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1, 1959

IN THE PRIVY COUNCIL

No. 30 of 1957

ON APPEAL
FROM THE COURT OF ORDINARY BARBADOS

B E T W E E N:

ERNEST CLARENCE HILL (Petitioner) Appellant

- and -

ERNEST CARLTON HILL (Respondent) Respondent

RECORD OF PROCEEDINGS

RASHLEIGH & CO.,
63, Lincoln's Inn Fields,
London, W.C.2.
Appellant's Solicitors.

MINETT MAY & CO.,
5, Dowgate Hill,
Cannon Street, E.C.4.
Respondent's Solicitors.

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RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No. 30 of 1957

ON APPEAL

FROM THE COURT OF ORDINARY BARBADOS

BETWEEN: ERNEST CLARENCE HILL
(Petitioner) Appellant

- and -

ERNEST CARLTON HILL
(Respondent) Respondent

RECORD OF PROCEEDINGS

10

No. 1.

In the Court
of Ordinary
Barbados.

PETITION OF ERNEST CLARENCE HILL

SHWETH as follows :-

No. 1.

1. That your Petitioner's father Ernest Clarence Hill late of "Carlton Cottage" Fontabelle in the Parish of Saint Michael and Island of Barbados above-said died there on the thirtieth day of April One thousand nine hundred and fifty-five domiciled and entitled to real and personal estate in this Island.

Petition of
Ernest
Clarence Hill.

26th July 1956.

20

2. That there appears from the records of the Registration Office of this Island that a Will purporting to have been made by your Petitioner's father on the Nineteenth day of September One thousand nine hundred and fifty-two has been filed in the said Registration Office for Probate in this Court.

3. The said Will is in the words and figures following, that is to say:-

"BARBADOS

30

This is the last Will and testament of me ERNEST CLARENCE HILL of Fontabelle in the Parish of Saint Michael in this Island, Morchant, hereby revoking all other Wills and testamentary writing heretofore made by me.

I direct that all my just debts funeral and

In the Court
of Ordinary
Barbados.

No. 1.

Petition of
Ernest
Clarence Hill.

26th July 1956
- continued.

testamentary expenses be paid by my executors here-
inafter named as soon as possible after my death.

I give devise and bequeath my residence known
as "Carlton" standing on 1 $\frac{1}{4}$ acres of land or
thereabouts to Marion Allanzena Green for her nat-
ural life and at her death "for her children Joan,
Bruce, Alfred and Betty in equal shares absolutely.

I give devise and bequeath my property in
Tudor Street now occupied by me and my property at
Bay Street to my illegitimate son Edward child of
Marion Allanzena Green.

10

I give devise and bequeath my property in
Settle Street to my son Ernest Carlton Hill abso-
lutely.

I give devise and bequeath my property known
as "Holborn" to my son Errol Hill and my daughter
Daisy Simmons now in the United States of America
in equal shares absolutely.

I bequeath to my son Ernest Clarence child of
Marion Allanzena Green the sum of ten thousand
dollars (\$10,000.00) to be paid from moneys real-
ised from my insurance policies.

20

All the rest residue and remainder of my es-
tate real and personal and mixed whether in posses-
sion remainder reversion or expectancy and whether
in this Island or elsewhere I give devise and be-
queath to Marion Allanzena Green and her afore-
mentioned children Joan, Bruce, Alfred and Betty
in equal shares absolutely.

I appoint Marian Allanzena Green and my son
Ernest Clarence the child of the said Allanzena
Green executors to this my Will.

30

IN TESTIMONY whereof I have hereunto set my
hand as and for my last Will and Testament this
Nineteenth day of September One thousand nine hun-
dred and fifty-two

SIGNED by the said Ernest Clarence Hill E.C.Hill
as and for his last Will and Testament in the joint
presence of us who at his request and in his

G. H. Spencor
W. A. Clarke

40

presence have hereunto set our hands. E.C.Hill
to this and the preceding sheet of paper as
witnesses:-

G. H. Spencer
W. A. Clarke

In the Court
of Ordinary
Barbados.

No. 1.

4. That a caveat was entered in the Registration
Office against probate of the said Will but the
caveator did not state in the caveat what interest
he had in the Will.

Petition of
Ernest
Clarence Hill.

26th July 1956
- continued.

10 5. That the said Will was subsequently put up for
probate in common form on Friday the thirteenth
day of July One thousand nine hundred and fifty-six
and the caveator through his Counsel objected and
then stated that the Will was prior to a marriage
by which it was revoked.

20 6. That on the Twenty-seventh day of October One
thousand nine hundred and fifty-four while your
Petitioner's father was undergoing post operative
treatment at Dr. Bayley's Clinic a form of marriage
took place between himself and Marion Isadora Al-
sina Green but that that marriage was invalid by
reason of absence of both essential and formal
requirements of the law and also by reason of the
incapacity of the deceased at the time of the cere-
mony.

7. Your Petitioner therefore humbly prays that
your Lordship will be pleased :-

- (a) To declare that marriage invalid;
- 30 (b) To grant probate of the said Will of the
said Nineteenth day of September One thou-
sand nine hundred and fifty-two in solemn
form of law E.A.C.
- (c) To decree that the costs of and incident
to this Petition shall be paid out of the
estate of the said Ernest Clarence Hill,
deceased

AND your Petitioner will ever pray
Hutson A. Williams. etc. etc. etc.

In the Court
of Ordinary
Barbados.

BARBADOS.

I the undersigned and within named Petitioner hereby MAKE OATH AND SAY that the statements contained in the foregoing Petition are correct and true both in substance and in fact to the best of my knowledge information and belief.

No. 1.

Petition of
Ernest
Clarence Hill.

26th July 1956
- continued.

SWORN to by the Deponent)
the said ERNEST CLARENCE)
HILL at my office, Town)
Hall, Bridgetown, this)
Twenty-sixth day of July)
One thousand nine hundred)
and fifty-six before me)

E. CLARENCE HILL, Jr.

10

V.I. de L. Carrington,
Registrar (Ag.)

No. 2.

Ruling of the
Chief Justice
on Burden of
Proof.

5th September,
1956.

No. 2.

RULING BY HIS LORDSHIP THE CHIEF JUSTICE
SIR ALLAN COLLYMORE ON BURDEN OF PROOF

On the last occasion that this matter was before the Court it was adjourned for a ruling in respect of points which were raised by Counsel in respect of the onus of proof of certain allegations. When the Will was before the Court and admission was sought in common form it transpired that an alleged ceremony of marriage had taken place, and thereupon the matter became contentious. As a result a petition was filed and there are certain points raised in the petition which form the subject matter of the contention.

20

As the matter stands at present, and as was pointed out by Mr. Dear, the Court, being a Court of conscience, cannot as the evidence at present stands, admit the will to probate. While I say that, I am entirely silent in respect of the point at issue as to whether or not there was a proper form of marriage. As I say, the will cannot be admitted in the evidence as it stands at present; and when one turns to the petition one finds in paragraph 6 allegations of fact which read as follows :-

30

40

"That on the 27th day of October, One thousand nine hundred and fifty-four, while your Petitioner's father was undergoing post operative treatment at Dr. Bayley's Clinic a form of marriage took place between himself and Maria Isadora Alsine Green; but that that marriage was invalid by reason of absence of both essential and formal requirements of the law and also by reason of the incapacity of the deceased at the time of the ceremony".

In the Court of Ordinary Barbados.

No. 2.

Ruling of the Chief Justice on Burden of Proof.

5th September, 1956 - continued.

10 That, to my mind, provides allegations of fact which must be proved by the person alleging them. I am fortified in that view when one turns to the prayer of the Petitioner; because in paragraph 7 we find this:

"Your Petitioner therefore humbly prays that Your Lordship will be pleased (a) to declare that marriage invalid"

20 Clearly, in my view, the onus is on the Petitioner who makes the allegations which I have read, and then proceeds in the prayer to ask that the Court declare the marriage invalid. That being so, I rule that the onus lies on the Petitioner to prove the allegations stated.

Let me repeat that I am not in any sense suggesting anything with regard to the merits or otherwise of what is contained therein.

E.A.C.

No. 3.

No. 3.

PARTICULARS OF PETITION

Particulars of Petition.

- 30 (a) Each of the parties did not freely consent to inter-marry with a proper understanding of the contract.
- (b) The said marriage ceremony was not performed in due form as required by the Marriage Act 1904-9.

15th September, 1956.

In the Court
of Ordinary
Barbados.

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

DATED this 15th day of September, 1956.

No. 3.

D. V. BYNOE,
Petitioner's Proctor.

Particulars
of Petition.

To:

15th September,
1956 -
continued.

Messrs. Hutchinson & Banfield,
Solicitors for the Caveator,
James Street,
Bridgetown.

10

No. 4.

No. 4.

Petitioner's
Evidence.

PETITIONER'S EVIDENCE

(a) Rev. Newton Ward.

(a) Rev. Newton
Ward.

Rev. Newton Ward affirms:

Examination.

I am a Minister of the New Testament Church
of God, stationed in Bridgetown. Having regard
to my office, I keep the register of that Church
and I have it with me. It contains the certifi-
cate of the marriage of the late Clarence Hill on
October 27th 1954. I do not know the signature
of the late Rev. Winter.

20

I produce the record.

(Exhibit "A").

No Questions.

(b) Fitz Roy
De Courcey Gill,

(b) Fitz Roy De Courcey Gill.

Examination.

Fitz Roy De Courcey Gill sworn saith :-

I live at Roaches, St. Lucy. I was one of
the witnesses to the marriage of the late Clarence
Hill. (Witness is shown exhibit). That is the
certificate. That is my signature. That is the
signature of the late Rev. Winter as far as I can
remember. I saw when he signed it. It is his

30

signature. John Daniel was the other witness. He is in England now.

In the Court
of Ordinary
Barbados.

Mr. Williams: Are there two other signatures on that paper?

No. 4.

Witness: Ernest Clarence Lionel Hill and Marion Green. The lady Miss Green signed both.

Petitioner's
Evidence.

Judge: Signed both signatures herself?

(b) Fitz Roy
De Courcey Gill

Witness: Yes sir.

Mr. Williams: Are you sure of that?

Examination -
continued.

10 Witness: Yes. I am quite sure. He asked her to sign. He said he was a bit "nervy" and he asked her to sign.

Mr. Williams: Did she sign all the names, every one?

Witness: As far as I know, she signed hers and then his.

Mr. Williams: Did she put in the names interlined?

Witness: Not as far as I know.

Judge: What is this little thing here in the corner?

20 Mr. Williams: It is very indefinite ...

(To Witness) Can you say which of these were signed by Miss Green.

Witness: I did not look to see which she was signing, but I heard him say: "Sign for me". He touched the pen.

Mr. Williams: Can you remember his exact words?

Witness: I do not remember.

Mr. Williams: Who was present when this happened?

30 Witness: Rev. Winter, Daniel, Mrs. Winter, the lady and so far as I remember there were two children. As far as I gather there were her children. It took place at Dr. Bayley's clinic.

Mr. Williams: How you came to go there?

Witness: I passed by Rev. Winter's residence. He told me he had this marriage and he asked me to go and witness for him. I went with him.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(b) Fitz Roy
De Courcey Gill

Examination -
continued.

Mr. Williams: You were a friend of his?

Witness: Yes.

Mr. Williams: As far as you remember what happened?

Witness: When we got there Rev. Winter asked Mr. Hill if he knew who he was. He said "Yes". He asked if he knew what he had come there about. He said "Yes", to marry him to Miss Green. That is as far as I remember.

Mr. Williams: After which what happened?

Witness: He carried on as far as I remember. He read from the book. 10

Mr. Williams: The Prayer Book?

Witness: I knew he was using a book. I cannot really tell whether it was a Prayer book. It was a marriage ceremony.

Mr. Williams: Did you hear Mr. Hill say anything?

Witness: I do not remember him saying anything. If he did, it would have been very faint.

Mr. Williams: So faint as not to understand?

Witness: I could not hear anything. 20

Mr. Williams: How far away were you?

Witness: I was a little distance away, about 6 to 8 feet.

Mr. Williams: Was anybody nearer than yourself?

Witness: The Reverend and the lady.

Mr. Williams: Anybody else?

Witness: Mrs. Winter.

Mr. Williams: She was nearer than you?

Witness: I do not remember.

Mr. Williams: Did you see them hold hands? 30

Witness: Yes. They did hold hands. I do not remember if she took his or he hers, but I saw both hands in one another.

Mr. Williams: You remember anything about the ceremony, what was done and what was not as far as the form went?

Witness: No.

Mr. Williams: Particularly, did you hear him make a declaration about knowing any just cause, etc.?

Witness: I heard the Reverend say that.

Mr. Williams: Did you hear Mr. Hill say anything?

Witness: I do not remember hearing him say that.

Mr. Williams: Did you hear the Reverend say that?

Witness: Yes.

10 (Mr. Williams asked Witness whether it would surprise him to hear that the service that was read did not contain those words. Witness did not reply).

Mr. Williams: Did he have any conversation with you or anybody in that room while you were there?

Witness: Not with me. The Reverend, the same Mr. Hill and the lady - they were talking.

Mr. Williams: Did you hear any conversation between him and anybody?

Witness: Not as conversation, just what the Reverend said when he went in.

20 Mr. Williams: Was he able to sit up?

Witness: There was a time he was sitting in a kind of lying position with the pillow behind him.

Mr. Williams: By his own aid?

Witness: He was alone. No one was holding him.

Mr. Williams: Did you see him sit up by himself?

Witness: I do not remember.

(c) Mrs. Violet Winter

Mrs. Violet Winter affirms:

I am widow of the late Rev. J. Winter.

30 Mr. Williams: I think you were present at Dr. Bayley's Clinic on the 27th October when a form of marriage was gone through by Mr. Hill and Miss Green?

Witness: Yes.

In the Court of Ordinary Barbados.

No. 4.

Petitioner's Evidence.

(b) Fitz Roy De Gourcey Gill

Examination - continued.

(c) Mrs. Violet Winter,

Examination.

In the Court
of Ordinary
Barbados.

—————
No. 4.

Petitioner's
Evidence.

(c) Mrs. Violet
Winter.

Examination -
continued.

Mr. Williams: I think you know what prayer book was used on that occasion?

Witness: I did not have anything to do with the book. My husband used it. I do not know if I can point it out.

Mr. Williams: Are there several marriage ceremonies?

Witness: I do not think there are.

Mr. Williams: Does that book have a little typewritten script attached to it by your husband?

10

Witness: Yes, this summons.

Mr. Williams: Can you tell the Court what that script contains?

Witness: I do not know ...

Mr. Williams: You can read it ... ?

Witness: Yes ... "Will thou have this woman to be

Mr. Williams: Is there a little typewritten script, an extract pasted into the book ... ?

Witness: I do not see any.

Mr. Williams: Is that your husband's book he used at these functions?

20

Witness: Yes.

Mr. Williams: On the occasion of this ceremony, can you tell the Court what, if anything, Mr. Hill said?

Witness: He answered as the questions were asked.

Mr. Williams: According to the ceremony?

Witness: Yes.

Mr. Williams: Can you remember anything that was in the ceremony that he answered?

30

Witness: I cannot remember.

Mr. Williams: How near or far were you?

Witness: About the chair to you (3 feet, estimate of Counsel).

Mr. Williams: And you cannot remember anything he said?

Witness: I can only remember "I will".

Mr. Williams: If he had said anything more you would have been near enough to hear?

Witness: I would have been. He was called upon to answer and he answered.

Mr. Williams: Audibly?

Witness: Yes.

Mr. Williams: He had a soft voice or a loud voice?

Witness: Very soft voice.

10 Mr. Williams: You know him very well?

Witness: Yes.

Mr. Williams: What he said was audible?

Witness: Yes.

Mr. Williams: Anybody in the room could have heard him?

Witness: Yes.

Mr. Williams: Did he only say "I will"?

Witness: Yes.

Mr. Williams: You saw anybody holding hands there?

20 Witness: Himself and the lady he married.

Mr. Williams: You remember what was said when he held hands?

Witness: I do not remember.

Mr. Williams: You are a missionary yourself?

Witness: Yes.

Mr. Williams: You have been so for how long?

Witness: 13 years.

Mr. Williams: What was his condition? Robust?

30 Witness: In my opinion he was not very well. I did not know he had an operation, but he was sick in bed.

Mr. Williams: Would you say very sick?

Witness: He was sick. I would not know whether he was very sick.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(c) Mrs. Violet
Winter.

Examination -
continued.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(c) Mrs.Violet
Winter.

Examination -
continued.

Mr. Williams: Did you know him for a long time?

Witness: Not very long.

Mr. Williams: How long?

Witness: About a year.

(Mr. Williams says he would like to tender the book in evidence and put in the marriage ceremony. Mr. Dear remarked he did not know whether the lady even found the type-script referred to.

Mr. Williams said that as far as that went he was in a very embarrassing situation. He did not know whether he could ask certain things he wanted to ask. He had seen the book before and heard certain things from someone since dead).

10

Witness: I never saw anything about a type-script (Mr. Williams asks whether he might remind her of a time when she saw it. He was contending he said, that it was not considered right and they decided to have the type-script put in. Last time he saw the book it had in the type-script).

Witness: I do not know what happened with a type-script. That fly piece was always in there.

20

(Mr. Williams remarked that he was just informed that the Reverend gentleman had several other books. Another book might have been the book and not the one in Court)

Mr. Williams: Has the late Rev. Winter got three other books?

Witness: Yes.

Mr. Williams: Have you got them at home?

Witness: They would be around there.

30

Mr. Williams: Were you not present when I called on your late husband in connection with this?

Witness: Yes.

Mr. Williams: Did he not show me the book he used in Church?

Witness: He showed you that Book.

Mr. Williams: Did he not show me two books?

Witness: There might have been another.

Mr. Williams: Did you follow everything?

Witness: I did not follow everything. You do not use two books to marry a bride and bridegroom.

Mr. Williams: You knew him about a year before that happened?

Witness: Yes.

Mr. Williams: You ever suggested to him that he lived in a life of sin? Have you ever spoken to him about marrying this lady?

10 Witness: My husband did.

Mr. Williams: In your presence?

Witness: Yes. I had spoken to her.

Mr. Williams: What did he say when your husband spoke about getting married?

Witness: I would not be able to say.

Judge: When was that?

Witness: Between the year she knew me.

Mr. Williams: Did your husband speak to him several times about marrying this lady?

20 Witness: Yes.

(Mr. Dear remarked that that would have nothing to do with the case. His Lordship adds that because a person says that another is living in sin and then subsequently goes through a form of marriage could not affect whether the marriage ceremony was good or bad. Mr. Dear remarked men had been known to change their minds on such matters. Mr. Williams remarked that there were several cases in which evidence was given as to statements made by the deceased man about the marriage. His Lordship observed that he could not make the witness say anything

30

Mr. Williams said it was of some significance what the man's attitude towards the marriage had been).

Mr. Williams: I still ask you what was his attitude when your husband tried to persuade him.....?

Witness: I was not listening.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(c) Mrs. Violet
Winter.

Examination -
continued.

In the Court
of Ordinary
Barbados.

—————
No. 4.

Petitioner's
Evidence.

(c) Mrs. Violet
Winter.

Examination -
continued.

Mr. Williams: When was the first time you came into the picture in connection with this ceremony that took place at Dr. Bayley's clinic?

Witness: I took my husband there.

Mr. Williams: How did your husband come to be taken there?

Witness: He was asked to marry the couple.

Mr. Williams: You know when?

Witness: I cannot remember the exact time.

Mr. Williams: Were you not the person who took the message to your husband? 10

Witness: I could have been.

Mr. Williams: Did you?

Witness: I think I did.

Mr. Williams: Was it the night before this ceremony took place?

Witness: I cannot remember.

Judge: Whom was the message from?

Witness: Miss Green.

Mr. Williams: And in consequence of that message you went to the hospital? 20

Witness: Yes.

Mr. Williams: I was asking you as to the state of his health on the day the ceremony took place?

Witness: He was sick.

Mr. Williams: What did your husband say to him?

Witness: All I know he asked him if he knew who he was.

Mr. Williams: Why did he ask him?

Witness: I would not know what reasons my husband would have. 30

Mr. Williams: He looked insensible?

Witness: He wanted to find out whether Mr. Hill knew why he was there.

Mr. Williams: He had some doubts?

Witness: I do not know.

Mr. Williams: Was it a normal question one always asked?

Witness: You do not always have to ask it

Mr. Williams: Did your husband acquaint the people in the hospital with what was happening? Did he tell the doctors and nurses?

Witness: No.

Mr. Williams: Subsequently to that did they have any indication as to the ceremony?

10 Witness: The Matron rang the Reverend.

Judge: How soon after?

Witness: A day or two after.

Mr. Williams: She had a conversation?

Witness: Yes. I told her she had to see the Colonial Secretary's Office. That was where the licence had been issued from.

Mr. Williams: In connection with your missionary work you were very anxious to see that these people should marry?

20 Witness: To help get their souls saved: That they should not sin.

Mr. Williams: You were anxious that they should marry?

Witness: Not for any other reason, not more than that.

Mr. Williams: How long was your husband a missionary?

Witness: Between 53 and 54 years he was a missionary.

30 Mr. Williams: And had been marrying people?

Witness: From the time I knew him.

Mr. Williams: In different places, not in Barbados?

Witness: All over Barbados.

Mr. Williams: Most of his ministry was outside Barbados?

Witness: Yes.

(Witness is shown register).

Mr. Williams: Do you know Mr. Clarence Hill's name, his full name?

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(c) Mrs. Violet
Winter.

Examination -
continued.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(c) Mrs. Violet
Winter.

Examination -
continued.

Witness: No.

Mr. Williams: You see the name Ernest Clarence Hill there you know who wrote that name?

Witness: No.

Mr. Williams: You do not know under what circumstances it was written?

Witness: It was written when someone had to sign for him.

Mr. Williams: He could not sign for himself?

Witness: No.

10

Mr. Williams: What about all these names interlined?

Witness: I did not see them written.

Mr. Williams: But you were standing there?

Witness: I went out of the hospital.

Mr. Williams: This was after the ceremony?

Witness: Yes.

Judge: When you went out where was your husband?

Witness: I left him in the hospital, the men who were signing the book.

20

Judge: Was it your habit to take your husband about where he was called?

Witness: I used to drive.

Judge: You drove the car?

Witness: I got someone to drive it that day, that night, just when the evening was going off, between 7 ...

Judge: You took your husband there?

Witness: No Mr. Gill.

Judge: You accompany him as a rule?

30

Witness: Yes.

Judge: How old was he?

Witness: 76 years, 6 months.

Judge: He died when?

Witness: 19th July.

Judge: He used to conduct services all the time?

In the Court
of Ordinary
Barbados.

Witness: Yes sir.

Judge: Where at ?

No. 4.

Witness: Various churches all over the Island.
Our churches are all over the Island.

Pétitioner's
Evidence.

(c) Mrs.Violet
Winter.

Cross-Examination:

Examination -
continued.

Mr. Dear: How long has your husband been in Bar-
bados?

Witness: He came in and went out on many occasions.

Cross-
Examination.

10 Mr. Dear: When did he first come here?

Witness: 1907.

Judge: How long were you married?

Witness: About 13 years.

Mr. Dear: During the time you lived in Barbados
you saw him perform several marriage ceremonies?

Witness: Yes.

Mr. Dear: The ceremony at Dr. Bayley's clinic was
in the usual form, nothing special about it?

Witness: Yes.

20 Re-Examination:

Re-Examination.

Mr. Williams: Did your husband not say there are
two forms of service and that he used this one be-
cause the old man could not ?

(Mr.Dear objects to Counsel putting words in
witness' mouth - the words of a man who could
not come to be cross-examined)

Mr. Williams: Has not your husband more than one
book?

30 Witness: Yes. He used this book all the time I
knew him. There are two, one is a Pilgrim Holi-
ness, but this is the one he used.

(Mr.Williams remarked that he would subpoena her
to produce all the books)

Judge: Can you remember how many people and who
were in the room at the time?

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Petitioner's
Evidence.

(c) Mrs. Violet
Winter.

Re-Examination
- continued.

Witness: Daniel, Gill, Rev. Winter, Mr. Hill,
Miss Green, her son and daughter and myself.

Judge: Anybody from Dr. Bayley's Clinic, any
nurse?

Witness: No, we did not see anyone there.

(d) Dr. Colin
Vaughn,

Examination.

(d) Dr. Colin Vaughn

Dr. Colin Vaughn: Sworn saith I am a registered
medical practitioner. I reside at Fontabelle.
Mr. Hill resides there. I knew him by sight from
the time I was a child.

10

Mr. Williams: You knew him more intimate when?

Witness: Since 1952 when I first went to live
there.

Mr. Williams: In 1952 did you know him profession-
ally?

Witness: I saw him professionally for the first
time in June 1953.

Mr. Williams: Can you tell the Court briefly under
what circumstances?

Witness: I saw him for hernia.

20

Mr. Williams: I want you to give the Court your
medical opinion as to his state of health, not in
detail, but affecting his state of mind, his phys-
ical strength ...

Witness: I saw him for hernia. He wanted to know
whether he could have an operation or not. In view
of his age I told him no. I told him I would not
advise him even if he could find some doctor to cut
him, which was doubtful.

Mr. Williams: Was he an old man?

30

Witness: He was old from the time I knew him
The next occasion I saw him was in 1955, February,
when he had a cerebral catastrophe, stroke, throm-
bosis. In April, 1955, the same thing That
was as far as my entire relationship was concerned.

Mr. Williams: You had nothing further to do with him in respect to his state of mind?

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Witness: Nothing whatsoever.

Mr. Williams: Were you ever requested to examine him with a view to his mental state?

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Witness: Mr. Hill requested me to examine him at the time I examined him. Other people may have asked me to examine him, but that had nothing to do with our relationship. Mr. Carlton Hill on one occasion asked me whether I would examine his father. I told him no, I would not examine him mentally unless I was asked to do so by the Court.

Petitioner's
Evidence.

(d) Dr. Colin
Vaughn,

Examination -
continued.

Mr. Williams: Have you any idea whether he was examined mentally?

Witness: No.

Mr. Williams: Do you remember calling at the late Mr. Hill's residence in Fontabelle any time with Mr. Carlton Hill?

Witness: On one occasion when Mr. Hill, Senior, was ill in February, I told his son he was seriously ill and if he wanted to see him he should come and see him quickly, February, 1955.

Mr. Williams: What resulted from that advice?

Witness: I believe Mr. Hill went to see his father.

Mr. Williams: You did not go with him?

Witness: He may have come in before I left the house, but I cannot remember.

Mr. Williams: Did you not visit Mr. Hill in company with Mr. Carlton Hill in 1953?

Witness: I went there in June to see whether he was fit to undergo an operation for hernia. I believe Carlton Hill was there on one occasion. I do not quite remember. I did not go with him. We did not go at the same time in the same car or anything like that. He may have been in the room when I gave him advice. I cannot remember anything about Exhibition days or anything like that. I have told the Court before that I have never examined Mr. Hill at any time with regards his mental health.

Mr. Williams: Did you not call with Mr. Carlton Hill for the purpose of examining him but he did not appear because he was well and out?

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Witness: I do not know anything about that.

Mr. Williams: Do you know that Dr. Simon was to see him with you?

Witness: I never examined him mentally.

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Evidence.

Mr. Williams: In so far as your relationship with him was concerned, did you form any opinion as to his mental health?

(d) Dr. Colin
Vaughn,
Examination -
continued.

Witness: I do not come to opinions until I give thorough examinations. When I spoke to him he seemed composed. I gave him advice and he carried it out. In 1953 he decided for some reason or another to have an operation. I told him I did not think any doctor would touch him unless his condition was strangulated or something like that. He took that advice.

10

Mr. Williams: You did not examine him again in 1953 between that time and the alleged operation ?

Witness: I did not visit him. The only times I have recorded were June 1953, February 1955 and April 1955.

20

Mr. Dear: No questions.

Judge: Did you have anything to do with his being sent to Dr. Bayley's Clinic?

Witness: I did not see him on that occasion.

(e) Dr. Charles
Manning,
Examination.

(e) Dr. Charles Manning.

Dr. Charles Manning: sworn saith

Mr. Williams: I think you knew Mr. Clarence Hill and visited him professionally some time before the operation?

Witness: Yes.

Mr. Williams: What operation ?

30

Witness: As far as I know he only had one at the Clinic at the time. I saw him in October, 1954, roughly a week before his operation. I was called to see him and he had strangulated hernia which I reduced. A short time after that, I believe on the 25th October, I was called to see him again. On that occasion I saw the hernia again strangulated and I could not reduce it. Although his pshysical health was very poor, the operation was necessary

or he would have died from congestion. He was then sent to Dr. Bayley's Clinic and I assisted in performing the operation.

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Mr. Williams: Can you say whether he was suffering from dysentery as well shortly before his admission?

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Witness: I do not recall it.

Petitioner's
Evidence.

Mr. Williams: What was his state physically and mentally as far as you could judge?

(e) Dr. Charles
Manning,

10 Witness: His physical state was extremely critical, especially on the last occasion when I saw him on the 25th. As a matter of fact we were in great doubt as to whether he could stand an operation or not. That was the very day of the operation.

Examination -
continued.

Mr. Williams: Can you say anything about his consciousness on that day?

Witness: He was conscious.

Mr. Williams: Did he know you?

20 Witness: Immediately before the operation, I do not think so. He was very ill at that time.

Mr. Williams: Did you see him after the operation at all?

Witness: I have no record, but I think I saw him a day after.

Mr. Williams: When you last saw him would you say he was capable of looking after his person?

Witness: On the 25th I would say definitely not.

Mr. Williams: His property.

30 Witness: Not on that day.

Mr. Williams: Can you state then how many days a man in that condition would be likely to be unable to contract business?

Witness: It is hard to say. The general mental and physical condition was in a great measure due to the strangulated hernia. Following the operation it is possible that he would have improved considerably.

Mr. Williams: What about the age factor?

40 Witness: He was in his eighties.

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Petitioner's
Evidence.

(e) Dr. Charles
Manning.

Examination -
continued.

Mr. Williams: Was he likely to improve rapidly?

Witness: That is difficult to say, I cannot give any opinion on that.

Mr. Williams: As to the probability of a man of his age?

Witness: It would have improved.

Mr. Williams: What would be the extent of improvement?

Witness: I cannot tell you.

Mr. Williams: Within a week after, would you have entrusted your affairs to him? 10

Witness: I do not think so. No.

Mr. Williams: In that you did not feel he would have been capable mentally?

Witness: Certainly physically, possibly mentally.

Mr. Dear: No questions.

(f) Dr. George
Stanley Emtage,

Examination.

(f) Dr. George Stanley Emtage.

Dr. George Stanley Emtage: sworn saith:

I am a registered medical practitioner. I knew the late Ernest Hill. On the 25th October, Dr. Manning asked me to see Mr. Hill, which I did, and he was suffering from strangulated hernia. It could not be reduced. I operated on him the same afternoon. I saw him subsequently every day until November 1st when he was discharged. 20

Mr. Williams: What was your opinion as to his physical condition then?

Witness: On admission his physical condition was extremely bad, but it was a question of relieving the obstruction or letting him die. 30

Mr. Williams: After the operation ?

Witness: His general condition improved rather rapidly.

Mr. Williams: He was under your care during that time?

Witness: Yes.

Mr. Williams: He talked?

Witness: He talked to me every day normally. He answered my questions normally. Of course my questions were only professional.

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Mr. Williams: Did you say much to him?

Witness: Not much.

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Mr. Williams: You said very little?

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Evidence.

Witness: Very little indeed, how are you today and such like ...

(f) Dr. George
Stanley Emtage,

10 Mr. Williams: From the amount you conversed with him, were you able to form any opinion as to his mental state?

Examination -
continued.

Witness: No.

Mr. Williams: Did he ever before or after the operation speak about any marriage?

Witness: No.

Mr. Williams: He never told you he was married?

Witness: No.

Mr. Williams: Did you hear him speak of it to anybody?

20 Witness: No.

Mr. Williams: Were you at any time informed about the marriage?

Witness: Yes.

Mr. Williams: Before it took place?

Witness: After.

Mr. Williams: Who spoke to you about it?

Witness: One of the nurses casually mentioned it some time after. I never mentioned it to him either.

30 Mr. Williams: Certain investigations were carried out as a result of the report?

Witness: I believe the matron did.

Mr. Williams: During the time he was there can you say whether he was able to look after his own person?

Witness: Certainly not on the day of admission or the day after. I can speak definitely for those two days.

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Evidence.

(f) Dr. George
Stanley Emtage,

Examination -
continued.

Judge: How do you mean could not look after his person?

Witness: I believe he means wash his face

Mr. Williams: Move around, etc.?

Witness: He would not be allowed to move around.

Mr. Williams: Would you say he was capable of managing his affairs, his personal business?

Witness: Not on the day of admission or the day after, the 25th or 26th.

Mr. Williams: Does that mean he could have done it the day after, the 27th? 10

Witness: I do not know, I can only speak for those two days because he was still suffering from the effects of this strangulation.

Mr. Williams: Is that condition liable to stop quickly or gradually?

Witness: Fairly quickly in young men - 3 or 4 hours, for men of his age longer.

Mr. Dear: No questions.

(g) Bruce Hill,

Examination.

(g) Bruce Hill

20

Bruce Hill: sworn saith:

I am a son of the late Ernest Clarence Hill.

Mr. Williams: You remember when your father was sick in hospital?

Witness: Yes.

Mr. Williams: Did you go there while he was there?

Witness: Yes.

Mr. Williams: How often?

Witness: Every day.

Mr. Williams: From the day he was admitted? 30

Witness: Yes.

Mr. Williams: You just went in and came out?

Witness: I used to stay with him all day.

Mr. Williams: At night?

Witness: No. During the day, 8 to 6.

Mr. Williams: You remember the wedding ceremony taking place during that period?

Witness: Yes.

Mr. Williams: You remember how many days after he went in?

Witness: I really cannot remember.

Mr. Williams: How long was he there, how many days

Witness: A week.

10 Mr. Williams: Was it at the end of the period, at the beginning?

Witness: About the middle of the period.

Mr. Williams: Do you remember the particular day what happened?

Witness: No.

Mr. Williams: Did you see anybody there that day?

Witness: No. The evening I went home I saw Rev. Winter, his wife and two other fellows.

Judge: Where did you see them?

20 Witness: At my home in Fontabelle.

Mr. Williams: On that day you had been to your father?

Witness: Yes.

Mr. Williams: Did he speak to you during the day?

Witness: He slept most of the day.

Mr. Williams: When he awoke, did he say anything to you?

Witness: He only asked for orange juice.

Mr. Williams: Was he given ...?

30 Witness: Yes.

Mr. Williams: After that what did he do?

Witness: He went back to sleep.

Mr. Williams: Sure he said nothing to you about the wedding or anything else?

Witness: He never told me anything.

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Petitioner's
Evidence.

(g) Bruce Hill,

Examination -
continued.

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Mr. Williams: You are sure that was the same day
you saw Rev. Winter in the car?

Witness: Yes.

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Judge: What time did you leave?

Petitioner's
Evidence.

Witness: About 4 o'clock.

(g) Bruce Hill,
Examination -
continued.

Mr. Dear: No questions.

(h) Nurse Rhoda Tucker

(h) Nurse
Rhoda Tucker,
Examination.

Nurse Rhoda Tucker: sworn saith:

I am a nurse at Dr. Bayley's Clinic.

Mr. Williams: You knew Ernest Clarence Hill?

10

Witness: Yes.

Mr. Williams: Can you tell the Court what you know
of him and his state of health?

Witness: I prepared him for his operation. While
I was preparing him I noticed he was very restless.

Mr. Williams: How much so?

Witness: I had very much trouble in preparing him.
That might have been due to his pain.

Mr. Williams: After that?

Witness: That is all I know.

20

Mr. Williams: Did you not nurse him again after
that?

Witness: I saw him about twice after that.

Mr. Williams: The same day?

Witness: Days after.

Mr. Williams: Did you converse with him?

Witness: No.

Mr. Williams: He with you?

Witness: No.

Mr. Williams: Did you observe anything about him?

30

Witness: No.

Mr. Williams: Did you hear him say anything at
all during these days?

Witness: No.

Mr. Williams: Was that normal?

Witness: I do not know.

Judge: You prepared him for the operation?

Witness: Yes sir, on the first day.

Judge: You are a surgical nurse?

Witness: Surgical and medical.

Judge: After the operation did you have any nursing duties to perform in connection with Mr. Hill?

10 Witness: No sir.

Judge: You did nothing else but prepared him for the operation?

Witness: Yes sir.

Judge: Did you have to visit him?

Witness: I passed through and saw him there, but I did nothing to him.

Mr. Williams: When you saw him he was just lying there?

Witness: Yes. He looked as though he was sleeping.

20 Mr. Williams: Last time you saw him was it shortly before he left the hospital?

Witness: No, I did not see him shortly before.

Mr. Williams: When did you see him?

Witness: A few days after the operation.

Mr. Williams: How soon after the few days after did you see him again?

Witness: I did not see him again.

Mr. Dear: No questions.

(i) Nurse Ruby Cozier.

30 Nurse Ruby Cozier, sworn saith:

I am a registered nurse. I was at Dr. Bayley's Clinic at one time, during the time Mr. Ernest C. Hill was there.

Mr. Williams: You were a relief nurse on his case?

Witness: Yes.

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Petitioner's
Evidence.

(h) Nurse
Rhoda Tucker,

Examination -
continued.

(i) Nurse
Ruby Cozier,
Examination.

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of Ordinary
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Evidence.

(i) Nurse
Ruby Cozier,

Examination -
continued.

Mr. Williams: When did you first see him?

Witness: Before the operation.

Mr. Williams: And after that?

Witness: Once or twice.

Mr. Williams: How did you find him?

Witness: Pretty restless.

Mr. Williams: Did he speak to you?

Witness: We never carried on any conversation.

Mr. Williams: Was he able to move around, look
after himself? 10

Witness: No. He was operated on so he was not
allowed to leave his bed.

Mr. Williams: How long?

Witness: A few days.

Mr. Williams: He never told you about his marriage?

Witness: No.

Mr. Williams: Did you know of any marriage taking
place?

Witness: I was told a night or two after.

Mr. Williams: From your contact with him you would
say he was a man who was capable of making a con- 20
tract at that time?

Witness: We never carried on any conversation so
I would not know. I have heard him calling for
his son Bruce.

Mr. Williams: That was all?

Witness: Yes.

Mr. Williams: Can you say anything of his state
of mind, confusion?

Witness: I can only say he was restless. During 30
the time I attended him he was very abusive.

Mr. Williams: Did he speak softly?

Witness: Sometimes he would shout out.

Mr. Williams: When you heard him make utterances,
did he speak softly or was he a man who spoke
loudly?

Witness: It would not be soft.

Mr. Williams: Did you ever hear him speak in soft
tones?

Witness: I never talked to him.

Mr. Williams: When you heard him talk, was it loudly?

Witness: He called for Bruce. He did not scream, but you could hear him say "where is Bruce?".

Mr. Williams: Quite audibly?

Witness: Yes.

Judge: People used to visit him?

10 Witness: His wife or supposed-to-be-wife, the children and their mother.

Judge: How often did they come?

Witness: I cannot tell you that. I have seen them once or twice.

Judge: Were you ever in the room when they were there?

Witness: At one time I can remember going to attend to him and they were there.

Judge: Was he sitting quietly?

Witness: When I got to him he was quiet.

20 Judge: How do you mean quiet?

Witness: Doing nothing.

Judge: What did they do?

Witness: I cannot tell you what he did as I never stayed any length of time. I came to sponge him once and I asked them to leave for a few minutes. They left. I cannot tell whether they carried on a conversation with him or not.

Judge: When you told them to leave, did he say anything to you?

30 Witness: No.

(j) Petitioner, Ernest Clarence Hill

Ernest Clarence Hill, sworn saith:

Ernest Clarence Fitz Allen Hill was my father.

(Judge observes that witness has been in Court all the time. Mr. Williams explains that he was Petitioner, and Counsel for the other side had not objected).

Mr. Williams: You worked in his business?

In the Court of Ordinary Barbados.

— — —
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Petitioner's Evidence.

(i) Nurse Ruby Cozier,

Examination - continued.

(j) Petitioner, Ernest Clarence Hill,

Examination.

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Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Examination -
continued.

Witness: Yes.

Mr. Williams: How long?

Witness: 10 years.

Mr. Williams: He carried on business where, principally?

Witness: Tudor Street.

Mr. Williams: He died when?

Witness: 1955, 30th April.

Mr. Williams: On that date what was his age?

Witness: Around 84 years old. I am not dead sure. 10

Mr. Williams: At the time of his death, was he carrying out his own business?

Witness: Not at the time.

Mr. Williams: When did he cease?

Witness: Little before he went for the operation.

Mr. Williams: How long ?

Witness: About 4 to 6 months. Before he went for the operation he was getting too weak to get around.

Mr. Williams: Who carried on the business?

Witness: I. 20

Mr. Williams: He had several Court actions, did he not?

Witness: Yes.

Mr. Williams: One resulting from the sale of property in Tudor Street?

Witness: Yes.

Mr. Williams: With a person named Lloyd Wilson?

Witness: Yes.

Mr. Williams: Was he summoned to the Court?

Witness: Yes. 30

Mr. Williams: He appeared?

Witness: Yes.

Mr. Williams: He appeared personally or was he represented?

Witness: He was not represented.

Mr. Williams: That was on what date?

Witness: I am not sure of that date. It was in 1953, I think. At the time he got ill and went to the hospital.

Mr. Williams: What was his condition? 40

Witness: He could hardly walk. A couple of days before he could not walk.

Mr. Williams: Was he in bed then?

Witness: He was in bed all the time.

Mr. Williams: What was the state of his mind at that time? Was he collected?

Witness: No. You had to tell him one thing many times to get him to understand anything. It would take a whole morning to get him to understand anything.

10

Mr. Williams: Did anybody ever take any steps to your knowledge to get him examined?

Witness: Once Dr. Simon came over and mentioned that he wanted him to get examined ...

(Mr. Dear objects to this and his saying that Dr. Simon had said Dr. Vaughn had sent him. His Lordship said that he said the doctor was called to examine him and that was as far as he could go ...)

20 Mr. Williams: When was that?

Witness: Around 1953.

Mr. Williams: He took ill and was sent to the Clinic?

Witness: Yes.

Mr. Williams: You visited him?

Witness: Yes, 3 or 4 times.

Mr. Williams: How soon after?

Witness: After the operation I visited him.

30

Mr. Williams: What was his condition then when you saw him?

Witness: He could not speak so we did not stay long.

Mr. Williams: You are the oldest of the then Miss Green's children?

Witness: Yes.

Mr. Williams: When you went to see him the day after the operation, what was his condition?

Witness: He was just lying there. All he could do was to ask for water ...

40

Mr. Williams: Did you know a marriage ceremony took place there?

Witness: I heard of it afterwards.

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No. 4.

Petitioner's Evidence.

(j) Petitioner, Ernest Clarence Hill,

Examination - continued.

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No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Examination -
continued.

Mr. Williams: Your father never told you?

Witness: No.

Mr. Williams: Between the operation and this did he carry on a conversation with you?

Witness: He was not capable of carrying on a conversation. He just said a couple of words.

Mr. Williams: Did you know Rev. Winter and his wife?

Witness: Just by seeing them.

Mr. Williams: Have you ever heard them speak to your father by any chance about marriage? 10

Witness: Some time or other.

Mr. Williams: How long before they went to the hospital?

Witness: A matter of months.

Mr. Williams: Did your father make any reply?

Witness: He told him he was wasting time.

Mr. Williams: Did your father ever make any comments in respect to his marrying?

Witness: More than once he said he would never marry again. 20

Mr. Williams: Did he give any reason?

Witness: The reason he gave was that he had a reading from a Secret Order that he should never marry again, a life reading telling him what to do and what not to do ...

Mr. Williams: After the alleged ceremony, did your father ever speak to you about it?

Witness: He never mentioned it.

Mr. Williams: Did you know your father's handwriting? 30

Witness: Yes. I have seen it for over 10 years, seen him signing.

Mr. Williams: Look at that handwriting and tell me whether it was the handwriting of your father?

(Witness shown Exhibit)

Witness: Definitely not.

Mr. Williams: Do you know the handwriting below - Marion Green. Can you say whether it is in the handwriting of your mother? 40

Witness: Marion Green is hers, the one to top. Alendor is not ...

Mr. Williams: What was your father's whole name?

Witness: I knew him as Ernest Clarence Hill.

Mr. Williams: Was he not Ernest Clarence Lionel Fitz Allen Hill?

Witness: This is the first I heard. I did not know that.

Mr. Williams: You say he did not speak to you about this alleged ceremony at all?

Witness: No.

10 Mr. Williams: When he came out of the hospital..

Witness: I took him home. He could not walk. I lifted him in the car.

Mr. Williams: You remember the time you saw him after the ceremony? What was his condition?

Witness: He was still weak. I lifted him.

Mr. Williams: Was he able to dress himself after that?

Witness: No for months after. My mother dressed him all the time.

20 Mr. Williams: Did he look after the business...?

Witness: I looked after it while he was in hospital.

Mr. Williams: There was an action in Court relating to Tudor Street property?

Witness: Yes.

Mr. Williams: Did he have other cases in Court?

Witness: Yes.

Mr. Williams: What about?

30 Witness: About land attached to his home in Fontabelle. He had others about other buildings.

Mr. Williams: What about the Tudor Street case?

Witness: That was with Lloyd Wilson.

Mr. Williams: What about the land case?

Witness: Pickwick Association.

Mr. Williams: What about other cases?

Witness: His son Carlton He took his son Carlton to Court.

Mr. Williams: What was the relationship between himself and his son Carlton? Good?

40 Witness: Not at that time. From 1950 on the relationship between himself and his son were bad.

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No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Examination -
continued.

In the Court
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No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Examination -
continued.

Mr. Williams: What about the relationship between your brothers and yourself?

Witness: Which brothers?

Mr. Williams: Your mother's children and yourself?

Witness: He liked Bruce so much he had to stay with him every day. He had to miss school for a period of time. Bruce stayed with him every day. My mother stayed at night.

Mr. Williams: Anybody else he was fond of?

Witness: Edward. 10

Mr. Williams: He ever said what was to be done with Edward?

Witness: I was the last person who spoke to him. That was three days before he died. He told me I would have to take care especially of Edward and the estate.

Mr. Williams: Did he go further about Edward?

Witness: He said what he had in the will for him.

Mr. Williams: Did he go further?

Witness: He wanted him to take a profession. 20

Judge: That was three days before he died?

Witness: Yes. He had a stroke that evening. Mentally he was all right. He was weak, but he could not remember everything. The boy always slept with him for the last five years.

Mr. Williams: Have you got a sister called Jean?

Witness: Yes.

Mr. Williams: Was he very fond of Jean at the time of his death?

Witness: No. 30

Mr. Williams: Why?

Witness: He was annoyed with her marriage.

Mr. Williams: Did he show it in any way?

Witness: From then on he had nothing to do with her.

Mr. Williams: When did she marry?

Witness: About 1951.

Mr. Williams: I think he later made a Will?

Witness: Yes. The last will he made he left her out totally. 40

(Mr. Williams refers to an effort being made to get two nurses as witnesses, and His Lordship comments on the practice of issuing short notices on nurses or doctors and disrupting the organisation of the hospital).

Cross-Examination.

In the Court
of Ordinary
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Mr. Dear: Your father's business is a one-man business?

Witness: More or less.

Mr. Dear: Who were the partners?

Witness: He was the owner.

Mr. Dear: You worked with him?

Witness: Yes sir.

Mr. Dear: How old are you?

10 Witness: 26.

Mr. Dear: You worked with him 10 years?

Witness: Yes sir.

Mr. Dear: Your father signed all cheques?

Witness: Not when he was sick. The last was when he came out of hospital.

Mr. Dear: The business is still being run?

Witness: Yes sir.

Mr. Dear: A kind of cash and carry business?

Witness: Yes sir.

20 Mr. Dear: That was the type when he was in hospital?

Witness: Yes sir.

Mr. Dear: You banked any money?

Witness: No.

Mr. Dear: After he came out of the hospital he visited the store?

Witness: He came there. He was brought there.

Mr. Dear: He came a number of times and supervised the business?

30 Witness: Yes.

Mr. Dear: After he was discharged he was able to conduct his own affairs?

Witness: Yes sir. He told me what to do.

Mr. Dear: Did he not give you instructions?

Witness: Yes, he gave me certain instructions.

Mr. Dear: You could not do what you wanted?

Witness: No.

Mr. Dear: He had given you no Power of Attorney?

Witness: No.

No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Cross-
Examination.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Cross-
Examination -
continued.

Mr. Dear: Did you consider he was capable of running the business after he came out of the hospital?

Witness: I was not in a position to tell you whether he was capable or not.

Mr. Dear: Would you express an opinion about it when he was in hospital?

Witness: When he was in the hospital he was incapable of doing anything at all, physically or mentally.

Mr. Dear: Your mother is still alive? 10

Witness: Yes.

Mr. Dear: Since this ceremony she has referred to herself as Mrs. Hill?

Witness: I do not know.

Mr. Dear: Is there a telephone at "Carlton Cot"?

Witness: Yes.

Mr. Dear: When was it put in?

Witness: Around 1952.

Mr. Dear: Do you know who put it in?

Witness: No. 20

Mr. Dear: Do you know who has kept it in?

Witness: No.

Mr. Dear: Do you know what number was listed in the telephone directory?

Witness: Yes.

Mr. Dear: How do you know the number?

Witness: Through my brother.

Mr. Dear: Where do you live?

Witness: Cheapside.

Mr. Dear: You have ever referred to your mother by her maiden name? 30

Witness: I call her Alsina or mother.

Mr. Dear: If you were speaking of her to a stranger, you would refer to her as Mrs. Hill or Miss Green?

Witness: I would call her mother. I never refer to her as Mrs. Hill.

Mr. Dear: You heard of the ceremony after it was over?

Witness: Yes sir. 40

Mr.Dear: Did you remonstrate with anyone that they should allow this to take place in his condition? Did you do anything about it?

In the Court of Ordinary Barbados.

Witness: I said I was not in a position to take legal steps at the time.

No. 4.

Mr.Dear: Is it a fact that you only questioned the marriage when you were advised that the marriage revoked the Will?

Petitioner's Evidence.

Witness: Before that.

10 Mr.Dear: You visited him how many times at the hospital?

(j) Petitioner, Ernest Clarence Hill,

Witness: About 4 times. I went actually every day.

Mr.Dear: How long you stayed when you went?

Cross-Examination - continued.

Witness: I do not remember. I stayed a good time.

Mr.Dear: 10 minutes or half an hour?

Witness: Over a period of half an hour.

Mr.Dear: What happened during that time?

Witness: My one would not be there. I have other brothers who would be there.

20 Mr.Dear: You sat and said nothing to one another?

Witness: We talked to one another.

Mr.Dear: You said nothing to your father?

Witness: Sometimes.

Mr.Dear: Did he answer?

Witness: Sometimes.

Mr.Dear: I think you said he was not capable of carrying on a conversation?

Witness: Sometimes he would say "yes" or "no". All depends what you understand by a conversation.

30 Mr.Dear: The fact remains he would reply to you?

Witness: Not all the time.

Mr.Dear: You would not expect a person at his age at that time to be a brilliant conversationist?

Witness: Depends.

Mr.Dear: You saw him the day he got married?

Witness: I would not directly say yes or no. I might have seen him that day or the day after.

Mr.Dear: When was the first time you saw a copy of the Will?

40 Witness: I cannot remember.

Mr.Dear: Cannot remember if you saw it before or after he was dead?

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Cross-
Examination -
continued.

Witness: I cannot remember.

Mr.Dear: In the Will you and your mother are ap-
pointed Executors?

Witness: He told me so.

Mr.Dear: Do you know that? you saw the will?

Witness: I have seen the Will.

Mr.Dear: You know that you and your mother are
Executors?

Witness: I am aware of that.

Mr.Dear: She is not proceeding in this suit? 10

Witness: I do not know her intention.

Mr.Dear: The day he left the hospital you lifted
him out?

Witness: I personally lifted him out.

Mr.Dear: What was his condition? He knew you were
lifting him?

Witness: Of course. He knew he was going home.

Mr.Dear: When he was in the hospital, when you
went to see him, did he not know you? Not the same
night he went to the operation, after that? 20

Witness: Not until three or four days after.

Mr.Dear: You say he could not discuss business in
the hospital?

Witness: No. He could not.

Mr.Dear: How do you know? You tried to discuss
business with him?

Witness: There was no point in trying. You could
look at him and see.

Mr.Dear: Have you ever looked at anybody else and
judged whether that person was in a condition....? 30

Witness: Nobody beside him.

Mr.Dear: Do you know whether Carlton Hill went to
see him at the hospital?

Witness: I do not know.

Mr.Dear: Bruce was with him during the day and
your mother at night?

Witness: Yes.

Mr.Dear: Would it be true to say you only went
twice?

Witness: No. I cannot remember how many times,
but more than twice. 40

Mr.Dear: Since your father died you have been carrying on the business?

Witness: Not solely. Me and my mother.

Mr.Dear: You keep books?

Witness: Yes.

Mr.Dear: Accounts, sales, purchases ?

Witness: Yes.

Mr.Dear: Your father died April last year?

Witness: Yes.

10 Mr.Dear: The books were audited since?

Witness: No.

Mr.Dear: Why were they not?

Witness: There was not much to audit.

(His Lordship questioned whether this was necessary. Mr.Dear said it was to show he had an interest).

Mr.Dear: The point I have been trying to put to you is that since your father's death you have been doing what you want?

20 Witness: How do you mean?

Mr.Dear: Do you have a bank account?

Witness: Never had one.

Mr.Dear: You making a profit?

Witness: I would not say that.

Mr.Dear: Since when you stopped making a profit?

Witness: I would have to get the books.

Mr.Dear: You have been carrying on business although it does not make a profit?

Witness: I would not be the first person to do it.

30 Mr.Dear: Are you really telling this Court that you do not know what your mother calls herself today?

Witness: What she calls herself is no concern of mine.

Mr.Dear: If she called herself Adolph Hitler it would not matter to you?

Witness: Not from the name point of view.

Mr.Dear: Do you know she refers to herself as Mrs. Hill?

40 Witness: I do not know.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Cross-
Examination -
continued.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(j) Petitioner,
Ernest Clarence
Hill,

Cross-
Examination -
continued.

Mr.Dear: You see her often?
 Witness: Yes.
 Mr.Dear: You and her get along very well?
 Witness: I would say so.
 Mr.Dear: All of you children have always gone by
 the name of Hill?
 Witness: Yes.
 Mr.Dear: At any time you visited him, were any
 doctors or nurses present?
 Witness: No.

10

Re-Examination.

Re-Examination.

Mr.Williams: You said the first information you
 had of this ceremony was when Mr.Carlton Hill came
 to you about it?
 Witness: He came to me and asked me whether I was
 aware that a marriage had been gone through between
 my mother and my father. I said "No". He said
 if I had not been aware, a marriage had taken place
 in the Clinic. He said my father was unconscious
 at the time.
 Mr.Williams: Did he say how he knew this?
 Witness: He said nurses had informed him.
 Mr.Williams: Anybody else you can recollect had
 informed him?
 Witness: I do not remember, but Dr. Bayley's name
 was mentioned.
 Mr.Williams: Anything else?
 Witness: He said he was taking legal steps to set
 it aside.
 Mr.Williams: Anything more was said about the
 wedding after that?
 Witness: No.
 Mr.Williams: When your father died, what was the
 stock in trade valued at?
 Witness: The Income Tax Department valued it at
 \$400.
 Mr.Williams: It comprised?

20

30

Witness: Mainly rum.

Mr.Williams: Did he leave you any money to carry on the business?

Witness: No.

(Further reference made to summoning of witnesses. End of first day).

In the Court of Ordinary Barbados.

No.4.

Petitioner's Evidence.

(j) Petitioner, Ernest Clarence Hill,

Re-Examination - continued.

() Esther St. Hill.

Esther St. Hill sworn saith:

10

I am a registered nurse at present employed at the General Hospital. I used to be employed at Dr. Bayley's Clinic.

Mr.Williams: You were so employed when Ernest Clarence Hill was a patient there?

Witness: Yes.

Mr.Williams: Was that in October, 1954?

Witness: I do not remember the date.

Mr.Williams: About then?

Witness: I really cannot remember.

Mr.Williams: He was an old gentleman, wasn't he?

20

Witness: Very old.

Mr.Williams: Do you remember what his trouble was?

Witness: Strangulated hernia.

Mr.Williams: Who was his nurse during that period he was there?

Witness: I assisted in preparing him for the surgery. After the surgery I had to sit with him while he was having his oxygen.

Mr.Williams: You remember how long he remained in the Clinic?

30

Witness: About a week, or over that.

Mr.Williams: Did you nurse him throughout that period or not?

Witness: Yes, but not long. There were other nurses.

(k) Esther St. Hill.

Examination.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(k) Esther
St. Hill,

Examination -
continued.

Mr. Williams: Can you say who was principally his nurse while he was there?

Witness: When he came from the surgery I was with him through the oxygen time.

Mr. Williams: Did you nurse him every day whilst he was there?

Witness: Yes.

Mr. Williams: What was his physical condition during the time that you nursed him?

Witness: I would say weak. 10

Mr. Williams: Did you remain with him for any length of time?

Witness: I would do what I had to do. I would go and come.

Mr. Williams: You were frequently in and out?

Witness: I was in and out.

Mr. Williams: Did you speak to him during the period that you nursed him?

Witness: Yes.

Mr. Williams: With what results? 20

Witness: No results. He never carried on a conversation not with me.

Mr. Williams: Did he say anything at all at any time?

Witness: At times when you catch him wondering he would say, "I am putting on my boots; I am going to the store".

Mr. Williams: Did he say anything else you can remember?

Witness: Sometimes he would say, "Bring the stick out of the corner", that he would beat me. Most of the time he would be cursing. 30

Mr. Williams: Was that one day, two days or throughout the time he was there?

Witness: Throughout the time he was there.

Mr. Williams: At any time during the stay there, were you able to get him to speak intelligibly to you?

Witness: He did not do much talking. He more talked with the little boy. 40

Mr. Williams: You were at any time about to get him speak intelligibly?

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Witness: No.

Mr. Williams: Did he do anything while he was there?

No. 4.

Witness: He was sleeping. If he did any talking, he did it to the little boy. He would always be asking him to bring coconuts for him. He was the only one that could get him controlled.

Petitioner's
Evidence.

(k) Esther
St. Hill,

10 Mr. Williams: You do not know the little boy's name?

Witness: No. He was one of his boys.

Examination -
continued.

Mr. Williams: During the time you were there nursing him, you know anything of a ceremony of marriage taking place?

Witness: I heard about it next day.

Mr. Williams: What do you mean by next day?

20 Witness: I understood it had been done in the evening. I heard about it next morning. A gentleman came up. The gentleman and the matron were talking.

Mr. Williams: Who is the matron?

Witness: Matron Johns.

Mr. Williams: Do you know the gentleman?

Witness: I do not.

Mr. Williams: Can you describe him?

Witness: He was old, with a basket in his hand.

Mr. Williams: White or coloured?

Witness: He looked like the father.

30 Mr. Williams: He spoke to the Matron?

Witness: The matron came in a fluster

Mr. Williams: You saw the gentleman speak with the matron?

Witness: Yes.

Mr. Williams: And then she spoke to you?

Witness: To the nurses.

Mr. Williams: Do you see this gentleman in the Court by any chance?

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(k) Esther
St. Hill,

Examination -
continued.

Witness: Something like this one (Witness
points to Carlton Hill)

Mr. Williams: That was the condition up to the
time he left the hospital?

Witness: The old man's condition, yes.

Mr. Williams: About his actions, did he ever do
anything?

Witness: He only lay there. He was helpless.
You had to do everything for him.

Mr. Williams: The day in question that you heard 10
that this ceremony took place, was he able to sit
up?

Witness: He was never able to sit up. Even when
he was leaving you had to help him out.

Mr. Williams: On that day would he have been able
to be propped up with pillows?

Witness: No.

Cross-Examination.

Cross-
Examination.

Mr.Dear: You did not know Mr.Hill before he came 20
to the Clinic?

Witness: I have seen him before ... at the store.

Mr.Dear: When you went to the store, you had any
occasion to hear him swear?

Witness: No.

Mr.Dear: You know some people cannot talk unless
they curse?

Witness: Yes.

Mr.Dear: Was he one?

Witness: I do not know.

Mr.Dear: Was it a coherent flow of abuse? 30

Witness: Just a word or two.

Judge: Did he curse you?

Witness: No. He just cursed... Sometimes I would
be bathing him or turning him and he would curse.

Judge: What sort of things? What did he say?

Mr.Dear: Did he say what the hell you are bother-
ing me for?

Witness: More than that. Once I was sponging him
and he talked about his balls

Mr.Dear: He cursed because you interfered with him?

Witness: It seemed to be in the conversation.

Mr.Dear: Would you agree intelligibly means clearly and coherently?

Witness: Clearly, yes ...

Judge: When he cursed, was there anything to give him cause to curse?

10

Witness: He did not have any cause. It just seemed to be something within him to do naturally. It appeared to me that way.

Mr.Dear: He looked like the sort of person who would naturally curse?

Witness: Yes, but I had never heard him before.

Mr.Dear: When you asked him how he was feeling, he would curse ... ?

Witness: Yes.

Mr.Dear: Did he ever answer you?

20

Witness: Sometimes he would answer, sometimes he did not.

Mr.Dear: When he did, did he tell you how he was feeling?

Witness: Yes.

Mr.Dear: He would answer in a manner you could understand?

Witness: Yes.

Mr.Dear: Would you agree that on such occasions he answered you intelligibly?

Witness: Sometimes.

30

Mr.Dear: You would agree with me then that when you told Mr. Williams you were never able to get him to speak intelligibly, that was not quite accurate?

Witness: Sometimes he would say "Bring coconuts" "Bring coffee".

Mr.Dear: He used to drink coconuts, the water...?

Witness: I do not remember, but he used to tell the boy to bring coconut water.

Mr.Dear: Was he allowed coconut water?

40

Witness: Yes.

In the Court
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No. 4.

Petitioner's
Evidence.

(k) Esther
St. Hill,

Cross-
Examination -
continued.

In the Court
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No. 4.

Petitioner's
Evidence.

(k) Esther
St. Hill,

Cross-
Examination -
continued.

Judge: You saw he liked coconut water, he appeared to like it?

Witness: He always used to be asking this boy to bring it.

Mr.Dear: He was allowed to drink it if he could get it?

Witness: Yes.

Mr.Dear: You say he liked it?

Witness: I would say so.

Mr.Dear: Therefore in asking the boy to bring coconuts for him, he was asking what you would regard as a reasonable request? 10

Witness: Yes.

Mr.Dear: The beds in the Clinic have handles by which you can wind up the patient?

Witness: Somo.

Mr.Dear: Do you remember whether the one he was in had?

Witness: I cannot remember.

Judge: After a person has an operation in the surgery do they not put them in a surgical bed? 20

Witness: Some have a handle you can turn. Some have back rests. He has some with handles and some without.

Mr.Dear: Have you ever seen him wound up in the bed or with pillows behind him?

Witness: We fixed him up.

Mr.Dear: Having fixed the pillows you left him?

Witness: Yes.

Mr.Dear: You would say he was an aggressive old man? 30

Witness: If you troubled him he would threaten and curse you.

Mr.Dear: I do not mean trouble in the bad sense of the word, if you sponged him off?

Witness: Yes.

Mr.Dear: He would say he would put on his boots..?

Witness: Yes, and that he would go to the store.

Mr.Dear: He did not carry on any long conversation with you? 40

Witness: No.

Mr.Dear: He knew he was in the Clinic and not in the store?

Witness: I do not know.

Mr.Dear: You said you spoke to him with no results, but you also said sometimes he answered you

In the Court
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No. 4.

Petitioner's
Evidence.

(k) Esther
St. Hill,

Cross-
Examination -
continued.

10

Witness: He would say he felt alright, bring his shoes. As to saying he felt good or bad, he never complained. If a pain seemed to trouble him he would start again. Passing water he would do in bed.

Mr.Dear: Do you remember when this ceremony was supposed to be gone through?

Witness: I do not remember the day.

Mr.Dear: How can you say that on the day of the marriage he could not have been propped up with pillows?

20

Witness: It was two or three days after the operation. A day or two he would still be having oxygen.

Mr.Dear: On the third day he could have been propped up?

Witness: No. I was looking forward to him to die.

Mr.Dear: Why could he not be propped up by pillows on the third day?

Witness: He had to have something on the sides.

Mr.Dear: Did you have any record as to when he was propped up on pillows?

30

Witness: No.

Mr.Dear: Are you saying that on the third day he was not propped up on pillows?

Witness: He was not as far as I know.

Mr.Dear: You are positive?

Witness: I do not know. He was very weak.

Mr.Dear: Are you absolutely certain he was not propped up?

Witness: I do not know.

Judge: You say you prepared him for the operation?

40

Witness: Yes, I assisted.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(k) Esther
St. Hill,

Cross-
Examination -
continued.

Judge: Do you know what anaesthetic he had?

Witness: General.

Judge: He had oxygen for two days?

Witness: The evening time it was and he had oxygen finishing the evening and the next day.

Judge: Then the oxygen stopped?

Witness: I cannot remember. I know of the evening and the day after.

Judge: When that stops, in a case of that kind, it means that the patient is in what condition - how? 10

Witness: Improved, that the breathing condition is improved.

Judge: Not as regard anything else?

Witness: No.

Judge: Only breathing?

Witness: Yes.

Re-Examination.

Re-Examination.

Mr. Williams: I think you said sometimes he would say he was feeling all right and sometimes he would say bring coconut water? 20

Witness: Yes.

Mr. Williams: I think you also said when you troubled him he cursed and he would say bring his boots ?

Witness: Some times he would say so and sometimes he would try to get up. He would try to turn that is why you had to keep the little boy by his side.

Mr. Williams: You said when he wanted to urinate he would not call you but would urinate in bed? 30

Witness: Yes.

(l) George
Griffith,

Examination.

(l) George Griffith

George Griffith: Sworn saith:

I knew Ernest Clarence Hill for years.

Mr. Williams: Did you ever speak to him during his life time?

Witness: Yes.

Mr. Williams: During 1954 you had occasion to go to Dr. Bayley's Clinic?

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Witness: Quite often.

Mr. Williams: What for?

Witness: My wife's grandson was there.

No. 4.

Mr. Williams: Any other patient was in the ward that you knew?

Petitioner's
Evidence.

Witness: Yes, Mr. Hill.

(1) George
Griffith,

10 Mr. Williams: Did you ever speak to Mr. Hill during your visits there?

Witness: I did.

Examination -
continued.

Mr. Williams: How did you find him, mentally alert, able to carry on a conversation?

Witness: Not coherently. He said he wanted to go home.

Mr. Williams: Did you know what he went in there for?

Witness: No.

Mr. Williams: Do you know how long he remained there?

20 Witness: A week or two.

Mr. Williams: When you went and tried to converse with him, was that one day?

Witness: I spoke to him on two occasions.

Mr. Williams: The same day?

Witness: No.

Mr. Williams: Over an interval of how many days?

Witness: I cannot remember now, roughly a couple of days.

Mr. Williams: And no occasion was he coherent?

30 Witness: No. I could not understand what he was telling me.

Cross-Examination

Mr. Dear: He said he wanted to go home

Cross-
Examination.

Judge: You do not know when he had the operation?

Witness: No.

Mr. Dear: You say you could not understand what he was telling you? How did you know he was telling you he wanted to go home?

Witness: He would say "home" "home".

40 Mr. Dear: Then he was not completely incoherent?

Witness: Off and on.

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Re-Examination.

No. 4.
Petitioner's
Evidence.
(1) George
Griffith,
Re-Examination.

Mr. Williams: How long this conversation lasted?

Witness: After I found out how he was, I left him.

(Mr. Dear objects to question relative to witness' hearing whether there was a form of marriage).

(m) Betty Hill.

(m) Betty Hill,
Examination.

Betty Hill: Sworn saith:

Judge: That is your real name?

10

Witness: That is my real name.

Mr. Williams: You are daughter of the late Mr. Hill?

Witness: Yes.

Mr. Dear: How old are you?

Witness: 13.

Mr. Williams: You remember your father?

Witness: Yes.

Mr. Williams: You remember his being ill in the Clinic?

Witness: Yes.

20

Mr. Williams: What they did to him?

Witness: Operated on him.

Mr. Williams: Did you ever go to see him there?

Witness: Yes.

Mr. Williams: On one occasion while you were there what happened?

Witness: Me and my sister Joan were there ...

Mr. Williams: Where is that sister?

Witness: In England.

Mr. Williams: Who else was there?

30

Witness: No other one.

Mr. Williams: Who else came into the room?

Witness: About 7 o'clock my mother, Mrs. Winter, Mr. Winter and two gentlemen came into the room and came to my father's bed. Then Mr. Winter began to read.

Mr.Williams: Before he began to read did he say anything to anybody?

Witness: I cannot remember.

Mr.Williams: While he was reading where were you?

Witness: About 10 feet off from my father's bed.

Mr.Williams: From where you are to where?

Witness: The same distance I am from you.

Mr.Williams: Could you see your father from where you were?

10 Witness: Yes.

Mr.Williams: Did your father say anything during this reading?

Witness: I did not hear my father say anything.

Mr.Williams: Could you see him?

Witness: I could see his face.

Mr.Williams: Did you see him make any movement of the face as if he were speaking?

Witness: No.

20 Mr.Williams: If he had done so would you have seen him?

Witness: Yes.

Mr.Williams: If he had spoken you would have heard him?

Witness: Yes.

Mr.Williams: When the reading was over what happened?

Witness: I saw him go out with the book.

Mr.Williams: Where?

Witness: Just beyond me ...

30 Mr.Williams: Who was present?

Witness: My mother, Mrs.Winter and the two gentlemen.

Mr.Williams: Are you sure Mrs. Winter was present?

Witness: I am sure.

Mr.Williams: Was she present throughout the time?

Witness: Yes.

Mr.Williams: Did she leave the room?

Witness: No.

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No. 4.

Petitioner's
Evidence.

(m) Betty Hill,

Examination -
continued.

In the Court
of Ordinary
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Cross-Examination.

—————
No. 4.
Petitioner's
Evidence.
(m) Betty Hill,
Cross-
Examination.

Mr.Dear: This happened nearly two years ago?

Witness: Not quite two years.

Mr.Dear: About two years less two weeks?

Witness: More than two weeks.

Mr.Dear: Two years less two months?

Witness: Less.

Mr.Dear: Can you estimate how long it was?

Witness: He was in hospital in 1954.

Mr.Dear: What month?

Witness: October.

Mr.Dear: What month this is now?

Witness: October.

Mr.Dear: You know the date of today?

Witness: 5th - 4th, 4th.

Mr.Dear: The point I am getting at child, you will agree with me now your father was in Dr. Bayley's Clinic now approximately two years?

Witness: He died in 1955.

Mr.Dear: We are not discussing his death, but the period of stay in the Clinic.

Witness: He was in about two years.

Judge: October, 1954 to October 1956 ... ?

Witness: Nearly two years.

Mr.Dear: You were 11 at that time?

Witness: Yes.

Mr.Dear: What date is your birthday?

Witness: 23rd.

Mr.Dear: Your father came out and went back to live at the same house as your mother and yourself?

Witness: Yes.

Mr.Dear: And he died when?

Witness: In 1955.

Mr.Dear: You remember the month?

Witness: April.

Mr.Dear: Between the time he came out of the Clinic and the time he died, did you discuss what had taken place in the Clinic with anyone?

10

20

30

Witness: Yes, with my mother and Mrs. Winter.

Mr.Dear: When was that?

Witness: In 1954.

Mr.Dear: How long after he came out of the Clinic?

Witness: Some days after.

Mr.Dear: You discussed this with your mother?

Witness: I cannot remember.

Mr.Dear: You cannot remember if you discussed what had taken place in the Clinic with anyone before your father's death?

10

Witness: I cannot remember.

Mr.Dear: When was the first time you can remember being asked about what you saw take place in the Clinic?

Witness: I cannot remember.

Mr.Dear: When Mr.Winter and Mrs.Winter, your mother and these two gentlemen came into your father's room, you were already there?

Witness: Yes.

20 Mr.Dear: Did they speak to you, any of them?

Witness: They said goodnight.

Mr.Dear: That was all your mother told you?

Witness: Not me. She told me hello.

Judge: You went by yourself there?

Witness: My other sister Joan had taken me there.

Mr.Dear: And you were there before this?

Witness: Yes.

Mr.Dear: How long before?

Witness: Three hours.

30 Mr.Dear: When they started to read the book, did you know what was taking place?

Witness: I had no idea.

Mr.Dear: At the end of it did you have any idea?

Witness: No.

Mr.Dear: Could you hear what Mr. Winter was saying?

Witness: Yes.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(m) Betty Hill,

Cross-
Examination -
continued.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(m) Betty Hill,

Cross-
Examination -
continued.

Mr.Dear: What did he say?

Witness: I cannot remember all the words he said.

Mr.Dear: Can you remember any of the words he said?

Witness: I really do not.

Mr.Dear: Mr. Winter, you say, went outside the room with the book. Mrs. Winter and the two gentlemen were present?

Witness: Yes.

Mr.Dear: Outside the room or to the end of the room?

Witness: Outside the curtain.

Mr.Dear: And your mother and these two gentlemen remained?

Witness: They went with Mr. Winter.

Mr.Dear: At the same time he was leaving?

Witness: Yes.

Mr.Dear: Who left the room first?

Witness: I do not remember who was in front.

Mr.Dear: You, your sister ...?

Witness: Me, my sister, Mr. and Mrs. Winter, the two gentlemen all left together.

Mr.Dear: You are sure Mrs. Winter did not leave first?

Witness: Yes.

Mr.Dear: You are sure?

Witness: Yes.

Mr.Dear: What makes you so sure?

Witness: Because we all left together.

Mr.Dear: You were taking a keen interest in what was going on?

Witness: I would say so.

Mr.Dear: You saw Mr. Winter read?

Witness: Yes.

Mr.Dear: You watched him?

Witness: No.

Mr.Dear: Why?

Witness: I had no cause.

10

20

30

Mr.Dear: What made you watch your father's face?

Witness: Mr. Winter was backing me and I could see my father's face.

Mr.Dear: Left or right.

Witness: Right.

Mr.Dear: Where was your mother?

Witness: She was there too.

Mr.Dear: Where in relation to the bed?

Witness: Near to the bed, right.

10 Mr.Dear: Where was Mrs. Winter?

Witness: I think Mrs.Winter was right of Mr.Winter who was on the right.

Mr.Dear: Where were you?

Witness: To the head of the bed.

(Mr.Dear gets illustration with book and pair of glasses)

Mr.Dear: Who was next to you?

Witness: My sister.

Mr.Dear: Where were these two gentlemen?

20 Witness: At the very foot of the bed.

Re-Examination

Mr.Williams: You knew the gentlemen?

Witness: No.

Mr.Williams: How far would you say they were from the bed?

Witness: They were in different positions.

Mr.Williams: About how far from the bed?

Witness: About a foot from the bed.

30 Judge: Did I understand you to say that you and your sister went to see your father before the others came?

Witness: Yes.

Judge: You were there about two hours before?

Witness: Three hours.

Judge: During the two or three hours you were there before these other people arrived what went on?

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(m) Betty Hill,

Cross-
Examination -
continued.

Re-Examination.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(m) Betty Hill,
Re-Examination
- continued.

Witness: Nothing went on.

Judge: Did you sit or stand?

Witness: I sat.

Judge: And your sister?

Witness: Yes.

Judge: Near the bed?

Witness: Yes.

Judge: Did any talk go on?

Witness: Me and my sister were talking.

Judge: What about your father? 10

Witness: Daddy never said anything to us.

Judge: Did you say anything to him?

Witness: When I went I said hello.

Judge: Did he say anything?

Witness: No.

Judge: Was he awake?

Witness: No.

Judge: What did you stay for three hours for then?

Witness: Joan and I talked.

Judge: He never said anything to you at all? 20

Witness: No.

Judge: Why did you go and see him then?

Witness: After we went he closed his eyes and laid
down.

Judge: He went to sleep?

Witness: I do not know if he was sleeping.

Judge: About how long after he closed his eyes?

Witness: About an hour.

Judge: You did not know if he went to sleep?

Witness: No. He soon opened them again. 30

Judge: When he opened them he never said anything?

Witness: No.

Judge: Did you go back to see him again after?

Witness: I went back once.

Judge: What happened that time with your sister?

Witness: I went with my sister.

Judge: What happened?

Witness: I sat by and then I went outside.

Judge: What did you go and see him for if you did not ask him anything?

Witness: Some person had to be with him.

Judge: So that you really went to be in the room with him?

Witness: Yes.

10 Judge: Why did somebody always have to be there?

Witness: When one of us was not there he might fall off the bed, so mumma always let one of us stay in the day and she stayed at night.

(Argument is led by Mr. Williams relative to taking evidence of the ceremony from a witness who had not been present. Argument was begun and adjourned, and another witness began to give evidence).

(n) Allazena Green

20 Allazena Green: Sworn saith:

Mr. Williams: You know the late Mr. E.C. Hill?

Witness: Yes.

Mr. Williams: How long?

Witness: From 1925 when I was 16 years old.

Mr. Williams: After you came to know him you became friendly with him?

Witness: He became friendly with me. I was a girl. I did not know anything.

Mr. Williams: When you became friendly?

30 Witness: In 1927 I went to work with him as cashier in his business in Tudor Street.

Mr. Williams: How long you worked there?

Witness: All the years. I only left when I had babies. I had eight children. One died and the others are alive.

Mr. Williams: You only left when you had infants?

Witness: Yes, and then I would go back and help.

Mr. Williams: You had a fixed salary?

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No. 4.

Petitioner's
Evidence.

(m) Betty Hill,

Re-examination
- continued.

(n) Allazena
Green,

Examination.

In the Court
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No. 4.

Petitioner's
Evidence.

(n) Allazena
Green,

Examination -
continued.

Witness: No. He supported me and the children.

Judge: You continued to live with him all the years?

Witness: All the years.

Mr. Williams: He used to run a business until when?

Witness: Until 1954 about May.

Mr. Williams: What happened then?

Witness: In May he had a cold in his eyes and he came home.

Mr. Williams: Did he go back after that? 10

Witness: No. He would go and have a view of the store, but he never stayed a whole day.

Mr. Williams: Did he control the business?

Witness: Not since 1954.

Mr. Williams: Who did?

Witness: My son Clarence.

Mr. Williams: In 1953 did he have any litigation that you know of, any court case?

Witness: Yes.

Mr. Williams: With whom? 20

Witness: Mr. Wilson concerning Suttle Street store.

Mr. Williams: Do you know whether he attended Court in connection with that case?

Witness: Yes. He had attended Court.

Mr. Williams: Was he represented by a guardian or himself?

Witness: He represented himself.

Mr. Williams: In 1954 did anything happen to him - he got sick?

Witness: Yes. 30

Mr. Williams: And was attended by whom?

Witness: Dr. Simon and Manning.

Mr. Williams: What did Dr. Simon attend him for?

Witness: Dysentery.

Mr. Williams: When was that?

Witness: 1954, late 1954.

Mr. Williams: Then Dr. Manning?

Witness: Yes, two days after.

Mr. Williams: What resulted from Dr. Manning's examination?

Witness: The hernia came down and would not go back up, so the doctor ordered him to Dr. Bayley's Clinic.

Mr. Williams: You remember the day he was admitted?

Witness: I really cannot remember the day.

Mr. Williams: It was in which month?

10 Witness: October, a Monday.

Mr. Williams: Did you go to the hospital with him that day?

Witness: Yes.

Mr. Williams: About what time?

Witness: 2 o'clock.

Mr. Williams: Was anything done to him?

Witness: He was operated upon.

Mr. Williams: About what time?

20 Witness: They carried him in the surgery about 3 o'clock.

Mr. Williams: Did you go home or remain with him?

Witness: I went to get his clothes and returned about 4 o'clock.

Mr. Williams: Did you then go home?

Witness: I did not go home.

Mr. Williams: Tell the Court what you did.

30 Witness: I stayed there until 6, went home again and returned at 7. I slept until next morning. I went home next morning. I used to sleep every night.

Mr. Williams: You went home next morning about what time?

Witness: 8.30.

Mr. Williams: In the course of your sitting there next morning did anything happen to Mr. Hill and yourself?

Witness: No.

Mr. Williams: Did he say anything to you?

In the Court
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No. 4.

Petitioner's
Evidence.

(n) Allazena
Green.

Examination -
continued.

In the Court
of Ordinary
Barbados.

—
No. 4.

Petitioner's
Evidence.

(n) Allazena
Green.

Examination -
continued.

Witness: He told me go and bring the Reverend and he would marry me.

Mr. Williams: When was that?

Witness: Monday night.

Mr. Williams: Had anything been done to him that day?

Witness: He was operated on that evening.

Judge: The same night as the operation he told you that?

Witness: Yes.

10

Mr. Williams: The Tuesday morning you went back home?

Witness: Yes.

Mr. Williams: On the Tuesday did anything happen?

Witness: Mrs. Winter came to see me at home in Fontabelle.

Mr. Williams: She had a conversation with you?

Witness: Yes.

Mr. Williams: You told her something?

Witness: I told her what the old man said.

20

Mr. Williams: As a result of the conversation with you she went to the hospital with you?

Witness: Not that evening.

Mr. Williams: That was the Tuesday?

Witness: Yes.

Mr. Williams: You slept there that night until next morning?

Witness: Yes.

Mr. Williams: On the Wednesday morning did you go back home.

Witness: Yes.

30

Mr. Williams: Anything happened then?

Witness: Mrs. Winter came to the hospital for me the Wednesday morning and took me home. After I took tea, she took me to the Building.

Mr. Williams: For what purpose?

Witness: To get a licence.

Mr. Williams: That was the Wednesday morning?

Witness: Yes.

Mr. Williams: Between Monday night and the Wednesday morning did he say anything about what he had told you about marrying him?

Witness: No.

Mr. Williams: When you went to the Building what happened?

Witness: We got a licence.

Mr. Williams: Did anybody sign any document?

Witness: I signed.

10 Mr. Williams: Did Mr. Hill sign any document?

Witness: No.

Mr. Williams: When you got this licence what happened then?

Witness: Mrs. Winter brought Mr. Winter at the night.

Mr. Williams: Did you go back home after going to the Building?

Witness: Yes.

Mr. Williams: And she left you?

20 Witness: Yes.

Mr. Williams: When next did she see you?

Witness: She came back about a quarter to seven the same Wednesday night. She came with her husband and two witnesses.

Mr. Williams: Did she bring anything with her?

Witness: She had books.

Mr. Williams: Any documents?

Witness: She had the very licence.

30 Mr. Williams: Where did you go to when she came to you?

Witness: I went to the hospital.

Mr. Williams: When you got to the hospital you went to Mr. Hill's room?

Witness: Yes.

Mr. Williams: Did you find anybody there?

Witness: No one was there ... you mean strangers? Only my two children, Betty and Joan.

Mr. Williams: What were they there for?

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No. 4.

Petitioner's
Evidence.

(n) Allazena
Green,

Examination -
continued.

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No. 4.

Petitioner's
Evidence.

(n) Allazena
Green,

Examination -
continued.

Witness: They were staying for me until I released them.

Mr. Williams: Why?

Witness: Because they had to stay with him until I came to stay at night.

Mr. Williams: Any reasons they kept all-day vigil?

Witness: Yes.

Mr. Williams: Some member of the family always had to be with him?

Witness: Yes. 10

Mr. Williams: When you went in what happened?

Witness: I went in and Mr. Winter went to the bed. The two witnesses stood a little distance from the bed. Mr. Winter went to the bed and asked Mr. Hill whether he knew what he had come about?

Mr. Williams: What happened?

Witness: Mr. Hill did not answer.

Mr. Williams: Did he tell him what he had come there for?

Witness: No. 20

Mr. Williams: What happened after that?

Witness: After that he took the book and started to read the matrimony.

Mr. Williams: What was Mr. Hill doing at the time? Was he sitting up?

Witness: He never sat up in the hospital. He was lying down.

Mr. Williams: Can you remember what his condition was at that time?

Witness: He was in a bad condition. His memory was bad and he was very sick. 30

Mr. Williams: When the service was read, what happened?

Witness: Nothing happened. Clarence did not answer.

Mr. Williams: What do you mean by that?

Witness: He did not say anything.

Mr. Williams: Do you know if there was anybody nearby to his room beside the family that day?

Witness: There was a boy that was a patient in there that day too.

Mr. Williams: You know his name?

Witness: No..... He was a Moseley.

Judge: He was a patient in the same ward?

Witness: Yes.

Mr. Williams: You saw him there that afternoon?

Witness: Yes.

10 Mr. Williams: You know anybody to whom Moseley was related?

Witness: Mr. Griffith that used to be a magistrate.

Mr. Williams: Is the boy Moseley still alive?

Witness: I think he is alive.

Mr. Williams: Do you know if he still is in Barbados?

Witness: I do not know.

Mr. Williams: You said Mr. Hill said nothing?

Witness: He said nothing.

Mr. Williams: After the reading was over?

20 Witness: I told him that he had told me to bring the Reverend, but he said nothing. The Reverend told me never mind, that that was nothing, he did that all the time. He said that when people were in a dying condition like that he would marry them with the gloss on their eyes.

Judge: How long did this reading last?

Witness: About three minutes.

Judge: You took no part in it?

30 Witness: I did not take any part in it. I only stood up with my hands folded. I did not say anything. Mrs. Winter answered.

Judge: How do you mean she answered?

Witness: Mrs. Winter said "I will". I heard her say "I will".

Mr. Williams: Any books were there beside the hymn book?

Witness: No other book He said sign my name there and the old man's name there. I asked him if he thought it was right. He said yes.

40 (Witness is shown Exhibit "A").

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No. 4.

Petitioner's
Evidence.

(n) Allazena
Green,

Examination -
continued.

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Petitioner's
Evidence.

(n) Allazena
Green,

Examination -
continued.

I only signed Ernest Clarence Hill. I did not sign
Lionel.

Mr.Williams: What about 'His mark'? It was signed
then?

Witness: No.

Mr.Williams: You see Fitz Allen in the corner?

Witness: Yes.

Mr.Williams: You signed it?

Witness: No... It was not signed in the hospital.

Mr.Williams: What about 'His Mark'?

10

Witness: That neither.

Mr.Williams: You see Marion Green below? That is
your name?

Witness: Yes.

Mr.Williams: You see Isador stuck in above?

Witness: Yes, I did not sign that.

Mr.Williams: You are sure these were not there that
day?

Witness: No. They were not.

Mr.Williams: When this was done who was present?

20

Witness: Mrs.Winter, the two witnesses, Joan and
Betty.

Mr.Williams: I want you to tell the Court just
where this signing of the book took place.

Witness: A little distance from the bed.

Mr.Williams: You know the room had a screen ...?
Where in relation to the screen?

Witness: Inside the screen.

Mr.Williams: Right inside?

Witness: The screen did not go right around.

30

Judge: About how far from the foot ... ?

Witness: About 3 feet from his feet.

Judge: Mrs.Winter was there when this happened?

Witness: Yes.

Judge: She was present all the time?

Witness: She never left. She and her husband
were present together and left together.

Mr. Williams: Did you continue to visit Mr. Hill there during the time he was there?

Witness: Yes, all the time. I had to.

Mr. Williams: Why you had to?

Witness: He would not have anybody but me.

Mr. Williams: Were any hospital authorities there, any doctor, any nurse, at this ceremony?

Witness: No. It was very swift.

10 Mr. Williams: Had these Winters been interested in Mr. Hill's marrying before this?

Witness: Yes. They used to ask him to get married and not live in sin. They wanted me to get baptised.

Mr. Williams: Did they go to him about it?

Witness: Yes.

Mr. Williams: When you were there he would carry on any conversation?

Witness: Yes... Ask me for coconut water, for the children. He asked me where he was.

20 Mr. Williams: Were you there when he left hospital?

Witness: I dressed him.

Mr. Williams: Did he walk out?

Witness: No, Clarence lifted him out.

Mr. Williams: Were you present when they took the stitches out of him?

Witness: Yes.

Mr. Williams: Who was the doctor?

Witness: Dr. Emtage.

30 Mr. Williams: Was anything said when the doctor took them out?

Witness: He asked him where he was.

Mr. Williams: When was that?

Witness: Saturday morning.

Mr. Williams: You were with him?

Witness: Yes.

Mr. Williams: And he asked Dr. Emtage where he was?

Witness: Yes.

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Petitioner's
Evidence.

(n) Allazena
Green.

Examination -
continued.

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Evidence.

(n) Allazena
Green.

Examination -
continued.

Mr. Williams: Did you ever visit the Winters after Hill's death?

Witness: I remember visiting them.

Mr. Williams: Who was with you?

Witness: My daughter that has gone to England, Joan and myself.

Mr. Williams: You remember how long ago that was?

Witness: Some time in July.

Mr. Williams: Whom did you meet?

Witness: Rev. Winter and his wife. 10

Mr. Williams: What happened?

Witness: We were talking with the Reverend and his wife.

Mr. Williams: Did you see Mrs. Winter do anything that evening?

Witness: She went down on her knees.

Judge: When did Rev. Winter die?

Witness: About six weeks ago I really cannot remember ... recently.

Mr. Williams: Was Mr. Hill a man who spoke softly or loudly? 20

Witness: Loudly.

Mr. Williams: Did any holding of hands take place that afternoon?

Witness: He did not say anything so there was no need for holding hands.

Mr. Williams: Did any take place?

Witness: No.

Judge: When were you talking about?

Mr. Williams: I am referring to the hospital. Did any holding of hands take place? 30

Witness: No.

Mr. Williams: Sure about that?

Witness: I am sure.

Mr. Williams: After he was lifted out of the hospital what was his condition?

Witness: He was weak.

Mr. Williams: Until how long?

Witness: Three weeks after.

Mr. Williams: Was he his usual self talking to you as before?

Witness: He was never the same after the operation.

Mr. Williams: Did he go back to his business to take control?

Witness: He used to go back out, but he could not control the business.

10 Mr. Williams: What do you mean by he used to go back out?

Witness: I would dress him and a motor car would come for him and he would go out a little and talk to Clarence and then come back home.

Mr. Williams: Before Mr. Hill went to the hospital where was he living?

Witness: In Fontabelle.

Mr. Williams: With whom?

Witness: With me and the children.

20 Mr. Williams: Did he live in these circumstances for some time?

Witness: Since I was 16 we were friendly. I went home to live with him in 1947. He had always provided a place for me and my children.

Mr. Williams: And you resided with him until this sickness.

Witness: Until he died.

Mr. Williams: During this period had there been any other ceremony of marriage between you?

30 Witness: I told you just now the Reverend came and he did not answer.

Mr. Williams: Had there been any ceremony before then?

Witness: No.

Mr. Williams: How did people address you during these years?

Witness: Some called me Mrs. Hill and some Miss Green.

40 Mr. Williams: When you returned from the hospital how did they address you?

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Petitioner's
Evidence.

(n) Allazena
Green.

Examination -
continued.

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Evidence.

(n) Allazena
Green.

Examination -
continued.

Witness: The same as before. Some people called me Mrs. Hill and some Miss Green. They went on as usual.

Mr. Williams: Had you any cause to dispute the validity of the ceremony which you went through?

Witness: I have never ...

Mr. Williams: Have you any cause now?

Witness: I have cause because you just asked me a question.

Mr. Williams: Before I asked you today you had any cause to wonder whether it was all right? 10

Witness: The day after this ceremony the matron at Dr. Bayley's Clinic rang.

Mr. Williams: Had you any reason before today to wonder as to the validity of the ceremony?

Witness: Yes. Because I asked you and you told me it was not legal.

Cross-Examination

Cross-
Examination.

Mr. Dear: Before this ceremony took place some people called you Miss Green and some Mrs. Hill? 20

Witness: Yes.

Mr. Dear: What you called yourself?

Witness: Just what I was named, Marion Hill.

Mr. Dear: After this ceremony in the Clinic what did you call yourself?

Witness: One does not generally call your own name I call myself Allazena.

Mr. Dear: Allazena Hill?

Witness: Anything.

Mr. Dear: You were advised that this ceremony was no good? 30

Witness: Yes.

Mr. Dear: You wear a wedding ring?

Witness: No.

Mr. Dear: You have a wedding ring?

Witness: No.

Mr. Dear: While your husband was still alive you never disputed the marriage?

Witness: No.

Mr.Dear: He knew he was married to you?

Witness: He never discussed it.

Mr.Dear: At no time?

Witness: At no time.

Mr.Dear: From the moment these people left the Clinic, you have never mentioned to him you were married, and he never mentioned it to you?

Witness: No.

Mr.Dear: You wanted to marry him?

10 Witness: Yes.

Mr.Dear: And you got a special licence and so forth?

Witness: It was Mrs. Winter.

Mr.Dear: On your instructions?

Witness: Yes.

Mr.Dear: And you went with Mrs.Winter and Reverend Winter?

Witness: Yes.

Mr.Dear: And you went into his room and Rev.Winter asked him if he knew what he had come about?

20 Witness: Yes.

Mr.Dear: Did he ask Mr.Hill whether he knew him?

Witness: He did not.

Mr.Dear: He only asked if he knew what he had come about?

Witness: Yes.

Mr.Dear: You never said a word?

Witness: I talked to Mr.Winter.

Mr.Dear: What?

Witness: He wished me goodbye.

30 Mr.Dear: These were all the remarks?

Witness: Mr.Winter told me he married anybody in that condition. I told him that the old man did not say anything. He said it was all right.

Mr.Dear: When you went into the room you said hello to your husband?

Witness: I always say hello. Whenever I go in I always kiss him on his forehead.

Mr.Dear: You asked him how he was feeling?

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Petitioner's
Evidence.

(n) Allazena
Green,

Cross-
Examination -
continued.

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Petitioner's
Evidence.

(n) Allazena
Green.

Cross-
Examination -
continued.

Witness: No.

Mr.Dear: You kissed him on his forehead?

Witness: Yes.

Mr.Dear: And you said what?

Witness: I only said 'I now come'.

Mr.Dear: Usually you say 'I now come to sleep
with you'?

Witness: Yes.

Mr.Dear: This afternoon you only said 'I now come'?

Witness: I said the same words 'I now come to sleep
with you'. 10

Mr.Dear: You did not say 'to marry you'.

Witness: No.

Mr.Dear: You did not make any mention of what was
said the Monday night, what he had said?

Witness: No.

Mr.Dear: Why? Would not that have been the nor-
mal, natural thing to do?

Witness: I do not know.

Mr.Dear: What do you mean by you do not know? 20

Witness: What you now tell me.

Mr.Dear: And when you went into the room he said
nothing?

Witness: Clarence said nothing. He said nothing.

Mr.Dear: And he said nothing to Rev. Winter?

Witness: No.

Mr.Dear: The children were there?

Witness: Yes.

Mr.Dear: He said nothing?

Witness: No. 30

Mr.Dear: You were satisfied to marry a man in
that condition?

Witness: I went by Rev. Winter.

Mr.Dear: And you were satisfied to marry a man in
this condition?

Witness: Yes.

Mr.Dear: You remember when Rev.Winter was reading
certain sections he asked you certain questions?

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Witness: No.

Mr. Dear: Did he say, 'Will you take this man to be your wedded husband?'

Witness: He read, just read.

Mr. Dear: You made no replies?

Witness: No.

Mr. Dear: Where were you standing when this was going on?

Witness: By the side of the bed, to the head.

10 Mr. Dear: You were next to the Reverend?

Witness: Mrs. Winter was next to the Reverend and I was next to her.

Mr. Dear: Where were the children?

Witness: In the next bed beside the one I slept in.

Mr. Dear: You heard Mrs. Winter say 'I will'?

Witness: Yes.

Mr. Dear: You did not ask her why she said 'I will'?

Witness: I did not ask her.

Mr. Dear: Why did she say 'I will'?

20 Witness: I think she was saying it loud enough for the witnesses to hear.

Mr. Dear: For what purpose?

Witness: So that they would hear voices.

Mr. Dear: At that time you thought there was something fishy?

Witness: Because he did not answer, I did.

Mr. Dear: You did not have to get married You had been living in that way with him for how long?

Witness: From 25.

30 Mr. Dear: Did you not say you did not like the set up, the thing smelled fishy, looked suspicious?

Witness: I thought so to myself, but I did not say anything.

Mr. Dear: Why?

Witness: Because Clarence did not say anything.

Mr. Dear: Was not that more reason for you to say something?

Witness: I do not know.

40 Mr. Dear: You did not take any steps during your husband's lifetime to have the marriage annulled or this alleged ceremony declared invalid?

No. 4.

Petitioner's
Evidence.

(n) Allazena
Green.

Cross-
Examination -
continued.

In the Court
of Ordinary
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No. 4.

Petitioner's
Evidence.

(n) Allazena
Green.

Cross-
Examination -
continued.

Witness: No. I was ignorant of the fact.

Mr. Dear: You did not know that a marriage revoked a will?

Witness: I did not know anything at all.

Mr. Dear: It was only after you heard that a marriage revokes a will that you began to look around to find a flaw in the marriage?

Witness: I had been suspicious

Mr. Dear: How many lawyers you went to?

Witness: I went to Mr. Reece ...

10

Mr. Dear: Did you only try to discover whether the ceremony had been good after you had been advised that a marriage revoked a will?

Witness: From the beginning I understood it was not good.

Mr. Dear: That is not a result of your being advised that a valid marriage revokes a will?

Witness: I did not know. I have been advised after ...

Mr. Dear: I am putting it to you that it was only after you were told that a valid marriage revokes a will that you began to find fault with the marriage?

20

Witness: I never said it was bad yet.

Mr. Dear: Two witnesses were present?

Witness: Yes.

Mr. Dear: They have no interest in this?

Witness: They belong to the same church.

Mr. Dear: They are not mentioned in Clarence Hill's will?

30

Witness: No.

Mr. Dear: Whatever happened in this case they do not stand to get any money?

Witness: No.

Mr. Dear: They have no interest?

Witness: No.

Mr. Dear: You say you used to speak to him in the Clinic?

Witness: Yes.

Mr. Dear: He would ask you for coconut water?

40

Witness: Yes.

Mr.Dear: And you would not ask him how he was feeling?

Witness: No. I knew. I used to ask the nurses.

Mr.Dear: He was a gentleman who spoke loudly.

Witness: Yes.

Mr.Dear: Ho was irritable?

Witness: I would not say so. When I was a girl in the desk he would use pips ...

10 Mr.Dear: That day that this ceremony went through, you did not see him before?

Witness: I left him the morning at 8 o'clock.

Mr.Dear: When you left him he was awake?

Witness: Yes. I kissed him goodbye.

Mr.Dear: Did he tell you goodbye?

Witness: He never said anything.

Mr.Dear: You had seen Mrs.Winter about this marriage on the Tuesday?

Witness: Yes. Tuesday night.

20 Mr.Dear: You arranged about getting a marriage licence?

Witness: Yes.

Mr.Dear: When you left on the Tuesday night did you tell your husband you arranged for the licence?

Witness: No.

Mr.Dear: Did you not think it would be reasonable for you to tell him so?

Witness: No.

30 (After short argument, Mr. Williams decided not to call other witness he had intimated earlier he might have liked to have called).

No. 5.

Respondent's Evidence
DARNLEY DEIGHTON THOMAS

Darnley Deighton Thomas: sworn saith:

Mr.Dear: You are employed in the Custom's Department of the Island?

Witness: Yes.

In the Court
of Ordinary
Barbados.

No. 4.

Petitioner's
Evidence.

(n) Allazena
Green.

Cross-
Examination -
continued.

No. 5.

Respondent's
Evidence.

Darnley Deighton
Thomas,

Examination.

In the Court
of Ordinary
Barbados.

No. 5.

Respondent's
Evidence.

Darnley
Deighton
Thomas,

Examination -
continued.

Mr.Dear: And you reside at ...?

Witness: Lands End, St. Michael.

Mr.Dear: You know Mr. E.C. Hill?

Witness: Many years.

Mr.Dear: You know that some time prior to his
death he went for an operation at Dr.Bayley's
Clinic?

Witness: Yes, in 1954.

Mr.Dear: You knew when he returned home from the
Clinic?

10

Witness: Yes.

Mr.Dear: Did you see him after he returned home?

Witness: A couple of days after he returned home
I went and paid him a visit.

Mr.Dear: What happened?

Witness: He appeared quite normal.

Mr.Dear: He spoke to you?

Witness: He could remember my name. I told him I
heard he was married. He said there was no dif-
ference between the first and the second.

20

Mr.Dear: You chatted with him for a while and then
went home?

Witness: Yes I did not stay long.

Mr.Dear: You saw him any time after that prior to
his death?

Witness: Once.

Mr.Dear: About two weeks before he went into the
Clinic you saw him?

Witness: I saw him about two weeks before at his
son's home. He spoke to me, told me about my
grandfather.

30

Cross-Examination

Cross-
Examination.

Mr.Williams: When were you first asked to give
this evidence?

Witness: A couple of minutes ago.

Mr.Williams: You say he went to Dr.Bayley's Clinic?

Witness: Yes.

Mr.Williams: You heard so?

Witness: I did not see him go. I heard so.

Mr.Williams: You said his son told you something
about him?

40

Witness: I know that the son called the doctor to him because he was ill.

Mr. Williams: Which doctor?

Witness: I cannot remember which doctor. I know he had to go to the hospital immediately.

Mr. Williams: What you know about his going to the hospital you got from Carlton?

Witness: Yes. I have every reason to believe it.

10 Mr. Williams: You do not know anything of his illness except from Carlton?

Witness: I know he was ill.

Mr. Williams: Have you ever seen him ill?

Witness: I did not.

Mr. Williams: Can you swear it was in October that it happened?

Witness: To the best of my knowledge and belief I think it was.

Mr. Williams: Why do you say so?

20 Witness: Because I was on vacation.

Mr. Williams: Are you of the opinion you were on holiday?

Witness: Yes.

Mr. Williams: Have you been told it was October?

Witness: No.

Mr. Williams: Do you know when he died?

Witness: No.

Mr. Williams: Have you continued to live the same place at Lands End?

30 Witness: All the time.

Mr. Williams: And yet you do not know when he died?

Witness: I had no reason to put that in a book.

Mr. Williams: Had you reason to put the date or month of his sickness in a book?

Witness: I know it was around October.

Mr. Williams: When you went to his house and called on him, did you know he had just come from hospital?

Witness: His son told me he had come from hospital.

Mr. Williams: Which son?

40 Witness: Carlton Hill.

Mr. Williams: Are you very friendly with his son?

Witness: For years with the whole family.

In the Court
of Ordinary
Barbados.

No. 5.

Respondent's
Evidence.

Darnley
Deighton
Thomas.

Cross-
Examination -
continued.

In the Court
of Ordinary
Barbados.

No. 6.

JUDGE'S NOTES

No. 6.
Judge's Notes.

Dear: Petitioner - Executor.

Asks for probate in solemn form as marriage
invalid. Clearly some form of marriage.

Presumptions:-

- (1) Valid - rebuttable only by cogent evidence
3rd Tolstoy Page 95
Russell v A.G.
1949 Prob. 391 10
16 Halsbury 598 & 9
& cases
27 Digest P.63 - 445
P.64
P.66 - 489

- (2) Omnia Praesumuntur Rite Esse Acta
27 Digest 536
Strong legal Presumption
Piers v Piers 1849
2 H.L. 331 20
9 English Reports 1118
Re: Teplin 1937 3 A.E.R. P.105
P.108

Local Act 1904 - 9

? Defective formalities.

If some distinction some directory and not
mandatory. Williams says only declaration
mandatory. Marriages can be declared null.
e.g. if one does not understand nature of
marriage. 30

Tolstoy P. 95.

Nature of defect etc., and one party aware of
defect.

Act 1904 No.9 Sec.2 and P.516 see proviso.

Requirements: Boamish v Beamish
1861 9 F.L. 274
11 Eng. Reports 735
Harrod v Harrod
69 Eng. Reports P. 344
P. 349 40

Independability of religious element.

Deaf and dumb

Repetition of forms

Signs of assent

Contract of marriage
 And forms not essential
 Declaration under our Act

In the Court
 of Ordinary
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1st not essential.

2nd Does not require use of exact words

But if evidence of assent by both valid.

16 Halsbury 590 para. 909 & notes.

therefore declaration before 1856 and case of
 Beamish.

 No. 6.

Judge's Notes.
 - continued.

13

Beamish - Anglican Church.

Ceremony declaration and as our statute.

Rubins.

Did parties understand nature of ceremony?

9th Phipson P. 36

P.700

In re Parke

1953 - 2 A.E.R. 408

But appeal 1411

Marriage - contract simple

20

Mental capacity to understand

As to evidence:-

conflicting - some not of help - e.g.5 doctors
 - presumption of sanity.

Dr. Manning P. 16

Dr. Emtage if anything in favour P.19.

Evidence does not rebut presumption.

Esther St. Hill P. 38 & P. 40 - 41.

?? Compare Griffiths

?? Clarence Hill P. 26

& P. 28

P. 29.

30

Bruce P. 20

from P. 19.

P.55 Mrs. Hill - conflicts with witnesses

Mrs. Winter and Gill.

Mrs. Hill says No response -

Mrs. Winter said "I will".

Compare Mrs. Winter and Gill -

Gill heard declaration.

Mrs. Winter as to hands.

40

Marriage ceremony in book P.156

Essential words in book and Mrs. Winter said
 they were used.

Submits of marriage revoking will.

Only agreed as to wish stated.

In the Court
of Ordinary
Barbados.

No. 6.

Judge's Notes.
- continued.

Williams: Generally agrees with principles of law.

27 Digest P.70 para. 485

Cases cited by Dear show couple with ceremony - there must be evidence of intention to marry clearly expressed.

All law in Park v Park 1953 2 A.L.R. 408.

Facts.

Important

Capacity

Here evidence no capacity therefore marriage invalid 10

Distinguish Browning v Reane

161 Eng. Reports 1080.

C went through the ceremony

Evidence here of persuasion

Signs of deterioration in mental capacity

Doctors

? Later Hill understood the things required,

Park Case -

Facts, circumstances and evidence

Re Park (1953) 3 W.L.R. P. 1021

No declaration by Hill, but statement to Mrs. Hill and Mr. Gill.

Statement to Mrs. Hill during night of operation and compare medical evidence.

She went away Tuesday morning and returned Tuesday night.

Arrangements for licence

Conversation Hill and Mrs. Monday night and Mrs. Hill no steps to get Minister.

And Thomas.

In re Parke P. 1025

Submits not enough to prove form of marriage but effect.

Browning v Reane

? Onus of proof P. 1025

P. 1027

Browning v Reane

161 Eng. Reports P. 1085

Submits comparison.

Other side should have brought "Sisters" to prove capacity. Other people could have seen him.

Therefore opportunity to caveator to call witnesses.

Therefore full statement in petition.

20

30

40

In Browning v Reane she went through ceremony.

Caveator and no one else has given evidence. Caveator has failed to carry out his duty.

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As to evidence:-

Register. Not valid document. In re Stollery 1926 Ch. 284.

See Mrs. Hill's evidence.

And Inc. London County Council v Agricultural Food Products, Ltd., (1955) 2 W.L.R. 929.

10

When form of signature required it must appear put on by someone having authority.

Gill's evidence.

Hill said "Sign for me"

And later none heard him speak and so said the other witnesses.

And declaration when signing Mrs. Winter was there.

And compare Mrs. Winter.

20

Mrs. Winter:

? Demeanour

Quibbled

P. 5 and P. 9

? Declaration.

N.B. Doctors compare

Browning v Reane

Doctors' evidence goes far from points of view P.16

30

Not capable looking after his affairs or person.

Entage P.17 and P.18.

N.B. Bruce Hill

Nurses, Clarence Hill

N.B. St. Hill, Nurse.

and P. 37.

Where is Carlton Hill?

Urination by Hill in bed.

See p. 45.

40

N.B. Betty Hill and Ambrosine Green (or Mrs. Hill) to be believed. Not capable.

Presumptions as to cohabitation subsequent to marriage.

Declaration and holding of hands

Mandatory.

As at this point marriage takes place.

Otherwise directory.

No. 6.

Judge's Notes.
- continued.

In the Court
of Ordinary
Barbados.

No. 6.

Judge's Notes.
continued.

Dear: No case to show that presumption arises as
Williams says -
1949 Probate
15 Halsbury
Of Browning v Reane.
Here no duty on caveator.
Presumption therefore disprove.

No. 7.

Judgment.

19th October,
1956.

No. 7.

JUDGMENT

The late Ernest Clarence Hill died on the 30th 10
day of April, 1955 aged over 80 years leaving a
will dated the 19th September, 1952, the due execu-
tion of which is in no way challenged. This will
is propounded by the Petitioner, a son of the de-
ceased for probate in solemn form. The sole ques-
tion for decision in these proceedings is whether
this will was revoked under the Wills Act, 1891 by
a marriage which is alleged to have taken place on
the 27th October, 1954. It is contended that this 20
marriage was invalid by reason of the absence of
both essential and formal requirements of the law
and also by reason of the incapacity of the de-
ceased at the time of the ceremony. This involves
the determination as to whether (1) The marriage
ceremony itself fulfilled the legal requirements
for a valid marriage and (2) the deceased was cap-
able of understanding the nature of the contract
into which he was entering and did in fact enter
into it.

The deceased in 1925, then a married man with 30
children, became associated with one Allazena Green.
She was cashier in his employ in a business which
he conducted with a considerable degree of success
and over the years she bore him several children
whom she nurtured and brought up while assisting
him in the business. She and her children were
some of the principal beneficiaries under the Will
of 19th September, 1952 and she was the other al-
leged contracting party to the marriage ceremony.

The deceased, who appears to have enjoyed ro- 40
bust health until late in life, was stricken with

an attack of dysentery early in October, 1954, and later in that month was treated by Dr. Manning, a witness in this case, for a strangulated hernia which he reduced. This trouble subsequently re-
 10 occurred and Dr. Manning in consultation with Dr. Entage, also a witness in this case, decided on an emergency operation to relieve the patient, and as a means of saving his life. The deceased was admitted to Dr. Bayley's clinic about 2 p.m. on Monday the 25th October, 1954, and removed to the operating theatre about 3 p.m. on the same day where an operation was performed by Dr. Entage with the assistance of Dr. Manning, physician to the deceased. It cannot be denied that the physical condition of the patient was very poor at the time of admission to the clinic and that he continued to be weak until his discharge on the 1st November, following. The ceremony of marriage is alleged to have taken place about 7 p.m. on Wednesday the 27th
 20 October, at the clinic.

After his discharge the deceased returned to his home where he continued to live with the other alleged contracting party as before.

In considering the questions mentioned above I think that the guiding principles are to be derived from Halsbury's Laws of England 2nd Ed., at page 599 with the many cases cited there, and from the two leading cases *Browning v Reane* 161 E.R.1080 and the more modern case on *In the Estate of Park*
 30 (1953) 2 All E.R. 408 and (1953) 2 All E.R. 1411.

In Halsbury at the page referred to above it is stated:-

"Where there is evidence of a ceremony of marriage having been gone through, followed by the co-habitation of the parties, everything necessary for the validity of the marriage will be presumed, in the absence of decisive evidence to the contrary, even though it may be necessary to presume the grant of a special licence".

40 It cannot be denied that in this case there was some form of marriage ceremony. The witness who gave her name as Allazena Green and who used to spend the nights at the clinic with the deceased states that on the Monday night after the operation the deceased told her "to go and bring the Reverend

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 No. 7.

Judgment.

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 continued.

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No. 7.

Judgment.

19th October,
1956 -
continued.

and he would marry me". It would seem that she accepted this as meant and intended by the deceased as the witness states she later had a conversation with Mrs. Winter, the wife of the Reverend Winter, a Minister of the Church of God in this Island, in the course of which she "told her what the old man said". A marriage licence was procured and a ceremony took place on the Wednesday evening the 27th October, 1954. It was performed by the Reverend Winter who is now dead, in the presence of two witnesses, one Fitz Roy DeCourcy Gill, who gave evidence and one John Daniel who is now in England and in the presence of two children of Allazena Green and the deceased who had spent the day with the deceased as was their wont awaiting the arrival of their mother.

10

The evidence is conflicting. Amongst other things Allazena Green says that there was no holding of hands, that the deceased lay speechless, that Mrs. Winter kept repeating the words "I will" in answer to the questions put by the Reverend Winter and this is to some extent corroborated by the girl Betty who, it is true, was impressive in the witness stand. Against this there is the evidence of the witness Gill, largely corroborated by that of Mrs. Winter. A part of this evidence is as follows :- (with regard to the register) "That is my signature. That is the signature of the late Rev. Winter as far as I can remember. I saw when he signed it. It is his signature. John Daniel was the other witness. He is in England now.

20

30

Mr. Williams: Are there two other signatures on that paper?

Witness: Ernest Clarence Lionel Hill and Marion Green. The lady Miss Green signed both.

Judge: Signed both signatures herself?

Witness: Yes sir.

Mr. Williams: Are you sure of that?

Witness: Yes, I am quite sure. He asked her to sign. He said he was a bit "nervy" and he asked her to sign.

40

Mr. Williams: Did she sign all the names, every one?

Witness: As far as I know, she signed hers and then his.

Mr. Williams: Did she put in the names interlined?

Witness: Not so far as I know.

Judge: What is this little thing here in the corner?

Mr.Williams: It is very indefinite ...
 (To witness) Can you say which of these were signed
 by Miss Green.

Witness: I did not look to see which she was sign-
 ing, but I heard him say "Sign for me" He touched
 the pen.

Mr.Williams: Can you remember his exact words?

Witness: I do not remember.

Mr.Williams: Who was present when this happened?

10 Witness: Rev. Winter, Daniel, Mrs. Winter, the
 lady, and as far as I remember there were two
 children. As far as I gather they were her
 children. It took place at Dr. Bayley's Clinic.

Mr.Williams: How you came to go there?

Witness: I passed by Rev.Winter's residence. He
 told me he had this marriage and he asked me to go
 and witness for him. I went with him.

Mr.Williams: You were a friend of his?

Witness: Yes.

20 Mr.Williams: As far as you remember what happened?

Witness: When we got there Rev. Winter asked Mr.
 Hill if he knew who he was. He said, yes. He
 asked if he knew what he had come there about. He
 said yes, to marry him to Miss Green. That is as
 far as I remember.

Mr.Williams: After which what happened?

Witness: He carried on as far as I remember. He
 read from the book.

Mr.Williams: The prayer book?

30 Witness: I knew he was using a book. I cannot
 really tell whether it was a prayer book. It was
 a marriage ceremony.

Mr.Williams: Did you hear Mr.Hill say anything?

Witness: I do not remember him saying anything.
 If he did, it would have been very faint.

Mr.Williams: So faint as not to understand?

Witness: I could not hear anything.

Mr.Williams: How far away were you?

40 Witness: I was a little distance away, about six
 to eight feet.

Mr.Williams: Was anybody nearer than yourself?

Witness: The Reverend and the lady.

Mr.Williams: Anybody else?

Witness: Mrs. Winter.

Mr.Williams: She was nearer than you?

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 of Ordinary
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 No. 7.

Judgment.

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 1956 -
 continued.

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Judgment.

19th October,
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continued.

Witness: I do not remember.

Mr. Williams: Did you see them hold hands?

Witness: Yes. They did hold hands. I do not remember if she took his or he hers; but I saw both hands in one another.

Mr. Williams: You remember anything about the ceremony, what was done and what was not as far as the form went?

Witness: No.

Mr. Williams: Particularly, did you hear him make a declaration about knowing of any just cause, etc.?

10

Witness: I heard the Reverend say that.

Mr. Williams: Did you hear Mr. Hill say anything?

Witness: I do not remember hearing him say that.

Mr. Williams: Did you hear the Reverend say that.

Witness: Yes."

The witness Gill is vague as to any form of declaration such as is specified in the Marriage Act, 1904-9, and cannot remember hearing Mr. Hill say anything during the ceremony but Mrs. Winter testifies as to the repetition by the deceased of the words "I will". Witness Gill however states that he heard the Reverend Winter reading a declaration.

20

Inasmuch as the law is that a deaf-mute can contract a valid marriage provided that he understands the nature of the contract into which he is entering it seems that the requirement in the Act of a declaration by the contracting parties is directory in its nature and not mandatory.

30

With regard to the marriage register which presents some odd features and peculiar interlineations Allazena Green signed for herself and for the deceased at his request according to the evidence of witness Gill and this was done at or near the bedside.

In the light of the above there is no decisive evidence to rebut the presumption that the marriage ceremony in itself was a valid one and, as I have said, the parties lived together in the same house subsequently to the discharge of the deceased from the Clinic.

40

As to the law about mental capacity of a party

contracting a marriage, the principles laid down in *Browning v Reane* were affirmed in *In re Park* but the facts and circumstances in the two cases are entirely dissimilar. In the former the lady contracting the marriage had been a simpleton from early youth and her mental faculties waned as she grew older. At the age of over 70 she went through a form of marriage with a man of 40 years of age after she had inherited property from a deceased brother. Her behaviour just before the ceremony was that of an imbecile and after it she and the alleged husband together with another man occupied the same bedroom at a country inn. She was left by the two men in the care of an inn-keeper who could not properly control her and she was seen at times importuning visitors to the inn for alms. In these circumstances she was held incapable of contracting a valid marriage. In the case of *In re Park* it was held that in considering whether or not a marriage is invalid on the ground that one of the parties was of unsound mind at the time it was celebrated the test to be applied is whether he or she was capable of understanding the nature of the contract into which he or she was entering, free from the influence of morbid delusions on the subject. To ascertain the nature of the contract of marriage a person must be mentally capable of appreciating that it involves the duties and responsibilities normally attaching to marriage.

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No. 7.

Judgment.

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continued.

In that case it was held that an elderly business man who had had a stroke and who was mentally failing was capable of understanding the nature of a marriage contract although he had been held incapable of executing a valid will within four hours after.

Here much of the evidence of mental capacity is of a negative nature and largely dependent on the testimony of one who herself was the other contracting party. The validity of the marriage was not at first challenged and this witness says:-

"Mr. Williams: Had you any cause to dispute the validity of the ceremony which you went through?

Witness: I have never

Mr. Williams: Have you any cause now?

Witness: I have cause because you just asked me a question.

Mr. Williams: Before I asked you today you had any cause to wonder whether it was all right?

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No. 7.

Judgment.

19th October,
1956 -
continued.

Witness: The day after this ceremony, the Matron at Dr. Bayley's Clinic rang.

Mr. Williams: Had you any reason before today to wonder as to the validity of the ceremony?

Witness: Yes, because I asked you and you told me it was not legal".

The medical evidence on the whole is not very helpful on the question of mental capacity. It is true that after the ceremony some form of investigation of which little is known was held by some of the authorities at the Clinic, but the evidence of Dr. Emtage, the surgeon who performed the operation, is important. He says:-

10

"I am a registered medical practitioner. I knew the late Ernest Hill. On the 25th of October Dr. Manning asked me to see Mr. Hill, which I did, and he was suffering from strangulated hernia. It could not be reduced. I operated on him the same afternoon. I saw him subsequently every day until November 1 when he was discharged".

20

Mr. Williams: What was your opinion as to his physical condition then?

Witness: On admission his physical condition was extremely bad, but it was a question of relieving the obstruction or letting him die.

Mr. Williams: After the operation ... ?

Witness: His general condition improved rather rapidly.

Mr. Williams: He was under your care during that time?

30

Witness: Yes.

Mr. Williams: He talked ... ?

Witness: He talked to me every day normally. He answered my questions normally. Of course my questions were only professional.

Mr. Williams: Did you say much to him?

Witness: Not much.

Mr. Williams: You said very little?

Witness: Very little indeed, how are you today and such like ...

40

Mr. Williams: From the amount you conversed with him were you able to form any opinion as to his mental state?

Witness: No.

Mr. Williams: Did he ever before or after the operation speak about any marriage?

Witness: No.

Mr. Williams: He never told you he was married?

Witness: No.

Mr. Williams: Did you hear him speak of it to anybody?

Witness: No.

10 Mr. Williams: Were you at any time informed about the marriage?

Witness: Yes.

Mr. Williams: Before it took place?

Witness: After.

Mr. Williams: Who spoke to you about it?

Witness: One of the nurses casually mentioned it some time after. I never mentioned it to him either.

Mr. Williams: Certain investigations were carried out as a result of the report?

20 Witness: I believe the matron did ...

Mr. Williams: During the time he was there can you say whether he was able to look after his own person?

Witness: Certainly not on the day of admission or the day after. I can speak definitely for those two days.

Judge: How do you mean could not look after his person?

Witness: I believe he means wash his face

30 Mr. Williams: Move around, etc.?

Witness: He would not be allowed to move around.

Mr. Williams: Would you say he was capable of managing his affairs, his personal business?

Witness: Not on the day of admission or the day after, the 25th or 26th.

Mr. Williams: Does that mean he could have done it the day after, the 27th?

40 Witness: I do not know. I can only speak for those two days because he was still suffering from the effects of this strangulation.

Mr. Williams: Is that condition liable to stop quickly or gradually?

Witness: Fairly quickly in young men - 3 or 4 hours, for men of his age longer".

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This evidence is in strict contrast with the evidence which states that the old man lay almost speechless save for occasional demands for coconut water and such like utterances, and when coupled with the evidence of his intention to marry expressed later in the night of the operation supplies positive testimony. Physically helpless as a result of his ailment and the operation he may have been and mentally incapable of managing his business affairs and looking after his person, but this is far from saying that he was entirely incapable of understanding the nature of a marriage ceremony and its implications.

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After his discharge from the Clinic the deceased used to re-visit his place of business and although taking no active part in the conduct of it is said at times to have given instructions. Some may have visited him in the Clinic and found him unintelligible and unresponsive but the one witness for the caveator who was a friend of the deceased and who visited him after his return from the Clinic stated:- "He could remember my name. I told him I heard he was married. He said there was no difference between the first and the second".

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The evidence to which I have listened cannot in my view rebut the presumptions of law

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

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(2) "Omnia Praesumuntur rite et solemniter esse acta".

I must admit that my sympathies are entirely with Mrs. Hill and her children for whom I verily believe the old gentleman intended to provide from his bounty and I only hope that adequate support and maintenance will be forthcoming for Mrs. Hill the widow and her children apart from Mrs. Hill's legal rights on an intestacy.

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The petition must be dismissed and the will refused probate. Costs will come out of the estate.

(Sgd.) E.A. Collymore.

Chief Judge.

19.10.56.

No. 8.

ORDER GRANTING SPECIAL LEAVE TO APPEAL

AT THE COURT AT GOODWOOD HOUSE

The 31st day of July, 1957

PRESENT:

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. MAUDLING

SIR MICHAEL ADEANE

SIR HARRY HYLTON-FOSTER

In the Privy Council.

No. 8.

Order granting Special Leave to Appeal.

31st July 1957.

10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 23rd day of July, 1957 in the words following, viz:-

20 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Ernest Clarence Hill in the matter of an Appeal from the Court of Ordinary of Barbados in the matter of the Estate of Ernest Clarence Hill deceased between the Petitioner and Ernest Carlton Hill Respondent setting forth (amongst other matters): that Ernest Clarence Hill (hereinafter called 'the deceased') who was then over 80 years of age died on the 30th April 1955 resident and domiciled in Barbados leaving a Will dated the 19th day of September 1952 (hereinafter called 'the said Will') which had been properly executed and appointing the Petitioner and one Marion Allanzena Green his Executors: that the deceased died 30 possessed of substantial estate estimated to be of a value of about \$98,602.57: that at his death there remained him surviving three children by his 'first' wife namely Ernest Carlton Hill born in 1893 Daisy Rosamund Hill born in 1898 who was at such time and is now resident in the United States of America and Erroll Leslie Hill born in 1911: that since 40 about the year 1925 the said Marion Allanzena Green had lived and cohabited with the deceased and did so up to the time of his death and during this time bore him eight children of whom seven survive the Petitioner being one

In the Privy
Council.

—————
No. 8.

Order granting
Special Leave
to Appeal.

31st July 1957
- continued.

of them: that the said Will made substantial provision for the said Marion Allanzena Green and several of her children by the deceased: that the Petitioner on the 6th April, 1956 filed the said Will for Probate pursuant to the Rules of the Court of Ordinary of Barbados and on the 21st June 1956 a caveat was entered thereto on behalf of the said Ernest Carlton Hill as heir at law who on the 25th July 1956 petitioned for Letters of Administration and for a declaration that the said Will was null and void on the grounds that it had become revoked by the deceased's subsequent marriage to the said Marion Allanzena Green on the 27th October 1954 and the said Erroll Leslie Hill consented to such grant: that a citation was issued on the 25th July 1956 to Marion Allanzena Hill (who is the same person as Marion Allanzena Green thereinbefore referred to) to enter an appearance to the said Petition and such appearance was filed on her behalf on the 27th July 1956: that meanwhile on the 26th July 1956 the Petitioner petitioned the Court of Ordinary (a) to declare the said marriage invalid (b) to grant Probate of the said Will in solemn form and (c) to provide for the costs out of the estate of the deceased alleging that the said 'marriage' was invalid both as to its formal validity and the capacity of the deceased at the time of the ceremony and by particulars delivered on the 15th September 1956 stated three grounds therefore namely that (i) each of the parties to the alleged marriage did not freely consent to intermarry with a proper understanding of the contract (ii) the said marriage ceremony was not performed in due form as required by the Marriage Act 1904-9 and (iii) the deceased was at the time of marriage so affected by age and physical weakness that he was totally incapable of marrying: that the said Court of Ordinary delivered Judgment on the 19th October 1956 dismissing the Petition and refusing Probate for the said Will and ordering the costs to be paid out of the estate of the deceased: And humbly praying Your Majesty in Council to grant special leave to appeal from the Judgment of the Court of Ordinary of Barbados of the 19th day of October 1956 or for such other Order as may seem fit:

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"THE LORDS OF THE COMMITTEE in obedience to His Late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Ordinary of Barbados dated the 19th day of October 1956 upon depositing in the Registry of the Privy Council the sum of \$400 as security for costs:

In the Privy Council.

No. 8.

Order granting Special Leave to Appeal.

31st July 1957
- continued.

"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Ordinary ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same".

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution

WHEREOF the Governor or Officer administering the Government of the Island of Barbados and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

IN THE PRIVY COUNCIL

No. 30 of 1957

ON APPEAL
FROM THE COURT OF ORDINARY BARBADOS

B E T W E E N:

ERNEST CLARENCE HILL (Petitioner) Appellant

- and -

ERNEST CARLTON HILL (Respondent) Respondent

RECORD OF PROCEEDINGS

RASHLEIGH & CO.,
63, Lincoln's Inn Fields,
London, W.C.2.
Appellant's Solicitors.

MINET & MAY & CO.,
5, Dowgate Hill,
Cannon Street, E.C.4.
Respondent's Solicitors.