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Judgment
52, 1964

IN THE PRIVY COUNCIL

No. 16 of 1958

ON APPEAL

FROM THE SUPREME COURT OF BRITISH HONDURAS

IN THE ESTATE OF ROBERT SIDNEY TURTON, deceased

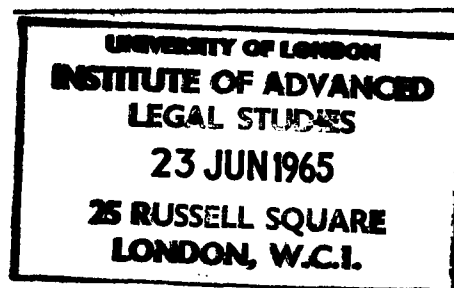
B E T W E E N:

ROBERT SIDNEY ACOSTA (Plaintiff) Appellant

- and -

ALFRED OWEN LONGSWORTH)
AURA JONES and)
MARGARET TURTON) (Defendants) Respondents

RECORD OF PROCEEDINGS



- 78702

HY. S.L. POLAK & CO.,
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~~Cursitor Street,~~ *N.C.I.*
~~E.C.4.~~
Solicitors for the Appellant.

GRAHAM PAGE & CO.,
41, Whitehall,
S.W.1.
Solicitors for the Respondent,
Margaret Turton.

IN THE PRIVY COUNCILNo. 16 of 1958ON APPEALFROM THE SUPREME COURT OF BRITISH HONDURASIN THE ESTATE OF ROBERT SIDNEY TURTON, deceasedB E T W E E N:ROBERT SIDNEY ACOSTA (Plaintiff) Appellant

- and -

ALFRED OWEN LONGSWORTH)
AURA JONES and)
MARGARET TURTON) (Defendants) RespondentsRECORD OF PROCEEDINGSINDEX OF REFERENCE

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No.	Description of Documents	Date		
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LIST OF EXHIBITS NOT TRANSMITTED TO THE PRIVY COUNCIL

E X H I B I T S

Exhibit Mark	Description of Documents	Date
1	Letter from Margaret Turton to N.M. Price	-

Exhibit Mark	Description of Documents	Date
3	Oath of Administrators viz: L.A. Jeffrey, Margaret Turton and Aura Jones in the Estate of R.S. Turton	29th November 1955
4	Petition of L.A. Jeffrey, Margaret Turton and Aura Jones for Grant of Adminis- tration with the Will annexed in the Estate of Robert S. Turton	29th November 1955
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LIST OF DOCUMENTS TRANSMITTED BUT NOT PRINTED

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3	Appearance to Citation for Cecil Turton	18th July 1956
4	Appearance to Citation for Mansel Turton	28th August 1956
5	Appearance to Citation for Aura Jones	28th August 1956
6	Affidavit of E.W. Francis	30th August 1956

No.	Description of Documents	Date
7	Appearance to Citation for Joseph Kirkwood	4th September 1956
8	Order granting Conditional Leave to Appeal to Privy Council	28th September 1957
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IN THE PRIVY COUNCIL

No. 16 of 1958

ON APPEAL

FROM THE SUPREME COURT OF BRITISH HONDURAS

IN THE ESTATE OF ROBERT SIDNEY TURTON, deceased

B E T W E E N:

ROBERT SIDNEY ACOSTA (Plaintiff) Appellant

- and -

ALFRED OWEN LONGSWORTH)
AURA JONES and)
MARGARET TURTON) (Defendants) Respondents

10

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

IN THE SUPREME COURT OF BRITISH HONDURAS, A.D. 1956
PROBATE SIDE

Action No. 12.

In the Estate of Robert Sydney Turton, deceased.

BETWEEN:- ROBERT SYDNEY ACOSTA Plaintiff

- and -

LINDSAY JEFFERY and)
AURA JONES and)
MARGARET TURTON) Defendants

20

ELIZABETH II by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

To: LINDSAY JEFFERY,
Fort George, Belsize.

AURA JONES,
c/o Turton's Office, Belize.

MARGARET TURTON,
Fort George, Belize.

30

In the Supreme Court of British Honduras

No. 1

Writ of Summons,
24th February 1956.

In the Supreme Court of British Honduras

No. 1

Writ of Summons,

24th February 1956 - continued.

WE COMMAND you that within 8 days after the service of this Writ on you inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of Robert Sydney Acosta AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence..

WITNESS His Lordship ERSKINE R.L. WARD, Chief Justice the 24th day of February, in the year of Our Lord One thousand nine hundred and fifty-six.

10

N.B. This Writ is to be served within 12 calendar months from the date hereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The Defendants (or Defendant) may appear hereto by entering appearances (or appearance) either personally or by their Solicitor, at the office of the Registrar, Belize.

STATEMENT OF CLAIM

20

The Plaintiff claims as beneficiary under a Will of Robert Sydney Turton deceased made on the 12th day of November, 1955 or thereabouts to have thesaid Will established and to have the grant of administration to the estate of the said deceased dated the 5th January, 1956 revoked and the pretended Will on which the grant was based pronounced against.

This Writ is issued against you the Defendants as having obtained the said grant of administration.

30

Sgd. E.W. Francis,
PLAINTIFF'S SOLICITOR.

A sufficient affidavit in verification of the indorsement on this writ to authorise the sealing thereof has been produced to me this 24th day of February, 1956.

Sgd. Rod. A. Pitts,
DEPUTY REGISTRAR.

This writ was issued by Ewart William Francis of Belize whose address for service is at his office at No.936 North Front Street, Belize, Solicitor for the said Plaintiff who resides in Belize.

40

This writ was served by me at _____ on _____ on the day of _____ 1956.

Indorsed the _____ day of _____ 1956.

No. 2

AFFIDAVIT OF R.S. ACOSTA

In the Supreme Court of British Honduras

No. 2

Affidavit of R.S. Acosta, 24th February 1956.

I, ROBERT SYDNEY ACOSTA of Belize, Clerk MAKE OATH AND SAY as follows :-

- 1. I am a natural grandson of the late Robert Sydney Turton, deceased.
- 2. I am one of the beneficiaries named in a Will made by the deceased on the 12th day of November, 1955 or thereabouts.
- 10 3. The said Will was signed by Doyle Prince of Belize and Rowland Dewgard of Belize as witnesses.
- 4. That the deceased died on the 15th day of November, 1955.
- 5. That I verily believe that the Will dated in 1918 produced to the Court is not the last Will and Testament of the late Robert Sydney Turton deceased.

SWORN at Belize the 24th) (Sgd.) day of February, 1956.) ROBERT SYDNEY ACOSTA.

20 Before me, Sgd. Rod.A.Pitts, Deputy Registrar General.

No. 3

AFFIDAVIT OF DOYLE PRINCE

No. 3

Affidavit of Doyle Prince, 27th February 1956.

I, DOYLE PRINCE of Belize, Clerk, MAKE OATH AND SAY as follows :-

- 1. I have been a Clerk at the Office of the late Robert S. Turton hereinafter called the deceased, since December 1948.
- 30 2. I have lived at the residence of the deceased for over 16 years with my mother who was employed by the deceased. I still live there.

In the Supreme
Court of British
Honduras

No. 3

Affidavit of
Doyle Prince,
27th February
1956 -
continued.

3. On Saturday the 12th November 1955 I was at the office of the deceased during the afternoon doing clerical work.

4. The deceased called me into his private office and asked me to shut the door. I did. He then said that he wanted me to do something for him which was of the strictest confidence.

5. He took a paper out his pocket with some writing on it and asked me to get a sheet of paper and take dictation. He dictated certain instructions in the form of a Will. I wrote down these instructions in my own handwriting. When he finished I read over what I had written to him and he said that did not suit him. He dictated again and I wrote. When he was finished I read the second Will to him and again he said "That didn't sound right". He dictated another Will and I wrote and when he was finished I read this over to him. He said "It sounds fair enough, but is not quite what I want". So he dictated a fourth Will and I wrote it in my handwriting, and when he was finished I read it over to him. He said this sounded like what he wanted, but he was going to see Miss Nellie Price about it because he had spoken to her about making a Will for him

10

20

6. The attached document marked "A" is as far as I can remember the form and contents of the fourth Will.

7. Just before he finished dictating the fourth Will Mansel Turton came in to tell him that Rowland Dewgard wanted to see him. He told Mansel to tell Rowland to have a seat as he was busy and he would see him when he got through.

30

8. When I finished reading the fourth Will to the deceased he shouted to Mansel to tell Dewgard to come in. This was about 4.30 p.m.

9. Dewgard came in and I left the private office. Soon after the deceased shouted for me and I went back into his private office. He took out the paper, that is, the fourth Will I had written for him and signed it before Rowland Dewgard and myself. He then passed it to me and asked me to sign it. I did. I identified the paper I signed as the fourth Will I had just written. After I

40

signed it the deceased asked Rowland Dewgard to do him the favour of signing it for him. He gave Dewgard his pen and Dewgard signed. Dewgard then handed me the paper, I took it, folded it and handed it to the deceased.

In the Supreme Court of British Honduras

No. 3

Affidavit of Doyle Prince, 27th February 1956 - continued.

10

10. Shortly after Dewgard left the office and the deceased then said to me "This Will that you have just written and signed as witness, you must not disclose it to anybody at any time or under any circumstances while I am alive. And if I dead now, because I believe I going dead for true, only say you wrote a Will for me if and when they can't find the Will, and you are satisfied they haven't found the Will".

20

11. Some time after Dewgard left, Mr. Lindsay Jeffery came into the office and was speaking to the deceased. At about quarter to seven o'clock the deceased said he was going home. I closed the office and as we were leaving, when the deceased reached the top of the steps he said "I feel like I am going to die" and we talked about death and went downstairs. The deceased got into his car and left, and I got on my bicycle and left.

SWORN at Belize this 27th } Sgd. D.A.E. PRINCE.
day of February, 1956. }

Before me,

Sgd. Rod.A.Pitts.

Deputy Registrar General.

No. 4

No. 4

30

STATEMENT OF CLAIM

Statement of Claim,

5th June 1956.

1. The Plaintiff is the natural grandson of the deceased Robert Sydney Turton who died at Belize on the 15th day of November 1955 and a beneficiary named in the Will of the said deceased bearing date the 12th November, 1955.

2. On the 7th day of December 1955 a pretended Will of the deceased dated the 10th day of May 1918 was admitted to Probate without the erasures alterations and interlineations thereto and on the 5th

In the Supreme
Court of British
Honduras

—
No. 4

Statement of
Claim,

5th June 1956
- continued.

day of January 1956 Letters of Administration cum testamento annexo in respect of the said Will were granted to Lindsay Jeffery, Margaret Turton and Aura Jones for a period of 12 months or until a later Will was found whichever event should first occur.

3. The Will bearing date 10th May 1918 was revoked by the Will dated the 12th day of November, 1955.

4. The Will dated the 12th November 1955 was never revoked or destroyed by the Testator nor by any person in his presence and by his direction with the intention of revoking the same and was at the time of his death a valid and subsisting Will, but the same cannot be found. 10

5. The contents of the Will dated 12th November, 1955 were in substance and effect as is stated in the Affidavit of Doyle Prince dated the 27th day of February 1956 and filed at the General Registry on the same date and a further Affidavit bearing date the 5th June 1956 and filed at the General Registry on the same date. 20

The Plaintiff claims:

(1) Revocation of the probate of the Will dated 10th May 1918 and the grant of Letters of Administration cum testamento annexo to Lindsay Jeffery, Margaret Turton and Aura Jones.

(2) That the Court shall pronounce for the Will dated 12th November 1955 in solemn form of law.

(3) A grant of probate of the said last Will dated 12th day of November 1955. 30

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

SUBSTANCE OF THE CASE

The Plaintiff alleges that the Will of the deceased Robert Sydney Turton bearing date 10th May 1918 is not the last Will of the said deceased because it was revoked by a later Will dated 12th November 1955.

(Sgd.) E.W. Francis
PLAINTIFF'S SOLICITOR. 40

DELIVERED the 5th day of June, 1956 by EWART WILLIAM FRANCIS, 936 North Front Street, Belize, Solicitor for the Plaintiff.

No. 5

AFFIDAVIT OF DOYLE PRINCE

In the Supreme
Court of British
Honduras

No. 5

I, DOYLE PRINCE of Belize, Clerk, MAKE OATH
AND SAY as follows :-

Affidavit of:
Doyle Prince,
5th June 1956.

1. I am the person who made and signed the affi-
davit dated the 27th February, 1956.

10 2. On the 28th February, 1956 the day after I
made the said Affidavit I returned to the office
of Mr. E.W. Francis, Solicitor, and told him that
I had forgotten to add the name of Mrs. Helen Clarke
in the Will attached to my Affidavit dated the 27th
February, 1956 and marked "A".

3. The deceased Mr. R.S. Turton had instructed
me to write and I wrote in the said Will "I give
and bequeath to Helen Clarke the sum of \$30,000".
This bequest was included in the fourth Will which
was signed by the Testator in the presence of the
witnesses, D.A.E. Prince and Rowland Dewgard both
present at the same time.

20 SWORN at Belize this }
5th day of June, 1956 } Sgd. D.A.E. PRINCE.

Before me,

Sgd. A.O. Longsworth,
Ag. Deputy Registrar General.

No. 6

DEFENCE OF THE DEFENDANT MARGARET TURTON

No. 6
Defence of the
Defendant
Margaret
Turton,
2nd July 1956.

1. The Defendant admits that the Plaintiff is the
natural grandson of Robert Sydney Turton, deceased
who died at Belize on 15th day of November, 1955.

30 2. The Defendant does not admit the existence of
any Will executed by Robert Sydney Turton deceased
save and except the last Will and Testament dated
the 10th day of May, 1918.

3. The Defendant denies that the last Will and
Testament of Robert Sydney Turton deceased executed

In the Supreme Court of British Honduras

No. 6

Defence of the Defendant Margaret Turton,

2nd July 1956
- continued.

by him and dated the 10th May, 1918 was ever revoked by a Will dated the 12th November, 1955 or at all.

4. As to paragraph 4 of the Statement of Claim filed herein the Defendant repeats paragraph of her defence.

5. Save as has been herein expressly admitted the Defendant denies each and every allegation of fact contained in the Statement of Claim as if the same had been set out herein and traversed seriatim.

10

The Defendant Claims:-

(1) That the Court will pronounce against the Will dated the 12th of November, 1955, propounded by the Plaintiff.

(2) That the Court will reject the Affidavit of Doyle Prince dated the 27th day of February, 1956, and filed at the General Registry on the same date and a further Affidavit of the said Doyle Prince bearing the date the 5th of June, 1956 and filed at the General Registry on the same date.

20

(3) That the Court will decree Probate of the Will of the deceased dated the 10th of May, 1918 in solemn form of law.

(4) That the Court will grant such further relief as may be just.

(Sgd.) R.S. Macpherson,
Solicitor.

Delivered:

No. 7

Affidavit of Script of R. S. Acosta,
4th July 1956.

No. 7

AFFIDAVIT OF SCRIPT OF R.S. ACOSTA

I, ROBERT SYDNEY ACOSTA of Belize, Clerk, Plaintiff in this action MAKE OATH and say :-

That no paper or parchment writing being or purporting to be or having the form or effect of a Will or Codicil or other testamentary disposition of Robert Sydney Turton late of Belize, the deceased in this action, or being or purporting to be instructions for, or the draft of, any Will, Codicil, or other testamentary disposition of the said Robert

30

40

Sydney Turton, has at any time, either before or since his death, come to the hands, possession or knowledge of me, this deponent, or to the hands, possession, or knowledge of my Solicitor in this action so far as is known to me, this deponent, save and except the Will of the deceased dated the 10th May 1918 now remaining in the Registry of this Court, and the contents of a Will of the deceased dated the 12th November 1955 as alleged in Affidavits of Doyle Prince dated the 27th day of February 1956 and the 5th day of June 1956 both filed at the General Registry, Belize.

10

SWORN at Belize this)
4th day of July, 1956) Sgd. ROBERT S. ACOSTA.

Before me,

Sgd. A.O. Longsworth,
Ag. Deputy Registrar General.

In the Supreme
Court of British
Honduras

No. 7

Affidavit of
Script of
R.S. Acosta,
4th July 1956
- continued.

No. 8

NOTICE OF MOTION FOR EXAMINATION OF DOYLE PRINCE

20

TAKE NOTICE that the Court will be moved on Tuesday the 28th day of August 1956 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. E.W. Francis of Counsel for the Plaintiff for an Order that the Plaintiff may be at liberty to examine Doyle Prince of Belize Clerk as witness on his behalf in this action de bene esse: saving all just exceptions.

DATED the 22nd day of August, 1956.

(Sgd.) E.W. Francis,

30

Solicitor for the Plaintiff.

To:

The Registrar General
The Attorney General
W.H. Courtenay & Co., Solicitors for the
Defendant.
S. McPherson Esq., Solicitor for Margaret
Turton.

No. 8

Notice of
Motion for
Examination of
Doyle Prince,
22nd August
1956.

In the Supreme
Court of British
Honduras

No. 9

AFFIDAVIT OF E.W. FRANCIS

No. 9

Affidavit of
E.W. Francis,

22nd August
1956.

I, EWART WILLIAM FRANCIS of Belize, Solicitor
MAKE OATH and say as follows :-

1. Doyle Prince of Belize Clerk is to the best
of my belief a material witness in this action for
the Plaintiff.

2. The said Doyle Prince is the person who wrote
out the last Will of the late Robert Sydney Turton
deceased dated 12th November 1955 and as far as I
know the only living person who knows its contents.
He is also one of the two attesting witnesses to
the said Will. 10

3. The said Will cannot be found and no other
living person is known to have any knowledge of
its contents.

4. The value of this estate is considerable and
there is substantial reason for apprehending that
the ends of justice would be defeated by the loss
of the evidence of the said Doyle Prince if any-
thing should happen to him. He is a particular
witness to particular facts. 20

5. It is proposed to examine the said Doyle
Prince as regards the drawing and the execution of
the said Will and as regards his knowledge of the
contents thereof.

SWORN at Belize this 22nd } (Sgd.) E.W. FRANCIS.
day of August, 1956.

Before me,

(Sgd.) A.O. Longworth,

Ag. Deputy Registrar General. 30



11.

No.10

AFFIDAVIT OF DOYLE PRINCE

In the Supreme
Court of British
Honduras

No.10

Affidavit of
Doyle Prince,
29th August
1956.

I, DOYLE PRINCE of Belize Clerk MAKE OATH and say as follows :-

1. I have lived at the home of the late Robert Sydney Turton (hereinafter called the deceased) for over 16 years and was employed as a Clerk in his office at Belize for years.

10

2. On Saturday the 12th November, 1955 the deceased called me into his office to ask me to write a Will for him.

3. He dictated and I wrote the Will.

4. The deceased signed the Will in the presence of myself and Roland Dewgard together at the same time and we signed as witnesses in the presence of the deceased.

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5. I verily believe that it is likely that I am the only person besides the deceased who knows the contents of the said Will because I have not heard of anyone else who saw the contents.

SWORN by the said DOYLE)
PRINCE at Belize on the) Sgd. D.A.E. PRINCE.
29th day of August 1956)

Before me,

Sgd. A.O. Longsworth,

Ag. Deputy Registrar General.

This Affidavit is filed on behalf of the Plaintiff.

No.11

AFFIDAVIT OF E.W. FRANCIS

No.11

Affidavit of
E.W. Francis,
29th August
1956.

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I, EWART WILLIAM FRANCIS of Belize, Solicitor MAKE OATH and say as follows :-

1. I am the Solicitor on the record for the Plaintiff in this action.

In the Supreme Court of British Honduras

No. 11

Affidavit of E.W. Francis, 29th August 1956 - continued.

2. I am informed by Doyle Prince of Belize Clerk and verily believe that he was the person who wrote the Will of the late Robert Sydney Turton dated 12th November 1955 and was one of the two attesting witnesses to the said Will as stated in his Affidavit attached hereto and marked "A".

3. Because of these allegations I verily believe that the said Doyle Prince is a material witness for the Plaintiff in this action.

4. I am informed by the said Doyle Prince and verily believe that as far as he knows he is the only witness to the particular facts of the contents of the Will. 10

5. I am informed by Joseph Kirkwood of Belize, Clerk and a former employee in the office of Robert Sydney Turton deceased and verily believe that he was present at the search made for the Will of Robert Sydney Turton deceased dated 12th November 1955 at the office and the home of the said Robert Sydney Turton after his death and that the said Will was not found. 20

6. I believe for the reasons given in paragraphs 2 and 4 herein that the ends of justice would be defeated by the loss of the evidence of the said Doyle Prince if anything should happen to him.

7. Nineteen citations in this matter have been served, one published by order of the Court, and one (for Everalda Turton) had to be sent to Lebanon through diplomatic channels. I believe it is uncertain how long it will be before notice of service of this citation will be received and therefore this application is to perpetuate the testimony of the said Doyle Prince. 30

8. It is proposed to examine the said Doyle Prince as regards the drawing and the execution of the said Will and as regards his knowledge of the contents thereof.

SWORN by the said EWART)
WILLIAM FRANCIS at Belize) (Sgd.) E.W. FRANCIS. 40
on the 29th day of August)
1956

Before me,
(Sgd.) A.O. Longworth,
Ag. Deputy Registrar General.

This Affidavit is amended pursuant to an Order of the Honourable Chief Justice dated the 27th August 1956 and filed on behalf of the Plaintiff in support of the application for leave to examine Doyle Prince as a witness on his behalf de bene esse.

In the Supreme Court of British Honduras

No.11

Affidavit of E.W. Francis,

29th August 1956 - continued.

No.12

ORDER FOR EXAMINATION OF DOYLE PRINCE

Before The Honourable ERSKINE R.L. WARD,
Chief Justice

The 28th and 29th days of August 1956.

No.12

Order for Examination of Doyle Prince,

30th August 1956.

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UPON HEARING Mr. Francis of Counsel for the Plaintiff and Mr. McPherson Solicitor for the Defendant Margaret Turton and Mr. Courtenay of Counsel for the Defendants and Mr. Grant of Counsel for Robert Straker Turton a party cited and upon reading the amended Affidavit of Mr. E.W. Francis and the Affidavit of Doyle Prince filed the 29th day of August 1956 IT IS ORDERED that Doyle Prince of Belize, Clerk a witness on behalf of the Plaintiff be examined viva voce de bene esse on oath before the Honourable Chief Justice in camera, the Plaintiff's Solicitor giving to the parties who have appeared to the writ of summons or citations in the action, or their Solicitors, notice in writing of the time and place where the examination is to take place and that such parties be permitted to be present AND IT IS FURTHER ORDERED that the examination so taken be sealed up and filed in the Supreme Court and on the trial of this cause no application for the reading of the examination be granted unless it be proven by the Plaintiff to the satisfaction of the Court that the said witness is dead or cannot be produced before the Court

In the Supreme
Court of British
Honduras

No.12

Order for
Examination of
Doyle Prince,
30th August
1956 -
continued.

AND IT IS FURTHER ORDERED that the cost of this application, except the hearing on the 28th August 1956 which will be costs against the Plaintiff in any event, be costs in the cause.

DATED the 30th day of August 1956.

BY THE COURT,

(Sgd.) W.P. Thomson,

REGISTRAR.

No.13

Notice to
Enter Action
for Trial,
29th September
1956.

No.13

NOTICE TO ENTER ACTION FOR TRIAL

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Enter this action for trial in Belize.

DATED the 29th day of September 1956.

(Sgd.) E.W. Francis

Plaintiff's Solicitor.

To:

The Registrar.

No.14

Counsels
Opening
Addresses
(Not printed).

No.14

COUNSELS OPENING ADDRESSES

Not printed.

No.15

EVIDENCE OF DOYLE PRINCEThursday, 22nd November, 1956DOYLE PRINCE sworn saith :-

10 Gaol Lane. I work at Real Estate Ltd. I know the deceased. I first knew him in 1940. I was taken to his home by my mother who was working there. She was his cook and lived at residence of deceased. I was then 8 years old. I lived there with my mother. I did not know deceased before I went to live there. I lived with deceased for 16 years up to time of his death. I went to school to Wesley Primary School and St. John's College. I was at latter from January, 1946, to December, 1948. While I was at school I worked for deceased. I worked as a messenger. Deceased helped with my schooling. After leaving school I worked at office of deceased for full time. I did messenger work and clerical work and wrote correspondence and as-

20 sisted the cashier. I worked in office from December 1948 to 31st March 1956. Correspondence I wrote was general business correspondence and confidential correspondence. I had no set hours for work. I did so in office from 8.30 a.m. to 5 p.m. or 7.30 or 8 or 9 p.m.

30 On Saturday, 12th November, 1955, I was at the office all day except for lunch hour. I did correspondence that day for deceased. In the afternoon about 2.30 p.m. deceased called me into his private office and told me to get some paper as he wanted to dictate something to me. I got the paper and sat down and waited. Deceased took a paper from his back pocket opened it and started reading to himself. After a while he said before I give you this dictation he wanted me to understand what he was going to dictate was very private and confidential and under no circumstances must I repeat the contents to anyone. He went on to say that he had spoken to Miss Nellie Price and told her that

40 he wanted her to do it but somehow they did not get together and he wanted it done now. Then he started dictating and I wrote down what he dictated. I was writing with a pen in ordinary long hand. He dictated from a paper he had in front of him. When dictation was finished he asked me to

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HondurasJudge's NotesPlaintiff's
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No.15

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22nd November,
1956.

Examination.

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Judge's Notes

Plaintiff's
Evidence

No.15

Doyle Prince,
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Examination
- continued.

hand what I had written to him. He read through it and remarked he was not satisfied. He started dictating a second time. When he was through I again handed what I had written to him. After reading through it he shook his head and started dictating a third time. On completing the third dictation a lady Muriel Pantin came to see deceased. She came into office and spoke to deceased for a few minutes and she left. I was there while she spoke to deceased. I handed deceased the third dictation and as he was reading it there was a knock at door and deceased got up and opened door. It was a tailor - Meighan. 10

At 12.30 p.m. Court adjourned to 2 p.m.

At 2.05 p.m. Court resumes.

Tailor told deceased he had brought the suit for him. Deceased called me and he and I and tailor went into the other room and deceased tried on suit. Then the three of us went to the back of the office into another room. He looked into glass and turned and went to Mrs. Jones and asked how suit fitted him. Mrs. Jones was in room into which he had gone. Mrs. Jones said she did not think suit fitted him nicely. We (deceased, tailor and I) left Mrs. Jones and returned to room in which deceased had tried on the suit. Deceased took off the suit, gave it to the tailor, told him to hang it up on a rack that was in the room. He then handed the tailor some money and told him to return on Tuesday. Deceased and I returned to his private office. He sat down and so did I. Deceased continued reading through the third draft. After he finished reading deceased remarked that something did not sound quite right and started dictating a fourth. When I got through writing the fourth, deceased started reading it. Before he finished reading the last draft Mansel Turton came to the door and announced Roland Dewgard wanted to see deceased. Deceased told Mansel to tell Dewgard to have a seat and wait awhile, he was busy. Deceased got up picked up the three first drafts and the fourth along with the paper from which he dictated and went to the lavatory. Lavatory is in the same room he went to look at himself in mirror. He returned shortly afterwards, sat down at his desk and placed the paper from which he had dictated and one of the papers which I had just written on 20
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the desk. The latter was the fourth draft I had made. Deceased then shouted for Mansel and told him to tell Mr. Dewgard to come in. Mr. Dewgard came in and deceased told him that he was not feeling well and that he had better return the following week, but he would like him to witness a document before he left. Deceased then signed the fourth draft, handed it to me, instructed me to sign as a witness. I signed and I passed it on to Mr. Dewgard. Mr. Dewgard signed and passed it back to me. I in turn returned it to deceased. We were all three present together when deceased signed the document. When I signed document deceased was sitting in room and so was Dewgard. We were all three still together when Dewgard signed. After we had all signed, deceased thanked Dewgard and latter left. There was no one else in room besides the three of us. After Dewgard left, deceased told me again to remember I had promised not to tell this to anyone under any circumstances. If anything happens and it cannot be found I am still not to say anything until I am convinced it cannot be found. I then left his private office and went out into the main office. At this time Major Jeffery was there along with Mansell Turton. No one else was in major office. Mrs. Jones was at the back in her own office. Mr. Jeffery and Mansell both went into deceased private room and I remained outside. I left to go home around 7 p.m. When I was ready to go home Mr. Jeffery and Mansell Turton were still in office. We all left together. Major Jeffery went downstairs first, deceased, Mansell and I were at the top of the stairs. Just before deceased started to go down he turned and said to me, "You know I feel bad like hell and I believe I going dead. Like you that is young you would not like to dead now". I replied, "You know sometimes things are kind of rough and it does not matter much one way or another". He replied "If it is so it goes I going to help you when I dead I will come for you". All three of us then went downstairs. I went down last and locked door. Deceased, Mr. Jeffery and Mansell got into the car and they left. I got on my bicycle and went home. I remember what was in this document that was signed. It started by saying I Robert Sydney Turton Merchant of Belize, British Honduras, declare this to be my last Will and Testament hereby revoking all previous testamentary writings that may have been made before by me. He then named three Executors,

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Plaintiff's
Evidence

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Examination
- continued.

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Examination
- continued.

Mrs. Aura Jones, Lindsay Jeffery and Harold Penso. He then made some bequests:- To Miss Margaret Turton and Mrs. Aura Jones he gave his shares in the Royal Bank of Canada to be divided equally. To Mansell Turton and Sydney Joseph Turton he gave \$20,000.00 each. To Mrs. Helen Clarke he gave \$30,000.00. To Mr. Fred Westby, Miss Nellie Price; Mr. Alfred Pinks, Joseph Kirkwood, George Price, Walter Dyer he gave \$15,000.00 each: To the rest of his employees he gave \$10,000.00 each. He went on to say that his Executors must cancel his debentures in Real Estate Ltd., which shares are held by eight of his children and the Executors must free them from any incumbrance. He went on to say that the rest of his personal belongings and other residue of his estate should be held in trust for his children by his Executors until the youngest reaches 21 years. He went on to name his children: Margaret Turton, Aura Jones, Mansell Turton, Sydney Joseph Turton, Cecil Turton, Robert Sydney Turton, Jnr., James Turton, Robert Straker Turton, Diana Turton, Olga Turton, Delba Turton, Lorna Turton, and his grandson Robert Sydney Acosta. He continued to say he empowered his Trustees to call in or vary investments as they saw fit to preserve the Estate. He then dated the Will the 12th November 1955. After the date he signed his name. Then there was another clause under the signature that the Will was signed and declared in the presence of Mr. Turton, in the presence of each other present at the same time and in presence of Mr. Turton. After that clause Mr. Dewgard and I signed. Signatures of Mr. Dewgard and I were the same signatures I have spoken of before in my evidence. After that day I did not see this document again. Deceased did not speak to me again about it after I left the office that day. I next saw the deceased the following night (Sunday) after 7 p.m. at his home. He was lying in his bed ill. He died on the Tuesday. After death of deceased I did not tell anyone of this document. There was once Mrs. Jones asked me if I had made a Will for deceased if it was true? She continued to say she would bet it was not so. I told her that I would take up her bet that another Will will be found. That was about 2 or 3 weeks after deceased's death. I told Mr. Alfred Pinks I had made a Will for deceased on 12th November. He was Senior employee in deceased's office. That was early in February. He just said he hoped Will will be

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found. I told Registrar of this Will - that was Mr. Thompson. I did so about the 6th February. I told him I had made a Will for deceased on the 12th November 1955 and gave him details of Will. Registrar wrote a note, handed it to me and told me to hand it to the Chief Justice. I took note to the Chief Justice. Mr. Thompson said he was sick. Registrar was then at his home. I saw the Chief Justice and he sent me back to the Registrar at his home. That was two days afterwards. I then gave a statement to the Registrar and he typed it. Details of Will I gave here are what I told the Registrar.

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Cross-Examined

Cross-examined by Mr. Rowe :-

During a conversation I had with Mrs. Aura Jones she did not tell me that Nellie Price had seen the Will I had written. I did not know that Nellie Price had told several people in Belize she had seen a Will I had written. I read in paper that Nellie Price told Court yesterday she had told several people in Belize that she had seen a Will I had written. I remember giving evidence on oath sometime earlier this year - in October. I did not then disclose to Court that I had spoken to Mrs. Jones about a Will. This is the first time I have mentioned this. It was only on one occasion she spoke to me about this Will. A few others spoke to me about this Will. Theophilus Gentle asked me if it was true. I just shrugged my shoulders. On another occasion Mansell Turton approached me about it. Gentle asked me about it about a month after death of deceased. Mansell asked me sometime after Gentle - it was sometime in December. One more person approached me. That was Mr. Penso. It was after Mansell. It may have been in December or January. I was engaged and I said I could not afford to talk. I was doing some work. I told both Mansell and Penso the same thing. I have not disclosed this information about Gentle, Mansell and Penso before.

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At 3.30 p.m. Court adjourned to 23rd at 10 a.m.

Friday, 23rd November, 1956

DOYLE PRINCE sworn saith :-

Cross-examined by Mr. Rowe continued :-

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1956.

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- continued.

Cross-
Examination.

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Cross-
Examination
- continued.

I did not indicate to Mrs. Aura Jones there was another Will in existence. She said she heard I made a Will for deceased and went on to say that she bet no other Will than 1918 Will will be found. I did say yesterday Mrs. Jones asked me if I had made a Will for deceased. She was betting that it was not so that I had made a Will other than the 1918 Will. I am varying what I said yesterday because "It is only a misuse of words". Two sentences are different in that in one I said "she told" and in the other "she asked". I denied saying she "asked me" this morning as I was under impression she "told me". I told her I will take up her bet and "I believe" another Will will be found. I am under impression I said "I believe" yesterday. As far as I am concerned I did not tell Mrs. Jones there was another Will. I did not intend to convey the impression that another Will would be found. Conversation between Mrs. Jones and I took place at deceased's office. Miss Delba Turton was present when Mrs. Jones and I spoke. Some other people were in office at the time. I do not know if they heard conversation. I was then standing up by Mrs. Jones's desk at which she was sitting. That took place about 2 or 3 weeks after death of deceased before Mrs. Jones left for U.S.A. Theophilus Gentle was deceased's chauffeur. He asked me if I had made a Will for deceased. He did so at the office. I just shrugged my shoulders. Mansell and Penso also asked me. Deceased called me at about 2.30 p.m. on the 12th November. Deceased's office is about 440 yards from that of Nellie Price. I had a bicycle. As far as I know Nellie Price did not have a telephone at her office. I am a beneficiary to tune of \$10,000.00 under Will. That was my impression when I first made disclosure to Registrar.

On 12th November I returned from lunch about 2 p.m. Deceased said he wanted me to take a dictation and wanted me to keep contents of it private and confidential. I assumed he meant the contents, but it might either have been the fact of making Will or the contents. I believe that on a former occasion I said on oath that I believed he wanted me to keep secret the fact that I had made a Will whilst he was alive. I also said he told me not to disclose what I had written under any circumstances. Deceased at no time asked me to memorize contents of Will. When I went to report to the Registrar I made notes of contents of Will for him.

That was about the 8th February when I saw Registrar the second time. I did not make any notes of contents of Will between time of signing of Will and the second time I went to the Registrar. I had nothing from which I could refresh my memory as to the contents. I had reasons between deceased's death and the 6th February to recall contents of Will - normally. I had made a Will and it could not be found; they were looking for it; so it is natural the contents of Will should come into my mind from time to time. I know Roland Dewgard. I believe he was in British Honduras when I swore to Affidavit as to contents of Will. I do not remember when I first went to Mr. Francis (Solicitor for Plaintiff). I swore to an Affidavit before Registrar on 27th February. I believe Affidavit was prepared by Mr. Francis. I have been to Mr. Francis's office in connection with this matter. The Plaintiff requested me to see him. That was some-
 10 time in February. When I first went to Registrar I explained contents of Will to him in the same form I did here yesterday. I told Registrar about "revoking all previous testamentary writings that may have been made before by me". I used words "give and bequeath" when I spoke to Registrar. I used word "debentures" when I spoke to Registrar. I did not then know meaning of word "debentures". I think I used the words "devisee" and something about "legatees" when I spoke to Registrar. I
 20 knew meaning of "legatee" and "devisee" when I went to Registrar. A devisee is when one gives a motor car or property or land. I prefer to say I do not remember. I do not know meaning of word "incumbrance". I did use word "incumbrance" to Registrar. Soon after death of deceased I heard they were looking for a Will. I did not think about making a note of contents of Will at that stage. I did not hear deceased tell Mr. Dewgard that the document was his Will. Throughout time
 30 Dewgard was there I was in deceased's private office. I did not hear deceased use any words to Dewgard to indicate document Dewgard was signing was his Will. I do not remember it after deceased had finished dictating further draft he said anything. I did say on a former occasion "He read it through and remarked this is alright but he would have to see Miss Price about it". Deceased did say so. Before handing deceased the further draft I did not read it through to him. If the follow-
 40 ing is on my deposition then I said it.
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 Evidence

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 1956.

Cross-
 Examination
 - continued.

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Cross-
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- continued.

"He continued to dictate to me and then I read it to him and he said this last draft sounded like what he wanted. I then handed the Will to him". After that he read it through and remarked this is alright but he would have to see Miss Price about it. I did not hear deceased ask Mr. Dewgard to keep strict confidence in this matter. Witness is asked to write:- "This is a Codicil to the last Will and Testament of me Andrew Johnson. Whereas in and by my said Will I have charged my son Edward Wilson with the clothing maintenance and education of each of my daughters Margaret, Alice and Phoebe, being under the age of 18 years, until they respectively attain that age and now it is my Will and mind that this provision so far as the same affects my said daughter Phoebe should be extended until she shall attain the age of 21 years and to answer the expense of this further providing for my said daughter Phoebe, I order and direct that there shall be deducted from the 1/5th part of the amount of the valuation of my real and personal estate in and by my said Will given to my said daughter Margaret the sum of £30 and the like sum from the amount of such valuation in and by my said Will given to my said daughter Alice, and it is my Will and mind, and I hereby order and direct that £20 of the sums thus deducted, shall upon my said daughter Phoebe attaining the age of 18 years be yearly applied by my said son Edward Wilson in consultation with Edmund Cockshutt and Richard Munday in my said Will named, in and towards the clothing, maintenance and education of my said daughter Phoebe until she attains the age of 21 years". Witness reads back above.

Witness is again asked to write:- "This is a fifth Codicil to the last Will and Testament of me Andrew Thompson. Whereas I have by my said Will bearing date the 12th day of March 1861 appointed my son Edward Wilson Thompson sole Executor thereof; and I have thereby directed that Edmund Cockshutt of Kendal aforesaid, Draper, and Richard Munday of the firm of John C. Gale & Company, Liverpool, in the County of Lancaster, Cotton Factors, shall act in conjunction with and advise and assist my said son Edward Wilson in carrying out the trusts of my said Will; and that upon any dispute arising in the execution of the trusts thereof, I have ordered that the same shall be referred to the said Edmund Cockshutt and Richard Munday, and directed that their decision should be final and

conclusive. Now I do hereby request and appoint my friend James Allen of Kendal, Draper, to act in conjunction with the said Edmund Cockshutt and Richard Munday. In all other respects I confirm my said Will and "four Codicils". Witness reads back above.

10 Miss Muriel Pantin interrupted the second or the third draft. I think I said once she interrupted the second draft. I think I said yesterday she interrupted the third draft. It could be either the second or the third she interrupted. Deceased told his tailor whether he had heard Mrs. Jones say the suit did not fit him well. He paid him and told him to return the following week. He also told him to hang up the suit. He told tailor to return the following Tuesday. I do not know what happened to suit. I have not seen it since. Mr. Price did a lot of the correspondence and I assisted him with it. I would not say that it is correct that Mr. Price typed the bulk of deceased's correspondence. I do not remember saying Mr. Price would type nearly all the correspondence. I will commit myself as to whether I said so or not after seeing the original. It was not chiefly when Mr. Price was not there that I did the typing. It was not only when the correspondence was heavy that I helped Mr. Price. I did not see Mr. Pinks neither before nor after I was dictated to. When I went with deceased for him to try on the suit if Mr. Pinks was there I would have seen him. Mr. Pink's desk is visible from door of deceased's private office but door was closed. It could have been around 3.30 p.m. when deceased went to try on suit. Miss Pantin came first. (Witness is asked to reproduce first dictation by Counsel and says) "I did not have sufficient time". That is completely different from what I wrote for Mr. Turton. I was acquainted with all the beneficiaries in Turton's Will and knew their names. I cannot reproduce any of first dictation. Name of testator was "Andrew Thompson". There were three beneficiaries under first dictation. I agree there were far more in deceased's Will.

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At 12.20 p.m. Court adjourned to 2 p.m.

At 2.10 p.m. Court resumes.

Witness is shown passage in evidence given de

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Judge's Notes

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Cross-
Examination
- continued.

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1956.

Cross-
Examination
- continued.

bene esse and says I did say "Mr. Price would type nearly all the correspondence". That is a fact. It is not correct that I only helped when correspondence was very heavy or I only typed when Mr. Price was not there. I do not remember saying I swore to Affidavit of 27th February at Mr. Francis's office. When I said previously that I had sworn to Affidavit in Francis's office that was a mistake. I had said the Registrar's office previously. (Refers to paragraph 2 of Affidavit of witness of 5.6.1956). I know Mrs. Clarke was an intimate friend of deceased. I included her name when I told the Registrar of this Will. He wrote it down. I do not know who drafted my Affidavit of 27th February. I may have first seen the Affidavit either at Mr. Francis's office or the Registry. I gave a statement to Mr. Francis about the contents of the Will. That was a few days after I gave my statement to the Registrar. I believe I read my Affidavit of 27th February before I swore to it. I did read it. I did not notice that Helen Clark's name was missing from it. I noticed that shortly after I signed it. It was the same day. I had a copy of the Affidavit I had signed. I noticed after leaving the Registrar that Mrs. Clarke's name was not on it. I read document more than once after leaving Registrar. I told Mr. Courtenay about leaving out Mrs. Clarke's name. I told him so the same day after leaving Registrar. I was at Mr. Courtenay's office on business in connection with this case. I cannot remember when I noticed omission. Besides Mr. Courtenay and Mr. Francis I think I told former about omission in presence of Mr. Penso. I went to Mr. Francis in connection with this matter as I was made to understand he wanted to see me. When I got to Courtenay's office, Mr. Penso was there. Sometime after I got there there was a talk about the Will. I had not spoken to Mr. Courtenay previously about this Will. I work at Real Estates Ltd. Mrs. Aura Jones could fire me if my services were no longer wanted. Mr. Penso is the Auditor for Real Estates Ltd. When I worked for deceased I got \$40.00 a month. Now I get \$100.00 a month. When deceased said as regards third draft that something did not sound quite right I do not know to what he referred. In third draft three Executors were - Mrs. Jones, Major Jeffery and F.C.P. Bowen and Miss Muriel Bladen's name was there. That was the only difference so far as I can remember. Executors were changed in

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fourth draft and Muriel Bladen's name as a beneficiary was left out. After reading fourth draft deceased said more or less this looks like what I want but I will have to see Nellie Price about it. All the employees of deceased acted as errand boys when it suited him. After writing first draft I started reading it to deceased but he said I was reading too loud and he took it away. After writing second draft the same thing happened. I would not say I did not modulate my voice but deceased was deaf but only when it suited him. Deceased sat at desk I sat to the right of the desk and Dewgard next to me. As far as I remember Dewgard signed with my pen as I signed with my pen and passed it on to him. I do not remember saying deceased handed Dewgard his pen. In my Affidavit of 27.2.56 I said deceased handed Dewgard his pen. It is true that when I swore to Affidavit facts were fresher in my mind but at time of signing of Will deceased had got a new pen and did not approve of others using it so it is more likely I handed my pen to Dewgard. Deceased's new pen was either a "Sheaffer" or a "Parker". Deceased had dozens of pens on his desk. I do not know if they were in working condition. When we left private room with the tailor drafts were left in room. Door was pushed to but not locked. From the back room one cannot see anyone entering deceased's private office from the main office. When tailor Meighan came there drafts had been written. Deceased opened door for Meighan himself. Then after finding out what Meighan wanted deceased called me to come and see him try on suit. When deceased returned from lavatory he had original paper from which he dictated and the fourth draft. I do not know what he did with others. I cannot say if Dewgard read document. I saw him sign his signature to it. He just kept it long enough to sign it. Deceased told Dewgard to sign document. He did not say Will.

Cross-Examined

Cross-examined by Mr. McKinstry:

Onion paper on which Will was written was foolscap size onion paper - typewriting paper without lines. Paper which deceased held up was more than one sheet. When he laid it on table he had folded it. I cannot say if it was written in manuscript or typewritten. Deceased always his everything from everybody. He took paper from his right hip pocket. I did not see Mr. Pinks on afternoon of 12th November. I had seen him that morning. As far as I remember everybody was out to work that morning.

At 3.30 p.m. Court adjourned to 26th at 10 a.m.

In the Supreme
Court of British
Honduras

—————
Judge's Notes

—————
Plaintiff's
Evidence

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No.15

Doyle Prince,
23rd November
1956.

Cross-
Examination
- continued.

Cross-
Examination.

In the Supreme
Court of British
Honduras

Monday 26th November, 1956

DOYLE PRINCE sworn saith :-

Cross-examined by Mr. McKinstry continued :-

Judge's Notes

Plaintiff's
Evidence

No.15

Doyle Prince,
26th November
1956.

Cross-
Examination
- continued.

I left school at 16. Only persons I saw between 2.30 p.m. and when I left office on afternoon of 12th November were deceased, Major Jeffreys, Mrs. Jones, Mansell Turton, Muriel Pantin, Rowland Dewgard and Tailor and Fred Perera who drove deceased home. I think Perera came to upstairs office. Difference between first and second draft - First one had Bynoe as one of Executors. He was Manager of Royal Bank. He was not included in second. In first Pinks was beneficiary and in second left out. Penso was put in for Bynoe as Executor. Difference between second and third - In third Pinks' name was put in again as a beneficiary. Mr. Penso was taken off as an Executor and replaced by Mr. F.C.P. Bowen. Miss Muriel Bladen's name was added as a beneficiary: Between third and fourth - Mr. Bowen's name was replaced by Mr. Penso and Muriel Bladen's name was omitted as a beneficiary. Previous to that I had written out a Will for Mr. Fred Wesby - just that one no other. After Dewgard came in I did not leave room. I remained there all the time. After Dewgard came in probably I left room for a few minutes and then returned: (Witness is referred to paragraph 9 of Affidavit of 27.2.1956). It is not correct that I stayed in room all the time. I do not at the moment remember what I went out for. I may have been out about a minute. I did not lock door of office with a key. Deceased, Pinks and Dyer each had a key to office. In office there was a safe. So far as I know deceased kept key of safe. I do not know of existence of any other key of safe. I did not mention about deceased, Jeffrey and Mansell getting into car in my Affidavit (Paragraph 11) as I was not asked. Question of other parties being present did not arise. Witness is reminded of what he said in examination-in-chief about debentures. For affidavit I gave Registrar words as far as I remembered and he put it in legal language and asked me if it sounded correct. I said Yes. Affidavit sounded correct to me. I used words "bequeath" to Registrar. I think I used word "devise". I believe deceased mentioned something about paying his just debts and funeral and testamentary expenses. I did not tell Mrs. Jones how much she was to get under Will or any particulars at all. I did not tell

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10 either Penso or Mansell Turton how they were interested in Will. Neither of them pressed. At that time I did not know Miss Price knew anything about Will. After deceased died I took part in search for his Will in the office. That was after the Administrator's return from U.S.A. A search was made in his office for Will a short time after his death. I did not take part in search and was not present during search. I was not there when

20 1918 Will was found. I heard it was found. I heard so before Administrators went to U.S.A. I do not remember who told me I knew Administrators were going to the U.S.A. to search for a Will. That is why I told Registrar about existence of 1955 Will. I did not tell any of people that were going. I did not ask Registrar specifically to tell them. I merely made a report to him. I understand the then Registrar (Mr. Thompson) is no longer in this country. Conversation with Mrs. Jones re another

30 Will being found took place before she left for U.S.A. about three weeks after deceased's death. I had no conversation with Mr. Jeffrey about this same matter. I gave Mrs. Helen Clarke's name to Registrar originally, but it was left out in my Affidavit filed by Francis. I assumed everybody's name was in it. When I read it before swearing to it I did not notice her name had been omitted but I did so notice when reading it again closely afterwards. Deceased did say after reading final draft that it sounded like what he wanted but he would have to see Nellie Price about it because he had spoken to her about making a Will for him. All I heard between Dewgard and deceased besides signing of Will was deceased telling Dewgard he was not feeling well and that he had better come back to see him the following week. I was then one of the most Junior clerks in office. Robert Acosta was the messenger.

Re-Examination

40 Re-Examined :-

I did not pay rent for living at house of Deceased. I got my food there. I did not pay for that. I also got clothing and cash from time to time. All these were in addition to my salary. I do not still live in house of Deceased. I now have to pay for food and get no extras. Deceased was hard of hearing and wore a hearing-aid. Deceased's desk was always littered with old papers and parcels. Sometime after I reported Will to Registrar

In the Supreme
Court of British
Honduras

Judge's Notes

Plaintiff's
Evidence

No.15

Doyle Prince,
26th November
1956.

Cross-
Examination
- continued.

Re-Examination.

In the Supreme Court of British Honduras

Judge's Notes

Plaintiff's Evidence

No.15

Doyle Prince,
26th November 1956.

Re-Examination
- continued.

someone told me I would not benefit under Will I had written and witnessed for Deceased. That was about a week after I had gone to Registrar. Son of Deceased who lived with him at time of his death was Sydney Joseph Turton. Suit was hung up in a room adjoining deceased's private office. The tailor hanged it up there.

(Evidence given by witness de bene esse put in and marked 7)

In my evidence I did say "there were times when Price was there but Turton did not want him to type certain letters and he would call me." I was not asked at that examination whether any persons had enquired of me if I had made a Will. I was then asked whether I had disclosed that information. Deceased's private office would be locked when he was not there.

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Through Court: At one time Sydney Joseph Turton worked at office of deceased. His father called him Sydney. There was another Sydney whose name was Robert Sydney Turton. He was called Robert by his father. He also worked at the office. Neither of them worked in office at time of deceased's death. There was also a Turton called "Straker". His full name was Robert Straker Turton and not JOSEPH STRAKER TURTON.

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No.16

A.O. Longsworth,
26th November 1956.

Examination.

No.16

EVIDENCE OF A.O. LONGSWORTH

ALFRED OWEN LONGSWORTH sworn saith :-

Acting Registrar of Supreme Court and as such in charge of Court Records. Before I took over one R.A. PITTS was Acting Registrar. He died in September last. Before him Registrar was W.P. THOMPSON who resigned on 14 September 1956 and has gone to Canada. I have searched records for a document purporting to be the contents of Will dictated to Registrar by Doyle Prince. I have found no such document signed by Prince or the Registrar. There is a typescript of such document amongst records. It was in an envelope marked "Confidential Re Turton Estate". Above these words is written

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"W.P. Thompson - Eyre St." There were a number of other documents also in that envelope. There is a statement purporting to be signed by Dewgard and letters and copies of letters. These were found by me in the safe when I took over from Mr. Pitts. Words "Confidential - Re Turton Estate" are in Mr. Pitt's handwriting. I am not certain in whose handwriting words "W.P. Thompson - Eyre St." is.

In the Supreme Court of British Honduras

Judge's Notes

Plaintiff's Evidence

No.16

A.O.Longsworth,

26th November 1956.

Examination - continued.

10 (Statement in typescript purporting to be Will dictated by Doyle Prince put in and marked 8).

Amongst documents in envelope is a letter dated 2nd May 1956. It purports to be signed by "Margaret R. Turton".

(Mr. Rowe admits it is Margaret Turton's letter). Put in and marked Exhibit 9.

Documents shown me are certified copies of Inventory of deceased's Estate. Put in and marked Exhibit 10.

Cross-Examined

Cross-Examination.

20 Cross-Examined by Mr. Rowe:

I have never seen Mr. Thompson type. I was with him in office for 4 months this year. I cannot say if he could type. I have never seen original of Exhibit 8. I joined Registry on 10th March. Mr. Thompson was away. Then Mr. Pitts fell ill about 15th May. Mr. Thompson returned sometime in June. Pitts died on 18th September. Thompson left on 14th September. I took over safe from March. I only discovered these papers quite a while afterwards. I visited Mr. Thompson's home once or twice and knew him quite well. He lived at the Gabourel's house. It is a guest house.

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Re-Examined

Re-Examination.

Re-Examined:

Gabourel's Guest House is in Eyre Street.



In the Supreme
Court of British
Honduras

No.17

EVIDENCE OF ROLAND DEWGARD

Judge's Notes

Plaintiff's
Evidence

No.17

Roland Dewgard,
26th November
1956.

Examination.

ROLAND DEWGARD sworn saith :-

Live 1657 Collette Canal St., Belize. I knew deceased. He was Co-Executor to my father's Estate. He died on 15th November 1955. I last saw him on the evening of the 12th November between 4 and 5 approximately. I saw him at his private office. I went to see him in connection with my father's estate. On arrival in general office I saw Mansell Turton there. I asked Mansell if I could see Deceased and Mansell went into deceased's private office returned after a short while and asked me to wait a little. I waited. After a little while Deceased shouted for Mansell who went into private office and returned shortly and showed me in. In private office I saw deceased and Doyle Prince. Deceased was seated at his desk and Doyle Prince was at his right. I told deceased I had come to speak to him about my father's estate. He told me he was not feeling quite well and suggested that I drop in the following week when we could discuss the matter. I said "good evening" and was on my way out when deceased called me back and using his own words said "Son as you are here you had better sign this thing for me". It was a document of foolscap size. I did not know what document was. I did not ask and he did not tell me. It was in manuscript. Deceased signed it and passed it to Doyle Prince who signed it. Prince passed it to me. Deceased pointed to bottom under Doyle Prince's signature showing me where I should sign. I signed it. When deceased signed Prince was at his right and I was to right of Prince. Deceased was behind his desk. Desk has a sort of shelf that can be drawn out. Prince was sitting to that and I was to right of Prince. All three of us were in the room when each person signed. I then said "good evening" and left. Both deceased and Prince were in same position when I left. I subsequently gave a statement to the Registrar which I signed. I do not remember the date I did so but I think it was sometime in February.

Cross-
Examination

Cross-Examined

Cross-Examined by Mr. Rowe :-

I live in Belize and have a farm called Rich Dew. As far as I can remember no one came to me

for an Affidavit in February. I signed document in office with a pen Prince passed to me. I cannot say whose pen it was. Document shown me is the one I gave to Registrar and signed. On document there appears "and then Mr. Turton passed it (the document) to me and I signed it". While I was in deceased's office Prince was there all the time. I am most positive about that.

At 12.27 p.m. Court adjourns to 2 p.m.

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At 2.5 p.m. Court resumes.

I did not put date on statement I made to Registrar. My father died 29th April, 1944. Item I wanted to speak to deceased about my Father's Estate was a deposit in the Orange Walk Treasury I had been told about. Deceased had possession of certain share certificates issued in my father's name. Up to time of deceased's death they were in his possession. I got possession of them after deceased's death. I got possession of them a little before July this year. They were handed over to me by Mr. Jeffreys and Miss Margaret Turton. Soon after I got them I went to the U.S.A. I did not have them turned over to my name. I did not receive any benefits from them I sold them. I got a cheque for them (Witness warned that he is not bound to answer any question that may incriminate him) Question:- Did you get interest on these bonds covering a number of years? (Witness refuses to answer as he says he feels answer may be likely to incriminate him). I am positive share certificates were my father's. I was not the only beneficiary under my father's Will as far as I know there are two others. I made no attempt before 1956 to get these share certificates. I did not need the money before. Shares were worth a few thousand dollars. I did not bother to ask for shares before as they were in Deceased's hands. Anybody can use money anytime. I gave a statement to Registrar. I did not give one to Mr. Francis nor to any other lawyer in the case. As far as I can remember I did not tell anyone I had given a statement to Registrar. I was not told to keep the fact that I had witnessed the document in deceased's office confidential. I was sent for by the Registrar and that is why I gave him a statement. I went to Registrar's home. It was in morning sometime between 9 a.m. and 12 noon - I do not quite remember. Registrar asked me if I know Mr. Turton and

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In the Supreme
Court of British
Honduras

Judge's Notes

Plaintiff's
Evidence

No.17

Roland Dewgard,

26th November
1956.

Cross-
Examination
- continued.

In the Supreme
Court of British
Honduras

Judge's Notes

Plaintiff's
Evidence

No.17

Roland Dewgard,
26th November
1956.

Cross-
Examination
- continued.

if I did what I knew about the affair. I told him what I knew and he wrote it down and asked me to come back the following day. I went back the following day to his house and he handed me typewritten document already shown me. He asked me to read it over. I did so and signed it as being correct. Only lady that showed me in was there. After showing me in lady left. I was subpoenaed to come to Court. On afternoon of 12th November when I went to Deceased's office I did not see anyone but Mansell Turton. I did not see Mr. Pinks at his desk or Major Jeffrey. I did not know what document I was signing was. I did not read it but saw something about witness where I signed. When I signed for deceased or my late Father I did not read what I was signing. They had sledge hammer over one's head and one could not talk back. When I heard deceased was dead I was surprised as I did not think he was sick to that extent. He looked nice and fine to me and appeared in good health. Deceased did not send for me. Deceased was my god-father. I do not think share certificates were in my father's name but really those of Deceased. No one asked me to swear to any Affidavit. I did not hear that Doyle Prince had gone to Registrar and said he had made a Will for Deceased. I heard so quite recently when it was all over Town. I cannot say when that was. I returned from U.S.A. in early part of October. I heard this all over the Town on my return. I may have heard about it before I went to U.S.A. but I am almost positive I did not. I was three months in U.S.A. I was summoned to give evidence on statement I had given previously. I think so and I know so now. No one approached me and asked me to give evidence until I received a summons to appear here. I say on Oath that I did go to Deceased's office on 12th November. Registrar did not tell me that deceased was supposed to have made a Will on 12th November. I heard that story late. Registrar did not tell me he had taken a statement from Doyle Prince. I met Doyle Prince a number of times after making statement to Registrar. I do not remember telling Prince that I had given a statement to Registrar about the signing of document for deceased. Before I went to U.S.A. I did not make any effort to ascertain why Registrar sent for me. I left here about July. I met Major Jeffrey several times before I went to U.S.A. I did not meet Miss Nellie Price. I saw Joseph Kirkwood and Mrs. Aura Jones a number

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of times before I went to U.S.A. I am positive Mr. Kirkwood did not ask me if I had signed a document for deceased on 12th November. I do not remember if Mrs. Aura Jones asked me. I did not know what document I signed. I had no reason to keep it a secret I did not meet Ernest Jones but saw him in street. I am beginning to learn farming. I have had farm 7 years. I am also a carpenter and tailor and a number of things. I have never worked for Real Estates Ltd., as a carpenter. I know George Price. I saw him a number of times before I left for U.S.A. Price never told me he had heard about a Will made on 12th November. I did not mention that to him. Registrar sent to call me and I went. He asked me if I knew deceased I told him Yes I did. He asked me when last I saw him prior to his death. I told him I saw him on the Saturday prior to his death. Registrar wrote this information on a sheet of paper. He asked me exactly what transpired on that Saturday and I told him. He did not then ask me to sign it but asked me to return the following day. I had then given Registrar all information I had on the subject. Registrar did not say why he wanted me to return. He did not then read over to me what I had told him.

Cross-Examined

Cross-Examined by Mr. McKinstry:-

When I went to deceased's office on 12th November I did not see Aura Jones, Muriel Pantin or Meighan (Tailor) or Major Jeffreys or Mr. Pinks. I was in office about 10 minutes altogether. Deceased signed and then Doyle Prince signed to left of deceased and a little below and deceased pointed out where I should sign and I did so a little below Prince's signature. There was nothing written below my signature. I signed at bottom of the paper. After deceased's signature there was some writing to the left corner. Prince's signature came immediately at end of writing and mine underneath. I cannot say what the writing was. I did not read any part of document. Paper was foolscap size without lines and a kind of thinnish (Witness shows on a blank sheet of paper where signature of deceased, writing and signatures of Prince and himself were on document - Put in and marked 12).

At 3.30 p.m. Court adjourned to 27th at 10 a.m.

In the Supreme
Court of British
Honduras

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Judge's Notes

—————
Plaintiff's
Evidence

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No.17

Roland Dewgard,
26th November
1956.

Cross-
Examination
- continued.

Cross-
Examination.

In the Supreme
Court of British
Honduras

Re-Examined

Tuesday 27th November, 1956

ROLAND DEWGARD sworn saith :-

Judge's Notes

Re-Examined :-

Plaintiff's
Evidence

No.17:

Roland Dewgard,

27th November
1956.

Re-Examination.

I went to Registrar's home as message I got was to see him there. He was sick. When I went into deceased's premises I remained in general office. From there I could not see into either deceased's private office or other offices. There is a door between general office and private office and one between general office and Mrs. Jones's office. These doors were then closed. Previous to this occasion I had signed documents for deceased. I was not in habit of talking abroad about signing these documents. I knew about certificate shares of my father's during his lifetime as he spoke about them from time to time. At time of his death my father lived with Mrs. Anne Gillett. She had a daughter for him. At time father took up with Mrs. Anne Gillett my mother (wife of father) was alive but she died before him. Under my father's Will deceased and I were Executors. Under Will I was to get all his wearing apparel and books. Other two beneficiaries were Mrs. Anne Gillett and child. They got entire rest of Estate. I was not entirely working with my father during last years of his life. Deceased and my father were business associates. Inventory of my father's estate was prepared by deceased. I signed and swore to it. Deceased told me it was prepared that way to avoid tax. Estate was shown to owe Deceased \$4255.75. Gross assets were shown as \$2331.66. Bankrupt Estate on which no Estate Duty would be paid. Deceased had share certificates. A letter came to me from the U.S.A. this year which I received by mistake and which caused me to go into matter again. In consequence I saw the three Administrators of deceased's estate - Mr. Jeffrey, Miss Margaret Turton and Mrs. Aura Jones. Mr. Jeffrey and Miss Margaret Turton actually handed me the share certificates. Besides share certificates I also got from Administrators money representing dividends on shares which had been received by Mr. Turton. The sum of \$4000.00 odd was deducted from these dividends as representing amount due by my father's estate to that of deceased. I then went to U.S.A. and sold these shares. On my return I made a supplementary inventory dated 30.10.1956 and returned money I received for these shares. Amount is \$20,861.45 (Papers re Estate of Richard Dewgard, deceased, put in and marked Exhibit 13).

Through Court: I prepared supplementary inventory of 30.10.1956 along with the help of the Clerk at the Registry.

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No.18

EVIDENCE OF ROLAND DEWGARD (Re-called)ROLAND DEWGARD sworn saith :- (Re-called)Further cross-examined by Mr. Rowe :-

10 I went to deceased's office to ask him about share certificates in my father's name after a letter from the U.S.A. had come to me by mistake. I did not go up to the Office quite angry demanding the shares. That letter helped to put me better on the track of shares, though I knew of them before from my father. I did not ask deceased for these shares before the 12th November. I received this letter from the U.S.A. after deceased died. The first time I went to the Administrators was after I had got this letter. I could not say how long after. I went to the U.S.A. alone.

Re-Examined :-

20 I did not know from my father how many shares these certificates related to or in what Corporation these shares were taken. I did not bother deceased about these certificates after my father's death. Deceased said he was taking care of everything in view of fact that my father owed him some money. After receiving letter I got in touch with Corporations in U.S.A. and had correspondence with them and found out details about shares.

Case for Plaintiff closed.

No.19

EVIDENCE OF ELSIE SMITHELSIE SMITH sworn saith :-

30 Wife of Robert George Smith. My maiden name was "Gabourel". I live with my two sisters at 34 Eyre Street. That is a guest house run by my sister. In beginning of 1955 (January - February) I was living there. I know W.P. Thompson who was Registrar of Supreme Court in Belize. He was

In the Supreme
Court of British
HondurasJudge's NotesPlaintiff's
Evidence

No.18

Roland Dewgard
(recalled),27th November,
1956,Further Cross-
Examination.

Re-Examination.

Defendants'
Evidence

No.19

Elsie Smith,

27th November
1956.

Examination.

In the Supreme
Court of British
Honduras

Judge's Notes

Defendants'
Evidence

No.19

Elsie Smith,
27th November
1956,

Examination
- continued.

Cross-
Examination.

resident at my sister's guest house from December 1953 to February or mid-February 1955. I have never seen Mr. Thompson use a typewriter in that house. I am a civil servant and I can type. In 1955 I had a typewriter at home. I had it there throughout the entire time Mr. Thompson was there. So far as I know he has never borrowed it. He has never asked me for it. He has never asked me to type anything for him. Mr. Thompson lived on main floor of house. His room adjoined the dining room. I reside in attic of house and typewriter is kept in attic in my quarters. 10

Cross-Examined

Cross-examined by Mr. Wooding :-

I left British Honduras on 16th June 1956. I was in Belize between February and June 1956. I now say Mr. Thompson lived at my sister's guest house until mid-February 1956. As a civil servant I am out on all working days from 8 - 12 and 1 - 4. During February 1956 I was at work. Mr. Thompson was ill at home from beginning to mid-February, off and on. I cannot say dates he was in but he was ill during that period. At one time he was taken to Hospital but I do not know if it was due to a heart attack. I do not know if he did any work of any kind whilst he was ill. I have passed through his room once or twice during entire period he was there. 20

No.20

Irene Gabourel,
Examination.

27th November
1956.

No.20

EVIDENCE OF IRENE GABOUREL

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IRENE GABOUREL sworn saith :-

Live at 34 Eyre Street. I run a guest house at that address. I knew W.P. Thompson Registrar of Supreme Court in Belize. He lived at Guest House for three years. He lived there from December 1953 to mid-February 1956. I have had occasion to go into Mr. Thompson's room. I clean room. I go into room about twice a day. Throughout three years Mr. Thompson was there I have never seen a typewriter in his room. I have never seen Mr. 40

Thompson use a typewriter during time Mr. Thompson was at guest house. I have heard a typewriter being used in his room. As far as I remember I did not see any visitors visit Mr. Thompson.

Cross-Examined

Cross-Examined by Mr. Wooding :-

10 I know Mr. Francis. I have never seen him visit Mr. Thompson. It could be he visited Mr. Thompson without my seeing him. As far as I remember I never leave the house. I have been so for some years. My sister buys my hats and frocks for me. I go to church sometimes. For a year or two I have not been to church.

At 3.45 p.m. Court adjourned to 30th at 10 a.m.

No.21

AMENDED DEFENCE AND COUNTERCLAIM OF
THE DEFENDANT MARGARET TURTON

Delivered 29th November, 1956.

- 20 1. The Defendant admits that the Plaintiff is the natural grandson of Robert Sydney Turton deceased who died at Belize on 15th day of November 1955.
2. The Defendant does not admit the existence of any will executed by Robert Sydney Turton deceased save and except the last will and Testament dated the 10th day of May, 1918.
- 30 3. The Defendant denies that the last Will and Testament of Robert Sydney Turton deceased executed by him and dated the 10th May, 1918 was ever revoked by a Will dated the 12th November, 1955 or at all.
4. As to paragraph 3 of the Statement of Claim filed herein the Defendant repeats paragraph of her defence.
5. Save as has been herein expressly admitted the Defendant denies each and every allegation of fact contained in the Statement of Claim as if the same has been set out herein and traversed seriatim.
- And by way of Counterclaim:-

1. The Defendant repeats paragraphs 2 and 3 of her Defence filed herein.

In the Supreme
Court of British
Honduras

Judge's Notes

Defendants'
Evidence

No.20

Irene Gabourel,
27th November
1956,

Cross-
Examination.

No.21

Amended Defence
and Counter-
claim,

29th November
1956.

In the Supreme
Court of British
Honduras

Judge's Notes

Defendants'
Evidence

No.21

Amended Defence
and Counter-
claim,

29th November
1956 -
continued.

The Defendant Claims:-

- (1) That the Court will pronounce against the said Will dated the 12th of November, 1955, propounded by the Plaintiff.
- (2) That the Court will reject the affidavit of Doyle Prince dated the 27th day of February, 1956, and filed at the General Registry on the same date and a further affidavit of the said Doyle Prince bearing the date the 5th of June, 1956 and filed at the General Registry on the same date. 10
- (3) That the Court will decree Probate of the Will of the deceased dated the 10th of May, 1918 in solemn form of law.
- (4) That the Court will grant such further relief as may be just.

(Sgd) Basil A. Rowe

Solicitor for Defendant, Margaret
Turton.

No.22

Irene Gabourel
(Re-called),

30th November
1956,

Further Cross-
Examination.

No.22

EVIDENCE OF IRENE GABOUREL (Re-called)

IRENE GABOUREL sworn saith:- (Re-called)

Further Cross-examined by Mr. Wooding :-

I used to attend the St. Mary's Church. I did not attend that church regularly in Canon Hubbard's time as I was ill. Apart from period of illness I did not attend church regularly in Canon's time. I have been ill for nearly three years. I was unable to go out as I would like to. I am not a person that likes to go out often but when I go out I go to Church. I have been going out since June this year but not very regularly - once on a Sunday I do not call once on a Sunday regularly as before I was ill I used to go three times on Sundays and sometimes in mid-week. Whenever there is a funeral and I know person if I am able to go I go. I did not go to Arthur Eyle's funeral on 1st October, 1956. I went to Mr. Turton's funeral. As far as I remember that was the last funeral I went to. I do my domestic work myself but at times I have an Assistant. I have three guest rooms all on the main floor. 30 40

No.23

EVIDENCE OF GEORGE ARTHUR YSAGUIRREGEORGE ARTHUR YSAGUIRRE sworn saith :-

Accountant employed at Maestre's Agencies. I am in charge of Insurance Department. I knew deceased well. I knew him from time I could remember. I know Nellie Price. I have known her for a number of years. We are on friendly terms. Both our families are friendly. I remember when deceased died. I went to his funeral. I saw Nellie Price a few days after his death. I spoke to her. She spoke to me. This conversation took place near her office. She mentioned deceased and said she did not get an opportunity to make the Will because Deceased had died. That Deceased had taken her to the Barracks in his motor car, parked it near the old Tamarind Tree and gave her certain instructions about drafting a Will but he died and she did not make the Will. She did not make mentioned of a codicil it was a will she spoke about. She also told me after they came from ride Deceased got very ill and nothing was done. He was not in a condition to talk business. I first gave Counsel (Mr. Rowe) a statement in this case yesterday.

Cross-ExaminedCross-Examined by Mr. Wooding :-

That was yesterday after lunch at about 1.30 p.m. at Maestre's Office. That was to Mr. Rowe. Conversation with Nellie Price took place two or three days after funeral of Deceased. Conversation came up generally. She said she does not think he made any will as she was to make it. (She said she had lost out). He had given her particulars to make a will and he did not live long enough to sign it. That was about it. Nellie Price told me she had instructions to make a will and when she went to Deceased for further instructions he was not fit to do anything and he died. I have told all I know. We were talking about Deceased's death which was talk of Town at the time. Nellie Price said I do not think he left any will because he had given her particulars to draft a will and that was never made because he never lived long enough. She went to him several times and each time he was

In the Supreme
Court of British
HondurasJudge's NotesDefendants'
EvidenceNo.23George Arthur
Ysaguirre,
Examination,
30th November
1956.Cross-
Examination.

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Judge's Notes

Defendants'
Evidence

No.23

George Arthur
Ysaguirre,

30th November
1956,

Cross-
Examination
- continued.

not in a condition to talk business. These instructions she had received from Deceased a few days previously when he took her to the Barracks and parked a car near old Tamarind Tree and despatched the driver so that both of them would be private and he gave her certain instructions. She did not tell me what the instructions were. Mr. Rowe was the first person I told this conversation to.

Witness asked to whom did he mention this conversation and began to answer several people were discussing it. Witness is stopped by Mr. Wooding and asked to whom did you mention this conversation: Answer: To Mr. Rowe: Question: Was he the first person to whom you mentioned it? Answer: YES.

10

Re-Examined

Re-Examination.

Re-examined :-

Before making statement to Mr. Rowe I had spoken about this to several people in the office, such as Jean Maestre.

20

No.24

No.24

Apolonia
Alamilla,

30th November
1956,

Examination.

EVIDENCE OF APOLONIA ALAMILLA

APOLONIA ALAMILLA sworn saith :-

Produce Exporter and Steamship Agent. I have offices in North Front Street in Belize. I know Nellie Price. She is my neighbour and her office is about 5 yards more or less to entrance to my office. I knew deceased. He died in November last. After he died I went to Nellie Price's office on 16th November. When I got there I told Miss Nellie I see Mr. Bob has left us. Miss Nellie with tears in her eyes told me 'Yes Boy, poor thing', and she went on to say that after Mr. Turton's first sickness Mr. Turton had asked to make a will but she went several times to him and he kept putting it off. She has told me that on Sunday before Deceased died he went over to her home in his car and asked her to go out with him.

30

10 She went with him in the car to the Barracks. There Mr. Turton explained to her what he wanted done. She told me she was one of the beneficiaries. Then she told me the morning Mr. Turton died she went over to his residence. When she got by his bedside she held Deceased's hand and asked him - 'How are you feeling?' Deceased did not answer. He shook his head only. Minutes after that Deceased said 'Nell three copies'. Shortly after that Deceased died. She mentioned a will to me. As far as I remember she did not mention word Codicil. She did not tell me Deceased had made will or that Deceased had ever signed it.

Cross-Examined

Cross-Examined by Mr. Wooding :-

20 I gave a statement concerning this matter last night between 8.30 and 9 p.m. to Mr. Rowe. He saw he in Street and I said I preferred to go to his house. We met by accident. I made no date with him. Mr. Rowe came to my house the night before in connection with same matter. That is first time I was introduced to him. I was introduced by Mr. Jean Maestre. He took Mr. Rowe to my house. No one else was with them. I did not tell Mr. Rowe that night what I have said in Court. I did not make any statement to him that night either verbally or in writing. He did not ask me to make any. I refused to come to Court unless I had to. I did not want to be involved. Rowe told me he understood I knew something about the case and I told him I was not going to come to Court unless I had to. I understood he wanted some information and I gave him none. I got a Summons yesterday between 4 and 4.30 p.m. Having got Summons I met Rowe in street accidentally. I told him I had got a summons and he asked me whether I would now make a statement. I said if I must I will and I went to his home to make it. I think I know difference between a will and a codicil. In connection with what happened at Barracks what Nellie Price told me was "will", Miss Nellie Price did not repeat word "will", when she stated what deceased had said at the Barracks. As regards previous sickness Miss Nellie Price spoke about Deceased wanting a will. As regards what happened on the Sunday all she said was Deceased explained what he wanted done. She also told me she was one of his beneficiaries. She did not explain whether it was

30

40

In the Supreme Court of British Honduras

Judge's Notes

Defendants' Evidence

No. 24

Apolonia Alamilla,

30th November 1956,

Examination - continued.

Cross-Examination.

In the Supreme
Court of British
Honduras

Judge's Notes

Defendants'
Evidence

No.24

Apolonia
Alamilla,

30th November
1956,

Cross-
Examination
- continued.

under something he had already written or from instructions he had given her to prepare something. She told me she was one of his beneficiaries not that she was to be.

(Mr. Rowe informs Court that that concludes case for Defendants except for a witness who will be called to put in certain documents and who need not be sworn).

At 3.40 p.m. Court adjourned to 1st December at 10 a.m.

10

No.25

Reply and
Defence to
Counterclaim,
1st December
1956.

No.25

REPLY AND DEFENCE TO COUNTERCLAIM

The Plaintiff says that :-

1. He denies each and every allegation contained in paragraphs 2, 3, 4 and 5 of the Defence and joins issue thereon.

3. The Will dated the 10th day of May 1918, referred to in paragraph 3 of the Amended Defence and Counterclaim was not duly executed according to the provisions of the Wills Ordinance.

20

3. The said Will dated the said 10th day of May 1918 was revoked by the Will propounded by the Plaintiff.

SUBSTANCE OF THE CASE

Under paragraph 2 the Plaintiff puts the Defendant to the proof that the provisions of the Wills Ordinance were duly complied with. Under paragraph 3 the Plaintiff repeats his Statement of Claim herein.

(Sgd.) E.W. Francis,
Plaintiff's Solicitor.

30

DELIVERED the 1st day of December 1956, by
Ewart William Francis, 936, North Front Street,
Belize, Solicitor for the Plaintiff.

No.26

EVIDENCE OF HAZEL USHERHAZEL USHER sworn saith :-

On document shown me I see signature of Robert Sydney Turton (Ex. 14). Below that I see signature of "Frans R. Dragten" and below that my signature "Hazel Usher". Document is in Mr. Dragten's handwriting. I know his signature and that of Deceased.

10 Frans R. Dragten was a barrister-at-law and a practising solicitor in Belize. At date of will I was working with him as a clerk. This document was signed by Deceased and Mr. Dragten and I at the same time. Mr. Dragten and I signed in presence of Deceased. Both of us were present and saw Deceased sign.

20 Mr. Wooding asks for what purpose letter signed by Mr. Courtenay is being tendered. Mr. Rowe says letter is put in to show state of mind of Mr. Courtenay at the time and to contradict part of evidence of Nellie Price. Mr. Wooding says he would like a note to be made of this.

I produce a letter dated 24th February, 1956, signed by Mr. Courtenay. (Tendered and marked Ex. 18).

Cross-ExaminedCross-Examined by Mr. McKinstry :-

Mr. Dragten read over Ex. 14 to Deceased. He was well aware it was his Will.

30 Cross-Examined by Mr. Wooding :-

I know it was Mr. Dragten's custom to read over documents to signatories. That is why I say he read this will over to Deceased. This letter (Ex. 18) appears to be addressed to Margaret Turton. I first saw it a few minutes ago. I know absolutely nothing about it. Margaret Turton is now sitting in Court. Major Jeffrey is also sitting in Court.

Case for Defendant Margaret Turton closed.

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Court of British
HondurasJudge's NotesDefendants'
Evidence

No.26

Hazel Usher,
3rd December
1956,
Examination.Cross-
Examination.

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Court of British
Honduras

Judge's Notes

Defendants'
Evidence

No.27

Nellie Price
(re-called),
3rd December
1956,
Examination.

Mr. McKinstry says he does not propose to call any witnesses but wishes to associate himself with remarks of Mr. Rowe when he opened.

Mr. Wooding asks to be allowed to call Nellie Price in rebuttal as nothing said by Mr. Ysaguirre or Mr. Alamilla was put to him in cross-examination.

No.27

EVIDENCE OF NELLIE PRICE (Re-called)

NELLIE PRICE sworn saith :- (re-called)

I know Mr. George Ysaguirre. I have known him for many years. I was sitting in Court when he gave evidence and I heard conversation that took place between us two or three days after funeral of Deceased. I never had any such conversation with him. I also know Mr. Alamilla. He is a neighbour of mine whom I have known for many years. I heard his evidence. I did have a conversation with him day after death of Deceased - that is very day of funeral. He came into office and said I see Mr. Bob has left us. I told him yes. I was very much upset and partly crying. I told him deceased was such a good and kind friend to me and had every confidence in me so much so that when he was very sick in August last (meaning 1955) he spoke to me about making his will for him; that I went to him several times and he put me off on account of others being in the way; that as late as Sunday he came for me in his car took me to the Barracks and told me that he wanted certain things done and told me what they were; also that he took sick the very night and that I went to the house and that just before he died his last words were "Nell three copies". Mr. Alamilla then said to me Miss Nell I hope he remembered you. I said yes I am a beneficiary. He then left.

Cross-
Examination.

Cross-Examined

Cross-Examined by Mr. Rowe :-

I have known Mr. Ysaguirre for a number of years. I only began having chats with him since June this year. I speak to Mr. Alamilla all the time. It is not correct that I have been having chats with him for a long time. It is only since he came to work at Maestre's that he came into my office and solicited all my insurances that I have been having chats with him. He came to work with Maestre's in May, 1956 and first came to my office in June.

Cross-Examined by G.M. McKinstry :-

Mr. Alamilla and I are neighbours in offices - not dwellings.

NOTES OF ARGUMENTSIn the Supreme
Court of British
HondurasNo.28Notes of
Arguments on
the 3rd to 6th
December 1956.

Mr. Rowe addresses :-

Wishes to remind Court of certain elements which should be borne in mind in considering evidence.

10 Approaching evidence: Remember where onus of proof lies. Defendant has to prove nothing: It cannot be said that Plaintiff did not know Major Jeffrey and Mr. Courtenay were not relevant witnesses who may have supposed allegation that a will dated 12th November, was made.

Nellie Price stated she disclosed existence of Doyle Prince will to several persons, including Major Jeffrey and Mr. Courtenay. If that is so, persons whose task it is to establish 1955 will should have called Major Jeffrey, Mr. Courtenay and Mrs. Aura Jones. They have not done so.

20 Woodward vs. Goulstone 11 A.C. 469, 475 - Lord Herschell - "Substantially testamentary dispositions of Testator".

Jamean on Wills - 8th Ed. p.28.

Barry vs. Butlin - 2 Marere's P.C. Cases at p.481.

Sugden vs. Lord St. Leonards 1876 IP 154, 177, 178.

Compare position of Miss Sugden as against that of Doyle Prince.

30 Writing one of 4 drafts - suspicions in it-self.

Defendant: does not concede or admit any document was written or drafted. Whole story about 1955 will is just a wicked concoction. Court justified in so finding.

40 Bear in mind circumstances in which will comes to this Court: Prince goes to Registrar - keeps silent otherwise! Goes to Registrar at his house: Returns and Registrar types a document which he signs. Document not forthcoming! Re Dewgard Registrar writes out statement in long hand and asks him to return. He does do and sees typed document which he signs. Several trips in connection with statements. Original Prince document

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No. 28

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- continued.

not found nor manuscript of Dewgard's statement
not there. Neither document dated. Contrast
position in Sugden Case: 179, 180.

To what extent statements of Doyle Prince and
Nellie Price corroborated by independent testimony?

In this case no documents corroborating testi-
mony of these witnesses. Only Doyle Prince's
imagination supported by Nellie Price.

Sugden Case - 222 - Lord Cockburn
243 - Jessel M.R., 244

10

Mr. Sugden confirmed in every material res-
pect: 245, except as to residence.

Miss Sugden: (1) opportunity of familiarizing her-
self with documents and her father made her fami-
liar of aspects thereof an ordinary individual
would not possess.

Contrast Doyle Prince: Corroboration of Miss
Sugden: Not unusual for Prince to be in office on
any Saturday afternoon. Attempt to bolster evi-
dence of Prince by other witnesses.

20

Tailor Neighan: Refers to differences in
evidence of Meighan and Prince in this Court and
Prince's evidence de bene esse.

(1) Evidence de bene esse: Prince reads drafts:
Nothing said to that effect in this case.

(2) Neighan does not support evidence that Prince
left private office with others.

(3) Filing of Suit - where?

(4) Discrepancy as to knocking on door - Between
Prince and Meighan.

30

(5) Meighan: Mrs. Jones called out of her office
to see suit.

Prince: Deceased went into her office to
show her suit.

Events occur at a very short space of time:
Both witnesses cannot be relied on.

Roland Dewgard:

Money realised by shares. No effort to get
them in lifetime of Deceased.

Brought to Court to say only one thing:

40

If these persons have set out to establish a
fraudulent non-existence will - all they have to

tell Court is for Prince to say document he wrote was a will. Suppose deceased made a draft of will that afternoon all that would be required of Nellie Price is to say thing she saw was a will and what she was asked to make at Barracks was a Codicil.

Witness Ysaguirre and Alamilla!

Disclosure by Nellie Price of existence of will at office: see pp.13 and 14.

10 Jeffrey wrote two letters and sent them to U.S.A. to inform Margaret Turton and Aura Jones that Doyle Prince had reported to Registrar that he had written a will to Registrar before he died. Major Jeffrey writing to give Margaret Turton and Aura Jones news.

Documents damn Miss Nellie Prince's evidence:-

Affidavit of Administrators dated 29.11.1955.

Document prepared and filed by Mr. Courtenay;

At 12.30 p.m. Court adjourned to 2 p.m.

20 At 2.4 p.m. Court resumes.

Order made by C.J.: Not open to this Court to draw any inference as to knowledge of C.J.'s hearing or reason for Order. No evidence as to what knowledge C.J. had.

Will very old one.

30 Far from attacking Mr. Courtenay's integrity intention is to bring all facts before Court relating to Nellie Price's disclosure about will to a number of persons including Courtenay from as far back as 19th November and to say what are the probabilities in light of conduct of those persons. Most unlikely and improbable that a lawyer of Courtenay's experience and an officer of Court would have had that information for 10 days - did not disclose it to Court; but on contrary prepares affidavit and obtains signatures of persons who Nellie Price says she also informed of existence of will of Doyle Prince. Consider cumulative effect of all those factors!

40 Two of three go off to U.S.A. to find a will. Such a will must have been made prior to 12th November and would be revoked by letter. It must have been obvious to Solicitor for Estate.

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Letter to Miss Margaret Turton in England dated from Courtenay.

Inescapable conclusion that Jeffrey, Margaret Turton, Aura Jones and Courtenay did not know of existence of 1955 will.

Two witnesses called as to conversations with Nellie Price - Ysaguirre and Alamilla - not beneficiaries under will. How did Alamilla come to give evidence.

Reasonable inference to be drawn from Nellie Price's conversation with Alamilla, that deceased died without making a will. "Three copies" of what? Will or Codicil? Switch word and deed is done. 10

Witness George Ysaguirre - conversation denied by Nellie Price. Why should witness come to Court and lie about Nellie Price. Not shaken in cross-examination!

Is it not likely Nellie Price would be saying things of that nature just after death of Deceased? No motive suggested for witness to lie: 20

Silence of parties as to this 1955 will - neither human nor reasonable!

If suspicious circumstances surrounding evidence for Plaintiff he would have failed to discharge burden placed on him.

In opening case Wooding promised - (1) he would call evidence that Deceased has on him a large brown envelope in which he carried important documents: Nellie Price saw him extract envelope from his right hip pocket and in it there was the will. He extracted it and she looked at it and made mental note of his dispositions. Again she saw it to look at date? 30

Further it would be proved that he had brown envelope in his right hip pocket when his trousers taken off and handed to Margaret Turton.

What are facts?

(2) Promised he would produce two witnesses Kirkwood and Perera to prove this. 40

Kirkwood's evidence! Witness failed to come up to promises made by Wooding.

(3) Evidence led to show Miss Margaret Turton burnt something.

Apparently to rebut presumption that Testator destroyed Will Animo revocandi.

Will last seen in possession of Testator by Nellie Price at about 12.30 p.m. on Sunday.

Envelope in trousers rolled up and put in wardrobe near to head of Deceased's bed.

Would Deceased ask Margaret to get trousers and she would stand there and do nothing? Ruled house with iron hand!

10 Presumption against fraudulent abstraction of wills from possession of a Testator!

Allan vs. Morrison & others (1900) A.C.604.
"Sort of Will Testator might be expected to make."

Allegation that Margaret Turton burnt something! At that time Sydney Joseph Turton says Aura Jones and Margaret discussing something.

Further, Margaret burnt a will with knowledge that she was to share shares in Royal Bank with Aura - larger interest than anybody else.

20 Allegation is that this was done on Thursday morning and 1918 Will only found on Thursday night.

Doyle Prince was a very minor employee of Deceased. Gave information to Doyle Prince: not a word to Rowland Dewgard.

Part of case for Plaintiff that Registrar typed case for Prince!

Prince said nothing because he thought it confidential.

30 Circumstances that no will ever made:- Evidence that when Deceased read fourth draft he said he will have to see Nellie Price about it.

In his affidavit he adds "because he had spoken to her about making a will for him".

That should be considered in light of evidence given by Ysaguirre and Alamilla.

At 3.50 p.m. Court adjourned to 4th at 10 a.m.

J.

TUESDAY, 4th DECEMBER, 1956.

Suit No.12/1956 continued.

40 Mr. Rowe continues :-

If Testator had no animus testandi even if

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- continued.

document produced purporting to be executed as a will it is invalid.

Lister vs. Smith 3 S.W. & Tr. 282 - 164 E.R. 1282:1285.

Testator never intended it to operate as a will.

Evidence must be very cogent and conclusive!

Evidence:- Testator states he will have to see Miss Nellie Price: Nellie Price says Testator said "It was not complete". Nellie Price always available to Testator even on Saturday. 10

Two witnesses Ysaguirre and Alamilla.

Testator says "I got Doyle Prince to write out this one for me".

NEVER was any testamentary document executed at all in Deceased's office on 12 November, 1955.

No witness by whose evidence Court can check story of Doyle Prince and Nellie Price that a will was made and executed.

Discrepancies between Prince and Tailor Meighan. 20

Evidence that Registrar Thompson did not use a typewriter. Not absolute proof that Thompson did not type - concedes! Probability is so! Therefore Doyle Prince is not speaking truth on that point.

Why should Plaintiff insist statement typed and original disappeared.

Documents undated!

No contest as to whether Prince was at Deceased's office or Nellie Price at Barracks on the Sunday morning. 30

See Notes on p.14 - p.17: What said by Nellie Price.

Dewgard unreliable and nervous - admits swearing to something untrue.

FREDERICK WESTBY:-

KIRKWOOD: Will in Cabinet: If Kirkwood remembered will in cabinet, Deceased would also have remembered it and know of existence of this will now destroyed. 40

Letter written by Margaret Turton to Registrar. Intention to make a new will: Fix up that thing for me!! Accept poor me that he had not made any testamentary disposition.

GEORGE PRICE: Keeps secret locked: Went to U.S.A. to look for a will and also search safety box.

Was Deceased a profit when he told Prince not to say anything until he was sure will could not be found?

Memory of Prince:- Extracts dictated: Shies at reproducing.

Goes to Registrar: Was story concocted after Administrators had gone to U.S.A.?

10 Why did not Nellie Price produce Prince herself?

Peculiar behaviour of all persons: all in same office.

Mr. Wooding addresses :-

Courts warned about proper functions of authorities.

20 Principles of law a decision established or illustrates and illustration of that principle in course of a discussion of that principle as to particular facts on which principle discussed.

G & C Kreglinger vs. New Patagonia (1914)
A.C. 25 39 & 40.

Lots of expressions used in Sugden case have no force when one has a simple form of will without complex words and expressions.

Principles of law established in Sugden case and Woodward vs. Goulstone :-

30 (A) A will differs in no way from any other instrument in so far as concerns the admissibility of secondary evidence to prove its contents in the event of its being lost.

(B) Such secondary evidence may be simply, or it may include the oral evidence of any person who has seen or otherwise had an opportunity of knowing the contents of the lost will.

40 (C) Because of the safeguards which the Legislators has thought fit to impose by requiring wills to be authenticated in a particular manner so as to leave no doubt in the mind of the Court that it has before it that which really expresses the will and intention of the Testator, parse evidence of the contents of a lost will must be clear and cogent so as

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- to satisfy the Court beyond all reasonable doubt that the contents deposed to are substantially the testamentary dispositions of the Testator.
- (D) Notwithstanding the need for such cogency of proof the law does NOT require corroboration of any oral evidence of the contents of a lost will even though that evidence be given by an interested party. It is merely desirable, as distinguished from obligatory that the accuracy of the witnesses' recollection be confirmed but the absence of such confirmation will not prevent the Court from accepting the testimony if satisfied as to its accuracy. 10
- (E) Pre-testamentary and post-testamentary declarations of the Testator are admissible in support of such oral evidence as may be available.
- (F) The fact of a will being lost after having last known to be in custody of the Testator raises a presumption in law that it was destroyed by him animo revocandi but that presumption is one which may be rebutted the onus of so doing being on the party propounding the lost will. 20
- (G) Whether presumption is rebutted or not is a question of fact to be determined in accordance with the circumstances of each case.
- (H) Probate should only be granted of a lost will if the Court is satisfied that it has before it the whole or the substantial parts of the Testamentary dispositions of the Testator. 30
- Re (C) Woodward vs. Goulstone 11 A.C. 475 to 476
- Re (D) Sugden vs. Lord St. Leonards (1876) 1 P.D. 224 (Lord Cockburn) 230, 247, 249, 252. All other Judges agree with Chief Justice's conclusions and reasons. 244 and 245 Jessel M.R.
- Re (E) Pre-testamentary declarations go to intention and Post-testamentary to the question of contents - neither as to fact or due execution. 40
- Re (F) Sugden vs. Lord St. Leonards 195, 217 and
& (G) 218
- Re (H) Sugden vs. Lord St. Leonards 230
Woodward vs. Goulstone 11 A.C. 474 (middle paragraph) 478.

Those are principles of law to be taken from these two cases. Not what Rowe sought to erect. In Sugden long and complicated will. Then legally trained mind required.

Rowe:

Sugden vs. Lord St. Leonards

p.177 instrument of this kind
Long and complicated will. Special training.

10 p.179 corroboration desirable but not essential
in law - so laid down in Court of Appeal,
practical, desirability.

p.122 Recollection of dispositions "contained in
the will which she has spoken"
"this kind, with details more or less of a
technical character"

all this relevant in the case of a simple will.

Asks Court to real will in Sugden Case - p.244.
credibility contested or established whether ac-
cepted or otherwise!

20 Is Court satisfied beyond all reasonable
doubt that it has substantial testamentary dis-
positions of Testator? Same manner in which
Juries determine criminal cases?

What is nature of confirmation which is said
to be desirable in the interests of accuracy?

30 No prescribed rule has been or can be laid
down each case must depend on its own particular
circumstances. In a long and complicated will
where imposition in memory is great, desirability
of confirmation in a number of respects will be
greater than in case of a simple will. Where
objects of Testator's bounty are all persons well-
known and familiar to witness imposition on his
memory less than if objects of bounty are strangers.

Tell a man this is confidential, do not tell
it to anybody - sure to impress it on his mind.

Sugden vs. Lord St. Leonards.

p.240: "Position of the Testator and the probability
of the disposition."

40 What more reasonable and rational will than we
would expect Deceased to make:-

Objects of bounty -

1. Old employees faithful to him for years.

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2. Two old friends and cronies whose companionship enjoyed for years.
3. Executors: one of cronies (Jeffery); business adviser and employee (Penso).
Daughter who has returned to Jamaica to take charge of Company he had formed, whom he regarded as having business sense.
4. Two children working and two living with him. Special bequests.
5. Remembered Co. to take out real property and given shares to 8 children and Co. indebted to him by way of debenture - He says forego debt cancel it. 10
6. Lady he loved: Her he remembered also.
7. Residue in trust for all children, save one with whom he had parted company when she was a tiny child.

Administration of Estates Ord. 34/1953 as amended by 6/1954 - Sec. Provision made for Jeffery - idle to say he is left out. 20

Sort of will reasonable and expect men to make.

1918 Will - same testamentary pattern: same confirmation of Doyle Prince Will.

Rowe:- Barry vs. Buntlin line of cases:-

Do not trouble question of accuracy or acceptability of recollection of any witness to the contents of a lost will. They go to question as to whether a will, the contents of which are known or are not in dispute, falls properly to be regarded as the last will of a free and capable Testator. Testator's knowledge and approval of contents and NOT contents itself. If Court finds person who prepares will is a person getting large benefits Court is put upon enquiry and has to be satisfied Testator knew and approved of that benefactor. 30

Mortimer on Probate - 7th Ed. 70 to 73.

Preparing a will in these cases means making it and not merely writing it in physical sense.

Harmes vs. Hinkson (1946) W.N.118. This does not touch this case - only point of union is that person who is an interested witness will have his evidence received with greater caution. In last resort it is a question of credibility of witness 40

and his evidence. It may or may not be desirable to have confirmation of his accuracy. Depends on kind of will and circumstances.

Question: Is Court satisfied beyond reasonable doubt that it has before it substantial testamentary dispositions of Testator?

At 12.30 p.m. Court adjourned to 2 p.m.

At 2 p.m. Court resumes.

Mr. Wooding continues:-

10 Animus Testandi Summarized in Mortimer on Probate 2nd Ed. 121-122. Cannot be suggested that Testator was joking or not serious.

Told everyone that he was not feeling well - told Muriel Pantin he was smelling blood. Had similar illness in August before. Was seeking to get basic dispositions down and let others be done if time permits. May have first thought it a draft, but fortuitous entry of Dewgard caused him to change his mind.

20 ONUS: Most unruly horse:

Robins vs. Nathaniel Trust Co. (1927) A.C. 515 at 5.20. Lord Dunedin "Onus if evidence pro and con evenly balanced".

PRESUMPTION as to REVOCATION: Presumption as to fraudulent abstraction of will.

Allan vs. Morrison & others (1900) A.C. 604.

Logical inference that Margaret had trousers and keys.

30 Do not know that Deceased got out of his bed after Sunday night.

Allen & Merream and others 608 Died in 1897 and will last seen in 1894. Facts: Unlocked safe and himself unlocked tin box: two days afterwards sent for a lawyer.

Exclude accident.

Presumption against revocation.

Possibility of its having been destroyed after his death is a circumstance to be taken into account in arriving at the result.

40 Court inferred from facts proved will in existence at time of death:

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Finch & Finch L.R.1 P & M 371 (1867)

Dictum dissented from: i.e. 1st paragraph.

Will in pocket:

Fell ill: Helped to toilet and back to his
bed: Do not know of his leaving his bed.

On Monday asks for trousers and wants to get
something to have it handy when Nellie Price comes.
When? Inference irresistible Will to have Codicil
made!

Blood transfusion that day - next morning 10
oxygen and death.

Margaret Turton in charge: seen with brown
envelope and burns something: Fails to give expla-
nation. Irresistible conclusion Court must come to
is that presumption has been rebutted!

Finch v Finch 273: Did Testator continue in
same mind from date of will to date of death?
Nothing to show change of intention. Court is
not bound to come to a conclusion about fraudulent
abstraction! 20

Dictum as to will not being in existence at
date of death of Testator is wrong.

Defendant though challenged as to her conduct
does not appear as a witness and subject herself to
cross-examination.

Date of will and date of death.

Did Testator remain in same mind.

What opportunity was there for abstraction if
one so minded.

Whether there is any evidence which unex- 30
plained raises suspicion against the person who
might be so minded and who had such an opportunity?

In Re Sykes 23 T.L.R. 747 (1907)

Dictum dissented from:

Sugden vs. Lord St. Leonards 220 Cockburn C.J.
(Middle para.)

FACTS:

Minute contradictions or divergencies:

Podmore vs. Whellor: 33 L.J. P.M. & A.143 (1864) 40
146. Meighan comes to try on suit and get money:
that is his interest.

Where any party to a suit has direct evidence to prove or disprove a particular fact but withholds that evidence and relies on inferences he asks Court to draw from ambiguous documents or circumstances, the Court should refuse to draw them and hold fact not proved as disproved as the case may be. Court is entitled as a matter of right to best evidence available. Let us get facts and not hide behind smoke-screens.

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10 Margaret Turton called Joseph Sydney Turton.

Hazel Usher produces letter and addressed to Margaret Turton.

Major Jeffery has been in Court and reliance placed on ambiguous letter he wrote in February.

Did Nellie Price make disclosure on morning of Friday 18th November in Deceased's office?

20 Evidence of Nellie Price: Refused to make copies and why? No attempt to suggest she was wrong in refusing. Why did she refuse? She says why! Has anybody attempted to give any direct answer to contrary. Several people present all interested parties. Joseph Kirkwood supported Nellie Price.

Sometime after made disclosure to George Price - he also supports her on that point.

30 Disclosed it to Mr. Courtenay: When Counsel is retained in a case not normally called as witness: If vital to Defence why not Courtenay called. Nellie Price sticks to it in presence of Courtenay. Why did she not do like Joseph Sydney Turton (His evidence re Courtenay).

Why was Courtenay not called? Either he would support Nellie Price or is not a man of integrity. Not multiplicity of witnesses.

Two witnesses called by Plaintiff to support Nellie Price.

Defence challenging Nellie Price's evidence: not a single person put in box to contradict Nellie Price on that point.

40 Documents from which Court asked to draw inferences.

Affidavit of Administrators:-

"We believe" Nellie Price says they refused to believe her what is wrong about that.

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Petition: "believed" "know of no other will."

Aura Jones speaks to Doyle Prince.

Mansell Turton and Penso also speak to Doyle Prince.

What is then wrong or inaccurate in Petition. Want to be clothed with necessary legal authority to make investigations.

Order made: Provisional order not to extend beyond a year or determined in event of later will being found. 10

Reasonable inference that Court must have been told something to limit its order. Ridiculous to say because will was 1918.

Asked to brand people liars because of inferences from ambiguous documents.

Letter from Courtenay to Margaret Turton. Know nothing about it. New - what? Report has been made to Court". Whether the Administrators believe this or not". Courtenay knew of Nellie Price's report and knew Administrators did not believe it. 20

Letters from Major Jeffery:

"Since your departure for U.S. Registrar General has sent for me etc. "He has instructed me by order of the Chief Justice to make another diligent search for this will."

Inference search already made and another search had to be made.

It is impossible to draw inferences from those documents that Nellie Price not speaking truth. When Defence elected to rest case on these inferences rather than call direct evidence, that is best reason why Court should conclude they have not brought such direct evidence because they have not got it, because Nellie Price speaking the truth. 30

At 3.50 p.m. Court adjourned to 5th at 10 a.m.

J.

WEDNESDAY, 5th DECEMBER, 1956

Suit No.12/1956 continued:

Mr. Wooding continues :- 40

Whether Plaintiff could have called Mr. Courtenay or people present on Friday 18th November. Any

persons present on Friday 18th could have been called as statement made in presence of Defendant during search for will.

That would not apply to Courtenay - made in absence of Defendant, and therefore not open to Plaintiff to call to support Nellie Price.

Two witnesses called to attack Nellie Price.

Ysaguirre:- Conduct in box: shifty and could not stand still.

10 Generally speaking gave indication of being utterly untruthful.

See last remark in Rowe's opening:- Counsel only refer to Alamilla. Conversation on day of funeral. That Rowe's opening was on Thursday 29th. Alamilla interviewed by Rowe at Alamilla's house on night of 28th. He refused to say anything then. If Alamilla did not tell Rowe anything on night of 28th on what did Rowe open on morning of 29th. It follows that Rowe opened on what Maestre told
20 him and not Alamilla. On same day and during luncheon adjournment Rowe appears at Maestre's business premises and gets a statement from Ysaguirre who is in employment of Maestre. Subpoena was expected to unhook Alamilla mouth. I do not know but it did. That is with reference to Alamilla going to Rowe's house on 29th to give him a statement. Position at 1.30 p.m. on 29th was, it was not known what Alamilla would say if put in
30 box - an unwilling witness - risky to call. Tie that with Ysaguirre's statement in cross-examination - was that the first time he told anybody of conversation was when he spoke to Rowe.

Pattern: Maestre informed Rowe of what he had heard of conversation between Nellie Price and Alamilla.

When Alamilla refused to say anything - Maestre got his employe to dub in for Alamilla: After he had agreed to do so and gave Rowe statement. After, Alamilla opened his mouth upon getting subpoena.
40 Ysaguirre's evidence was on surface too good to be let go and instead of one witness we have two. Deus ex machina behind all this is Maestre.

Case excited public interest. Stated on 20th, Ysaguirre only came in picture on 29th, in circumstances outlines - he was not known previously to be a recipient of Nellie Price's confidence before then.

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Ysaguirre: says "a few days after death and two or three days after funeral." On morning of Friday, 18th November, Nellie Price refuses to make copies of 1918 Will and telling several persons about 1955 Will. Absurd and stamps Ysaguirre as a liar. Called to substantiate in case Alamilla did not come up to scratch.

Question and answer at end of cross-examination "Rowe first person to whom I mention it."

Why "such as Maestre" - An admission that he came into picture through Maestre.

10

Alamilla:

Was Nellie Price on day of funeral mourning loss of a bounty or of a friend? Was she that morning discussing Turton's affairs or reminiscing over departure of an old friend? Submits latter.

Not attacking him as being dishonest: speaking of recollection of conversation that took place more than a year ago. Nellie Price spoke of two occasions when Deceased asked her to do things. First incident she spoke about a "will" but later about what Deceased "wanted done." She "was" not "to be" a beneficiary. Alamilla's evidence in accord with Nellie Price's.

20

These two failed to shake Nellie Price's evidence!!

Unnatural and inhuman behaviour of beneficiaries under Doyle Prince will. Silent and inactive notwithstanding Nellie Price's disclosure.

Doyle Prince as well by remaining silent! People do not behave according to a set pattern - but re-act according to truth, environment and influences to which they have been subject:

30

Assess character of TURTON. Judge character of persons working closer to him and subject to his influence. Successful self-made man - having two passions, one making of money and the other the making of love. Mortimer, who demanded unwavering loyalty of few friends he had, the unquestioning service of his employees and of those upon whom he relied for assistance, and also the tight-lipped secretiveness which was a matter of principle and policy with him: study common sense and spartan approach to life: impatient and expected people to do what he wanted when he wanted, even though he made up his mind on spur of moment: Himself

40

extremely secretive, trusting nobody with much. Employing people to do confidential work, but not letting anyone do too much: "Hid things even from himself."

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10 Re children: recognised parental obligations in that he maintained them and took a few in office and his home; but showed no special favours or as in case of Robert Sydney Jr: and Sydney Joseph if they did not come up to expectations out they went. Wanted children to grow up like him. Even when he formed Real Estate Ltd. and passed his real estate to Co. and gave shares to children, he kept financial control by creating a debenture. Recognised at death he would have to release his control on his money, his children and a claim on it.

See evidence of witnesses including Sydney Joseph Turton.

20 What followed? All people in Turton's service (including Nellie Price) had been subject for many years to influence of Turton's character and habits. Stamped with his characteristics.

Doyle Prince held his peace, but it is not suggested he denied making will at any time.

30 Tight-lipped until he realised certain emissaries going to U.S.A.? He first tells Pinks, senior employee in office: From there he does to Registrar: Major Jeffery's letter (Exs. 2 & 6) is dated 13th February. From whole evidence Prince went to Registrar and went back two days afterwards. Registrar must have sent for Dewgard shortly afterwards: Only after Registrar had both statements that any Order would have been made by C.S. requiring Administrator's to search for will. Corroborates Prince that he went to Registrar about 6th February.

40 Loss of Documents: It is suggested Plaintiff or his witnesses responsible for records of Registry? What difference it makes to this case whether original or copy appears in records. Major Jeffrey was told what these persons were saying. It was open to him to go and see what these people said. It was his duty as Administrator to go and see what they said.

Nellie Price told persons reasons for her refusal to make copy of 1918 will. Refuse to believe her: only further disclosures are to Mr. Courtenay and George Price (her nephew). When people say they don't believe it - no steps.

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George Price: hopes to find will and searches when he can. No key to safe!

Aura Jones: Does not believe Nellie Price because no will found; but she, Mansell and Penso despite their disbelief, enquire of Doyle Prince: He shuts up and closes like an oyster.

Major Jeffrey's attitude: we do not know! mute of malice; she does not do so; but relies on Sydney on his reconstruction assisted by two other people; hoping that alibi instead of denial would serve her purpose: 10

Helen Clarke: Turton called for trousers on the Monday. Margaret Turton does not deny but contents herself with fear she had for father and fact that father did not brook opposition or delay; but forgetting that Mrs. Clarke explained that it was she who poured oil over the troubled waters.

Questions to answer:

Is Court satisfied beyond all reasonable doubt that a will was made by Deceased on 12 November, 1955, written for him by Doyle Prince and witnessed by Prince and Dewgard. 20

(1) Clear intention on part of Deceased from August to make a will. Circumstances at time of 1918 Will completely altered:

Evidence of Nellie Price: Margaret Turton's letter (Practising to make a will: Deceased dictating from paper in his hand:)

That Saturday Turton said to everybody he spoke to how ill he felt: Kirkwood, Muriel Pantin, Meighan, Dewgard and Prince. That would be an inducing factor and make him anxious to make will putting basic provisions in writing. 30

Assuming just making draft: appearance of Dewgard probably factor that led him finally to decide to execute will. May be he meant Nellie Price to O.K. it from legal point of view. But got will executed from legal aspect.

Apart from confirmatory evidence of Nellie Price, there is sufficient evidence to carry conviction that will was made on the Saturday afternoon. 40

Way in which witnesses gave testimony should leave no lingering doubt in mind that evidence true. Dewgard's demeanour: Only when questions

about shares: he subsequently paid extra duty. Dewgard nothing to gain from this. Why was he silent? What had he to talk about. Knows nothing about document. When sent for by Registrar he immediately gives statement. No suggestion that he has backed down from statement, shortly after busy about shares.

10 ii. Is Court satisfied it has before it substantially the testamentary dispositions of Deceased?

- (1) Comparatively simple will.
- (2) Contents make it a reasonable will that a man in Turton's position and circumstances and with his moral obligations would make.
- (3) A will which confirms with Testamentary pattern set by 1918 will.
- (4) Will dictated to Prince when he was sworn to closer secrecy; therefore one in which Prince would be interested because of confidential nature of disclosure.
- 20 (5) Objects of Testator's bounty and persons named as Executors were all persons with whom Prince was familiar.
- (6) Prince, a person of at least average intelligence.
- (7) Price, very shortly after writing will knew that they were looking for a will; they had not found one and it was only natural that what he wrote would come to his mind from time to time.
- 30 (8) Nellie Price confirms testimony of Doyle Prince in many particulars. She would be expected to observe and remember that she was a beneficiary and to what extent. Also to observe and remember names of those bracketed with her to get a like amount. Woman's curiosity in her led her to observe and remember what Mrs. Clarke got. If she was to prepare a draft Codicil it was necessary for her to observe and remember who were named in that will. She immediately thereafter noted not instructions but what she had seen in will to enable her to see whom she would recommend to be put in Codicil. Nellie Price says she had notes - confirmation of accuracy of matters to which she deposed.
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Oral testimony of person who wrote will; oral evidence spoken partly of recollection and partly from refreshing memory from Notes made immediately afterwards of Nellie Price who saw and read it, and confirmation by type of will made.

Test to which Doyle Prince put: Prince's answer (1) names of persons, places and occupations all unfamiliar to Prince: (2) Turton's will was a simple will: Dictation complicated and beset with involved legal phraseology; (3) speed and manner of dictation different from what would be expected of Turton; (4) will dictated 4 times by Turton; differences between several drafts being comparatively small; two things dictated altogether different and dictated only once; (5) Prince had personal interest in this will and believed himself to be a beneficiary under general benefaction to employees; (6) Turton had put Prince on oath of secrecy and very confidential character impressed on document would be an aid to Prince's recollection of its contents; (7) cross-examination of Prince proceeded immediately after dictation so that his mind could not be occupied in thinking of what was dictated to him but of matters put to him; whereas after completion of Turton will he had nothing to do in Office and had his mind free to think of will; (8) there he was in familiar atmosphere of Turton's office and here in unfamiliar atmosphere of Court.

Has presumption of revocation been rebutted? 30

(1) This will made one day before Turton took ill, so ill that he died from that illness.

(2) It was less than three days before his death.

(3) Seven hours he took ill and had to be put to bed he had discussed will with Nellie Price on footing that it was continuing to be his will although he was proposing to make a codicil to it; from which one gets adherence to his testamentary disposition 7 hours before he is put to be on his last illness and only two days before he died. 40

(4) Having made an appointment with Nellie Price for the Monday in connection with Codicil but his illness and confinement to bed having intervened, he spoke to Margaret when Mrs. Clarke visited to him on the Monday, calling to her to produce his trousers which had been folded and put away in

wardrobe with whatever contents they had, so that he might get something out of it to have it handy when Nellie Price came. It is submitted the thing then referred to was nothing but the will. The codicil to that being the matter which had been appointed for discussion between him and Nellie Price on that Monday morning.

10 (5) Presumption is that having been seen to put the will amongst other papers and between two letters, the writers of which were identified and having been seen to put these things in a brown envelope; and further being seen to put that brown envelope with those papers in his right hip pocket, where he normally kept and carried papers of importance; presumption is envelope and its enclosures (including will) continued in that pocket up to and at the time when Kirkwood and Perera undressed him; handed trousers to Margaret and when Kirkwood saw Margaret fold them with contents and put them in wardrobe.

20

(6) Presumption confirmed to point of certainty when uncontradicted evidence is that on the Thursday following death amongst things Sarah Moe saw Margaret with was a brown envelope from which she extracted papers which she read, destroying one or more of them and causing them to be burnt and putting back into envelope the rest of papers which she retained. Uncontradicted evidence because alibi sought to be set up by Sydney is a stupid one that only an indiscreet person would attempt to put up or one that knows she has something to hide; but one which no Court could give credence to.

30

(7) The search caused by Margaret to be instituted in the bedroom shortly after on that morning, she having refused at first to search office because she was too tired and upset, when her sister and sister's husband came to house. Inference can be drawn, and it is incumbent on Margaret to explain away, is that she was seeking to give impression to Mr. and Mrs. Jones of openness and candour at a time when she knew that openness and candour would not disclose presence of will.

40

(8) Inference can be drawn from evidence that the last thing Margaret wanted was that any recent will should turn up because there again, having refused to go to Office at first the moment she heard somebody suggest a will might be planted there, she immediately jumped taking the necessary

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steps to search office: she being at that time in possession of key to safe and private. How could she be reasonably impressed that a will could be planted there in circumstances? In any event if any such will planted, there could be a complete investigation that would reveal forgery. Inference was she was anxious of no will of recent origin should be found.

(9) It may seem at first sight to be illogical that a person in Margaret's position obtaining substantial benefits under 1955 Will should be interested in its disappearance or that she should be interested in an intestacy from which she will derive nothing except by grace of Crown - to extent to which any such grace might extend; but one cannot judge a woman's ways! Obvious hatred of Margaret Turton for Helen Clarke - what a woman will do when she hates. Margaret is determined to spite woman whom she despises and to risk taking chance to get something from Crown rather than risk Helen Clarke touching a penny of Deceased.

10

20

(10) Failure of Margaret in face of suspicious circumstances to go into box to attempt an explanation; her sheltering, even when she sought to produce documents (Ex. 6 and 18), behind others.

Finch vs. Finch:

Facts there bear many resemblances to facts here. By reason of these common facts Court concluded that will was in existence at date of death; invites Court to say same thing here. Common facts are such as to rebut effectually the presumption of revocation by Deceased.

30

Will made on 12th November, 1955 and revoked 1918 Will.

Whatever fate of 1955 will; 1918 will gone and cannot be resurrected.

Wood vs. Wood L.R. (1867) 1 P & D 309.

Contest here is between 1955 will and an intestacy! Surprising contest should be between Rowe and himself. Understands collaboration between Crown Counsel and Rowe.

40

At 12.50 p.m. Court adjourned to 2.15 p.m.

At 2.20 p.m. Court resumes.

Mr. McKinstry addresses :-

No quarrel with legal principles enunciated by Wooding.

Onus on Plaintiff to establish beyond reasonable doubt that Will made and properly executed and contents:

Miss Sugden unimpeachable witness and strong corroboration of her recollection of will.

10 Was will made and executed in accordance with Wills Ordinance.

Probability or otherwise of contents of alleged 1955 Will.

Why was Everalda's name omitted from 1955 Will? Letter and photograph from her shown to Fred Westby about 5 years ago.

In 1918 Will Deceased makes bequests to various people but no clause benefitting his employees generally.

20 In 1918 Will even with amendments, Turton was careful to select persons he had known for years; in contrast we have name of Penso who had not been in his employ more than 3 years.

As Doyle Prince is a substantial beneficiary under will his evidence should be regarded as pregnant with suspicion - substantial benefit for a person in that walk of life.

Sarah Moe under will also a beneficiary (but she declares she knew nothing about it).

30 Truth may lie in between two extreme propositions, that is, that a draft will was prepared but not in fact executed.

Grant of Letters of Administration made provisionally - Fact that it has initialled alterations and it being over 40 years old may prima facie account for provisional Order.

40 Death-bed Scene - Nellie Price held his hand and enquired how he was and he is heard to say "three copies Nell". Does not make sense if it relates to a codicil but does to a will. What Deceased told Prince in his office about having to consult Nellie Price indicates what was prepared was a draft will. That explains evidence of Ysaguirre and Alamilla. "Poor thing she has lost out."

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Silence on part of parties interested - 1918 will was considered old and it was hoped to discover another will at National Boulevard Bank. Two Administrators go there. News that no will found in safety deposit box - travelled back to Belize: it is probable that action about alleged 1955 Will then commenced.

Failure to date Doyle Prince's will makes proper dates difficult to ascertain.

Probabilities are that a document was in fact drawn up on afternoon of 12th November, but it was a draft and not a will. A document not a will was undoubtedly signed, but not a will. 10

Refers to affidavit of Doyle Prince of 27th February, 1956, (para. 6) and will annex and asks Court to contrast that with Ex. 12. Therefore evidence of Dewgard fails to confirm attestation of will as alleged. Doyle Prince was writing with a pen and not a typewriter.

Evidence of Dr. Goscinski as to Testator saying he was not interested in making a will after his former illness, to be considered. 20

No comment made about loss of original statement by Prince and first manuscript statement by Dewgard.

All witnesses for Plaintiff: interested in will, except Registrar, Dewgard, Muriel Pantin and Meighan, the tailor.

Turton had only three fingers on right hand - right hip pocket, difficulty of taking out envelope. 30

Why should Deceased choose Doyle Prince to make will instead of his Solicitor or Miss Nellie Price.

What was Deceased doing at Barracks with Nellie Price for nearly two hours - 10.30 a.m. to 2.30 p.m.

Why Deceased did not chase persons out of room and do business with Nellie Price.

Nellie Price tells several people about it.

At 3.30 p.m. Court adjourns to 6th at 10.30 a.m. 40

J.

THURSDAY, 6th DECEMBER, 1956.

Suit No. 12/1956 continued.

Mr. McKinstry continues :-

If Court satisfied that a document was signed on the afternoon of 12th November, that document was not a will.

Persons to whom Nellie Price spoke about will did not believe her - very strange!

10 Disclosure of legacy and amount to George Price?

George Cadle Price: Told of legacy and amount and did nothing about it! Reason was he regarded it as confidential.

Doyle Prince:

Discrepancies between his evidence in this Court and evidence de bene esse and affidavit.

20 Four dictations made by Turton - changes only names: Contrast alterations made in 1918 Will! Fabrication to give Prince opportunity of memorising contents of will.

Turton telling Prince that he is not to say anything unless he is convinced it cannot be found - sounds prophetic and suspicious.

If he had enjoined Prince to secrecy all time he was alive it would be another matter.

"Betting with Mrs. Aura Jones": Flippant and unreasonable to believe on part both of Prince and Mr. S. Jones.

30 Registrar typed Prince's statement on his second visit - consider evidence of Mrs. Smith and Miss Gabourel.

Strange behaviour on Prince's part when enquiry made of him as to whether he had made will.

Last comment of Turton "it looks alright but I will have to see Miss Nellie Price." Strongest indication that no will was in existence that day.

Longsworth was at Registry for four months and never saw Thompson type.

40 Dewgard contradicts Prince when he said Prince was in private office all time I was there - he was most positive about that.

Dewgard says Turton appeared in good health - he seemed nice and fine to him.

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Daniel Meighan: Discrepancies with Prince...

Joseph Kirkwood: Did not notice anything in trousers - fairly large brown envelope? He did not see it because it was not there.

Deceased kept important documents in safe. 1918 Will in filing cabinet - conveyances also in filing cabinet.

Deceased quite conscious practically up to time of his death - Quite conscious when trousers handed to Margaret Turton.

10

Sarah Moe - Size of envelope (folded?) Put papers in another envelope and told witness to put them in stove. Extraordinary. If what witness says it is true Margaret Turton was not destroying will or that it is an invention on part of witness. Witness is subsequently discharged by Margaret Turton.

Helen Clarke: Helen Clarke was told pants were in wardrobe in presence of Deceased. Why did not Helen Clarke get pants herself? Deceased spoke to people quite intelligently. Why would not Nellie Price "shoo" people out of room and do business?

20

Sydney Joseph Turton

Room cleared. Margaret Turton's name scratched out of 1918 will. Wardrobe about 5 feet from head of Deceased.

Ysaguirre and Alamilla: No interest in will. If talks taken place in Maestre's office, Mr. Maestre might well have passed on information.

30

Wooding: Criticisms of address

(1) Is will really a simple will?

(2) Not reasonable. Everalda left out.

Last time envelope seen was when Nellie Price saw Deceased put it in his pocket. Kirkwood's failure to observe envelope in trousers.

Asking Court to infer an awful lot.

Would seem illogical for Margaret Turton to destroy will under which she received substantial benefits.

40

Costs as between Solicitor and client!

Certify for two Counsel for Plaintiff.

C.A.V.

J.

No.29

NOTICE OF MOTION TO RE-OPEN DEFENCE

TAKE NOTICE that this Court will be moved on Tuesday the 29th day of January 1957 at 10 a.m. or so soon thereafter as Counsel can be heard by Counsel for the above-named Defendant Margaret Turton for the following relief :-

1. That the said Defendant Margaret Turton be granted leave to re-open her defence in the above-named action and to call further evidence.
2. Such further evidence could not reasonably have been called at the trial of the said action.
3. Such further evidence is now available and will form a determining factor in or an important influence on the result of the above-named action.

And that the costs of this application be costs in the cause.

DATED this 17th day of January, 1957.

(Sgd.) Basil A. Rowe.

Solicitor for Defendant
MARGARET TURTON.

No.30

AFFIDAVIT OF MARGARET TURTON

1. I Margaret Turton make oath and say that I am a Trained Secretary and I live at Marine Parade, Belize, British Honduras.
2. I am a Defendant in the above-mentioned suit and one of the Beneficiaries under the Will of the late Robert Sydney Turton deceased which was duly executed by him on the 10th day of May, 1918.
3. I am informed and verily believe that further evidence is now available which will form a

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Notice of Motion
to Re-open
Defence,

17th January
1957.

No.30

Affidavit of
Margaret Turton,

17th January
1957.

In the Supreme Court of British Honduras

No. 30

Affidavit of Margaret Turton, 17th January 1957 - continued.

determining factor in or an important influence on the result of the above-named action.

- 4. Such evidence was not reasonably available at the date of the trial of this action.
5. Such evidence will be given by Mr. W.P. Thomson formerly Registrar of the Supreme Court of British Honduras.
6. I am informed and verily believe that Mr. W.P. Thompson will say :-

- (i) That he did not type the document produced or any document in the presence of or on behalf of Doyle Prince a witness for the Plaintiff in the above-named action. 10
(ii) That he is unable to type.
(iii) That Doyle Prince did not at any time give him a written statement nor did Doyle Prince sign any statement in his presence.
(iv) That he did not reconstruct the 1955 Will in its present form from information given him by Doyle Prince or at all. 20
(v) That he did not send for Roland Dewgard a witness for the Plaintiff as alleged or at all.
(vi) That he did not take any statement from Roland Dewgard in manuscript.
(vii) That he did not type the statement which is an exhibit in this case for Roland Dewgard or at all.

SWORN at Belize this 17th day of January 1957. (Sgd.) MARGARET R. TURTON. 30

Before me, (Sgd.) A.O. Longworth, Acting Registrar General.

This Affidavit is filed on behalf of the Defendant Margaret Rebecca Turton by Basil A. Rowe of North Front Street Belize Solicitor for the said Defendant.

No. 31

ORDER FOR ADJOURNMENT

The 29th day of January 1957.

UPON READING the Motion dated the 17th day of January 1957 and the Affidavit of Margaret Turton sworn and filed the 17th day of January 1957 and UPON HEARING Mr. Balderamos of Counsel acting on behalf of Mr. Rowe of Counsel for the Defendant Margaret Turton and Mr. Francis of Counsel for the Plaintiff and Mr. Courtenay of Counsel for the Administrators of the said Estate and Mr. McKinstry of Counsel for the Defendant Everalda Turton IT IS ORDERED that the said Motion be adjourned generally to be brought on by fourteen days notice by either party subject to the approval of the Court AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

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DATED the 16th day of April, 1957.

By Order,

(Sgd.) A.O. Longsworth,
Acting REGISTRAR.

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No. 32

ORDER FOR CROSS-EXAMINATION OF MARGARET TURTON

UPON READING the Summons filed herein on the 21st day of January 1957 AND UPON HEARING Mr. Francis of Counsel for the Plaintiff and Mr. Balderamos of Counsel holding the papers of Mr. Rowe of Counsel for the Defendant Margaret Turton IT IS ORDERED that the Plaintiff be at liberty to cross-examine Margaret Turton on her Affidavit sworn on the 17th January 1957 and that the cross-examination be taken before the Court on the 5th day of March 1957 and that the said Margaret Turton do also attend on the 5th day of March 1957 at the Supreme Court at 10 o'clock in the forenoon to be cross-examined AND IT IS FURTHER ORDERED that unless

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In the Supreme Court of British Honduras

No. 31

Order for
Adjournment,
29th January
1957.

No. 32

Order for Cross-
Examination of
Margaret Turton,
13th February
1957.

In the Supreme Court of British Honduras

No. 32

Order for Cross-Examination of Margaret Turton, 13th February 1957 - continued.

the said Margaret Turton attend accordingly the said Affidavit shall not be used as evidence by the said Defendant in these proceedings AND IT IS FURTHER ORDERED that the costs of the application be costs in the cause.

DATED the 13th day of February, 1957.

By Order, (Sgd.) A.O. Longsworth, Acting Registrar.

No. 33

Order appointing A.O. Longsworth Additional Administrator, 16th February 1957.

No. 33

ORDER APPOINTING A.O. LONGSWORTH ADDITIONAL ADMINISTRATOR

The 16th day of February 1957.

UPON HEARING Mr. Courtenay of Counsel for the Administrators of the said Estate on the 13th day of February 1957 and upon hearing Mr. Francis of Counsel holding the papers of Mr. Courtenay on the 16th day of February 1957 and Margaret Turton one of the Administrators who appeared for herself and Lindsay Jeffery one of the Administrators who appeared for himself AND UPON READING the affidavit of the Administrators sworn and filed the 12th day of February 1957 and the affidavit of Harold Penso sworn and filed the 13th day of February 1957 and the affidavit in reply of Lindsay Jeffery and Margaret Turton sworn and filed the 16th day of February 1957 IT IS ORDERED that the Grant of Letters of Administration to Lindsay Jeffery, Margaret Turton and Aura Jones be extended for a period of six months from the date of this order or until further order of the Court in the action now pending between Acosta v. Jeffery et al AND IT IS FURTHER ORDERED that Mr. Alfred O. Longsworth be appointed as an administrator with the above named administrators without responsibility for any acts or omissions of the aforementioned administrators prior to his appointment and that for the purpose of administering the assets the signature of three of the administrators, one of whom shall be Mr. Longsworth, shall be a sufficient warrant for the payment out of money to any creditors or other

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persons lawfully receiving money from the Estate AND IT IS FURTHER ORDERED that there be liberty to apply and that the costs of this application be paid out of the Estate as between solicitor and client.

In the Supreme Court of British Honduras

No. 33

DATED the 1st day of March 1957.

By the Court,
(Sgd.) A.O. Longworth,
Acting Registrar.

Order appointing A.O. Longworth Additional Administrator, 16th February 1957 - continued.

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No. 34

NOTICE OF HEARING OF MOTION TO RE-OPEN DEFENCE

TAKE NOTICE that the hearing of the motion in this matter dated the 17th day of January 1957 is set down for hearing on Monday the 18th day of March 1957 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard.

DATED the 27th day of February, 1957.

(Sgd.) E.W. Francis,
Solicitor for Plaintiff
ROBERT SYDNEY ACOSTA.

No. 34
Notice of Hearing of Motion to Re-open Defence, 27th February 1957.

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To:

Basil Rowe, Esq., Solicitor for Defendant
Margaret Turton.

No. 35

ORDER STRIKING OUT AFFIDAVIT OF MARGARET TURTON

Before the Honourable ERSKINE R.L. WARD,
Chief Justice in Chambers.

The 5th day of March 1957.

UPON HEARING Mr. Balderamos of Counsel holding the papers of Mr. Rowe of Counsel for the Defendant Margaret Turton and Mr. Francis of Counsel for the Plaintiff and Mr. Courtenay of Counsel for the Administrators of the said Estate IT IS ORDERED that as the Defendant Margaret Turton did not appear in obedience to the Order of the Court dated 12th day of February 1957 and as no good reason was given for her non-appearance the Affidavit be struck out as incompetent and not conforming to the Rules of

No. 35
Order striking out Affidavit of Margaret Turton, 11th March 1957.

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In the Supreme Court of British Honduras

No. 35

Order striking out Affidavit of Margaret Turton,

11th March 1957 - continued.

the Supreme Court and that it be not used as evidence of the said Defendant in these proceedings AND IT IS FURTHER ORDERED that the costs of the application be costs in the cause and that there be liberty to apply.

DATED the 11th day of March, 1957.

By Order, (Sgd.) A.O. Longsworth, Acting Registrar.

No. 36

Order granting Leave for Affidavit by Margaret Turton,

16th April 1957.

No. 36

ORDER GRANTING LEAVE FOR AFFIDAVIT BY MARGARET TURTON

The 18th day of March 1957.

UPON HEARING Mr. Balderamos of Counsel acting on behalf of Mr. Rowe of Counsel for the Defendant Margaret Turton and Mr. Francis of Counsel for the Plaintiff and Mr. Courtenay of Counsel for the Administrators of the said Estate and Mr. McKinstry of Counsel for the Defendant Everalda Turton IT IS ORDERED that leave be granted to the Defendant Margaret Turton to file an additional Affidavit or Affidavits such Affidavit or Affidavits to be filed on or before 12th April 1957 AND IT IS FURTHER ORDERED that the Motion dated the 17th day of January 1957 and adjourned by order dated 29th day of January 1957 be further adjourned to the 16th day of April 1957 AND IT IS FURTHER ORDERED that as the costs of this hearing is wholly attributable to the negligence or the deliberate contempt of the solicitor for the Defendant Margaret Turton the costs of this hearing be paid by the Solicitor personally.

DATED the 16th day of April, 1957.

By Order, (Sgd.) A.O. Longsworth, Acting Registrar.

No. 37

Notice of Motion to Re-open Defence, 11th May 1957.

No. 37

NOTICE OF MOTION TO RE-OPEN DEFENCE

TAKE NOTICE that this Court will be moved on Monday 13th day of May, 1957 at 10 a.m. or so soon thereafter as Counsel can be heard by Counsel for the above-mentioned Defendant Margaret Turton for the following relief:-

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1. That the Defendant Margaret Turton be granted leave to re-open her defence in the above-named action and to call further evidence.
2. Such further evidence could not reasonably have been called at the trial of the said action.
3. Such further evidence is now available and will form a determining factor in or an important influence on the result of the above-named action.
4. That the Judgment of His Lordship the Chief Justice herein be stayed in the meantime.

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And that the costs of this application be costs in the cause.

DATED this 11th day of May, 1957.

(Sgd.) Arthur Balderamos

Solicitor on behalf of Basil A. Rowe.

Solicitor for Defendant Margaret Turton.

In the Supreme
Court of British
Honduras

No. 37

Notice of
Motion to Re-
open Defence,
11th May 1957
- continued.

No. 38

AFFIDAVIT OF DEFENDANT MARGARET TURTON

1. I Margaret Turton make oath and say that I am a Trained Secretary and I live at Marine Parade, Fort George, Belize.
2. I am a Defendant in the above mentioned action and one of the Beneficiaries under the Will of the late Robert Sydney Turton deceased which was duly executed by him on the 10th day of May, 1918.
3. I am informed by my Solicitor Basil A. Rowe and verily believe that further evidence is now available which will form a determining factor in or an important influence on the result of the above mentioned action.
4. Such evidence was not reasonably available at the date of the trial of this action.
5. Such evidence will be given by William Patrick O'Brien Thompson of 1158 Bird Road, Richmond, Province of British Columbia, formerly Registrar General of the Supreme Court of British Honduras.

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No. 38

Affidavit of
Defendant
Margaret Turton,
11th May 1957.

In the Supreme
Court of British
Honduras

No.38

Affidavit of
Defendant
Margaret Turton,

11th May 1957
- continued.

6. I am informed by a Statutory Declaration of the said William Patrick O'Brien Thomson signed and declared by him on the 25th day of April, 1957 before Ronald D. Angell a Notary Public in and for the Province of British Columbia and verily believe that he will say what is stated in the said Statutory Declaration. A copy of the said Statutory Declaration is now produced and shown to me and marked "M.T.1."

SWORN at Belize this) (Sgd.) MARGARET TURTON. 10
11th day of May 1957)

Before me,
(Sgd.) A.O. Longsworth,
Acting Registrar General.

This Affidavit is filed on behalf of the Defendant Margaret Turton by Basil A. Rowe of North Front Street, Belize, Solicitor, for the said Defendant.

No.39

Affidavit of
Robert Douglas
Stansmore,

11th May 1957

No.39

AFFIDAVIT OF ROBERT DOUGLAS STANSMORE

I, Robert Douglas Stansmore of Belize, British Honduras Solicitor's Clerk make oath and say as follows :- 20

1. I have seen the Statutory Declaration of William Patrick O'Brien Thomson of 1158 Bird Road of Richmond, Province of British Columbia signed and declared by him on the 25th day of April, 1957 before Roland Douglas Angell a Notary Public in and for the Province of British Columbia.

2. I know the said William Patrick O'Brien Thomson as he was Registrar General of this Colony and also know his signature well as I have often seen him sign his name and obtained documents signed by him by virtue of my position as a Solicitor's Clerk. 30

3. Therefore I identify the signature "W.P.Thomson" subscribed to the said Statutory Declaration as the true and proper signature of the said William

Patrick O'Brien Thomson.

SWORN at Belize this)
11th day of May 1957) (Sgd.) ROB. STANSMORE.

Before me,

(Sgd.) A.O. Longsworth,
Acting Registrar General.

This Affidavit is filed on behalf of the Defendant Margaret Turton by Basil A. Rowe, of North Front Street, Belize, Solicitor for the said Margaret Turton Defendant.

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In the Supreme Court of British Honduras

No. 39

Affidavit of Robert Douglas Stansmore,

11th May 1957
- continued.

No. 40

STATUTORY DECLARATION
OF WILLIAM PATRICK O'BRIEN THOMSON

DOMINION OF CANADA : PROVINCE OF BRITISH COLUMBIA
"M.T.1."

IN THE MATTER OF THE ESTATE OF ROBERT SYDNEY TURTON
TO WIT

STATUTORY DECLARATION

I, WILLIAM PATRICK O'BRIEN THOMSON, Retired, of 1158 Bird Road, in the Municipality of Richmond, Province of British Columbia, DO SOLEMNLY DECLARE:

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1. That I am unable to type.

2. That I did not on or about the 8th day of February A.D. 1956 or at any time personally type out at Mrs. Gabriel's boarding house where I lived, information given to me by any person known as Doyle Prince purporting to be the contents of an alleged Will made by Mr. Robert Sydney Turton on the 12th day of November, A.D. 1955.

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3. That as I did not type the information referred to in paragraph 2 hereof, that I did not therefore then sign the said ~~document~~ writing.

4. That I did not subsequent to this, reconstruct this ^{alleged} last Will and Testament of Mr. Turton from information supplied to me by Doyle Prince.

No. 40

Statutory Declaration of William Patrick O'Brien Thomson,

25th April 1957.

Int'd. (R.D.A.)
Int'd. (W.P.T.)

Int'd. (R.D.A.)
Int'd. (W.P.T.)

In the Supreme Court of British Honduras

No.40

Statutory Declaration of William Patrick O'Brien Thomson, 25th April 1957 - continued.

5. That I have not the slightest recollection of subsequently sending a message to one Roland Dewgarde asking him to attend upon me in connection with the alleged Will of Mr. Turton, and that to the best of my knowledge, information and belief, I do not know one Roland Dewgarde.

6. That I did not take down in manuscript form at my home any information whatsoever which the said Dewgarde had to convey and further to the best of my knowledge, information and belief the said Dewgarde did not convey any information to me whatsoever.

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7. That I did not a few days after the alleged incident referred to in paragraph 6 hereof, send for the said Dewgarde and present him with a typed statement nor get him to sign it.

8. That I did not type this alleged statement.

Int'd. (R.D.A.) Int'd. (W.P.T.)

9. That I did not, when ~~where~~ I lived at Mrs. Gabriel's boarding house, nor at any time whatsoever possess a typewriter.

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AND I make this solemn Declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the "Canada Evidence Act".

DECLARE before me at the City of Vancouver, Province of British Columbia this 25th day of April, A.D. 1957. (Sgd.) W.P. THOMSON.

(Sgd.) R.D. Angell,

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SEAL ROLAND DOUGLAS ANGELL. NOTARY PUBLIC BRITISH COLUMBIA.

A Notary Public in and for the Province of British Columbia.

This Declaration is filed on behalf of the Defendant Margaret Turton by Basil A. Rowe of North Front Street Belize, Solicitor for the said Defendant in Supreme Court Action No. 12/1956.

No.41

AFFIDAVIT OF ROBERT ACOSTAIn the Supreme
Court of British
Honduras

No.41

Affidavit of
Robert Acosta,
13th May 1957.

I, ROBERT ACOSTA of Belize, Clerk MAKE OATH
AND SAY as follows :-

1. I am the Plaintiff in this action and one of the beneficiaries under the Will of the late Robert Sydney Turton deceased dated the 12th day of November 1955.

10 2. I have read the motion dated the 11th day of May 1957 and the Affidavits in support of it, and I oppose the motion.

3. I am advised by my Solicitor Mr. H.O.B. Wooding and verily believe that the further evidence said to be now available could reasonably have been discovered before the trial of this action, and ought to have been discovered.

20 4. I was informed by Major Lindsay Jeffery and verily believe that as early as February 1956 he received copies of the statements made by Prince and Dewgard and that he had informed Miss Margaret Turton shortly thereafter that these statements had been given.

30 5. Mr. Thomson the Registrar General became ill and had to leave British Honduras sometime late in February or early in March 1956. He returned to British Honduras in July 1956 and finally left again on the 15th of September 1956. While he was here an application was made to this Court on my behalf to have Doyle Prince examined viva voce de bene esse in this matter. An Order dated the 29th August granting leave to do this on the 25th day of September was made by this Court and signed by Mr. Thomson as Registrar. The Defendant Margaret Turton was represented by her Solicitors in all these proceedings.

40 6. The fullest investigations ought to have been made by the Defendant Margaret Turton upwards of a year ago so as to ascertain the full facts, particularly in view of the fact that Mr. Thomson was ill and it could not be known whether he would survive that illness or not.

In the Supreme Court of British Honduras

No.41

Affidavit of Robert Acosta, 13th May 1957 - continued.

7. Before the defence in this action was closed the Defendant Margaret Turton and her advisers could have ascertained the whereabouts of Mr. Thomson in order to discover the true facts or alternatively could have asked for an adjournment to do so.

8. Since the 17th day of January 1957, the date of a previous motion to the same effect in this matter, this Court has given the Defendant and her advisers ample time to put that motion in order. This was not done and that motion was finally struck out on the 16th day of April last. If this application was granted, it would have the same effect as if the Court had granted the last application for an adjournment, so that the practical result would be that the Court's refusal of the adjournment would be stultified.

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9. No mention has been made in the application about the state of the health of Mr. Thomson who is out of the jurisdiction or whether he is willing and able to come and give evidence in Court. This might be a fruitful cause of indefinite delay which would further defeat the principle that there should be some finality in litigation.

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SWORN at Belize this 13th day of May 1957 } (Sgd.) ROBERT S. ACOSTA.

Before me, (Sgd.) A.O. Longsworth, Acting Registrar General.

This Affidavit is filed on behalf of the Plaintiff Robert Sydney Acosta by E.W. Francis of 936, North Front Street, Belize, Solicitor for the said Plaintiff.

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No.42

Affidavit of Margaret Turton, 16th August 1957.

No.42

AFFIDAVIT OF MARGARET TURTON

I, MARGARET TURTON MAKE OATH and say that :-

1. I am a Trained Secretary and live at Marine Parade, Fort George, Belize.

2. I am a Defendant in the above mentioned Action and one of the beneficiaries under the Will of the late Robert Sydney Turton deceased which was duly executed by him on the 10th day of May 1918.

In the Supreme
Court of British
Honduras

No. 42

3. I have read the Affidavit of the Plaintiff Robert Sydney Acosta filed herein dated the 13th day of May 1957.

Affidavit of
Margaret Turton,

16th August
1957 -

continued.

10 4. That I beg to refer to Paragraph 3 of the Affidavit filed by the Plaintiff dated the 13th May 1957 and I say that it was impossible to anticipate that the Plaintiff would have made it a part of his case that MR. THOMSON typed a Statement given him by Doyle Prince when in truth and in fact MR. THOMSON is unable to type.

20 5. I beg to refer to Paragraph 4 of the said Affidavit by the Plaintiff and to say that the copies of Statements by Doyle Prince and Roland Dewgard which were given to Major Lindsay Jeffery were given at a time when I was not in the Colony of British Honduras.

6. That the fact of MR. THOMSON being able to type was raised for the first time by the witness Doyle Prince in his Examination in Chief.

30 7. That it only became relevant to enquire from Mr. Thomson as to the further evidence which is now available after the Plaintiff's witnesses Doyle Prince and Roland Dewgard had given their evidence and it had been made a part of the Plaintiff's case that Mr. Thomson typed the Statement he obtained from the witness Doyle Prince and it was then discovered that in truth and in fact Mr. Thomson was and is unable to use a typewriter.

SWORN to at Belize this)
16th day of August 1957) (Sgd.) MARGARET TURTON.

Before me,
(Sgd.) A.O. Longsworth,
Acting Registrar General.

40 This Affidavit is filed on behalf of the Defendant Margaret Turton by Basil A. Rowe of North Front Street, Belize, Solicitor for the said Defendant.

In the Supreme
Court of British
Honduras

No.43

NOTES OF APPLICATION FOR CROSS-EXAMINATION OF
MARGARET TURTON

No.43

Notes of
Application for
Cross-
Examination of
Margaret Turton,

29th August
1957.

Thursday, 29th August, 1957

Application by Defendant Margaret Turton to be granted leave to re-open defence and call further evidence.

Mr. Rowe for Applicant.

Mr. Wooding and Mr. Francis for Plaintiff.

Mr. McKinstry appears for Everalda Turton.

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Mr. McIntyre (S.G.) appears for Crown.

Mr. Wooding informs Court he wishes to make application to cross-examine Margaret Turton on her Affidavit as certain things are not clear therein.

Mr. Rowe submits that Plaintiff should have asked for a supplementary affidavit.

Court rules that Margaret Turton may be cross-examined on her Affidavit of 16th August, 1957.

Defendants'
Evidence

No.44

20

No.44

Margaret
Turton,

29th August
1957.

Cross-
Examination.

EVIDENCE OF MARGARET TURTON

MARGARET TURTON sworn saith :-

Cross-Examined :-

When Major Jeffery got statements from Prince and Dewgard I was in the U.S.A. At that time Mr. Courtenay was acting for Administrators of Estate. I was one of the Administrators. Whilst I was in London I got a letter from Mr. Courtenay (Exhibit D.18). Whilst I was away I also got letters from Major Jeffery (Exhibits 2 and 6) dated 13.2.1956. I had no legal adviser acting for me personally at the time. I returned to British Honduras on the

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7th March. Major Jeffery spoke to me and told me that he tried to get a copy of the Doyle Prince Will from Mr. Courtenay but could not get it. Mr. Courtenay let me see a copy of that Will the day after I arrived, viz:- the 8th March. I never personally wrote or communicated in any other way with Mr. Thompson. I think Mr. Rowe said he was trying to get some evidence from Mr. Thompson. That was about the time the Statutory Declaration from Mr. Thompson came. That is dated 25th April, 1957. I first saw this on the 9th May, 1957. I do not know before that of anyone getting in touch with Mr. Thompson before that.

10

In the Supreme
Court of British
Honduras

Defendants'
Evidence

No.44

Margaret
Turton,
29th August
1957.

Cross-
Examination
- continued.

No.45

ADDRESSES BY COUNSEL

MR. ROWE addresses :-

At trial it was part of Plaintiff's case Thompson typed Will. It became relevant to enquire whether Thompson able to type or not.

20

Signed statement - whether taken by him?

Subsequent to case being closed an Affidavit sworn to exhibiting a Statutory Declaration by W.P. O'Brien Thomson.

That is basis on which this application is based. Facts in Thomson's Affidavit directly in issue having regard to unusual manner 1955 Will came into Court. Goes to whole root and fabric of case.

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Principle of re-opening a case is well recognised:- Even when matter has reached Court of Appeal and matter decided.

Odgers on Pleadings & Practice - 13th Ed. -
277

Charles Bright & Co., vs. Sellar (1904) 1 K.P.D.
6 Annual Practice (1955) pp. 1251 & 1252

Ord. 58 r. 4:- Further Evidence:

"The moral elements of the case must be taken into consideration etc. etc."

No.45

Addresses by
Counsel,

29th August
1957.

In the Supreme
Court of British
Honduras

No. 45

Addresses by
Counsel,

29th August
1957 -
continued.

In this case which is not a Court of Appeal and Judgment not yet given - these authorities apply a fortiori.

Sanders vs. Sanders 19 Ch. D. 374 [381]

No one could have anticipated that it was part of Plaintiff's case that Thompson typed the particular document.

R. vs. Copestake (1927) 1 K.B. 468

R. vs. Robinson (1917) 2 K.B. 110

Brown vs. Dean (1910) A.C. 374.

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MR. WOODING :!

Contrary to law for Court to admit evidence sought.

It is a matter for Court's discretion whether fresh evidence admitted or not.

Case adjourned on 6th December, 1956: More than five months later this application filed:

Applications of this sort ought to be made promptly. Previous application dismissed on 16th April, 1957.

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Nash vs. Rochford Rural Council.

(1917) 1 K.B. 384 [391] [394] [395]

Not proper for Affidavit of Thompson to be put before Court.

Principles to be applied:-

(A) Evidence sought to be adduced could not have been obtained with reasonable diligence before case closed.

(B) Evidence must be such that if given it would probably have important influence on result of case, if believed.

30

(C) Evidence must be such as presumably to be believed.

What are issues in case :-

(1) Did Turton make a Will in 1955 as alleged by Prince and supported by other witnesses?

(2) If he did have contents been satisfactorily proved?

(3) If they have has presumption of revocation been rebutted?

Thompson's evidence goes to credit of Prince but not to issue in case.

It cannot reasonably be said Defendant could not reasonably have foreseen necessity for Thompson's evidence.

10 In February 1956 Jeffery notified about alleged Will. Defendant got to know about it in March and its authenticity contested by her. Law required her to make fullest possible enquiries.

Prince gave evidence de bene esse on 1st October, 1956 and said Registrar put in bequeathing words.

Evidence given in Plaintiff's case: Prince gave evidence on 22nd November and Dewgard on 26th November. Case for Defendant closed on 3rd December.

Defendant called Mrs. Smith and Miss Gabourel on this point - no adjournment asked for.

20 Hals: (Hail. Ed.) Vol. 13 p: 759 (para. 834).
Bigsby vs. Dickenson L.R. (1876) 4 ch. Div. 24
R. vs. Stanley Liddle (1928) 21 C.A.R. 3.
In re Coppiapo Mining Co. (1894) 10 T.L.R.

At 4.10 p.m. Court adjourned to 30th at 9.30 a.m.

Friday 30th August, 1957.

9.30 a.m. Application resumed.

In the Supreme
Court of British
Honduras

No. 45

Addresses by
Counsel,

29th August
1957 -
continued.

30th August
1957.

WOODING continued :-

Nash vs. Rochford Rural Council.

(1917) 1 K.B. [389]

30 "Evidence might have been procured by proper diligence" [393]

No motion was before Court on 10th May, 1957, for re-opening of case: An Affidavit put on record in support of nothing: Case on paper for judgment.

[380] Sanders vs. Sanders 19 Ch. D (1881) 374

? R. vs. Copestake (1927) 1 K.B. 468 [474]

? R. vs. Robinson (1917) 2 K.B. 108

40 Brown vs. Dean (1910) A.C. 373 [374] [375]

In the Supreme
Court of British
Honduras

No. 45

Addresses by
Counsel,

30th August
1957 -
continued.

Nothing has been put before Court to show this evidence could not have been discovered and procured before case for Defendant closed.

What is reasonable in particular circumstances?

Court cannot look at Affidavit of Margaret Turton of 17th January as it offends against Rules in that it does not state source of information.

In Re J.L. Young Manufacturing Co.
(1900) 2 Ch. 753.

Lumley vs. Osborne (1901) 1 K.B. 532 [535] 10

Alternatively if Court can look at Affidavit it does not indicate information was procured or even sought by diligence of Defendant or her advisers.

? Charles Bright & Co. vs. Sellar (1904) 1 K.B.D.6.

In Re Herwin (1953) 2 All E.R. 782 [785]

Evidence goes to credit of witness and not to any particular issue. Further evidence not allowed when it goes solely to credit unless it is of such a nature and circumstances of case are such that Tribunal could not be expected to act at all on evidence of witness whose credit is attacked. 20

Braddock vs. Tillotson's Newspaper Ltd.

(1950) 1 K.B. 47 [50] [53]

(A) Where evidence only does to credit fresh evidence only allowed if conclusive.

(B) Reasonable diligence not exhibited.

ROWE replies :-

Authorities show certain settled principles:

(A) Could Defendant reasonably have obtained fresh evidence with due diligence. 30

Affidavit and Motion of 17.1.1957.

Application to re-open case and call fresh evidence granted. Costs of application to be paid by Applicant.

(Sgd.) A.R. Cools-Lartigue,
J.

No.46

NOTICE OF MOTION FOR LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

In the Supreme
Court of British
Honduras

No.46

Notice of
Motion for
Leave to
Appeal to Her
Majesty in
Council,

30th August
1957.

10 TAKE NOTICE that the Court will be moved before His Lordship A.R. Cools-Lartigue on Monday the 2nd day of September 1957 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on behalf of the above-named Plaintiff to grant leave to appeal to Her Majesty in Council against the interlocutory order in this action made the 30th day of August 1957.

DATED this 30th day of August, 1957.

(Sgd.) E.W. Francis,

Solicitor for the Plaintiff.

To:

Basil Rowe Esq., Solicitor for Margaret Turton
Messrs. W.H. Courtenay & Co., Solicitors for
Defendants.

20 D. McIntyre, Esq., Solicitor for the Attorney
General.

S.A. McKinstry, Esq., Solicitor for Everalda
Turton.

E.A. Grant, Esq., Solicitor for Robert Straker
Turton, Esq.

Mansel Turton, Esq., 1083 North Front Street
Cecil Turton, Esq.

Robert Sidney Turton, Esq., Belize.

Joseph Kirkwood, Esq., 1083 North Front Street
Mrs. Aura Jones, 1083 North Front Street

30

No.47

AFFIDAVIT OF EWART WILLIAM FRANCIS

I, EWART WILLIAM FRANCIS of 936, North Front Street, Belize, a Solicitor of this Honourable Court MAKE OATH and say as follows :-

1. On the 30th day of August, 1957 in the Court on an application by the Defendant Margaret Turton praying that leave be granted to re-open her defence to call further evidence in this action an

No.47

Affidavit of
Ewart William
Francis,

30th August,
1957.

In the Supreme Court of British Honduras

No.47

Affidavit of Ewart William Francis,

30th August 1957 - continued.

interlocutory order was made granting the said application.

2. The Plaintiff is desirous of lodging an appeal to Her Majesty in Council against the said Order.

3. I am informed by the Plaintiff and verily believe that he the Plaintiff is prepared to enter into good and sufficient security to the satisfaction of the Court as required by Section 7 of the Privy Council Appeals Ordinance (Chapter 155 of the Consolidated Laws 1924). I believe the said information because the Plaintiff is my client and I have his instructions to appeal against the said order. 10

4. The matter in dispute in the intended appeal arises on a claim for probate in respect of an estate the gross value whereof is about \$5,500,000.00. Further, it raises an important point of principle touching the right or discretion of the Court to allow a Defendant to re-open her defence, after the case has been closed and judgment therein has been reserved, so as to admit evidence in rebuttal of statements made by witnesses for the Plaintiff (additional to that tendered during the trial on behalf of the Defendant) notwithstanding that no attempt had been made or shown to be made, before closing her case, to ascertain from the witness intended to be called whether he was able or willing to give such evidence and/or to apply for an adjournment of the trial to enable the witness (then and now abroad) to return within the jurisdiction so as to give such evidence or to apply to have his evidence taken abroad pursuant to leave to be granted under the Rules of Court. 20 30

SWORN by the said Ewart William Francis at Belize this 30th day of August, 1957 (Sgd.) E.W. FRANCIS

Before me, (Sgd.) C.A.B. Ross, Registrar.

40

This Affidavit is filed on behalf of the above-named Plaintiff Robert Sydney Acosta.

No.48

ORAL JUDGMENT DELIVERED BY COOLS-LARTIGUE, J.In the Supreme
Court of British
Honduras

No.48

Oral Judgment
delivered by
Cools-Lartigue,
J.,2nd September
1957.

10 I hold on the facts that the evidence could not have been reasonably obtained by due diligence on the part of the Defendant before her case was closed. Thompson was not in the Colony when Prince and Dewgard gave their evidence, and the Defendant could not have foreseen that Prince's evidence about typing or Dewgard's evidence (referring to the Registrar) would have been given. I hold also that the evidence must have an important influence on the result and in the interests of justice I feel I should grant this application.

The costs of the application must be paid by the Defendant Margaret Turton.

No.49

ORDER GRANTING LEAVE TO RE-OPEN DEFENCE

20 The 29th and 30th days of August and 2nd day of September, 1957.

30 UPON READING the Notice of Motion dated the 11th day of May 1957 and the Affidavits of Margaret Turton sworn and filed the 11th day of May 1957 and the 16th day of August 1957 and the Affidavit of Robert Stansmore sworn and filed the 11th day of May 1957 and the Affidavit of Robert Acosta sworn and filed the 13th day of May 1957 and UPON HEARING Mr. Rowe of Counsel for the Defendant Margaret Turton and Mr. Wooding of Counsel for the Plaintiff Robert Acosta and Mr. McKinstry of Counsel for the Defendant Everalda Turton IT IS ORDERED that the application of the Defendant Margaret Turton to re-open her defence in this action and to call Mr.W.P. Thomson to give further evidence be granted AND IT IS FURTHER ORDERED that the Plaintiff Robert Acosta be granted leave to call Mr. Erskine R.L. Ward to give evidence in rebuttal AND IT IS FURTHER ORDERED that the costs of this application be paid by the Defendant Margaret Turton.

DATED this 28th day of September 1957.

40 By Order
(Sgd.) C.A.B. Ross,
Registrar.

No.49

Order granting
Leave to Re-
open Defence,28th September
1957.

In the Supreme
Court of British
Honduras

No.50

ORDER GRANTING FINAL LEAVE TO APPEAL TO
HER MAJESTY IN COUNCIL

No.50

The 3rd day of March 1958.

Order granting
final leave to
Appeal to Her
Majesty in
Council,

7th March
1958.

UPON READING the Notice of Motion dated the 25th day of November 1957 and the Affidavit of Mr. E.W. Francis filed herein on the 25th day of November 1957 and UPON HEARING Mr. Francis of Counsel for the Plaintiff and Mr. A. Balderamos of Counsel holding the papers of Mr. Basil Rowe of Counsel for the Defendant Margaret Turton and Mr. W.H. Courtenay of Counsel for the Administrators the Defendants IT IS ORDERED that the Plaintiff has final leave to appeal to Her Majesty in Council from the Interlocutory Order in this action made the 30th day of August 1957 by Mr. Justice A.R. Cools Lartigue AND IT IS FURTHER ORDERED that the Record be prepared and forwarded on or before the 3rd day of June 1958 and that the Record shall be printed in England AND IT IS FURTHER ORDERED that there be liberty to apply and that the costs of this application be costs in the cause.

10

20

DATED the 7th day of March, 1958.

By Order

(Sgd.) C.A.B. Ross

Registrar.

No.51

Order sub-
stituting
name of A.O.
Longworth in
Privy Council
Appeal,

7th September
1960.

No.51

ORDER SUBSTITUTING NAME OF A.O. LONGSWORTH IN
PRIVY COUNCIL APPEAL

Before the Honourable CLIFFORD DELISLE INNIS
Chief Justice in Chambers

30

The 7th day of September, 1960.

UPON READING the Summons herein dated the 17th day of August 1960 and the Affidavit of Ewart William Francis sworn and filed the 17th day of August 1960 and UPON HEARING Mr. Francis of Counsel for the Plaintiff and Mr. Balderamos of Counsel acting on behalf of Mr. Rowe of Counsel for the Defendant Margaret Turton and Mr. McKinstry of Counsel for the Defendant Everalda Turton and Mr. Courtenay of Counsel for the Administrators of the said Estate.

40

IT IS ORDERED that the name of Lindsay Jeffery one of the Administrators of the Estate of Robert Sydney Turton deceased be struck out and that the name of Alfred O. Longsworth as one of the Administrators of the Estate of Robert Sydney Turton deceased be added as a Defendant to this Action without prejudice to the Appeal pending in Her Majesty's Privy Council against the interlocutory Order made the 30th day of August 1957.

10

AND THAT the costs of this application be paid out of the Estate as between Solicitor and own client.

DATED the 7th day of September, 1960.

By Order,
(Sgd.) C.A.B. Ross
Registrar.

In the Supreme
Court of British
Honduras

No.51

Order substituting
name of A.O.
Longsworth in
Privy Council
Appeal,

7th September
1960 -
continued.

ExhibitsE X H I B I T S

P. 14.

P.14. - WILL OF ROBERT SIDNEY TURTONWill of R.S.
Turton,

Frans R. Dragten, Belize.

10th May 1918.

British Honduras.

This is the last Will and Testament of me Robert Sidney Turton of Belize Merchant I APPOINT ~~Edward Hall Lindsay Jeffery of Belize Foreman of Works to the Belize Town Board Bank Clerk of The Royal Bank of Canada and Richard Dewgard of Belize Mahogany Contractor the Executors and Trustees of~~ this my Will I DEVISE my house and lot situate in Pickstock Street to Ethel Koop of Belize Spinster I BEQUEATH to ~~William Rabeteau the sum of Three thousand dollars~~ Zelya Christie the wife of Charles Christie the sum of Two hundred and fifty dollars. To my Godson Hall the sum of One hundred and fifty dollars I BEQUEATH to my aunt / and sister Frances Forman an annuity of Four dollars per week during her life To ~~Muriel Bladen~~ an annuity of three dollars per week during her life To Miss Ethel Koop an annuity of five dollars per week such respective annuities to commence from my death the first payment to be made at the expiration of three calendar months from my death I GIVE AND DEVISE all the residue of my property both real and personal unto my Trustees their heirs executors and administrators respectively UPON TRUST that my Trustees shall sell call in collect and convert into money the said real and personal estate and premises at such time or times and in such manner as they shall think fit and so that they shall have the fullest power and discretion to postpone the sale calling in and conversion of the whole or any part or parts of the said premises during such period as they shall think proper and retain the same or any part thereof in its present form of investment without being responsible for loss and that the income of such of the same premises as for the time being shall remain unsold shall as well during the first year after my death as afterwards be applied as if the same were income arising from investments ~~herein~~ hereinafter directed to be made of the proceeds of sale thereof AND I DECLARE that my Trustees shall out of the moneys to arise from the sale calling in and conversion of or forming part of my said real and personal estate pay my funeral and testamentary expenses and debts and

10

20

30

40

sic.

legacies bequeathed by this my Will and make provision for the payment of any annuities so bequeathed and shall at the discretion of my trustees invest the residue of the said moneys (hereinafter called my residuary estate) and shall ~~pay~~ apply the income of my residuary estate for the education and maintenance of my natural children Everilda Turton ~~Adela Sutehle or~~ Cecil Turton Haidie Olga Turton ~~Maggie Turton Lena Turton~~ Aura Turton until the youngest of them shall have attained the age of twenty-one years and from and after that date Upon Trust for my said children in equal shares
 sic. Turton ~~Adela Sutehle or~~ Cecil Turton Haidie Olga
 sic. Turton ~~Maggie Turton Lena Turton~~ Aura Turton until
 10 the youngest of them shall have attained the age of twenty-one years and from and after that date
 Upon Trust for my said children in equal shares
 IN WITNESS whereof I have put my hand to this my Will this tenth day of May ~~19~~ One thousand nine hundred and eighteen.

Exhibits

P.14.

Will of R.S. Turton,
 10th May 1918
 - continued.

Sgd. R.S. TURTON.

20 SIGNED by the above-named Testator in the presence of us who at his request in his presence and in the presence of each other have hereunto put our hands as witnesses:

Sgd. Frans R. Dragten
 Sgd. Hazel Usher.

P.13. - PETITION FOR PROBATE IN ESTATE OF RICHARD DEWGARD

P.13.

Petition for Probate in Estate of Richard Dewgard,
 11th July 1944.

PETITION FOR PROBATE OF A WILL

BRITISH HONDURAS, 1944 No.33/1944

IN THE SUPREME COURT - PROBATE SIDE

In the Goods of RICHARD DEWGARD Deceased of Belize, Gentleman

30 TO HIS HONOUR The Honourable Carleton George Langley, K.C., Chief Justice of British Honduras.

THE PETITION of ROBERT SYDNEY TURTON of Belize, Merchant, and ROLAND ERIC HUGH DEWGARD of Belize,

HUMBLY SHOWETH :-

1. The above-named Richard Dewgard of Belize died at Belize on the 29th day of April, 1944.
2. The paper writing hereunto annexed marked "A" is believed by Your Petitioners to be the last Will and Testament of the said Richard Dewgard deceased.

Exhibits

P.13.

Petition for
Probate in
Estate of
Richard Dewgard,
11th July 1944
- continued.

3. Your Petitioners are the persons in the said Will named and appointed Executors.

4. Your Petitioners know of no other later Will made as the last Will of the Testator.

5. Your Petitioners believe that without any deduction for debts the probable value of the personal estate and effects of the said Richard Dewgard deceased in the said Colony is \$1,131.66 and no more.

Your Petitioners therefore humbly pray that Probate of the said Will may be granted to them.

10

DATED the 11th day of July 1944.

(Sgd.) R.S. Turton

" R.E.H. Dewgard,

Signatures of Petitioners.

AFFIDAVIT VERIFYING PETITION

BRITISH HONDURAS, 1944.

IN THE SUPREME COURT - PROBATE SIDE

In the Goods of RICHARD DEWGARD Deceased of Belize

WE, ROBERT SYDNEY TURTON of Belize, Merchant, and ROLAND ERIC HUGH DEWGARD of Belize, make oath and say that the statements contained in the annexed Petition are just and true to the best of our knowledge, information and belief.

20

(Sgd.) R.S. Turton

" R.E.H. Dewgard.

SWORN at Belize this 11th)
day of July, 1944

Before me,

(Sgd.) A.O. Longworth,

REGISTRAR GENERAL.

30

P.8. - STATEMENT IN WRITING PURPORTING TO BE WILL
OF R. S. TURTON DICTATED TO DOYLE PRINCE.

Exhibits

P.8.

British Honduras.

Statement in
writing
purporting to
be Will of
R. S. Turton
dictated to
Doyle Prince,

12th November
1955.

I, Robert Sydney Turton, Merchant of Belize in the Colony of British Honduras do hereby declare this to be my last Will and Testament, hereby revoking all testamentary writings which may heretofore have been made by me.

10 I hereby appoint Lindsay Jeffery, Aura Jones and Harold Penso to be the executors and trustees of this my Will.

I hereby give and bequeath to Mr. George Price, to Mr. Alfred Pinks, Mr. Joseph Kirkwood, Mr. W.W. Dyer, Miss Nellie Price and Mr. Fred Westby the sum of Fifteen thousand dollars each.

I give and bequeath to all my other employees the sum of Ten thousand dollars each.

20 I give and bequeath to my daughters Margaret Turton and Aura Jones all my shares in the Royal Bank of Canada, Montreal equally.

I give and bequeath to my sons Mansell Turton and Sydney Joseph Turton the sum of Twenty thousand dollars each.

I give and bequeath to my dear friend Mrs. Clarke the sum of Thirty thousand dollars.

30 I hereby declare that all the debentures held by me in respect of the houses which I have agreed to sell to Real Estates Limited the shares of which are held by eight of my children shall be cancelled by my Executors and Trustees and the properties aforesaid shall be conveyed by my Executors and Trustees to the aforesaid shareholders free of all incumbrances.

40 All the rest residue and remainder of my property whether real or personal and whether in this Colony or elsewhere and wherever situate including my personal effects I give devise and bequeath unto to my Executors and Trustees upon trust to hold the same and pay the income arising therefrom for and to my children, Margaret Turton, Aura Jones,

Exhibits

P.8.

Statement in writing purporting to be Will of R.S. Turton dictated to Doyle Prince, 12th November 1955 - continued.

Mansell Turton, Sydney Joseph Turton, Cecil Turton, Robert Sydney Turton, Junior, Robert Straka Turton, Diana Turton, Delba Turton, Olga Turton, Lorna Turton, and James Turton, and my grandson Robert Sydney Acosta until the youngest of the said devisees and legatees shall attain the age of twenty one years and after the happening of this event to divide the said residue between the said devisees and legatees in equal shares.

I further empower my Executors and Trustees to manage all the residue of my property aforesaid until the youngest of the afore-mentioned devisees and legatees shall attain the age of Twenty one years and for this purpose to have the power to sell call in or vary investments and to do all such things as may be necessary for the preservation of my estate. 10

I direct my Executors and Trustees to pay all my just debts and funeral and testamentary expenses out of my said estate. 20

IN WITNESS whereof I have this 12th day of November, 1955 set my hand to this my last Will and Testament.

(Sgd.) R.S. Turton.

SIGNED DECLARED AND ACKNOWLEDGED by the said Robert Sydney Turton as and for his last Will and Testament in the presence of us both present at the same time who in his presence and in the presence of each other have this day signed our names as witnesses 30

Sgd. D.A.E. Prince
" Roland Dewgard.

I hereby certify that this is to the best of my recollection the Will which I wrote at the dictation of the late Robert Sydney Turton at his office on Saturday November 12th, 1955 and which was signed in my presence by the Testator and in the presence of Roland Dewgard and that after the Testator had signed Mr. Dewgard and I signed in the presence of each other and in the presence of Mr. Turton, I signing first. I have narrated all the circumstances under which the Will was made to the Registrar and am willing to testify to this in a Court of law. 40

Sgd. D.A.E. Prince.

P.11. - STATEMENT OF ROLAND DEWGARDExhibits

P.11.

Statement of
Rowland
Dewgard,
(Undated).

10 I went to the office of the late Mr. Robert Sydney Turton on the evening of Saturday November 12th, 1955 about 4.30 to 5 p.m. Mr. Turton was co-executor with me of my father's estate and I went to see him about matters in connection with this estate. I met Mr. Mansell Turton outside the office and he showed me into Mr. Turton's office. There I found Mr. Turton and Mr. Prince, whom I knew as a young man employed by Mr. Turton. I began discussing my father's estate with Mr. Turton. He told me he was not feeling quite well and that I should call back the following week when we could talk about it. I then got up to leave when Mr. Turton said to me: "Son, as you are here witness this thing for me." Prince was sitting at the side of the desk. There was a sheet of paper on the desk with writing on it in the form of a document and Mr. Turton took it and signed it. He then passed it to Prince who signed it and then Mr. Turton passed it to me and I signed it. At the time I signed the document Mr. Turton's signature was on it. Mr. Turton put back the paper on his desk and I said good evening and left. I think I left the office around five p.m. I returned to my home "Richdew" on the Monday morning. I remember the date well because I heard over the radio the following Tuesday that Mr. Turton had died. I was very surprised as he appeared to be in good health when I left him. I left Prince in the room with Mr. Turton. I do not know that nature of the document which I signed as Mr. Turton didn't tell me what it was. I was not surprised at this as both Mr. Turton and my father would ask a person to sign something without disclosing what it was.

(Sgd.) Roland E.H. Dewgard.

Exhibits

D.2. - LETTER FROM L.A. JEFFERY

D.2.

Belize, B.H.

Letter from
L.A. Jeffery,
13th February
1956.

13th February 1956.

Miss Margaret Turton &
Mrs. Aura Jones,
Joint Administrators.

Mesdames,

Since your departure for the United States the Registrar General sent for me with reference to a supposed missing WILL purported to have been written by D.A.E Prince and witnessed by Roland Dewgard.

10

He has instructed me by order from the Chief Justice to make another diligent search for this Will.

I hope you are having fair weather and are accomplishing something.

Expecting to see you all soon. With best regards.

Yours faithfully,
(Sgd.) L.A. Jeffery,
Joint Administrator.

20

D.6.

D.6. - LETTER FROM L.A. JEFFERY

Letter from
L.A. Jeffery,
13th February
1956.

Belize, B.H.,

13th February 1956.

This is in identical wording to Exhibit D.2.

D.18. - LETTER FROM W.H.COURTENAY TO MARGARET TURTONExhibits

W.H. COURTENAY & CO.,
Solicitors & Notaries
W.H. Courtenay, C.B.E.
Telephone: 89
Cables "Legis" Belize
C O D E S
A.B.C.5th.D & Bentley's
106

174 Church Street,
Belize,
British Honduras.
24th February, 1956.

D.18.
Letter from
W.H.Courtenay
to Margaret
Turton,
24th February
1956.

10 AIR MAIL
REGISTERED

Miss Margaret Turton,
c/o Mrs. Norman Brockbank,
1 Vale View,
Conistan,
Lancaster, England.

Dear Margaret,

Estate of R.S. Turton, deceased

20 As you have already been informed by Major
Jeffery, a report has been made to the Court that
your late father executed a will a few days before
his death. Whether the Administrators believe
this or not, the matter must be dealt with by them
in the proper way. A thorough search for this
alleged will has been made of the office, except
the safe, and the house must be thoroughly searched
and report made to the Court.

30 We understand that you have the keys to the
safe and the house, and to enable the necessary
search to be made of both places, we must ask you
to return these keys immediately by airmail. I
will see to it that your representative, Mr. Pinks,
is present during the search of the house and
that your personal belongings are not interfered
with. We will also try to arrange for an officer
of the Registry to be present.

Exhibits

D.18.

Letter from
W.H.Courtenay
to Margaret
Turton,

24th February
1956 -
continued.

It is my duty to tell you that the Administrators are officers of the Court and as such are liable to be removed from office and otherwise penalised if they do not carry out their duties properly or do anything which may be regarded as contemptuous of the Court. Please therefore comply with the request to return the keys by airmail immediately. If they are not received here by the 10th March, a report will have to be made to the Court, and the matter of the alleged Will will be then investigated by the Court and pronouncement thereon made.

10

Jo asks to be remembered, and with kindest regards and best wishes from us, both.

Yours sincerely,

Sgd. W.H. Courtenay.

Co. to Registry of the Supreme Court

Major L.A. Jeffery & Mrs. A. Jones.

P.9. - LETTER FROM MARGARET TURTONExhibits

Turton's Residence,
1837, Marine Parade,
Belize,
British Honduras, C.A.
2nd May, 1956.

P.9.
Letter from
Margaret
Turton,
2nd May 1956.

Mr. R.A. Pitts,
Acting Registrar,
The Registrar's General Office,
10 Belize, British Honduras.

Dear Sir,

On Monday, 16th April, 1956, the Hon'ble. the Chief Justice, made it clear, that very shortly, the matter of the alleged Will that Doyle Prince said my late father made on the 12th November, 1955, must go through the Court of Laws.

I know that my father did not make a new Will. He was practising to make a new Will, but he did not actually make one.

20 My father, (as he knew how to!) obtained copies of various Wills, two of which I remember well: that of the late Mr. Glickstein; and that of the late Archbishop Dunn, and he was studying them with a view to the making of a new Will. Miss Nellie Price was to do the writing up of it. He and Miss Nellie Price were up at the Barracks on the morning of November the 13th. It was usually there that he went, when he had a serious matter to discuss. He was making mental notes of his intended
30 new Will. On the evening of the same day, 13th November, 1955, my father sat watching me for a long time, then he said he felt quite unsettled on his stomach, and just after that he started to vomit, and he kept on vomiting for a longtime. When he stopped, he told me: "Maggie, tell Nellie Price I want to see her tomorrow morning. I want her to fix up that thing for me". Then he started to strike his breast, and said: "I haven't got my affairs settled ----- poor me; poor me; poor feller".

40 It only remains for me to say, that I am in communication with prominent people in the United Kingdom on this matter, and if necessary, the Secretary of State for the Colonies will be asked to send out a man from Scotland Yard to probe it thoroughly.

Yours truly,
(Sgd.) Margaret R. Turton.

Exhibits

P.10.

Inventory in
the Estate of
R.S. Turton,
deceased,12th June
1956.P.10. - INVENTORY IN THE ESTATE OF R.S. TURTON,
deceased

True Copy

(Sgd.) A.O. Longsworth

Acting Registrar General.

BRITISH HONDURAS, 1955.

IN THE SUPREME COURT - PROBATE SIDE

In the Estate of ROBERT SYDNEY TURTON, deceased of
Belize, who died at Belize, on the 15th day of
November, 1955.

10

I N V E N T O R Yof all the Personal and Real Property which were
of the said deceased in respect of which Estate
Duty has become payable on the death of the de-
ceased, delivered in accordance with section 13
(1)(a) of Ordinance No.19 of 1927.PERSONAL PROPERTY

Wearing Apparel	2,204.50	
Household furniture and effects	2,225.20	
Office Furniture and Equipment	997.00	20

Merchandise:

Patent medicines	3,475.29	
Replacement parts for vehicles	4,872.37	
Sundries	<u>3,186.93</u>	11,534.59

Vehicles and Boats:

Packard Motor Car 1947	532.00	
" " " 1952	2,000.00	
" " " 1955	3,000.00	
G.M.C. Truck	1,356.47	30
Camion	4,861.45	
Dodge Command Car	87.08	
Tractor	4,000.00	
M/V "Sula"	13,181.00	
M/V "Neto"	<u>614.46</u>	30,382.46

Office Furniture and Equipment	997.00	
--------------------------------	--------	--

Carried forward	₡ 48,340.75	
-----------------	-------------	--

		Brought forward	\$ 48,340.75	<u>Exhibits</u>
				P.10.
Livestock at Boom Pasture:				Inventory in
	25 Bulls @ \$40.00 each	1,000.00		the Estate of
	70 Heifers 35.00	2,450.00		R.S. Turton,
	75 Cows 45.00	3,370.00		deceased,
	14 Heifers 20.00	280.00		12th June
	11 Bulls 20.00	220.00		1956 -
	1 Mule	75.00		continued.
10	40 Studs 25.00	1,000.00		
	36 Mares 30.00	1,080.00		
	63 Colts 20.00	1,260.00		
	20 Geldings 25.00	<u>500.00</u>	11,235.00	
Investments in British Honduras:				
	Government of British Honduras Debentures	80,000.00		
	Real Estate Ltd., Debentures	300,000.00		
	Belize Estate & Produce Co., Ltd.,			
20	200 Shares @ £15.10.0 = £3,100.	12,400.00		
	Palace Theatre Co., Ltd.,			
	150 Shares @ \$150.	15,000.00		
	Belize Turf Club	200.00		
	Mortgage Loans	<u>37,218.00</u>	504,818.00	
	Sundry Debtors		170,103.15	
Cash Balances in British Honduras:				
30	Royal Bank of Canada	11,223.88		
	Barclays Bank D.C.O.	851.38		
	Savings a/cs.	5,276.73		
	In safe and with Cashier	<u>9,364.46</u>	<u>26,716.45</u>	
			761,213.35	
<u>REAL PROPERTY</u>				
Town of Belize:				
	West Canal Street	3,500.00		
	Pettycoat Alley	3,500.00		
	Goal Lane	<u>5,000.00</u>	12,000.00	
		Carried forward	<u>\$773,213.35</u>	

<u>Exhibits</u>	Brought forward	\$773,213.35
P.10.		
Inventory in the Estate of R.S. Turton, deceased, 12th June 1956 - continued.	District of Belize:	
	308 Acres at Gallows Point	300.00
	901 " " Manatee Seacoast	1,240.00
	20 " " Bermudian Landing	100.00
	289 " " Bermudian Landing	500.00
	1,344 " " Frankfurt Belize River	2,250.00
	14,186 " " Spanish Creek	11,721.00
	88 " " Caye Caulker (Fred Wagner)	250.00
		16,411.00
	Town of Corozal:	
	22,223 Acres at Sarteneja	9,340.00
	40 " " San Jomal	80.00
		9,420.00
	Total Property situate within B.H.	\$799,044.35
		20
	<u>DEDUCTIONS:</u>	
	Funeral Expenses	800.97
	Medical and nursing expenses	668.10
	Debts	88,173.11
		89,642.18
		\$709,402.17

DEVOLUTION

Under the Will of the Testator dated 10th May 1918 provisionally admitted to probate a trust of the residuary estate is created for the benefit of certain names natural children after providing certain small annuities and legacies and a devise of real property for certain strangers in blood.

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Dated this 12th day of June 1956.

L. A. Jeffery,
Margaret R. Turton,
Aura Jones.

P.7. - EVIDENCE OF DOYLE PRINCE TAKEN de bene esseExhibits

Monday October 1st, 1956

P.7.

Evidence of Doyle Prince taken de bene esse.Evidence of
Doyle Prince
taken de bene
esse,

Mr. E.W. Francis for the Plaintiff.

Mr. W.H. Courtenay for the Administrators of the
Estate of Robert Sydney Turton.1st October
1956.

Mr. S.A. McKinstry for Everalda Turton.

Mr. A.B. Rowe for Margaret Turton.

Mr. D.K. McIntyre, Acting Attorney General for
the Crown.

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Doyle Prince sworn saith:

I live at Gaol Lane, Belize, I was a clerk employed at Turton's office, but I am now employed as a book-keeper at Real Estate Ltd. I used to work for the late Robert Sydney Turton as a clerk for eight years before his death. I left the employ of the administrators at the end of March, 1956. I didn't know Mr. Turton before I began to work for him. During the time I worked for him I was living at his residence. My mother is employed as a cook by Mr. Turton and she took me there with her. I lived in Mr. Turton's house. I am 24 years old. When I was eight years of age I went to live at Mr. Turton's house. I went to St. John's College for three years 1946-1948. I used to work for Mr. Turton when I was going to school. I started to work with him as a full time employee in December, 1948 and continued up to the date of his death. I stopped living at Mr. Turton's house in September, 1956. I typed letters, took dictation from Mr. Turton, and sometimes I assisted the cashier. At other times I did errands. Sometimes the letters were special letters i.e. confidential and not ordinary business letters. Mr. George Price also used to do this work. I had no regular hours. Sometimes the confidential letters were taken and typed during working hours and sometimes in the night. My hours for leaving the office were not fixed - any time between 5 and 9 p.m. At times Mr. Turton had the letters typed without making copies. He would then only sign the original. The reason was, he said, that he did not want anyone to know about it. On 12/11/55 - a Saturday - I worked in the morning and in the afternoon. Mr.

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Exhibits

P.7.

Evidence of
Doyle Prince
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esse,

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1956 -
continued.

Turton called me into his office about 2.30 p.m. and told me to close the door. He told me to sit down and take some dictation for him. Before he started to dictate he told me to go back outside and see if there was anyone there. I went into the outer office and no-one was there except Mrs. Jones who was in her office in the back. He then started to dictate a Will to me. He told me first that he wished me to do something very special and confidential. He said he wanted Miss Nellie Price to do this but she had not come as he expected. Apparently she had no time as she did not come. He told me that I was to promise not to disclose in any circumstances what he was going to dictate to me. I told him yes. He then took a piece of paper from his pocket and started to read through it. He was reading it to himself. After he finished reading he started to dictate the Will. I took it down in writing with pen and ink. When he finished he asked me to read what I had written and I did so. He then asked me to hand it to him. He read it and was not satisfied and told me to start writing again. He dictated another Will. When it was finished I read it to him and handed it to him and he started shaking his head again. About this time Miss Muriel Pantin came in and interrupted us. Mr. Turton spoke to her and she left after a little while. He spoke to her in the private office. I was there also. When she left Mr. Turton began to dictate a third Will. There was another interruption by his tailor who had brought a suit for him. The tailor's name is Meighan. He spoke some time with Meighan because he had to try on the suit and he went to the back of the office to look at himself in the glass. The tailor and I followed him. He told the tailor he was not satisfied with the job and he asked Mrs. Jones how she thought it fitted him. She told him it didn't fit him so nice. We then went from the back office to Mr. Turton's private room. He told Meighan to hang up the suit and he paid Meighan who left. He went back to his desk and told me to resume writing as he wanted to get through. He continued to dictate to me and then I read it to him and he said this last draft sounded like what he wanted. I handed it to him. He read it through and remarked that this is all right but he would have to see Miss Price about it. Mansel Turton came to the door of the private office and said that Roland Dewgard wanted to see him. He told Mansel to tell Dewgard

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to wait a few minutes as he was busy. Shortly after he called for Mansel and told him to send in Dewgard who came into the room. Turton told Dewgard he wasn't feeling too well and it would be better if he returned and saw him on Monday but he would like him to witness his signature before he left. Mr. Turton then took the fourth draft and signed it, handed it to me, I signed it and passed it to Dewgard who signed it. Dewgard handed the Will back to me and I handed it to Mr. Turton. Dewgard then left. All three of us were there present together. No one else was in the room at that time. Shortly after Dewgard left I went out of the room and went outside and then Mansel went into Mr. Turton. I remained at the office until about 7 p.m. Mr. Turton was there also. Shortly after I left the room Major Jeffery came in and went into Turton's room. Before I left the room and after Dewgard had left Mr. Turton reminded me of my promise to say nothing about the Will which he had dictated. He told me that under no circumstances was I to disclose what I had just written. I saw him fold the paper after I handed it to him and he had it on his desk. Major Jeffery, Mr. Turton, Mansel and I left the office together. Major Jeffery went downstairs ahead of Mr. Turton. Just before I turned off the light, Mansel, Mr. Turton and I were together at the top of the stairs and Mr. Turton said he was feeling very badly and thought he was going to die. He then told me as I was young that I wouldn't like to die now and I remarked that sometimes it isn't what you want that you have. He replied if he dies he will console me by coming for me. I forgot to mention that at one time when the fourth draft was finished Mr. Turton picked up all the previous drafts, the paper he had originally been reading before he began dictating the Will and the fourth draft and he went into the toilet which is upstairs in the office. When he came back he had only the fourth draft with him and the paper which he had been reading at the beginning. After he came back Dewgard came in. When we were about to leave the office he put the fourth draft or Will inside the paper from which he had been reading and had it on his desk at the time I left the room. I closed the door. Mansel, Major Jeffery and Mr. Turton got into the car and left. I rode home on my bicycle. I remember what was in the fourth draft of the Will. I gave a statement to the Registrar in February, 1956. I told him

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Evidence of
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continued.

what I remembered the contents of the Will to be. I went to him on February 6th, 1956 in the evening. At that time he told me he was an ill man and he started to tremble and he wrote a note and sent me with it to the Chief Justice. I remember what I told Mr. Thomson was in the last Will. I think I remember it or some of it. The Will began by stating I Robert Sydney Turton Merchant of Belize, British Honduras declare this to be my last Will and Testament hereby revoking all previous Wills and Testamentary documents made before by me. He then named Major Jeffery, Mrs. Aura Jones and Mr. Harold Penso to be Executors and Trustees of his Will. He then made some bequests. All the shares which he had in the Royal Bank of Canada, Montreal to be shared equally between his daughters Margaret Turton and Aura Jones. He gave \$15,000.00 to Mr. Pinks, George Price, Joseph Kirkwood, Walter Dyer, Mr. Fred Westby and Miss Nellie Price. He gave a bequest of \$10,000.00 each to the rest of his employees. To his friend Mrs. Helen Clarke he gave \$30,000.00. To Mansel Turton and Sydney Joseph Turton he gave \$20,000.00 each. He requested that his Executors and Trustees cancel all the debentures which he had against Real Estate Ltd. and to free Real Estate Ltd., from any incumbrance. He then said that the remainder of his estate he left to his Trustees to take care of it until his youngest child reached the age of twenty-one years and he gave the names of the children; namely Margaret Turton, Aura Jones, Mansel Turton, Sydney Joseph Turton, Cecil Turton, Robert Straker Turton, Delba Turton, Lorna Turton, Olga Turton, James Turton and his grandson Robert Acosta, and also Diana Turton. I don't remember any other name which was mentioned. After the youngest child reached the age of twenty-one years the remainder of his estate was to be divided equally between them. He said he gave the Executors and Trustees power to manage his affairs and to call in and sell investments as they saw fit for the preservation of the estate. There was a final clause acknowledging his signature and setting out that the witnesses both saw him sign and that they both signed in his presence and in the presence of each other. In reply to a question by Mr. Francis Doyle said that the name of Robert Sydney Turton Junior was also among the names of the children named as beneficiaries in the remainder of his estate. I never saw this Will again before Mr. Turton died nor did he again speak

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to me about it. I next saw Mr. Turton on Sunday night after he was taken ill. I saw him after 7 p.m. He was then in bed. He died on 15/11/55 about 8.40 a.m. Sometime after Mr. Turton died I heard that proceedings had been taken to probate a Will in the Registry. This was about a month or two after his death. I heard that administration had been granted to Major Jeffery, Aura Jones and Margaret Turton. I heard about a 1918 Will but I didn't go and look at it. I didn't pay much attention to it as I knew that I had made one for Mr. Turton on 12/11/55. Later I heard that the administrators were about to go to the United States in search of another Will as they had not found any Will later than 1918. When I knew for certain that they were going I went to the Registrar as I thought this might save them expense as I knew they would not find anything later than 12/11/55 and there was a Will made on 12/11/55. Before I went to the Registrar I spoke to Mr. Pinks, a senior employee at Mr. Turton's Office. I told him I had made a Will on 12/11/55 for Mr. Turton, but I gave him no details. He said he hoped it would be found as it would be better for everybody.

No Questions by Mr. Courtenay.

Examined by Mr. Rowe:- I was taken to Mr. Turton's home from 8 years old. My mother took me there when she went there as a domestic servant. I lived in the servant's quarters until his death. I spent three years at St. John's College. I took no examinations. I left because of my eyes. The doctor said I had myopia. I still have trouble with my eyes. I had to read and write when working as a clerk. I had drops to put in my eyes from Mr. Turton. When I first came to the office in 1948 I was a messenger, and up to the time of his death I still did messenger's work. I was not one of his principal clerks. When I left St. John's College I could type. Mr. Turton never graded us as juniors and seniors. At the time of his death I was getting \$40.00 per month. Most of the other clerks got more salary than I. I agree that I was a very junior member of the staff. Sometimes I wrote confidential letters for him to Ichabod Williams & Sons of New York - important business involving money transactions. He didn't keep copies of some of the letters. Mr. Price was employed as his Secretary. Mr. Price would type nearly all

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Evidence of
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continued.

the correspondence. When he was not there I did the work. When there was a lot of correspondence he and I worked together on it so that we would catch the mail. There were times when Price was there but Turton did not want him to type certain letters and he would call me. I can't say if Price also typed confidential letters for Mr. Turton. It was about 2.30 p.m. when I was called in by Mr. Turton. He took the paper from which he read from his hip trousers pocket. I can't say how much time 10
elapsed from the time when Mr. Turton started to dictate the fourth draft and the time I handed it finally to him. I handed him the final copy about 4.30 p.m. or a little later. It could have been half an hour between the time when Mr. Turton began to dictate the fourth and final draft and the time when I handed it to him. I was writing at an average rate. It could be half an hour or less. While he was dictating Mr. Turton would pause and ask me to read back what I had written. He didn't 20
dictate it right off like I am giving evidence. I didn't specially memorize it but what I have said is what I remember. I remember some of the contents of the other three drafts. Mr. Turton sent me out to see if anyone was in the outer office. Mr. Pinks was not there. Mrs. Jones was in her private office at the back. Mansel was not there either. I don't know when Mansel came. I know when he knocked at the inner office. He told Mr. Turton that Dewgard wanted to see him. I did not 30
hear Mr. Turton ask Mr. Dewgard to keep the matter in strict confidence. I was in the inner office all the time Dewgard was there. He told me not to disclose what I had written under any circumstances. I understood that he wanted me to keep secret the fact that he had made a Will, while he was alive. I do not know if Dewgard knew it was a Will which he was witnessing. Dewgard signed the document. I don't know if he knew it was a Will. I didn't notice Dewgard reading anything. I just handed him 40
the paper and he signed it. It was open. It was written on one page. I don't know where Mr. Dewgard is at present. When Mr. Turton came back from the toilet none of the documents had been signed. I glanced through it when he handed it to me to sign. I didn't read it through again. I knew it was the fourth draft. The other three had on scratches where he made alterations in them, but this one had none. From the time I went into the inner office Dewgard, Mansel, Meighan and Muriel 50

Pantin came to the office before the Will was signed. Mansel didn't go into the inner office. Meighan came and knocked and Mr. Turton went out to him. He tried on the suit where the telephone is and then he went to the back room to see how the suit looked in the glass. Meighan didn't go into the inner office. I don't know what time Mrs. Jones left the building. Major Jeffery went downstairs ahead of Mr. Turton and the rest of us. Mansel, Mr. Turton and I were at the top of the stairs together. Up to December, 1955 I lived at Mr. Turton's residence. Miss Margaret Turton lived there also, until she went to the United States to look for another Will. I didn't tell Miss Margaret Turton because they were still looking for a Will and I felt confident they would find the Will I had written. At the beginning when they were searching for the Will the attitude of the persons was that they didn't take anyone into their confidence. I didn't want to tell any of the parties. I felt the best person I could go to was the Registrar. I didn't know that the Will made in 1918 was being proved in Court. I heard that such a Will had been found and that it had been put into the Court. I didn't take any steps to find out if this was so. I heard about this from outside. I didn't think it my duty to check on this. I was not to disclose the making of the Will unless I was satisfied they could not find the Will. I knew the 1918 Will was the last Will they had found. I understood they were searching for a Will later than 1918. None of the Executors told me about the 1918 Will. All I knew was from hearsay outside.

Adjourned at 11.55 to 1.30 p.m.

Resumed at 1.30 p.m.

Examination continued: I knew that a search was being made for a Will. I was present at one of the searches. They didn't find a Will. I went to the Registrar about February 6, this year. I didn't tell anyone till about that time that I knew of the existence of the Will. On 6th February 1956 the Executors were still in Belize. I didn't tell the Registrar to communicate with them. I was made to understand that the administrators had a time within which to find a Will and I thought that if I told the Registrar that I had written this Will he would inform the administrators. I made no

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Evidence of
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P.7.

Evidence of
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continued.

effort to communicate with them myself. I didn't think they would find a Will in the United States. I would say that they were going to the U.S.A. on a wild goose chase. I told Pinks but I didn't ask him to tell the administrators. Other senior people than I were employed in the office. I can't say if they were doing more important work than I. Mr. Pink's usually held a power of attorney for Mr. Turton when he was not in the Colony. Sometimes I still went on errands for Mr. Turton. When I read the Will over to Mr. Turton he said it seemed all right to him but he wanted to see Miss Nellie Price. She does confidential work for Mr. Turton.

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I suppose she has been doing it for years. I can't say as a fact that she has been doing it for a long time. Turton didn't ask me to make a mental note of the Will. I didn't at any time make a note of what was in the Will. I didn't disclose the contents of the Will till February 6, 1956. I had nothing from which to refresh my memory. I can't say if Mr. Dewgard was a chance visitor that afternoon. I don't know if Dewgard had come to Mr. Turton on his own business. I have not seen Dewgard for some long time. I swore to an Affidavit on 27th February, 1956. Dewgard was as far as I know in the Colony on that date. I have never spoken to him about the matter. I can't say that I used the exact words that Turton used. The words are not my own words. I have given the words as I remember them in the Will. "Give and bequeath" were in the Will. Bequeath means to give anybody something like a car or a bicycle. I don't know the proper word for giving a house by Will. I don't know what is a debenture. I don't know what is an incumbrance. I said that the last clause in the Will was that Mr. Turton acknowledged the document to be his last Will. I don't know if he indicated to Mr. Dewgard that it was his last Will but that was in the clause. Mr. Turton dictated from the paper he was reading. He didn't tell Dewgard it was his Will. He asked him to sign the document. I last saw the Will on Mr. Turton's desk just before I left the office on the Saturday evening. I heard they were looking for a Will a couple of days after Mr. Turton died. I was not present when the 1918 Will was found. I heard about the probate of the 1918 Will about a month or two after Mr. Turton's death. I can't say how long after I heard this I went to the Registrar. I went

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to the Registrar sometime after I heard about the Probate of the 1918 Will. I didn't go to the Registrar immediately I heard this because a search was still going on for a later Will. I can't say if it would have saved the time of the Court if I had gone immediately to the Registrar. I believe so. I didn't mean to use the word believe. I didn't say that I believed that if I had gone to the Registrar immediately it would have saved the time of the Court. I was one of Mr. Turton's employees and I would get \$10,000.00 under the Will.

Exhibits

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Evidence of
Doyle Prince
taken de bene
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continued.

Examined by Mr. McKinstry: I learnt after the Will was reported to the Registrar that I wouldn't get anything under the Will. My mother was employed by Mr. Turton when I was eight years old. I used to carry the basket for the lady who went to Market - Mrs. Brown. I was not employed to do this but I did it. I don't know about my mother being second cook. I left school at the age of 16 - St. John's College. I have no certificate. I never heard that I was asked to leave because I did not have much sense. Generally I lock up the office but whoever is there last with Mr. Turton locks up the office. Some of the clerks leave at 12.00 on Saturday and some of them sometimes return. On Saturday 12th November, 1955 I was the only one there. No other clerk was there except Mrs. Jones. Turton's lunch was sent to the office that day. I saw no other clerks there. I didn't see Mr. Pinks there. Mr. Price was not there. I wrote the drafts on foolscap, white onion skinned plain - typewriting paper, single sheets. He was not satisfied with one of the Executors and one of the beneficiaries named in the draft. He had put in Mr. Bynoe of the Royal Bank of Canada. He had Mr. Pinks name in the first draft and he scratched it out. In the second draft he put in Mr. Penso in place of Mr. Bynoe and left out Mr. Pinks completely. He then corrected that and said he didn't want Penso and he put in Mr. F.C.P. Bowen and put back in Mr. Pinks and he had Miss Muriel Bladen's name in the third draft. He then dictated a fourth draft, left out Muriel Bladen and put back Mr. Penso as one of the Executors. He remarked that he didn't want Bynoe. The only differences were as to the names of individuals. I had to carry out Mr. Turton's instructions and so I could not let him make all the changes on one draft and then make a fair copy. He had a paper in front of him and

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Exhibits

P.7.

Evidence of
Doyle Prince
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continued.

he was reading to me from it. He said that all the debentures he had from Real Estate Ltd. were to be cancelled. I can't give you his exact words. Turton asked Dewgard to witness his signature to the document. He didn't tell him it was his Will. I have been living in the same premises with Miss Margaret Turton. She has helped me at times. She has been friendly to me. I didn't take part in a search more than once. I searched his private office with Major Jeffery, Mansel Turton and Robert Acosta for a Will. I didn't mention the Will because when the Will was found it would explain itself. I didn't tell Major Jeffery that I had written out a Will for Mr. Turton. I promised Mr. Turton that I wouldn't say anything about the Will until I was satisfied that a Will could not be found. I told the Registrar that Mrs. Helen Clarke was a legatee for \$30,000.00. At the time I said Mrs. Clarke to the Registrar. I see my Affidavit of June 5, 1956. In that Affidavit I pointed out that I had omitted Mrs. Clarke's name from the list of legatees in the Affidavit sworn at Mr. Francis' office on 27th February, 1956. I returned the nextday and told Mr. Francis of the omission of Mrs. Clarke's name. The office was not closed up on the Saturday. I closed up the place. The windows were closed about 6.30 p.m. before Mr. Turton left. Major Jeffery was with him then. Major Jeffery came a little before 5 p.m. and he and Mr. Turton were speaking together. I used to announce visitors to Mr. Turton. This was not my principal duty - it was one of my duties. I typed letters for Mr. Turton both for abroad and in British Honduras. I have typed letters to I.T. Williams. I don't know if he kept a confidential file. I don't know where he kept the confidential file. In giving evidence this morning I forgot temporarily the names of Diana Turton and Robert Sydney Turton. Mr. Turton didn't use the name Everalda to me. I have heard that Mr. Turton had a daughter named Everalda. He had two other children whose names were not mentioned in the Will and I told him that he had left out two of Miss Bernice Locke's sons. He told me to mind my own business and do what he tells me. I didn't mention Everalda. She had never been in this colony since I went to live at Mr. Turton. I knew Miss Margaret Turton was getting ready to leave the colony. I was not in the habit of telling her things. When I went to the Registrar they had not left the colony yet. It was

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never a habit of mine to tell Miss Margaret anything. Mr. Turton always instructed me never to tell Miss Turton anything that happened in the office. At the time I reported the Will I wasn't thinking of the \$10,000.00. I didn't tell Mrs. Clarke, I told Mr. Pinks. I am working as a book-keeper for Real Estate now. I have a Zenith Radio - it was loaned to me by Mr. Jones. It is an old radio. Mr. Jones is the agent for Zenith Radios. (Clause re debentures in Will read to witness). The wording of this clause is worded by the Registrar from what I told him of what I recollected from what Mr. Turton dictated. Mr. Turton used the words "all the debentures which I hold in respect of Real Estate Ltd." I didn't write out the Will as I remembered it. Mr. Turton had a paper in his hand and dictated the Will to me. He read from the paper. I don't think he manufactured this clause out of his head at the time. It seemed to me that he read this from the paper before him.

Exhibits

P.7.

Evidence of
Doyle Prince
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continued.

Examined by Mr. McIntyre: Can you dictate the words as Mr. Turton dictated them to you? No I cannot dictate them word for word, I can put them in my own words. I told the Registrar the gist of Mr. Turton's dictation. I can remember fairly accurately what I said to the Registrar. I told the Registrar that Mr. Turton appointed Major Lindsay Jeffery, Mrs. Aura Jones and Mr. Harold Penso as Executors and Trustees. I told him how the Will began. I told him how the Will started before I told him about the Executors. I told him "I Robert Sydney Turton Merchant of Belize hereby declare this to be my last Will and Testament hereby revoking all previous Wills and testamentary documents made before by me". I next told him about the appointment of the Executors. As regards the bequests I told the Registrar as far as I could remember what Mr. Turton had dictated. I told the Registrar that he said that the shares which he had in the Royal Bank of Canada be given to his daughters Miss Margaret Turton and Mrs. Aura Jones to share equally. I think I told him that Mr. Turton gave his shares in the Royal Bank of Canada to his daughters Margaret Turton and Aura Jones to share equally. I gave him the gist of the other bequests and he put in the bequeathing words. Mr. Turton used the word bequest in directing all the gifts - I think the word was bequeath. I used the word debentures to the Registrar. I told him they should

Exhibits

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Evidence of
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continued.

be cancelled by the Executors. I didn't profess to be giving the Registrar Mr. Turton's exact words. I couldn't remember the exact words used by Mr. Turton in every line. I wrote the Will four times. I am sure I didn't make a mistake as to who was crossed out and also as to who was put in in the various Wills. All the changes were quite simple to remember. He changed the name of the Executors four times. Pinks was taken out of the first and not put in the second and put back in the third and fourth. Muriel Bladen was put in in the third and left out in the fourth. On 12th November, 1955 I did no other confidential correspondence for Mr. Turton. I had often typed confidential letters for Mr. Turton before. The last time was some weeks before November 12. I typed some confidential correspondence for him to the National Boulevard Bank of Chicago. There was a copy of this letter which Mr. Turton kept. The Bank has sent a statement of his special account in Chicago and he was annoyed and he wrote them telling them not to send anything about his personal account in Chicago to his Belize office. I can't be sure of the time.

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Re-Examined: I heard about the proving of the Will and I understood from what I heard that they were not certain whether this was the last Will which Mr. Turton made. After this they were still searching for a Will. I didn't tell Miss Margaret Turton about the Will because Mr. Turton had always forbidden me to tell her anything about his business because he said she was crazy. I did confidential correspondence about Mrs. Jones who was then in Jamaica. Mr. Turton destroyed the copy. I think Mr. Penso knew about this correspondence, but as far as I know none of the others. Mrs. Jones came to Belize as a result of the correspondence and took charge of Real Estate Ltd. In May 1955 Mr. Turton contemplated going to the United States to reside permanently. I went to the U.S.A. Consul to get a permanent resident visa form. (Question as to Mr. Pinks over-ruled).

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Evidence taken de bene esse closed.

P.12. - BLANK SHEET OF PAPER SHEWING WHERE
SIGNATURE OF DECEASED, WRITING AND SIGNA-
TURES OF PRINCE AND DEWGARD WERE ON DOCUMENT

Exhibits

P.12.

Blank Sheet of
paper shewing
where signature
of deceased,
writing and
signatures of
Prince and
Dewgard were
on document,
(Undated)

The image shows a blank sheet of paper with several handwritten marks. At the top, there are two short horizontal lines. Below these are two longer, slightly curved horizontal lines. In the center, there is a large, stylized signature that appears to be 'S.D.' or similar, with a large loop. Below this signature are two more horizontal lines, one shorter than the other. At the bottom left, there is a large, complex signature with many loops and flourishes. To the right of this signature, there are two smaller, wavy horizontal lines. At the bottom right, there are two more wavy horizontal lines, one above the other.

IN THE PRIVY COUNCIL

No. 16 of 1958

ON APPEAL

FROM THE SUPREME COURT OF BRITISH HONDURAS

IN THE ESTATE OF ROBERT SIDNEY TURTON, deceased

B E T W E E N:

ROBERT SIDNEY ACOSTA (Plaintiff) Appellant

- and -

ALFRED OWEN LONGSWORTH }
AURA JONES and }
MARGARET TURTON } (Defendants) Respondents

RECORD OF PROCEEDINGS

HY. S.L. POLAK & CO.,
~~20/21, Fooks Court,~~ *46 Museum Street,*
~~Curator Street,~~ *W.C.1.*
~~E.C.4.~~
Solicitors for the Appellant.

GRAHAM PAGE & CO.,
41, Whitehall,
S.W.1.
Solicitors for the Respondent,
Margaret Turton.