that it has been executed with due solemnities by a person of competent understanding, and apparently a free agent, he has 'prima facie' discharged the burden of proof cast upon him by law", 40

see Mortimer on Probate 2nd Edition p.70.

The burden of proving that the Will was not

made by the testator at all, (as where it was a forgery) or that there was fraud or undue influence is on the party who alleges it.

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10 Chadee did not suggest that the signature 'Peter Chandroo' on that Will was a forgery. Chadee was not present at the home of the testator on 7th September 1960 and could not and did not speak of what took place on the occasion of the making of the 1960 Will. There was no conflict therefore with respect to its execution or as to the knowledge and approval of its contents.

20 It is strange indeed that the effect of Chadee's evidence was so considerable on the learned judge. For my own part the evidence that he did give was open to some question. I have already referred to his failure to inform the Respondent with regard to the affidavit of scripts. Chadee also testified to carrying "the Will and Codicil" to the home of Peter Chandroo on 26th September 1960, when the Cummings deed was to be signed. The Will of November 1956 had a Codicil attached thereto but not the later Will of February 1957. George Chandroo had told Chadee he wanted his father's Will "to tear it up". On the 26th Chadee told the testator he had brought 'the Will and Codicil' as he was told that he the testator wish to make a 'change'. If then the expression 'Will and Codicil' referred to the 1956 instrument, why should Chadee have taken that one to Peter Chandroo and not the 1957 Will. One will not speculate on this matter but what truly emerges is that the testator wished his Will of 1957 destroyed if George is to be believed or changed if Chadee is believed, and that is in consonance with the fact that on 7th September 1960 he had written another Will. The testator was given to secrecy regarding the Wills he had at different times made and it appears to me that the making of the Will of 1960 was another manifestation of secrecy even as regards Chadee. No reason has been given why George Chandroo was not believed, there was no evidence that he knew whether he benefited at all or to what extent by the Will of his father.

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On all consideration I hold that the

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learned judge for the reasons I have given mis-directed himself in the inferences he drew and the reasoning he applied to the uncontroverted facts in this case. The speculative inference that the judge drew that the testator must have consulted Chadee if he wished to make any legal instrument, and did not, therefore the instrument of 1960 never was made is patently wrong, and is tantamount in my view to a finding of forgery or fraud. The Respondent would have had to prove either of these affirmatively. This was not done.

10

It follows that when the instrument of 7th September 1960 is properly regarded and the evidence in the case is correctly appreciated, there can be no question but that the provisions of the statute had been complied with, and that the Will sought to be probated had been made by a capable testator with knowledge and approval of its contents.

20

There only remains the submission made by counsel for the Respondent that on the assumption that the judge at the trial was wrong this court should order a new trial.

In the circumstances of this case, this Court is in no inferior position to the trial judge with regard to the facts. The Appellants were put to the proof of due execution of an instrument valid on the face of it, and to the proof that the testator knew and approved of its contents. There was no contradiction to these matters in the case for the Respondent. The learned judge was not called upon to be eclectic as to what was testified to or whose evidence to prefer, and there was no question that the manner or demeanour of the witness played any part in the conclusions to which he came.

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In such circumstances it is undoubted that this court can come to its own conclusion on this case. See Yuill v Yuill (1945) 1 All E.R. 183, Watt v Thomas (1947) 1 All E.R. 582 and Bermax v Austin Motor Corporation (1955) 1 All E.R. 326.

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In Wintle v Nye (1959) 1 A.E.R. 552, a

probate action tried before a jury, where although the learned trial judge had stated the law and the issues accurately and clearly, his summing up to the jury of the evidence substantially negatived the law. In the opinion of the House of Lords there was such misdirection that the jury's verdict on the facts could not stand. Viscount Simonds at the very commencement of his speech at p.54 said :

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10 "My Lords, the right to trial by jury
 is traditionally precious to the
 citizen if their verdict is to be
 lightly set aside and either a new
 trial ordered or the opinion of an
 appellate court substituted for
 theirs the value of that right would
 be substantially diminished." I
 have not, I hope, in my considera-
20 tion of this case, failed to pay
 that jealous regard to the verdict
 of a jury which is its due".

 Their lordships proceeded to set aside the
 verdict and decree and substituted their own
 on the Will and Codicil disputed in that case.
 I also pay 'jealous regard' to the judgment of
 the trial judge but I am firmly of the view
 that his decision cannot stand. I would allow
 this appeal and propose that the following
30 order should be made. That the judgment and
 decree of Corbin, J. dated 4th May, 1963 be set
 aside and the Will of 11th February 1957 be
 pronounced against. That this court pronounce
 for and in favour of the Will of Peter Chandroo
 dated 7th September 1960 and that it be admitt-
 ed to Probate in solemn form of law.

 As to costs that this Court orders that
 the Respondent do pay to the Appellants the
 taxed costs of this appeal and two-thirds of
 the taxed costs of the trial.

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A. Hugh McShine
Justice of Appeal.

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of Appeal

No.18

JUDGMENT OF HYATALI J.A.

No. 18

Judgment of
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23rd March
1964

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No.32 of 1963.

BETWEEN

In the Matter of the Estate of Peter
Chandroo of La Romain in the Ward of
Naparima in the Island of Trinidad.

10

PANDIT DINANATH TEWARI and Plaintiffs/
JOSEPH CHANKARAJ SINGH Appellants

- and -

KELVIN LUCKY Defendant/Respondent.

BEFORE: The Hon.Mr.Justice A.H.McShine, J.A.
 " " Mr.Justice I.E.Hyatali, J.A.
 " " Mr.Justice C.E.Phillips,J.A.

March 23, 1964.

Messrs.J.A.Wharton, Q.C. and E. Hamel-Wells for
 the Appellants.
Mr. H.A.S.Wooding for the Respondent.

20

J U D G M E N T

The Respondent, who is one of the Executors
of a Will made on February 11, 1957 by the late
Peter Chandroo of La Romain (hereinafter refer-
red to as "the Testator"), succeeded in persuad-
ing Corbin, J. to hold that a subsequent Will of
the Testator made on September 9,1960 was not duly
executed and that the preparation and execution thereof
were attended by circumstances of suspicion.
In the result, the 1957 Will whose validity as a
testamentary document was in no wise impeached
was admitted to probate as the true last Will of

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the testator and the 1960 Will propounded by the Appellants as the Executors thereof, rejected.

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10 The Appellants have challenged the learned judge's findings against the 1960 Will but before proceeding to examine them it would be convenient to consider the issues raised by the pleadings and those that were ultimately in contest at the trial. By way of defence the Respondent alleged that the 1960 Will was a forgery and in the
10 alternative that if it was made and signed by the testator it was not duly executed and that he did not know and approve of its contents when he did so. Save for the Appellants' plea that it was revoked by the 1960 Will no other issue was raised in respect of the 1957 Will which the Respondent propounded by way of counterclaim. As to due execution of the 1960 Will, the Appellants were merely put to the proof of compliance with the
20 provisions of the Wills and Probate Ordinance and as to want of knowledge and approval, the Respondent alleged that the testator gave no instructions for the Will, that it was not read over or explained to him, that he did not read it himself and that he was unaware of its nature and effect.

At the trial however the charge of forgery was either abandoned or withdrawn - it is not clear which - and as to the specific matters pleaded under the head of want of knowledge and approval there was no evidence in support thereof. The
30 learned judge recognised that the Appellants and their witnesses had given prima facie proof of due execution and knowledge and approval of the 1960 Will but in the end he refused to admit it to probate because of his conclusion that the Respondent had destroyed the credibility of the Appellants and their witnesses and shown that the preparation and execution of the Will were attended by suspicious circumstances.

40 The first question for decision in these circumstances is whether the reasons given by the learned judge for rejecting the evidence of the Appellants and their witnesses and finding suspicious circumstances can be supported. These reasons may be summarised as follows :-

- (a) differences as to minor details between the evidence of the attesting witnesses

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and a son and daughter of the testator as to what took place at his home on the morning of September 7, 1960 when he signed the Will.

- (b) the long delay by Tewari (an executor and attesting witness) in informing the co-executor (the second Appellant), of the existence of the Will and the way in which he went about making the application for probate. 10
- (c) the extreme unlikelihood that the witness Duff a layman could write a Will in the terms of the 1960 Will merely by listening to the testator express his wishes; and
- (d) the unlikelihood that the testator would have asked anyone but Dalton Chadee to alter his Will if he wished to do so.

Phillips, J., in the judgment he is about to deliver and which I have had the advantage of reading has clearly demonstrated that these reasons are both unsatisfactory and insupportable and as I find myself in agreement with his views I shall in the interest of brevity merely add a few observations. The minor discrepancies on matters of detail were in the circumstances of this case a far from satisfactory ground for impeaching the credit of the witnesses. The delay by Tewari in informing his co-executor of the 1960 Will after the testator's death was a matter of some six weeks, which was by no means long or undue and in any event, it was satisfactorily explained. I have looked in vain in the evidence to find anything sinister, unusual or suspicious about the way Tewari went about making the application for probate of the Will. He merely went to his own solicitor, which was perfectly natural, to instruct him to apply for probate and secured the attendance of the relevant persons to enable the application to be prepared. With respect to the writing of the Will by the attesting witness Duff the learned judge was completely oblivious of the evidence that the testator had Tewari's Will in his hand and used it as a precedent to dictate the terms in which it was actually written. A 20 30 40

comparison between the Tewari Will and the 1960 Will shows the striking similarity in phraseology, provision, style and expression. It would seem that the terms in which the Will is couched excited much suspicion in the mind of the judge but there was a perfectly good explanation therefor which he unfortunately ignored. As to Chadee's evidence I would accept the learned judge's view that it was accurate and reliable; but in my judgment, it failed to establish that if the testator wanted to make another Will he would have asked Chadee to do so and no one else. Indeed, the evidence showed that he wanted to make a material change in the terms of the dispositions contained in the 1957 Will and had in fact ignored Chadee and sent for Cameron a solicitor of San Fernando with a view to effectuating his wishes. There is one feature of Chadee's evidence nevertheless, which might be said to bear on the question of knowledge and approval and it arises in this way. The testator's son George who had nothing whatever to do with the preparation and execution of the 1960 Will testified that two weeks before his death on October 5, 1960 the testator had instructed him to retrieve the 1957 Will from Chadee and destroy it. He went to Chadee on the next day to get the Will but Chadee refused to deliver it up to him. Chadee's evidence however was that George saw him on two occasions in 1960 about the testator's Will. The first was on or about the last Sunday in August and the next, on September 26, 1960. In consequence of the first interview with George, Chadee saw the testator and told him that George had said that he, the testator, wanted to see Chadee in connection with his Will. The testator denied telling George so and warned Chadee not to disclose the contents of the Will to George. On the next occasion Chadee saw the testator and told him that George had said that he, the testator, wanted Chadee to bring his Will to make a change in it. The testator denied this also and told Chadee that his children only wanted to get his property but were not interest in giving him nourishment.

The learned judge accepted this evidence as true and concluded therefrom that if the testator wanted to change his Will he would not have asked anyone but Chadee to do so. I have already

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commented on this conclusion, but what is more to the point is that if the testator spoke to Chadee in the manner alleged, it tended to show - (1) that the testator on the first occasion instructed Chadee to keep the contents of his 1957 Will secret; (2) that on September 26, 1960 he could not have been aware that he had made a Will on September 7, 1960 inasmuch as he told Chadee he did not want to make any changes to the 1957 Will; and (3) that George told an untruth when he said that the testator had asked him to get the 1957 will from Chadee and destroy it. Of these matters the second only is of relevance to the question of knowledge and approval. The difficulty about it however is that one is unable to say whether the testator made those statements to Chadee out of a desire to conceal from him the 1960 Will, which would have been perfectly natural in the circumstances if he had in fact made it in the circumstances alleged, or whether he spoke the truth to Chadee, in which event it would tend to negative knowledge and approval. To justify the latter conclusion however, it would be necessary to regard the testator's statement as proof of the truth of what he stated but in my judgment, it cannot be so regarded. Chadee's evidence in its totality therefore comes to nought.

It is of importance to notice that the credibility of the appellants and their witnesses did not turn on manner and demeanour. As I have said before they were rejected for reasons that are unsatisfactory and untenable, and as to suspicious circumstances they were inferred from material that was tenuous and inconclusive. I am satisfied that these errors disabled the learned judge from taking proper advantage of his having seen and heard the witnesses and that the case falls within Lord Thankerton's third proposition in Watt (or Thomas) v Thomas (1947) 1 All E.R. 582 at 587, and accordingly becomes one at large for this court.

The Appellants urged that the unconverted evidence in support of the matters that were in issue at the trial made it a fit and proper case for the court to come to its own factual

conclusions but the Respondent objected that the nature of the evidence and the subject matter of the action precluded the court from arriving at a proper decision. I confess that at first blush, I was inclined to the view that the case should be remitted for re-trial but on further consideration, I have come to the firm conclusion that this course cannot be justified. On appeal from the decision of a judge sitting without a jury, the Court of Appeal, subject to the qualifications stated in a long line of cases and more particularly in Watt (or Thomas) v Thomas (supra), has the same right to come to decisions on the issues of fact as well as law as the trial judge. (see Per Lord Atkin in Powell v Streat-ham Manor Nursing Home (1935) All E.R. 58 at p.63). Indeed, "justice and judicial obligation" require that in appropriate cases the court should not shrink from exercising this right. Lord Halsbury L.C., in Rickmann v Thierry (1896) 14 R.P.C. 105 expressed this obligation in even stronger language. He said at p.107 ibid:

"Upon appeal from a judge where both fact and law are open to appeal it seems to me that the appellate tribunal is bound to pronounce such judgment as in their view ought to have been pronounced in the court from which the appeal proceeds and that it is not within their competence to say that they would have given a different judgment if they had been the judge of first instance, but that because he has pronounced a different judgment they will adhere to his decision".

Lord Reid quoted this passage with approval in his speech in Benmax v Austin Motors Ltd. (1955) 1 All E.R. 326 at p.329, and it seems to me to be merely a logical extension of Lord Halsbury's opinion to say that the court should not order a re-trial when the evidence is such as to enable it to come to a satisfactory conclusion on the issues of fact.

The learned judge accepted that there was prima facie proof of due execution and of knowledge and approval, and I agree with him. The

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real question therefore is whether there was any good ground to displace it, or any sufficient reason for not admitting the Will to probate. I myself have been unable to find any. The Will in question is a customary legal Will with a valid attestation clause and contains dispositions that are completely consistent with the proved intention of the testator to leave all his real estate to his sons. All his daughters are left legacies in a like amount and his wife is also provided for. The authenticity of the testator's signature thereto was neither challenged, impeached or placed in doubt for a single second. On the contrary, the evidence establishes beyond a peradventure that the signature is genuine. The Will itself not only speaks for its validity in all respects, but its due execution as evidenced by the attestation clause, is supported by the attesting witnesses Tewari and Duff who benefit in no way whatever from the testator's bounty. There is not a single fact introduced by the Respondent to show that there were suspicious circumstances nor is there a single circumstance in the whole of the evidence to raise any question of suspicious circumstances. Moreover, there is no evidence in support of any of the specific matters pleaded under the head of want of knowledge and approval, and no question arises as to the capacity of the testator. In these circumstances I think the court would be shrinking from its duty if it did not come to a decision on the issues of fact. I therefore hold that the evidence establishes that the 1960 Will was duly executed with the knowledge and approval of the testator and that circumstances of suspicion do not exist. I agree that the appeal should be allowed, that the orders of the learned judge be vacated and that the 1960 Will be admitted to probate. I also agree with the order as to costs proposed by McShine, J.A.

Isaac E. Hyatali
Justice of Appeal.

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No.19

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BETWEEN

In the Matter of the Estate of Peter
Chandroo of La Romain in the Ward of
Naparima in the Island of Trinidad.

10

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJ SINGH

Plaintiffs-
Appellants

And

KELVIN LUCKY

Defendant-
Respondent

BEFORE: The Hon. Mr.Justice A.H.McShine, J.A.
" " Mr.Justice I.E.Hyatali, J.A.
" " Mr.Justice C.E.Phillips, J.A.

March 23, 1964.

20

Messrs. J.A.Wharton, Q.C. and E. Hamel-Wells for
the Appellants.

Mr. H.A.S. Wooding for the Respondent.

J U D G M E N T

30

Peter Chandroo, a proprietor of La Romain
(to whom I shall hereafter refer as "the testa-
tor") died on the 5th October 1960, leaving him
surviving his wife, five sons and four daughters.
The gross value of his estate for probate pur-
poses was sworn to as being more than \$330,000.
By a Will dated 11th February 1957, the testa-
tor, after conferring certain life benefits
upon his wife, divided the bulk of his estate
among the other members of his family. All

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his daughters were married women. As executors of the said Will the testator appointed one Joseph Chankaraj Singh, therein described as "my friend" and two of his sons-in-law, namely, Joseph Motilal and Kelvin Lucky, the Respondent in this appeal, who was the Defendant in the action. This Will was prepared by one Dalton Chadee, and revoked a previous Will and Codicil dated 10th and 12th November, 1956, respectively, which had also been prepared by Mr. Chadee, who was formerly a solicitor's chief clerk. His son-in-law, Mr. Tsoi-a-Sue, is the solicitor for the Respondent herein. It appears that Mr. Chadee virtually had in his hands the conduct of this litigation on behalf of the Defendant. This is illustrated by his evidence given at the trial to the following effect:-

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"He (i.e., Mr. Tsoi-a-Sue) has asked me to assist him in this case. I would consider myself in the role of instructing solicitor in this case ... I have a lot of experience in legal matters - over forty years. I have been in several probate matters. I know the issues in such matters".

20

The Appellants herein, Plaintiffs in the action, sought probate in solemn form of what they allege to be the last Will of the testator, dated 7th September 1960, whereby the testator appointed the Plaintiffs as executors thereof, describing them therein as his "brother-in-law" and his "personal friend" respectively. It may be repeated here that the second-named Plaintiff, Joseph Chankaraj Singh, was also appointed an executor under the Will dated 11th February 1957, (hereafter referred to as the 1957 Will). Chankaraj Singh lived at La Romain like the testator, and there was incontrovertible evidence that for many years he was on terms of the closest amity with the testator and his family. He is a man of unblemished character who was ordained as a Presbyterian Minister in December 1960.

30

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The Plaintiff Chankaraj Singh was a witness to the execution of the 1957 Will, instructions for which were given by the testator at the home of the Defendant. He was not, however, a

witness to the Will propounded by the Plaintiffs, (hereafter called "the disputed Will"), and first became aware of its existence on the 16th November 1960, when he was informed of its execution by Pandit Tewari, his co-plaintiff in the action, who was not only a witness to the Will but also played an important part in connection with its preparation.

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10 The case for the Plaintiffs as presented at the trial was that on more than one occasion prior to the date of the disputed Will the testator had expressed the intention of making a new Will, culminating in a conversation he had with the Plaintiff Tewari on the 4th September 1960, during which the testator expressed his dissatisfaction with the manner of distribution of his estate to his daughters in the 1957 Will. The testator eventually decided to send for Mr. Cameron, a well-known solicitor in practice at San Fernando, for the purpose of arranging his
20 affairs. Despite this, however, he agreed to Tewari's suggestion that Tewari should bring his own Will for the testator's inspection and use as a model in making his Will if he so desired. It was arranged that Tewari would bring his Will to the testator's home on the 7th September 1960.

30 Two of the testator's children, namely, Stella Motilal and George Chandroo, deposed that sometime in the month of August, 1960 a gathering of most members of the family took place at the testator's home at his request. At this conference the testator announced his intention of handing over his entire estate to his five sons. Stella Motilal swore that early on the following morning her sister, Mrs. Pearl Lucky, the wife of the Defendant, who had not attended the conference, came to her home and spoke to her. Later on the same day the three sisters, Stella Motilal, Pearl Lucky and Ethel Massahood
40 went to the testator's home, where Pearl Lucky told her father that she understood that he was giving the boys everything and began to use words of abuse towards him, in consequence of which tears came to his eyes.

With particular reference to the events of the 4th September 1960, Stella Motilal confirmed that the testator did have a conversation

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with the Plaintiffs at his home and that Ethel Massahood was also present on that day. Her evidence on this point was as follows :-

"On 4th September 1960 it was clear that he (the testator) wanted to make a new Will. That is why he gave instructions for Mr.Cameron to come on 7th September 1960".

It may here be observed in parenthesis that all this evidence, which was directly relevant to the circumstances in which the disputed Will came into existence, and was accordingly of such a nature as to be of great assistance to a judge dealing with the issues raised in this case, was not contradicted in any respect. Not a single reference, however, is made to any part of it by the learned trial judge, who appears to have ignored it altogether and thus to have failed in this respect to make full use of the advantage which he had of hearing and seeing the witnesses in this case.

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20

It was in this setting that the disputed Will came into existence. According to the evidence of the two witnesses to the Will, namely, the Plaintiff Tewari and Frank Duff, the Will was written down by Duff at the dictation of the testator who had in his hand Tewari's Will. It was written on a sheet of paper provided by the testator himself. The witnesses gave uncontroverted evidence of its due execution and of the testator's knowledge and approval of its contents. It has not been suggested that the testator did not have full testamentary capacity. The document itself is in proper form and bears a proper attestation clause.

30

It is in these circumstances that the trial judge had to decide the issues raised by the pleadings, which were -

- (1) Whether or not the disputed Will was a forgery;
- (2) If not, whether it was duly executed in accordance with the provisions of the Wills and Probate Ordinance, Ch.8 No.2;

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- (3) If yes, whether the testator knew and approved of its contents.

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At the trial the Defendant did not seek to maintain that the Will was forged. This was no doubt due to the fact that the Plaintiffs produced overwhelming evidence that the signature on the Will purporting to be that of the testator was in fact his. The trial judge disposed of this issue in the following words :-

10 "It may be said at the outset that no evidence was led in support of the allegation of forgery and so this is considered as abandoned".

I would merely add that this appears to be an understatement of the true position, in view of the fact that no suggestion was made by the defence that the signature in question was not that of the testator.

20 Thereafter the learned trial judge proceeded to find that the evidence on behalf of the Plaintiffs established prima facie due execution by the testator of the Will as well as his knowledge and approval of its contents; but he then put to himself this question - "Has the Defendant destroyed the evidence of the Plaintiffs' witnesses?", and answered it in the affirmative.

30 It is, accordingly, necessary to examine briefly the reasons given by the learned trial judge for this finding. It must, of course, be borne in mind that the defence called no evidence in contradiction of the evidence given on behalf of the Plaintiffs in connection with the preparation and execution of the Will. The only witness called by the defence was Chadee, the purport of whose evidence was that he had for so long been the legal adviser and confident of the testator that it was very unlikely that the testator would have his Will prepared by
40 anyone else.

For his disbelief of the testimony of the witnesses called in support of the Plaintiffs' case the learned trial judge gave the following reasons :-

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- (1) Alleged discrepancies in the evidence of the witnesses as to details, which he enumerated as follows - "as to who was at Chandroo's house on the day the Will was signed; the sequence of events surrounding the eating of lunch; the circumstances relating to Duff's departure from and return to Chandroo's house"; 10
- (2) certain behaviour of the Plaintiff Tewari, namely, "the (allegedly) long delay in informing the co-executor of the existence of the Will, and the way in which he went about making the application for probate";
- (3) the fact that he thought it "extremely unlikely that a layman could write a Will in the terms of this one merely on listening to a testator express his wishes"; 20
- (4) Chadee's evidence, which he considered to be "positive evidence which casts suspicion on the execution of this Will".

It seems to me that Chadee's evidence was a factor which exerted on the trial judge an influence altogether disproportionate to its intrinsic value. Complete acceptance of the evidence of this witness cannot, in my judgment, be sufficient to cast any doubt or suspicion on the evidence of the attesting witnesses if otherwise credible. That the judge's approach to the Plaintiffs' case as a whole was seriously affected by his acceptance and evaluation of Chadee's evidence is seen from the following passage in his judgment:- 30

"I accept this evidence of Chadee's entirely, and find that in all these circumstances it is very difficult to believe that Peter Chandroo should wish to have someone other than Chadee prepare a Will for him in September 1960. Why should he suddenly wish to 40

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abandon Chadee who had prepared the earlier Will and had it keeping? To explain this, Pandit Tewari attempted to give evidence to the effect that Chandroo had referred to Chadee as a rogue, but he retracted it at once, and Stella Motilal quoted him as saying that he had lost confidence in Chadee. I do not believe either of these statements and can see no reason to conclude that if Chandroo wished to alter his Will in September 1960, he would have turned to anyone but Chadee".

10

This passage, in my view, presents the key to the understanding of the learned trial judge's approach to the case, which was that the disputed Will, not having been prepared by Chadee, must be suspect, unless good reason were shown by Plaintiffs for the testator's abandonment of Chadee. In my opinion, this proposition has no basis either in law or reason. The saying, common in another branch of the law, that "the devil himself knoweth not the mind of man" appears to be eminently applicable to the present circumstances; and in any case, the trial judge seems to have completely ignored clear evidence of a change of mind of the testator in relation to Chadee, namely, that on the 4th September 1960 he decided to send for Mr. Cameron, a solicitor, for the purpose of arranging his affairs.

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30

It seems to me that the trial judge's conclusion that it was "extremely unlikely that a layman could write a Will in the terms of this one merely on listening to the testator express his wishes" is also basically unsound. This finding, in my opinion, is not warranted by the evidence that the testator actually dictated the terms of the Will, using as a model Tewari's Will, which is in quite simple terms, and to which the disputed Will, mutatis mutandis, in fact bears a close resemblance. This is not a case, with due deference to the learned trial judge, of the testator merely "expressing" his testamentary wishes.

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With regard to the alleged discrepancies in

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the evidence the trial judge states that they "may appear to be minor but take on greater importance when the evidence is considered as a whole and in the light of some of the behaviour of Pandit Tewari".

It is not altogether clear what the judge meant by his reference to the way in which Tewari "went about making the application for probate". The evidence disclosed that the testator handed the disputed Will for safe keeping to Tewari, with a request that he should not disclose its existence to the testator's children. This desire for secrecy on the part of the testator is not at all surprising in view of the treatment which he is alleged to have received in the month of August 1960, at the hands of one of his daughters, Mrs. Pearl Lucky, the wife of the Defendant. The testator died on the 5th October 1960, and it was admitted by Tewari that he did not disclose the existence of the Will until the 15th November, 1960, when he told the testator's eldest son, George Chandroo, about it. On the 16th November he informed his co-executor, Chankaraj Singh, about it and on the said date gave instructions to a solicitor, Mr. Roberts, to apply for probate of the Will. If it is sought to be held against Tewari that he should not have given instructions to the solicitor of his choice, but should have had recourse to Chadee, I am quite unable to see the reasonableness of any such suggestion. In so far as there was some delay on the part of Tewari in disclosing the existence of the Will, his evidence that he was ill for a period commencing before the testator's death appears to me to have provided a satisfactory explanation. Entirely apart from this, however, I cannot understand how this alleged delay can have any relevance either to the issue of the due execution of the Will or of the testator's knowledge and approval of its contents.

I agree with the suggestion of the trial judge that the alleged discrepancies in the evidence were in themselves minor. It is important to point out, however, that while they may possibly have some bearing on the question as to whether the document purporting to be the testator's Will came into existence on the occasion and under the circumstances alleged by the

Plaintiffs, and might therefore have been relevant to the issue of forgery, they are not, in my opinion, relevant to either of the other issues left for determination by the trial judge. It is necessary to bear in mind that no issue of fraud or undue influence is raised in this case. So soon therefore as the issue of forgery was resolved in favour of the Plaintiffs, it seems to me that the uncontradicted evidence in support of the due execution of the disputed Will and the testator's knowledge and approval of its contents was in the circumstances such as should inevitably have led to its establishment, unless there were circumstances of suspicion within the meaning of the well-known rule in Barry v Butlin (1838) 2 Moo. P.C.C. 480, as explained in several later cases.

In the Court
of Appeal

No.19

Judgment of
Phillips J.A.
23rd March
1964
continued

In Re R. (deceased) (1950) 2 All E.R. 117
Wilmer, J., after reviewing the authorities, said
(at pp. 121-122) :-

"The conclusion which I draw from these authorities is that in dealing with a question of knowledge and approval of the contents of a Will the circumstances which are held to excite the suspicions of the court must be circumstances attending, or at least relevant to, the preparation and execution of the Will itself. This view is, I think, confirmed by the decision of the Court of Appeal in In the Estate of Musgrove (1927) p.264, where it was held that a suspicion engendered by extraneous circumstances, arising subsequent to the execution of the Will, was not a sufficient reason for rebutting the presumption of due execution of a Will regular on its face".

In my opinion, no such circumstances of suspicion exist in the present case. The fact that the disputed Will was not prepared by Chadee is, in my judgment, not a circumstance attending or relevant to its preparation or execution. This fact however, appears to have been substantially at the root of the reasoning that led to the judge's rejection of the disputed Will under which, be it noted, no one concerned in its

In the Court
of Appeal

No.19

Judgment of
Phillips J.A.
23rd March
1964
continued

preparation receives any benefit, and in which all the beneficiaries are the same persons who were beneficiaries in the 1957 Will, namely, the members of the testator's family. It is significant, in my opinion, that one of the testator's daughters whose share in the estate was reduced by the disputed Will should have given evidence in support of it. It may also be of some significance that the opposition to probate thereof comes from the husband of that daughter of the testator who is alleged to have abused her father in August 1960, a fact which probably confirmed his intention of reducing the benefits to be left to his daughters, who, in any case, seem to have been regarded by him as being already in good financial circumstances.

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It appears to me that in applying the rule in Barry v. Butlin to the facts of the present case the trial judge failed to bear in mind that that rule must not be ".... used as a screen behind which one man was to be at liberty to charge another with fraud or dishonesty without assuming the responsibility of making that charge in plain terms". (Per Lord Loreburn, L.C. in Low v Guthrie, (1909) A.C. 278 at p. 282.

20

The only remaining question is whether the circumstances of the present case are such as to make it competent for this Court, not having seen or heard the witnesses, to reverse the decision of the trial judge on issues based on mere questions of fact. It is necessary at once to make two observations:-

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(a) This is not a case in which the trial judge had to make up his mind as to the truth of conflicting testimony given by opposing witnesses. The evidence of the Plaintiffs' witnesses was in fact uncontradicted;

(b) the trial judge's disbelief in the evidence of the Plaintiffs' witnesses is not expressed to be based on their manner and demeanour, but was to a large degree engendered by what he considered

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to be the improbability of the Testator having a Will prepared by anyone but Chadee.

In the Court
of Appeal

No.19

Judgment of
Phillips J.A.
23rd March
1964
continued

In these circumstances it seems to me that this Court is in as good a position as was the trial judge to arrive at a conclusion in the matter. In this connection I consider the following observations of Lindley M.R., in Coghlan v Cumberland (1898) 1 Ch. at pp. 704-705, to be singularly appropriate :-

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"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the Court must reconsider the materials before the judge, with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the Court comes to the conclusion that the judgment is wrong. When, as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the judge, the Court is sensible of the great advantage he has had in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions; and when the question arises which witness is to be believed rather than another, and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and

In the Court
of Appeal

No.19

Judgment of
Phillips J.A.
23rd March
1964
continued

these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the Court has not seen".

For the reasons indicated I consider that the findings of the learned trial judge that the Plaintiffs failed to prove due execution of the Will or the testator's knowledge and approval of its contents are plainly wrong and should not be allowed to stand. I would, accordingly, allow the appeal and set aside his decision on both the claim and counterclaim. I pronounce against the establishment of the 1957 Will, and in favour of the validity of the Will dated the 7th September 1960 propounded by the Plaintiffs, as being the last true Will of the testator.

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I, accordingly, agree with the order proposed by McShine, J.A.

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Clement E. Phillips
Justice of Appeal.

No.20

Order
23rd March
1964

No.20

O R D E R

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

Civil Appeal No.32 of 1963

BETWEEN

In the Matter of the Estate of Peter Chandroo of La Romain in the Ward of Naparima in the Island of Trinidad

30

PANDIT DINANATH TEWARI and Plaintiffs/
JOSEPH CHANKARAJ SINGH Appellants

- and -

KELVIN LUCKY

Defendant/Respondent.

In the Court
of Appeal

Entered the 23rd day of March, 1964

Dated the 23rd day of March, 1964

Before the Honourables Mr. Justice A.H.McShine
(President)

Mr. Justice I.E. Hyatali

Mr. Justice C.E. Phillips.

No.20

Order
23rd March
1964
continued

10 UPON READING the Notice of Appeal filed on
behalf of the above-named Plaintiffs/Appellants
dated the 7th June, 1963, and the Judgment here-
inafter mentioned

AND UPON READING the Records filed herein

AND UPON HEARING Counsel for both parties

AND MATURE DELIBERATION THEREUPON HAD

20 IT IS ORDERED that this Appeal be allowed
and that the Judgment of the Honourable Mr.
Justice M.A.H. Corbin dated 4th May, 1963, be
vacated and that the last true Will dated the
7th September, 1960, of the Testator be admitted
to Probate

AND IT IS FURTHER ORDERED that the
Respondent do pay to the Appellants the taxed
costs of this Appeal and Two Thirds (2/3) of
the taxed costs of the Trial.

George R. Benny
Deputy Registrar,
Supreme Court.

L.S.

In the Court
of Appeal

No.21

No.21

ORDER GRANTING FINAL LEAVE TO
APPEAL TO THE PRIVY COUNCIL.

Order granting
Final Leave to
Appeal to the
Privy Council
16th July 1964

TRINIDAD AND TOBAGO
IN THE COURT OF APPEAL

ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO

Civil Appeal No.32 of 1963.

In the Matter of the Estate of PETER
CHANDROO of La Romain in the Ward of
Naparima in the Island of Trinidad.

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BETWEEN

KELVIN LUCKY (Defendant)

Appellant

- and -

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJ SINGH
(Plaintiffs)

Respondents

Entered the 16th day of July, 1964.

On the 16th day of July, 1964.

Before the Honourables Mr. Justice A.H.McShine,
Acting Chief Justice

20

Mr. Justice I.E. Hyatali
and

Mr. Justice C.E.Phillips.

UPON MOTION made unto this Honourable
Court this day by Counsel for the above-named

Appellant for an Order granting the said Appellant final leave to appeal to Her Majesty in Her Privy Council against the judgment of the Court of Appeal dated the 23rd day of March, 1964, and the judgment of His Lordship Mr. Justice Maurice Corbin, dated the 4th day of May, 1963.

In the Court
of Appeal

No.21

Order granting
Final Leave to
Appeal to the
Privy Council
16th July 1964
continued

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UPON READING the said Notice of Motion dated the 9th day of July, 1964, the affidavit of Mark Thomas Inskip Julien sworn to the 9th day of July, 1964, and the Certificate of the Registrar of the Supreme Court of Judicature dated the 9th day of June, 1964, all filed herein.

UPON HEARING Counsel for the Appellant and Counsel for the Respondents

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THIS COURT DOTH ORDER that final leave be and the same is hereby granted to the said Appellant to appeal to Her Majesty in Her Privy Council against the said Judgments

AND THIS COURT DOTH FURTHER ORDER that the costs of this motion be costs in the cause

George R. Benny.
Deputy Registrar.

L.S.

Exhibits

E X H I B I T S

D.C.3.

D.C.3. WILL OF PETER CHANDROO
10th November 1956

Will of Peter
Chandroo
10th November
1956

10-11-56.
TRINIDAD

This is the last Will and Testament of me Peter Chandroo of La Plaisance Estate in the Ward of Naparima in the Island of Trinidad made this tenth day of November in the year 1956. I hereby revoke all former Wills and testamentary dispositions made by me and declare this to be my last Will. I appoint my sons George Chandroo Byron Chandroo, and Ethel Massahood my daughter, to be the Executors of this my last Will.

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I give and devise and bequeath of my real and personal estate Whatsoever and Wheresoever situate to the persons and in the shares and manner following, that is to say, to my said son George Chandroo twenty per cent thereof absolutely, to my said son Byron Chandroo, twenty per cent thereof absolutely, to my son Claude Chandroo, twenty per cent to my son Hector Chandroo, twenty per cent thereof absolutely, to my son Charles Chandroo, ten per cent thereof absolutely, to my daughter the said Ethel Massahood, two per cent absolutely, to my daughter Stella Mootilal, two per cent absolutely, two per cent absolutely to my daughter Pearl Lucky, two per cent thereof absolutely and of the residue of four per cent. Three per cent to my wife Lilian Chandroo and one per cent to my daughter Maud Lalbeharry Maharaj for and during the term of their respective lives and from and after their death. To my five sons and their daughters above named in equal shares as tenants in common. The devisee and bequest hereinabove contained are subject to the payment of all my debts and funeral and testamentary expenses and I declare that after my devisee herein should desire to sell his or her share of my estate herein bequeathed to him or her option should be given to the other devisees to purchase the same.

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In Witness whereof I have hereunto subscribed

my name date and year first herein written at the Colonial Hospital, San Fernando.

Exhibits

D.C.3.

Sgd. Peter Chandroo

Will of Peter Chandroo
10th November 1956
continued

I sign by the testator and acknowledge by him to be 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 subscribed names as Witnesses.

Sgd. Dalton Chadee

Neamath Shah.

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D.C.3. CODICIL TO WILL OF
10TH NOVEMBER 1956

D.C.3.

TRINIDAD.

Codicil to Will of 10th November 1956
12th November 1956

I Peter Chandroo of La Plaisance Estate in the Ward of Naparima in the Island of Trinidad declare this to be a Codicil of my Will which bears date the 10th day of November 1956.

20

1. Whereas by my said Will I have appointed my daughter Ethel Massahood to be an Executor thereof together with my sons George Chandroo and Byron Chandroo. Now I hereby Revoke the appointment of my said daughter as Co Executor of my said Will and appoint my son Claude Chandroo and my daughter Stella Mootilal to be Executors thereof in place of my said daughter Ethel Mootilal.

30

2. And Whereas by my said Will I gave and Devised and bequeath to my wife Lilian Chandroo for life Three per cent of all my real and personal estate an annuity for life of Six Hundred Dollars payable by monthly instalments for Fifty Dollars the first of such payments to be made to her on the first day of the month after my decease.

3. In all other respects I confirm my said Will.

In Witness whereof I have hereunto subscribed my name this 12th day of November, in the year

Exhibits

D.C.3.

Codicil to
Will of 10th
November 1956
12th November
1956
continued

1956, at the residence of Kelvin Lucky at the
Les Efforts, San Fernando.

Signed by the said Peter Chandroo as a Codicil
to his Will which bears date 10th day of
November 1956 in the presence of us at the
same time who at his request in his presence
and in the presence of each other have sub-
scribed our names as Witnesses.

Dalton Chadee
Neemath Shah.

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D.C.2.

Instructions
to D.Chadee
for prepara-
tion of Will

D.C.2. INSTRUCTIONS TO D.CHADEE
FOR PREPARATION OF WILL.

This is the last Will and Testament of me
Peter Chandroo of La Romain Village in the
Ward of Naparima in the Island of Trinidad
Proprietor, made this Eleventh day of February
in the year 1957.

(1) I hereby revoke all former Wills and
Testamentary dispositions made by me and de-
clare this to be my last Will.

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(2) I appoint my friend Joseph Chandroo and
my Sons-in-law Joseph Chankaraj Singh and Joseph
Mootilal the Executors of this my last Will.

(3) See next page.

(4) a. Fifteen per cent thereof to my son
Byron Chandroo for his absolute use
and benefit.

b. Fifteen per cent thereof to my son
Claude Chandroo for his absolute use
and benefit.

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c. Fifteen per cent thereof to my son
Hector Chandroo for his absolute use
and benefit.

d. Fifteen per cent thereof to my son
Charles Chandroo for his absolute
use and benefit.

e. Fifteen per cent thereof to my son George Chandroo for his life and after his death to my other four sons above named as tenant in common.

Exhibits

D.C.2.

f. Seven per cent thereof to my daughter Ethel Massahood for her absolute use and benefit.

Instructions to D. Chadee for preparation of Will continued

10

g. Seven per cent thereof to my daughter Stella Mootilal for her absolute use and benefit.

h. Seven per cent thereof to my daughter Pearl Lucky for her absolute use and benefit.

Four per cent thereof to my daughter Maud Lalbeharry for her life and after her death to my other daughters above named as tenant in common.

20

I give and bequeath to my wife Lilian Chandroo the use and occupation of the dwelling house now occupied by us of my land at La Romain aforesaid for the term of her life free from rent or other charge and also, the sum of fifty dollars per month for the term of her life, such sum to be paid on the first day of the month after my decease. Should oil mining operations be undertaken on any part of my real and any royalty become payable in respect of thereof, the sum payable to my wife shall be increased to one hundred dollars per month and shall payment on the first day of the month after such royalty shall become payable.

30

4. Subject to the above I give devise and bequeath of my real estate in the shares, to the persons and for the estate and interest hereinafter mentioned, that is to say :-

5. I give and bequeath my personal estate to my said five sons and four daughters in the shares in which I have devised by real estate after absolute use and benefit.

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N.N.W.

Exhibits

J.C.1. WILL OF PETER CHANDROO
11th February 1957.

J.C.1.

Will of
Peter Chandroo
11th February
1957

TRINIDAD:

This is the last Will and Testament of me PETER CHANDROO of La Romain Village in the Ward of Naparima in the Island of Trinidad, Proprietor, made this Eleventh day of February in the year One Thousand Nine Hundred and Fifty Seven.

1. I hereby revoke all former Wills and testamentary disposition made by me and declare this to be my last Will. 10

2. I appoint my friend JOSEPH CHANKARAJASINGH and my sons-in-law KELVIN LUCKY and JOSEPH MOTILAL the Executors of this my last Will.

3. I give devise and bequeath to my wife LILIAN CHANDROO the use and occupation of the dwelling house now occupied by us on my land at La Romain aforesaid for the term of her life free from rent or other charge AND also the sum of Fifty Dollars per month for the term of her life, such sum to be paid on the First day of the month after my decease. Should oil mining operations be undertaken on any part of my real estate and royalty become payable in respect thereof the sum payable to my wife shall be increased to One Hundred Dollars per month and shall begin on the first day of the month after such royalty shall become payable. 20 30

4. Subject to the above I give devise and bequeath all my real estate, in the shares, to the persons and for the estate and interest hereinafter mentioned, that is to say :-

(a) Fifteen per cent thereof to my son BYRON CHANDROO for his absolute use and benefit.

(b) Fifteen per cent thereof to my son CLAUDE CHANDROO for his absolute use and benefit. 40

Exhibits

J.C.1.

Will of
Peter Chandroo
11th February
1957
continued

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- (c) Fifteen per cent thereof to my son
HECTOR CHANDROO for his absolute use
and benefit.
- (d) Fifteen per cent thereof to my son
CHARLES CHANDROO for his absolute use
and benefit.
- (e) Fifteen per cent thereof to my son
GEORGE CHANDROO for his life and after
his death to my other four sons above
named, as tenants in common.
- (f) Seven per cent thereof to my daughter
ETHEL MASSAHOOD for her absolute use
and benefit.
- (g) Seven per cent thereof to my daughter
STELLA MOTILAL for her absolute use
and benefit.
- (h) Seven per cent thereof to my daughter
PEARL LUCKY for her absolute use and
benefit.
- (i) Four per cent thereof to my daughter
MAUD LALBEHARRY for her life and after
her death to my other three daughters
above named as tenants in common.

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5. I give and bequeath my personal estate to my said five sons and four daughters in the shares in which I have devised my real estate for their absolute use and benefit.

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IN WITNESS WHEREOF I have hereunto set my hand the day and year first hereinabove written:

Signed by the Testator in the)
 presence of us two witnesses)
 who in his presence and in the)
 presence of each other have)
 hereunto signed our names as) Peter Chandroo
 witnesses to the signing of)
 the same by the said Peter)
 Chandroo.)

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Dalton Chadee)
 J.Chankaraja Singh)

Exhibits

F.D.1.

Will of
Pandit D.Tewari
9th October
1957

F.D.1. WILL OF PANDIT D.TEWARI.

TRINIDAD:

This is the last Will and testament of me PANDIT DINANATH TEWARI of Southern Main Road, Cunupia in the Ward of Chaguanas in the Island of Trinidad Proprietor.

1. I hereby revoke all former Wills and testamentary writing heretofor made by me and to declare this to be my last Will and testament.

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2. I appoint my brother AKNATH RAMCHARRAN as the sole executor of this my last Will.

3. After payment of my just debts, funeral and testamentary expenses I give and bequeath to my five daughters VIDYAWATI TEWARI, SATYAWATI TEWARI, DHARAWATI TEWARI, VADEWATI TEWARI and SARASWATI TEWARI the sum of FIVE HUNDRED DOLLARS each for their own use and benefit absolutely.

4. I give devise and bequeath my real and personal estate to my wife PEARL TEWARI and my two sons MAHINDRANATH TEWARI and DRAWANDRANATH TEWARI in equal shares for their absolute use and benefit.

20

5. I instruct both my sons and my wife not to dispose of their share or shares of the estate to any person or persons without firstly offering the same to his brother or mother.

IN WITNESS WHEREOF I have hereunto set my hand this Ninth Day of October in the year of Our Lord One thousand Nine hundred and Fifty seven.

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Pandit Dinanath Tewari.

Signed by the testator as his last Will in the presence of both of us present who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

Pandit Jaggarnath
Cunupia

Mr. A. Ghany
Barrister at Law.

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D.C.4. PROMISSORY NOTE, P. CHANDROO
to G. CHANDROO and ANOTHER

Exhibits

D.C.4.

16th September, 1959.

Promissory
Note, P.
Chandroo to
G. Chandroo
& Another
16th September
1959

Two years after date of Peter Chandroo promise to pay to George Chandroo and Christina Chandroo or their order from money belonging to them on a joint account. The sum of fifteen thousand, two hundred and forty dollars and sixty cents for value received.

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Witness

Pelo Chandroo
Lallachadee.

F.D.2. WILL of PETER CHANDROO,
7TH SEPTEMBER 1960.

F.D.2.

TRINIDAD.

Will of
Peter
Chandroo,
7th September
1960

This is the last Will and Testament of me PETER CHANDROO of La Romain Village, in the Ward of Naparima in the Island of Trinidad, Proprietor.

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1. I hereby revoke all former Wills and Testamentary writing hereto for made by me and to declare this to be my last Will and Testament.

2. I appoint my brother-in-law Pundit Dinanath Tewari and my personal friend Joseph Chankarja Singh as the sole executors of this my last Will.

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3. After payment of my just debts, funeral and Testamentary expenses I give and bequeath to my wife LILIAN CHANDROO the use of the dwelling house now occupied by us at La Romain for the duration of her life free of all charges, and the sum of Sixty dollars per month to be paid to her at the end of every month during her life. I also give and bequeath to my daughters, ETHEL MASSAHOOL STELLA MOTILAL MAUD LALBEHARRY and PEARL LUCKY the sum of Five Thousand Dollars each for their own use and benefit absolutely.

Exhibits

F.D.2.

Will of
Peter
Chandroo,
7th September
1960
continued

4. I give, devise and bequeath my Real and personal Estate to my five sons GEORGE CHANDROO BYRON CHANDROO CHARLES CHANDROO CLAUDE CHANDROO and HECTOR CHANDROO in equal shares for their absolute use and benefit.

5. I instruct each and every one of my sons not to dispose of his share or shares of the Estate to any person or persons without firstly offering the same to his brother.

10

IN WITNESS WHEREOF I have hereunto set my hand this Seventh day of September in the Year of Our Lord One Thousand Nine Hundred and Sixty.

PETER CHANDROO.

SIGNED by the Testator as his last Will in the presence of both of us present who at his request in his personal and in the presence of each other have hereunto subscribed our names as witness.

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Frank L. Duff of David Toby Road, Cunupia.

Pandit Dinanath Tewari, Southern Main Road, Cunupia.

Peter Chandroo.

X

X, DEED, P.CHANDROO and A.CUMMINGS

Deed, P.Chandroo and A.Cummings
26th September
1960

Registered No. 13457

TRINIDAD.

This Deed was prepared by me

George A. Tsoi A Sue.

Conveyancer.

30

THIS DEED made this Twenty Sixth day of September, in the year of our Lord One thousand nine hundred and sixty Between PETER CHANDROO of La Plaisance Village in the Ward of Naparima

in the Island of Trinidad, Proprietor, (hereinafter called "the Vendor") of the one part and AUBREY CUMMINGS of La Plaisance Village in the Ward of Naparima, aforesaid, Proprietor (hereinafter called "the Purchaser") of the other part :

Exhibits

X

Deed, P. Chandroo and A. Cummings 26th September 1960 continued

10 WHEREAS the Vendor is seised in fee simple of the hereditaments (hereinafter referred to as "the assured hereditaments") described in the First Part of the Schedule hereto subject to the deed of lease (hereinafter referred to as "the deed of lease") mentioned in the second part of the said Schedule and the several covenants and conditions therein contained but otherwise free from encumbrances

20 AND WHEREAS the Vendor recently received from the Purchaser an offer to purchase the assured hereditaments with such exceptions reservations and provisions as are hereinafter contained and subject to the deed of lease and the covenants and conditions therein contained but otherwise free from encumbrances for the sum of Three thousand Dollars:

AND WHEREAS the Vendor in pursuance of his covenant in that behalf contained in the deed of lease notified the lessee of the said offer to purchase the assured hereditaments

30 AND WHEREAS the Lessee has intimated in writing to the Vendor that it does not propose to exercise its option contained in Clause 8(5) of the deed of lease to purchase the assured hereditaments and the Vendor has agreed to accept the said offer and to convey the assured hereditaments to the Purchaser in manner hereinafter appearing:

NOW THIS DEED WITNESSETH as follows:

40 1. In pursuance of the said agreement and in consideration of the said THREE THOUSAND DOLLARS paid to the Vendor by the Purchaser (the receipt of which sum the Vendor hereby acknowledges) the Vendor as beneficial owner hereby conveys unto the Purchaser all the assured hereditaments TO HOLD the same subject to the exceptions reservations and

Exhibits

X

Deed, P. Chandroo and
A. Cummings
26th September
1960
continued

provisions hereinafter contained and to the deed of lease and the covenants and conditions therein contained unto and to the use of the Purchaser in fee simple.

2. Out of the conveyance hereinbefore contained there are excepted and reserved unto the Vendor his heirs and assigns all mines and minerals of whatsoever nature lying in or under the assured hereditaments with full right power and liberty at all times for the Vendor his heirs and assigns and their agents and workmen to enter into or upon all or any part of the same and to search for win to work win get bank lay up store convert burn dress and carry away the said mines and minerals and any mines and minerals in under or upon any other lands and to let down the surface of all or any part of the assured hereditaments and any buildings erected thereon AND for the purposes aforesaid or any of them to sink pits and shafts open quarries drive adits erect buildings furnaces ovens machinery an apparatus construct and use railways tramways and roads lay pipes make aqueducts watercourses and reservoirs and collect water and appropriate and use the surface of the assured hereditaments or any part thereof as a brickfield or for spoil banks or refuse heaps and to do upon under and over the surface of the assured hereditaments all other things necessary or convenient for the full enjoyment of the exception and reservation hereinbefore contained.

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3. The Vendor hereby covenants with the Purchaser his heirs and assigns that the Vendor his heirs and assigns shall make full compensation to the Purchaser his heirs and assigns and lessees and tenants for all damage done to the surface of the assured hereditaments by the Vendor his heirs and assigns in exercising the rights, powers, privileges and liberties hereinbefore reserved AND it is hereby agreed and declared that the amount of such compensation as aforesaid in case any dispute shall arise between the said parties hereto or their respective heirs or assigns with respect thereto shall be determined in all respects in accordance with the provisions of the Arbitration Ordinance Chapter 7 Number 1 or any

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statutory modification or re-enactment thereof for the time being in force.

Exhibits

X

IN WITNESS WHEREOF the Vendor and the Purchaser have hereunto set their hands the day and year first herein written.

Deed, P. Chandroo and A. Cummings
26th September 1960
continued

THE SCHEDULE ABOVE REFERRED TO

FIRST PART:

10 ALL AND SINGULAR that parcel or lot of land situate in the Ward of Naparima in the Island of Trinidad, comprising FIVE THOUSAND SUPERFICIAL more or less and bounded on the North by the Southern Main Road and by other lands of Peter Chandroo and on the South and East by other lands of Peter Chandroo and on the West partly by the Southern Main Road and partly by other lands of Peter Chandroo and which said parcel or lot of land is delineated and coloured pink in the plan marked "A" attached to deed registered as No.14356 of 1960.

20 SECOND PART: Deed of Oil Mining Lease dated the 25th day of March, 1944 (registered as No.7305 of 1944) and made between Peter Chandroo of the one part and Antilles Petroleum Company (Trinidad) Limited of the other part whereby the mines and minerals therein mentioned were demised to the said Antilles Petroleum Company (Trinidad) Limited for the term of twenty-one years from the First day of January One thousand nine hundred and Forty Four at the rentals and royalties therein set out and upon the terms and conditions appearing in the said deed.

30

Signed and delivered by the within)
named PETER CHANDROO as and for his)
act and deed in the presence of:)

Frank Chadee
22c Harris Promenade
San Fernando
Solicitor's Clerk.

} Peter Chandroo

And of me

40 George A. Tsoi A Sue
Conveyancer.

Exhibits
X
Deed, P. Chandroo and
A. Cummings
26th September
1960
continued

Signed and delivered by the)
within named AUBREY CUMMINGS)
as and for his act and deed) Aubrey
in the presence of) Cummings
S.Ramkissoon)
San Francesique Road,)
Solicitor's Clerk)

And of me,

E. Irwin Cameron,
Conveyancer.

10

I, FRANK CHADEE of Number 22c Harris Promenade in the Town of San Fernando in the Island of Trinidad, Solicitor's Clerk make oath and say that I was personally present on the 26th day of September, 1960 at La Plaisance Village in the Ward of Naparima in the Island of Trinidad, and did then and there see Peter Chandroo one of the parties to the within written deed purporting to be a deed of two parts and made between the said Peter Chandroo of the one part and Aubrey Cummings of the other part sign and deliver the same as and for his act and deed and that the signature "Peter Chandroo" to the said deed subscribed is of the proper handwriting of the said Peter Chandroo and that the signatures "Frank Chadee" and George A. Tsoi A Sue" thereon also subscribed as the witnesses to the execution of the same by the said Peter Chandroo is of the proper handwriting of me this deponent and of the said George Andrew Tsoi a Sue Conveyancer respectively.

20

30

Sworn to at Harris Promenade)
in the Town of San Fernando) Frank Chadee
this 6th day of October,)
1960)

Before me

Dalton Chadee

Commissioner of affidavits.

40

I, SOOKRAM RAMKISSOON of Court Street in the Town of San Fernando in the Island of

Trinidad, Solicitor's Clerk make oath and say that I was personally present on the 29th day of September, 1960, at San Fernando, aforesaid and did then and there see Aubrey Cummings one of the parties to the within written deed purporting to be a deed of two parts and made between Peter Chandroo of the one part and the said Aubrey Cummings of the other part sign and deliver the same as and for his act and deed and that the signature "Aubrey Cummings" to the said deed subscribed is of the proper handwriting of the said Aubrey Cummings and that the signatures "S.Ramkissoon" and "E. Irwin Cameron" thereto also subscribed as of the witnesses to the execution of the same by the said Aubrey Cummings is of the proper handwriting of me this deponent and of the said Elliott Irwin Cameron Conveyancer respectively.

10

20

Sworn to at Harris Promenade)
 in the Town of San Fernando,) S. Ramkissoon
 this 6th day of October,)
 1960.)

Before me,
 Dalton Chadee
 Commissioner of Affidavits.

J.C.2. INSTRUCTIONS TO MR. G. TSOI-
 A- SUE.

J.C.2. San Fernando.
 Mr. George A Tsoi-A-Sue,

30

Instructions are hereby given to you to apply for grant of probate of the Will of the Late Peter Chandroo filed 11th day of February, 1957, in which we are named as executors. The testator died on the 5th day of October 1960.

Kelvin Lucky
 Joseph Mootilal
 Joseph Chankarajsingh.

Exhibits

X

Deed, P. Chandroo and
 A. Cummings
 26th September
 1960
 continued

J.C.2.
 Instructions
 to Mr.G.Tsoi-
 A -sue
 17th October
 1960

Exhibits

D.C.1. NOTICE PUBLISHED IN
"TRINIDAD GUARDIAN"

D.C.1.

Notice
published
in "Trinidad
Guardian"
22nd October
1960

D.C.1.

Re: Peter Chandroo deceased

Notice is hereby given that of persons having claims or demands against or upon the estate of Peter Chandroo who died on the 5th day of October 1960 are required to send to me the undersigned at my office at No.22c, Harris Promenade, San Fernando, full particulars of such claims or demands on or before the 19th day of November, 1960 in order that the same may be examined by the Executors of his Will.

10

Dated this 22nd day of October, 1960.

George A. Tsoi-A.Sue
Solicitors to the Executor.

J.C.3.

J.C.3. AUTHORITY TO G. CHANDROO AND
ANOTHER TO APPLY FOR THEATRE
LICENCES

Authority to
G.Chandroo
and Another
to apply for
Theatre
Licences
15th November
1960

J.C.3.

San Fernando 15th November, 1960.

Messrs.George Chandroo and Claude Chandroo,

20

This is to authorise you to apply for and obtain the exhibitors licence and licences to operate the Empire Theatre and the Venus Theatre situate at Fyzabad and La Romain respectively on behalf of the estate of Peter Chandroo Deceased, during the year 1961.

Joseph Mootilal
Joseph Chankarajsingh
Kelvin Lucky

30

Executors of Peter Chandroo, Deceased.

We agree to apply for and obtain the licences above mentioned on behalf of the estate of Peter Chandroo, deceased.

George Chandroo
Claude Chandroo.

Exhibits

J.C.3.

Authority to
G. Chandroo
and Another
to apply for
Theatre
Licences
15th November
1960
continued

"Y" INSTRUCTIONS TO MR.L.L.ROBERTS
TO APPLY FOR PROBATE.

"Y"

Instructions
to Mr. L.L.
Roberts to
apply for
Probate
16th November
1960

TRINIDAD:

10

We Pandit Dinanath and Joseph Chankarajasingh the sole Executors of the last Will and Testament hereby instructs Mr. L. Llewellyn Roberts to prepare the necessary documents to apply for Probate of the last Will and Testament of the late Peter Chandroo who departed this life on the 5th day of October, 1960, without having revoked the said Will dated the 7th day of September, 1960.

Pandit Dinanath Tewari
Joseph Chankarajasingh.

Exhibits

P.D.T.1. LETTER, PANDIT TEWARI
to MRS.E.MASSAHOOD.

P.D.T.1.

Letter,
Pandit Tewari
to Mrs. E.
Massahood
3rd January
1961

Southern Main Road,
Cunupia,
3rd January, 1961.

To: Mrs. Ethel Massahood,

My Dear Daughter,

You are cordially invited to a family
conference at your father's residence La
Romain on Sunday 8th day of January, 1961,
at one p.m. sharp due to my ill health I
was not able to attend your father's funeral
and up to now I am still under doctor's care
but as such a meeting is urgently necessary.
I am inviting your four brothers, three
sisters and your mother each with letters
under separate cover.

10

I will be looking forward to see you.
Please attend without fail.

I beg to remain,

20

Your uncle,

Pandit Tewari.

IN THE PRIVY COUNCIL

No.37 of 1964

ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO

B E T W E E N :

KELVIN LUCKY
(Defendant)

Appellant

- and -

PANDIT DINANATH TEWARI and
JOSEPH CHANKARAJ SINGH
(Plaintiffs)

Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant.

J.N. MASON & CO.,
41/44, Temple Chambers,
Temple Avenue,
London, E.C.4.
Solicitors for the Respondents.