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1967/12

IN THE PRIVY COUNCIL

No. 47 of 1964

ON APPEAL

FROM

THE SUPREME COURT OF BERMUDA

IN THE ESTATE of MARGARET YOUNG HORNE
(also known as Margaret Young Huntingdon)
deceased

B E T W E E N :

WILLIAM EDWARD ARTHUR SWAN
(Plaintiff)
Appellant

- and -

MARISCHAL PHILLIPS HUNTINGTON
and RICHARD CLEVELAND FOX
(Defendants)
Respondents

C A S E FOR THE APPELLANT

1. This is an Appeal from the judgment of the
Supreme Court of Bermuda (the Hon. Myles John
Abbot Kt. Chief Justice) dated the 3rd July 1964
whereby the Court pronounced for the force and
validity of a copy of a Will of the above named
Margaret Young Horne dated the 24th January 1950
and granted Probate in solemn form thereof and
administration of the personal estate of the
deceased to the above named Defendants-Respondents,
two of the Executors named therein and part
beneficiaries thereunder, pronouncing against a
Will dated the 22nd March 1961, of which the
Appellant was sole executor and sole beneficiary.
The main question in this Appeal is as to the
testamentary capacity of the deceased.

Record

p.85

Record
p.138(parents)

p.95

p.1

p.1

pp.2-3

p.137

p.4

2. The above named Margaret Young Horne (also known as Margaret Young Huntington, and born Astwood and hereinafter called "the Deceased") of Warwick Villa, Warwick Parish in Bermuda, died on the night of 27th/28th March 1961 at the King Edward VII Memorial Hospital, Paget Parish, Bermuda, a Widow, aged 64½ years. On the 1st April 1961, the above-named Respondent, Marischal Phillips Huntington, her son and only child, who lived in New Jersey, U.S.A., (hereinafter called "the son") entered a Caveat in the Supreme Court of Bermuda that nothing be done in the personal estate of the deceased unknown to him, which Caveat was warned by the Plaintiff-Appellant (hereinafter called "the Appellant") and appearance was entered to the warning.

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3. On the 6th May 1961, the Appellant issued a writ of summons, Numbered 1961 No. 41, in the said Supreme Court (Probate Jurisdiction) in the Estate of the Deceased against the son, endorsed with a Statement of Claim claiming, as executor, Probate in solemn form of the Will of the deceased bearing date the 22nd March 1961.

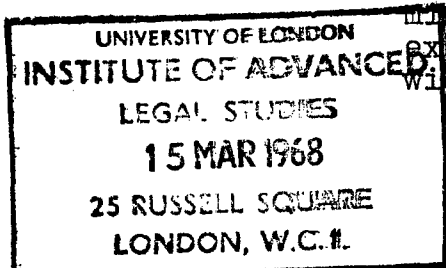
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By the said Will the Deceased revoked all former Wills and testamentary dispositions, appointed the Appellant sole Executor, directed payment of her just debts funeral and testamentary expenses out of her real and personal property and gave and bequeathed the residue of all her said real and personal property to the Appellant his heirs and assigns absolutely. This Will had been duly signed and had been prepared upon the Deceased's oral instructions by Mr. L.J. Madeiros, Attorney of the Supreme Court, who with his Secretary, Diana Jackett, had duly attested it.

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4. On the 13th June 1961, the son delivered his Defence by which, in short, he admitted the appointment of the Appellant as Executor of the said Will of the 22nd March 1961 but alleged that the Deceased was incompetent and not of sound mind for some time before and at the time of its execution, that she had died intestate and a widow and that he was the only lawful son and

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heir at law and the only person entitled to her estate and he counterclaimed that the said Will should be pronounced against.

Record

5. On the 31st October 1961, the son delivered Particulars of Delusions, which were considered at the trial and are set out in paragraph 14 of this Case.

pp.5,6

10 6. In February 1962, the copy Will of the 24th January 1950, of which probate in solemn form has been decreed, was discovered in the possession of Mr. E.T. Richards, Attorney of the Supreme Court, a former legal adviser of the Deceased, who had prepared it.

p.11.1.30

20 This document (which described the son as of New York City in the State of New York, U.S.A.) revoked all other Wills, appointed the Respondents, with one Edward Astwood, a brother of the Deceased, to be Executors and Trustees of her Will and the property comprised therein, gave her dwellinghouse "Warwick Villa" and its land and cottages, together with the furniture fixtures and other personalty therein and thereon at the time of her death, to the trustees upon trust for sale and for payment out of the proceeds and out of her money of her funeral and testamentary expenses and debts and of legacies given by the Will or any Codicil, and the trustees were to stand

30 possessed of the residuary trust moneys to be divided in equal shares between her son, the 2nd Respondent, (hereinafter called "Fox"), Edward Astwood and the Trustees of The Packwood Old Folks Home in Sandys Parish, Bermuda.

p.12

40 The Deceased appointed the above mentioned Mr. E.T. Richards to be the attorney for her said Estate and directed that he should be entitled to charge the usual fees and receive the usual remuneration for professional work in relation to that Will and the property comprised therein (this being the only legacy given by this Will and no Codicil thereto being known). Finally the Deceased gave to her son the rest and residue of her personal estate, absolutely. The original of this Will was proved to have been prepared upon the Deceased's written instructions by Mr. Richards, who, with his Clerk, duly

p.65

Record

attested it.

p.132 Edward Astwood had predeceased her on the 3rd May 1955.

p.16 7. On the 19th February 1963, there was issued out of the Supreme Court a writ of summons, also numbered 1961 No. 41, wherein the Appellant was Plaintiff and the son and Fox were Defendants
p.87.11.1-6 endorsed with the same Statement of Claim as on the said writ of the 6th May 1961. This action appears to have been intended to be and was treated as an amendment and continuation of the original action by the addition of Fox as a Defendant.

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p.18 8. On the 27th March 1963, the son delivered an amended Defence containing the same allegation of the incompetency of the Deceased as in his Defence of the 13th June 1961 and further alleging the former Will of the Deceased, dated 24th day of January 1950, of which he and Fox were Executors, and again claiming to be the only lawful son and heir at law and the only person entitled to the estate of the Deceased, if she died intestate and a widow, and further claiming, if she died testate in respect of the said Will of the 24th January 1950, he was one of the Executors and one of the Beneficiaries. He counterclaimed (a) that the Court should pronounce against the said Will of the 22nd March 1961, (b) in the alternative (i) Probate in solemn form of the Will of the 24th day of January 1950 (ii) a declaration that, as the only lawful son and heir at law, he was the only person entitled to the real and personal estate of the Deceased who had died intestate and a widow.

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p.21 9. On the 13th May 1963, the evidence of the son was taken in advance of the trial (pursuant to Order 37 rule 5 of the Rules), on the ground that (his residence being in New Jersey) he was shortly visiting Bermuda and that it would cause him considerable expense to return there for the trial. (At which however he was present but was not again examined).

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10. His evidence was, shortly, to the following effect:-

Record

10	<p>He was the Deceased's only child being her son by her first husband who had died when he was about 3 years old. He had lived with his Mother until he was 14, when the Bermuda Courts took him away from her. (This was in 1937). While living with her, the slightest thing he did wrong resulted in a beating and he was made by her to study very hard and had little time to play. She sent him successively to two schools and finally to a private tutor, because she did not think that he was learning enough at school. He denied that he was an unmanageable mischievous boy, and though he used to run away from home it was under threat of beating. Taking his mind back to this period, he considered her treatment of him was tantamount to some form of insanity, as there seemed to him to have been, in many instances,</p>	<p>pp.21-30</p> <p>p.76.1.24</p> <p>p.24.11.20-35</p>
20	<p>no reasonable reason for her treatment. After the Court had removed him from his mother's care, he remained some time in Bermuda and eventually went to the United States to join the U.S. Navy at a date which does not appear.</p>	<p>p.25.1.28 to p.26.1.7</p> <p>p.24.11.2-7 p.28.11.7-13</p> <p>p.22.11.23-29</p>
30	<p>He said that had not had any contact whatever with her after he had left her care except on three occasions. The first occasion had been 9 years previously (i.e., in 1954) when she visited New York on her way to England, and sent for him to see her at a hotel, "stated that she had made her Will out three ways" and that he was one Executor and proposed to give him a contract, which it seems was to assist her in her business of an apartment housekeeper, of which nothing came at this time.</p>	<p>p.22.1.30</p> <p>p.22.1.33 to p.23.1.10</p>
40	<p>The second occasion had been in 1955, when he had visited Bermuda with his wife and children for a holiday. <u>He did not want anything to do with her</u> but, on receiving a pressing message from her, that she wanted to see him, he went to see her, when the contract was again discussed, her offer being that he should have a free apartment, work 8 hours a day on an outside job, work on her property in his spare time and his wife work for her in the house. This he refused, considering it slavery to her and the offer of it</p>	<p>p.23.11.11-25 p.29.11.13-30 p.27.1.1 (date)</p> <p>p.24.11.11-13</p>

Record

showing unsoundness of mind.

- p.23.11.26-32
p.25.11.15-27
p.26.11.11-15
and 28-31
p.27.1.4(date)
p.27.11.4-5
p.26.11.19-20
p.29.11.1-5
- The third occasion was that, after his return to the United States, he wrote her (in 1956) a letter that, if she were to assign a portion of the property (i.e., her apartment house) to himself and his wife, so that they would know what they were working for, he might consider it, enclosing a note of what he wanted her to do. He asked her to teach him to run the business at Warwick Villa. To this he received no answer. He agreed that she managed the business very efficiently. He was not surprised that he had been excluded but was that her grandchildren (his children) had been. 10
- p.24.1.39
- The Witness, who at that time was a bus driver in New Jersey, where he resided, did not explicitly state where he had resided after he had left Bermuda in his youth to go to the United States, but it is reasonably apparent that he had not come back to Bermuda except as a visitor and there is no indication that he had done even that, except on the one occasion in 1955 or that he had resided elsewhere than in the United States. He admitted that he took no interest in his mother's affairs in her lifetime, and significantly, he did not know who the Respondent Fox was, though Fox had been closely associated with her for many years, or more of the Appellant than that he believed the Appellant had worked for her for the previous 10 or 11 years. They appear to have met on the occasion of the meeting he had had with his mother at her home in the year 1955. 20
- p.27.11.20-24
p.22.1.1
p.25.1.2
- p.51.11.21-32
p.54.11.37-41
p.64.11.28-31
pp.32-33
10. On the 3rd February 1964, Fox delivered a Defence and Counterclaim, making the same admission of the Executorship of the Appellant of the Will of the 22nd March 1961 and a similar allegation that the deceased was not of sound mind memory and understanding as had been made in the said Defence of the son and further alleging that such Will was procured by the undue influence of Appellant and counterclaiming Probate in solemn form of the Will of the 24th January 1950 whereof he and the son were Executors. The stated substance of his case as to incapacity is given in paragraph 15 of this Case. The allegation of undue influence was 30
- p.77.11.21-29
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negatived both by Fox and by the Court at the trial and is not further referred to in this Case.

Record
p.77.11.21-29
p.92.11.5-8
pp.34-35

11. On the 4th May 1964, the Appellant joined issue upon the last mentioned Defence and, as Defence to the last mentioned Counterclaim, did not admit the execution of the said Will of the 24th day of January 1950 and alleged that, if executed, it was not the last Will of the Deceased. This pleading was also delivered to the son.

10 12. On the 17th June 1964, on the commencement of the trial, by leave and with consent, the son delivered a further Amended Defence identical with his Amended Defence of the 27th March 1963 save that it counterclaimed alternatively for Probate of a copy of the Will of the 24th January 1950 instead of the Will itself.

pp.37-38

20 13. On the same date, by leave and with consent, the second Respondent delivered a Defence and Amended Counterclaim identical with his Defence of the 3rd February 1964, save that it counterclaimed alternatively for Probate of the said copy of the Will of the 24th January 1950 instead of the Will itself.

p.39

14. In support of the allegation that the Deceased was incompetent and not of sound mind at the time of executing the said Will of the 22nd March 1961 the Respondents relied upon the following allegations.

30 A. The son in his Particulars of Delusions, delivered on the 31st October 1961, gave instances of six alleged delusions, each of which will hereinafter be referred to by its number.

pp.5,6.

A.1. First Delusion:- that the Deceased underwent a period of irrationality while a patient in the King Edward VII Memorial Hospital, Bermuda, during the month of March 1961 and, in particular, that she claimed that she was being poisoned by the Medical Staff of the said Hospital, which allegation was untrue.

p.5

40 A.2. Second Delusion:- that the Deceased claimed ownership of property known as "Mermaid Rocks" Warwick West, Bermuda which "is" (sic.? "was then")

p.6

- Record in the legal ownership of Mervyn S. Astwood and to which the Deceased had no rights.
- p.6 A.3. Third Delusion :- that the Deceased asserted a claim to land adjoining property known as "Sand Song", Warwick, Bermuda, over which the Deceased had no rights and which was at the time in the legal ownership of Frederick Gunniston Astwood and the Deceased accused the said Astwood of trespass on the said land.
- p.6 A.4. Fourth Delusion :- that the Deceased accused the said Frederick Gunniston Astwood in the Magistrates' Court of attempting to kill her by throwing her down a quarry, which accusation was untrue. 10
- p.6 A.5. Fifth Delusion :- that the Deceased re-asserted her claim to the said property known as "Sand Song" when it was in the legal ownership of Morris Alvin Gibbons and maliciously damaged the same.
- p.6 A.6. Sixth Delusion :- that the Deceased believed that there was a piece of steel running up and down her arm and refused to believe the diagnosis of sciatica by her medical adviser. 20
- pp.33 & 40 B. Fox, in his Substance of Case as to incapacity, alleged that he met the Deceased at her doctor's surgery on a day in or about January 1961 (that is, some time prior to her death) and her manner of behaviour and conversation was strange and nonsensical and that since that date until the date of her death the Deceased exhibited a change in personality consistent with that of a person whose mind was completely unbalanced. 30
- pp.41-84 15. The trial took place before the Chief Justice on the 17th June 1964 and four succeeding days, when the witnesses were heard, whose names and connection with the Deceased are given in Part 1 of the Appendix to this Case. In Part 2 of the Appendix the life of the Deceased is summarised as appearing from the evidence.

The picture which emerges is that of a somewhat eccentric person, unconventional in her

clothes, hard working and capable, and exacting hard work also from at any rate one of her husbands and from her son while in her care. As to him, she was cruel but in order, as she thought, to be kind, and particularly so that he might fully benefit from his schooling.

Record

10 16. On the 3rd July 1964 judgment was delivered pronouncing against the said Will of the 22nd March 1961 (but repelling the allegation of the Appellant's undue influence in procuring it) and in favour of the said Will of the 24th January 1950 and ordering Probate of the said copy thereof and it was decreed accordingly.

p.85

17. In his Judgment the Chief Justice first dealt with the Will of the 22nd March 1961 and found that the Deceased was, when she made it not of sufficiently sound mind, memory and understanding to have proper testamentary capacity and pronounced against the validity of that Will.

p.87.1.38 to
p.91.1.44

20 He next found that the allegation by Fox of undue influence exercised by the Appellant to procure the execution of this Will had not been established. In fact no evidence in support had been adduced and Fox himself had repudiated the idea.

p.92.11.4-7

30 The Chief Justice then proceeded to deal with the Will of the 24th January 1950, finding that the copy given in evidence was a true copy, that the original had been lost or had been destroyed, but, by inference, not destroyed by the Deceased, and that, on the balance of probabilities and in view of his finding that the Will of 22nd March 1961 was invalid, it had not been revoked and that the Deceased, even hearing in mind her eccentric and litigious habits and her cruelty to her son, had then the necessary testamentary capacity to make it. The Appellant, if the Will of the 22nd March 1961 is held not valid, accepts entirely the finding as to testamentary capacity and does not dispute any other of these findings.

p.77.11.21-29

p.92.1.9 to
93.1.23

40 In pronouncing against the validity of the Will of 22nd March 1962 because of the Deceased's mental condition prior to and at the time of her

p.89.11.31-48

Record

undisputed execution of this Will, the Chief Justice referred to the evidence of her eccentricities, her early treatment of her son (some 22 years before) and what he incorrectly described as her obsession about a piece of land which he said she thought she owned (this being a reference to the alleged 3rd and 5th delusions) and to her being, he said, very litigious.

But he only specifically dealt with and held to be delusions, the alleged 6th and 1st delusions, both of which he held to have been established. 10

p.90.11.6-21
p.74.11.4-16 &
p.76.11.36-42
p.68.11.7-8

As to the 6th Delusion, (the steel in the arm) the only evidence of this was that of Fox, which the doctor concerned did not believe to have been correct and which is not supported by that of any other witnesses to whom she might, and, it is submitted, probably would, have displayed it at and about the time (January 1961) spoken to by Fox. It is submitted that, on a consideration of all the evidence as to this, the proper inference is that Fox misunderstood a statement by her that her arm felt as if it had had a nail driven into it. 20

p.16.11.1-3

As to the 1st Delusion (poisoning) the only specific delusion alleged was that the Deceased believed that she was being poisoned by the medical staff of the hospital. Though the evidence is not precisely to this effect but is wider, there is no doubt that there was some evidence (particularly of Dr. MacAuley who had procured her admittance and who was attending her there) that, at some period after she had entered the hospital on the 22nd March 1961, she had said that attempts, by administering pills were being made and/or had been made to poison her by the doctor himself and by the hospital staff. But no evidence was given by him that, in fact, she had this delusion at the time she gave instructions for the Will or when she executed it, and all the other evidence as to its existence clearly relates to a period after the day of execution, namely the evidence of Nurse Mitchell relates to the next day, Thursday, 23rd March 1961 or later, and that of Mrs. Cassie White, Harry Sharpe and Mrs. Jessie Sharpe, to Friday, 24th March 1961. Nor was there 40

p.78.11.5-11

p.69.11.18-21
(Mitchell)
p.61.1.31-
p.62.1.29
(White)

any evidence that the Deceased believed any statement she might have made to the effect that she was being poisoned. There is no evidence that in such belief she refused the food or to have the pills and any other medicaments prescribed. Her statements were quite compatible with, and in the circumstances were, exaggerated expressions of dislike for hospital treatment.

Record
p.63.1.7
(H. Sharpe)
p.72.1.25
(Mrs. Sharpe)

10 The Chief Justice, apart from the before mentioned two specific alleged delusions, also referred to the general impressions of certain persons attending or visiting her at the hospital, namely, Dr. MacAuley, Nurse Mitchell, Mrs. White and Mr. and Mrs. Sharpe. Of these the only person who had seen her shortly before her entry into hospital and the making of her Will was Dr. MacAuley. While it is clear that on the evening of her admission into hospital (i.e., after she had made her Will) he considered her undoubtedly delusional, it is not apparent why he considered her delusional then or whether or not he considered her delusional previously. He indicates in his evidence that he treated her for mental disturbance by prescribing "Demerol" but his own written orders record that he prescribed this drug (after the making of the Will) "for pain" and apparently from it being followed by the indication "SOS", only if the patient requested relief. And the Hospital Administrator, Dr. H.J. Elverson, deposed that it is a painkilling drug, not given for mental condition.

p.90.1.29 to
p.91.1.39

p.78.11.31-32
Ex.C.p.3.

p.49.1.9

18. A Probate Act dated the 3rd July 1964 was issued whereby the said copy Will was admitted to Probate in solemn form (until the original or more authentic copy should be brought into the Registry) and administration was granted to the Respondents.

p.95

40 19. On the 9th September 1964 final leave to appeal to Your Majesty in Council against the said Judgment dated the 3rd July 1964 was granted to the Appellant by the said Supreme Court.

p.98

20. The principal question involved in the appeal is whether, on the evidence before him, the Judge was right in law in holding that the

Record

Deceased had not the necessary testamentary capacity to make the Will dated the 22nd March 1961.

21. It is respectfully submitted, for the reasons herein appearing, that he erred in his finding that the Deceased lacked the necessary testamentary capacity at the time when she made the Will dated 22nd March 1961 and that it was contrary to the evidence and was wrong on the facts in law in that there was no sufficient evidence justifying the Judge in holding that the mind, memory or understanding of the Deceased were in any way so impaired to deprive her of capacity in law from making a Will.

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p.91

22. Further, the Deceased's testamentary capacity could not be determined by the probity or otherwise of the principal beneficiary under the Will propounded by such beneficiary i.e., the Plaintiff, and the Judge was unduly swayed by his finding that the Plaintiff's evidence was unreliable.

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p.89.1.11

Though the Chief Justice held that the Appellant was not a reliable witness and particularly disbelieved him in respect of :

p.88.1.9Cf
p.50.1.24

(1) his statement that he found Deceased's condition normal (i.e., mentally normal) when he saw her in hospital on the 23rd March 1961;

p.88.11.16-21

(2) his statement (Record p.47 l.39, p.48 l.5, p.50 l.22, p.51 l.42, p.53 ll.40-43, p.55 l.35) that he never thought that he was going to benefit by the Will of the Deceased

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p.88.11.27-31

(3) his "denials of knowledge" of the 1950 Will after the death of the Deceased and his allegation (p.50 ll.32-38) that the 2nd Respondent had told him, if he found it, to destroy it and

p.88.1.37

(4) his evidence as to the case of Abelman and Huntington.

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it is submitted that his veracity in these matters, apart from (1) had no bearing on the testamentary capacity of the Deceased at or about the time of her execution of her Will on the 22nd March 1961.

Record

10 But the incidental finding of the Chief Justice that the Deceased had on several occasions (vide Record p.47 l.40, p.48 l.7, p.53 l.38, p.55 ll.31-35) spoken words to him giving the clearest possible indication that he was going to benefit by her Will is, it is submitted, of the greatest importance as showing that her Will of the 22nd March 1961 was made in pursuance of a long standing intention to benefit him by Will (dating back at least to the year 1957) which she still had (p.49 l.36.) immediately before she entered the hospital on the 22nd March 1961 and took steps to carry out that same day, as, before she died, she indirectly indicated to the Appellant that she had done.

p.88.11.16 to 21

p.53.1.38

p.88.1.21

cf.p.50.1.16

20 As to the disbelief of the Chief Justice in the Appellant's denials of knowledge of the earlier Will and his acceptance of the evidence of Fox that the Appellant did know about it, the Appellant had not denied knowledge of this Will, he had stated that he had been informed by the Deceased of its tenor.

p.88.11.27-30

p.53.11.3-10

30 What the Appellant had said was that the Deceased did not tell him where that Will was or show it to him and he denied knowledge of its whereabouts after her death.

p.53.1.10
p.50.11.30-38

23. The Judge attached undue weight to the Deceased's litigious disposition as it affected her testamentary capacity on the 22nd March 1961 and in particular failed to give weight, or sufficient weight, to the following facts :-

pp.89,90

- 40 (i) that the said "obsession" of the Deceased about her ownership of land (if she had any obsessions as to her ownership) was an obsession held by the Deceased almost contemporaneously with the making of the Will, the copy of which was admitted to Probate.

pp.58,60,61.

Record

(ii) that there was evidence that normal people get obsessed about land disputes and

(iii) that it was a family characteristic of the Deceased's family (the Astwoods) to "fall out over land".

p.63.1.32

p.99-100

24. The Judge attached no or insufficient weight to the fact that, in determining the Deceased's testamentary capacity, account had to be taken of her character. The Deceased's character was rigid and unbending. Her personal conceptions of right and wrong were upheld intransigently. These characteristics were evinced in her shooting a man (though, as she was acquitted, in circumstances that justified or excused it), wearing unusual clothes and quarrelling with relatives and litigating over what she believed to be her brother's land. They were also evinced in her stern treatment of her son, the relatively high demand she made of him in school and other work, although she felt affection for him, and was capable of kindness. These characteristics are of a kind now commonly ascribed to puritans. Her character was so determined, unbending and inflexible that it made her a woman different from most people, so that those who first met her or who knew her little thought she must be mentally unbalanced but those who had known her long were better able to recognise her for what she was, an eccentric and bizarre but mentally sound woman.

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25. The Judge's finding that delusion No. 6 had been proved was contrary to the weight of the evidence and was wrong in law in that :-

(i) He failed to give any, or sufficient, weight to the evidence of Mr. S.H. Pettit, an independent witness, who under cross examination said that the Deceased had told him she had shoulder pains two weeks before going to hospital but made no mention of any piece of steel. Had the Deceased really believed she had a piece of steel in her she would have been likely to have told

p.59.11.20-22

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this witness and anyone who presented her with an opportunity to tell the same.

Record

10 (ii) He failed to give any or sufficient weight to the evidence of the Deceased's physician, Dr. Smith, who had treated her for over 10 years from the 12th December 1950 to the 18th March 1961 and in particular to his evidence that she said her arm felt as though a nail had been driven into it, evidence which indicated that the Deceased used the said words as a figure of speech or evidence which was compatible with such a construction

p.67

p.68

20 (iii) He held that a belief, before she executed the said Will, i.e. in January 1961, that she had a nail or piece of steel in her arm, constituted evidence of testamentary incapacity on the 22nd March 1961. There was no evidence before the Judge that she held that belief on that day or at that time or, except in a figurative fashion, at any time.

p.75.1.4

26. The Judge's finding that the first delusion had been proved (i.e., as to her being poisoned in hospital) was contrary to the weight of the evidence and was wrong in law in that :-

30 (i) he gave no, or insufficient weight to the evidence of Dr. Smith, who had been the Deceased's physician between the 12th December 1950 and the 18th March 1961 and who stated in evidence that he had visited the Deceased 4 days before the 22nd March 1961 and that all the time he knew the Deceased she was, in his opinion, of sound mind, memory and understanding. There was no doctor who knew the Deceased as well as Dr. Smith and the other doctors who examined the Deceased only saw her for the first time immediately prior to her death and were, in the circumstances, more likely

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p.67

Record

to be led astray by her eccentricities and unable to make the necessary allowances for the same.

p.91

- (ii) He failed to give any, or sufficient, weight to the evidence of Norah Mitchell who

pp.68,69

- (a) knew the Deceased for a long period of time and had regarded her as eccentric in matters which she specified (as she phrased it "as mad as a hatter")

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p.69

- (b) but saw the Deceased every day except perhaps the day she was admitted while she was in hospital in March 1961 as nurse at the said hospital and who was the only witness who saw the Deceased every day at that time and therefore, knowing her eccentricity, could form a considered opinion of her state of mind. Having seen the Deceased in those circumstances and having heard her complaints that she was being poisoned, that witness (who had known the Deceased all her life) considered that her mental balance was not disturbed when she was admitted to hospital (i.e., on the date of the execution of the Will of the 22nd March 1961) and saw nothing much the matter with her mentally all the time she was under this nurse's observation.

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p.69.1.22

admitted to hospital (i.e., on the date of the execution of the Will of the 22nd March 1961) and saw nothing much the matter with her mentally all the time she was under this nurse's observation.

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p.69.1.14

p.88.1.2

- (iii) He failed to give any or sufficient weight to the evidence of Dr. Nash who, while she was in hospital from the 22nd to 28th March 1961 saw her once at least, probably within 2 days of her admission, spoke to the Deceased and saw nothing unusual about her.

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p.43.11.1-5

- (iv) He failed to give any or sufficient weight, to the fact that the nurses' records of the Deceased made no

Ex.C.pp.13-20
N1

reference to mental instability on the part of the Deceased, these records, according to the said Dr. Nash, would have disclosed "any matters serious enough to be referred" to him. The mental instability of a patient would be such a matter.

Record
p.43.1.8

- 10 (v) He failed to give any, or sufficient, weight to the undisputed evidence that the Deceased had for upwards of 20 years (possibly nearly 30 years) until the 22nd March 1961 managed a Guest House for 18 people with success and efficiency.
- (vi) He failed to give any, or sufficient weight to the evidence of L.J. Madeiros, the Solicitor who took instructions for, prepared and attested the Will of the 22nd March 1961.
- 20 (vii) He was wrong in preferring the evidence of Dr. MacAuley, Mrs. White and Mr. and Mrs. Sharp or in holding that that evidence was sufficient to establish the Deceased's testamentary incapacity or to rebut the other evidence which established that she had the necessary testamentary capacity.
- 30 27. He failed to give any, or sufficient weight, to the following facts :-
- (a) that the Deceased had consulted Mr. Madeiros, her solicitor, 4 months before the 22nd March 1961 about the making of a Will:
- (b) that the Deceased sent for Mr. Madeiros as soon as she arrived in hospital;
- (c) that Mr. Madeiros, to whom the deceased was not a stranger, was so satisfied of the mental capacity of the deceased at the time when he took her instructions and when she executed her

p.26.11.8-20
p.49.11.30-35
p.55.11.1-16
p.58.1.1 to
p.59.1.9
p.75.11.43-48
pp.45-47

pp.90,91

p.45.11.26-28

p.43.11.18-19

p.45.1.41
p.46.11.23-40

Record

Will that it did not occur to him to obtain medical advice before execution as to whether she was mentally fit to make her Will but, as a matter of practice, she being a sick person, he afterwards spoke to Dr. MacAuley that very same day and that there was no evidence that Dr. MacAuley had told Mr. Madeiros then or at any other time that, in his opinion, she had not the necessary capacity or even that he was doubtful about it.

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p.74.11.21-34
p.77.11.7-11

(d) That the whole of the evidence before the Judge showed that the Deceased evinced an intention to benefit by testamentary disposition the person who was for the time being her handy man.

p.132
p.76.11.19-23

(e) That the Deceased had ceased to have affection for her son and had no near relatives except her son and his children, her brother Edward, to whom she had been attached, having died on the 3rd May 1955. Her son had been taken from her in 1937 in circumstances that distressed her exceedingly and there had been thereafter no communications between them except those in 1954, 1955 and 1956 mentioned by him in his evidence (referred to in paragraph 14 of this Case) and one earlier occasion (possibly 1941-1945), deposed to by Fox, being a letter written when he was serving in the United States forces, asking her to forgive him for what he had done. In 1954 she sought him out but in the result he rejected her advances and made it clear to her that he had no interest in her except on business terms and that he had done with her otherwise. She, having been so rejected by her son and her brother having died about this time, decided to alter her Will and returned to the decision she had taken in 1937 to leave her son nothing, a decision which, owing to the good offices of Fox, she

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p.76.11.23-28

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p.76.1.28

p.74.11.24-38

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had departed from in 1950.

Record

It is submitted that her actions after the rejection by her son of her overtures show that her doing so was not forgetfulness of his claims upon her but the execution of a long standing intention. It is submitted that this rejection by him of her proposals is the probable ultimate reason why she, in 1961, preferred to benefit by her Will the Appellant, who had upwards for 10 years been her trusted handyman, which she had wished her son to be but he had refused, and that this was a completely rational reason, so much so that he was not himself surprised that he and others had been excluded and accepted that situation for himself. It is clear that she had never had anything to do with his children.

p.77.11.7-9

p.29.11.1-9

(f) That all those who had known the Deceased for the longest periods of time or most intimately (the Plaintiff, Fox, Dr. Smith and Nurse Mitchell) together with Mr. Pettit who had been in almost daily contact with her for several weeks up to the day she made her Will, thought the Deceased was mentally sound at all material times and that the evidence of these witnesses (other than that of the Plaintiff but then only in respect of the period after the execution of the Will) was never seriously challenged or impugned. All these witnesses thought that the Deceased had the necessary testamentary capacity to make a Will on the 22nd March 1961 and only the persons who knew the Deceased very recently or had not seen her for a long period of time and knew least about her eccentricity, thought that she was mentally unsound and then only in respect of the period after the execution of the Will, when "she was going down hill" save that Dr. MacAuley doubted it on that day, stating that he

pp.47-57
p.75
pp.67-69
pp.58-59

p.78.1.12

Record

would not have thought that she was at any time that day of sound mind, memory and understanding.

28. In finding that the Deceased's mental incapacity was proved by the evidence of Dr. MacAuley, Mrs. White, and Mr. and Mrs. Sharp the Judge failed to give any or sufficient weight to the following facts :-
- pp.90-91
- p.62.11.23-25 (a) he failed to give sufficient weight to the fact that under cross examination Mrs. White said "when I saw the Deceased in hospital I had not seen her for 10 years. I would not have called her irrational. But nervous." Only when further pressed did this witness say that she thought that the Deceased was mentally ill and that the balance of her mind was disturbed. 10
- p.62.11.35-36
- pp.72-73 (b) Mrs. Sharpe concluded that the Deceased was mentally unbalanced because the Deceased complained to her that she was being poisoned by "all those pills". It was not appreciated that this could have been a mere figure of speech, indicating that the Deceased was dissatisfied with her treatment, and that the Deceased's suspiciousness was essentially in keeping with the Deceased's character as it appears from the evidence and with her mode of expressing herself forcefully. 20 30
- p.78 (c) That Dr. MacAuley had hardly known the Deceased at all and that it was inconceivable that, if he had thought that the Deceased was not fit to make a Will on the 22nd March 1961, he should not have told Mr. Madeiros so and told the Court that he had told him so. No evidence was adduced as to what was said in the course of the conversation between Dr. MacAuley and Mr. Madeiros though no one disputed that such a conversation had taken place on the 22nd March 1961, the day of the making of the Will. 40

29. The Appellant submits that the judgment of the Supreme Court of Bermuda should be reversed and that judgment should be given in accordance with the relief sought in the Plaintiff's Statement of Claim and the Will made on the 22nd March 1961 proved in solemn form or alternatively that the case should be remitted to the said Court for the hearing of further evidence for the following (among) other

Record

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R E A S O N S

1. BECAUSE the Plaintiff Appellant proved that the Deceased had the necessary testamentary capacity on the 22nd March 1961;
2. BECAUSE the delusions alleged by the son were not proved and the particulars of the case relied upon by both Respondents were not proved;
- 20 3. BECAUSE the Judge allowed himself to be unduly influenced by the impression he formed of the Plaintiff in the course of his giving evidence;
4. BECAUSE it was clear from the evidence before the Court that the Deceased had the necessary testamentary capacity on the 22nd March 1961;
- 30 5. BECAUSE the delusions found by the Court to exist, if rightly so found, were not calculated to influence the Deceased in making her Will, nor were they connected with the subject matter of the Will;
6. BECAUSE the exclusion of the son was rational and reasonable having regard to the history of his relations with the Deceased, especially his rejection of her overtures in the years 1954 and 1955 and was in accordance with her previous declarations;
7. BECAUSE Fox had no claim on the bounty of the Deceased which she ought to have recognised;

Record

8. BECAUSE the Will expressed the long standing and deliberate intention of the Testatrix and is wholly rational.

J.H. HAMES

APPENDIX PART 1RecordWitnessesDoctors:-

- P.W.1. M.E.B. Nash. Medical Superintendent at the Hospital where deceased was from 22nd to 28th March 1961. He saw her once at least, probably within 2 days of her admission and spoke to her. R42
- 10 D.W.9. C.A. Smith. Deceased his patient 12th December 1950 to 18th March 1961 when he last saw her. R67
- D.W.15. J.C. MacAuley. Lst saw deceased on 12th March 1961. Saw her twice in next 10 days, saw her in hospital on evening of admission (admitted afternoon of 22nd March 1961) after having seen her at home earlier that day and also saw her in hospital on subsequent days. R77 C5,6
- 20 D.W.1. H.J. Elverson. Hospital Administrator. Never saw deceased but spoke as to hospital records of her stay there. R48

Legal Advisers

- P.W.2. L.J. Madeiros. Full length of acquaintance not stated. Took instructions for and completed the Will of 1961 in the Hospital on 22nd March 1961 and had been consulted on the matter during the 4 months before she died (on 28th March 1961). R45
- 30 D.W.7. E.T. Richards. Acted for deceased between 1948 and 1951 approximately. Took instructions for and completed the Will of 1950, at which time she had been a client for 2 years, engaged in land litigation for her. R65
- P.W.4. E.A. Jones. Consulted in December 1957 as to obviating a Privy Council judgment affirming a judgment in 1951 of the Supreme Court against her on the ground of discovery of fresh evidence. R57

in paragraph 14 above.

Record

Relatives and friends

D.W.3. Miss Cassie White: An elder cousin of deceased, who had known her all her life, but, having left Bermuda on some unnamed date, had returned in 1935. Saw deceased in hospital on the Friday after her admission, that is, Friday 23rd March 1961, before which she had not seen deceased for 10 years. R61.11.9-10
R62.11.24-32

10 D.W.4 Harry Sharpe. His wife deceased's 1st cousin. R.63
knew deceased and had worked with her at a hotel in 1922 and visited her in hospital with Miss Cassie White on Friday 23rd March 1961.

D.W.5. Frederick G. Astwood. Cousin. Had known deceased all her life and had been summoned by her for trespass at a time which does not appear but long before her death. Did not know when he had last seen her but could remember what she looked like. R.63

20 D.W.6. Mrs. Margaret Huntingdon. Wife of 1st Respondent. Could only speak as to the interviews in New York and Bermuda deposed to by her husband. R.64

D.W.13. Mrs. Jessie Sharpe. Wife of Harry Sharpe. R.72
Cousin of deceased. Known her all their lives from schooldays together. Had seen her 5 years before her death and had visited her in hospital with her husband and Miss cassie White on Friday 23rd March 1961.

30 Neighbours and Third Parties

D.W.5 Stanley H. Pettitt. Businessman, guest at deceased's private hotel from 1st January 1961 until she went into hospital and had talked to her once or twice every day. R.58

D.W.2. Morris A. Gibbons :- Real Estate Agent. R.60
Had known deceased somewhat for many years and got to know her better after buying land from her cousin G. Astwood, in or about 1949, which led to litigation as to boundaries with her, ended in
40 the Bermuda Supreme Court by judgment for him on R.105.1.40

- Record 6th April 1951. He had had nothing to do with her since then.
- R.66 D.W.8. Anthony W. Sedgwick. Senior Magistrate. No personal knowledge of deceased but gave evidence of his findings in an action against deceased (Abelman v. Huntington) in 1959.
- R.68 D.W.10. Nora Mitchell. Next door neighbour of deceased and nurse at the hospital during her last illness, where saw her on the day after admission and thereafter every day. 10
- R.70 D.W.11. John B. Adcock. Neighbour of deceased from 1932 to 1938.
- R.71 D.W.12. Mrs. G.M. Wirthlin. Neighbour of deceased from 1936-1937 to 1941.

PART 2

HISTORY OF THE LIFE OF DECEASED

The evidence as to the circumstances and history of the deceased (in summary) was as follows :

- R.138 She was a white Bermudian, born in 1896, a 20
R.101.1.12 member of the Astwood family and had a brother Samuel Edward, who in the Record and this Case is referred to as Edward Astwood. There is no indication that she had any other brother or any sisters. When a child she did not at first like school and had to be coaxed to go there but no other evidence was given as to her childhood, except that her parents lived at "Warwick Villa", her own residence at the time of her death and for many years before. The Astwoods were 30
R.63.1.32 landowners, and often fell out over property.
- R.115.1.28 Her father was Samuel Josephus Astwood, who was the eldest son of Adrastus Henry Astwood. Adrastus Henry died in 1901, leaving a parcel of land supposed by him to be about 24 acres, which became the subject of litigation in which the deceased was involved, which is referred to later.

The deceased was twice married. Her first husband was William Huntington. The date and place of this marriage does not appear. In 1922, she was working in a Bermuda Hotel, and while so employed, she shot the Manager, was arrested, but upon being tried (as Margaret Young Huntington) she was on the 22nd May 1922 acquitted. She had an only child, the 1st Respondent, born in or about 1923. She obtained work in New York and he was born there and lived there with her. He alleged that on one occasion in New York she left him all day with insufficient food whilst she went to work. It does not appear whether husband and wife were living together during her stay in New York nor does it appear how long she and her son stayed there. His father died when he was about 3 years old (i.e. about 1926). There is no reference in the evidence to Huntington beyond his death. Eventually mother and child returned to Bermuda and lived together at Warwick Villa. The date is not in evidence.

Record
R.22.1.4
R.63.11.3-7
R.72.1.20
R.99 (Ex.D)
R.22.1.2

R.72.1.20
R.24.1.15

R.22.1.11

In 1933 her father Samuel Josephus Astwood died, having devised certain land (part of that supposed to be 24 acres) devised to him by his father, to Edward Astwood, and appointed the deceased his Executrix and residuary legatee. Edward had left Bermuda for the United States in 1914, became an American Citizen and did not return to Bermuda until 1947, as later appears. Possibly it was at her father's death that she returned to Bermuda, having become, as his residuary legatee, the owner of Warwick Villa. Upon it thereafter she carried on a private hotel or apartment house up to the time of her death. Her son lived with her until 1937, when he was 14. His own statement of the treatment he received from her has been indicated in para. 9 of the Case and shows that, however much she chastised him, she was desirous of his welfare and his progress in education. The witnesses, Nora Mitchell, Adcock and Gladys Wirthlin, speak of specific instances of harsh treatment by her for which they knew of no reason. Adcock and Mrs. Wirthlin thought him a hard working boy. He denied that, when he was a little boy, he was quite unmanageable. The deceased herself however had asked the assistance of the Court to control him but had been refused.

R.115.1.42
R.116.1.12-15
R.116.11.1-4

R.118.11.7-11

R.76.1.12

R.68-70 & 71

R.25.1.32
R.76.1.11

Record

R.76.1.24

In May 1937 she was summoned for cruelty to him when he was taken away from her, his subsequent dealings with her being stated in para. 13 of the Case. A little time before the Court intervened, the 2nd Respondent began to work for her as a handyman and continued to do so until 1951. He was called as a prosecution witness. Shortly after this event, deceased made a Will leaving everything to the Society for the Prevention of Cruelty to Animals.

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R.74.1.21

R.76.1.28

R.22.11.23-29

R.76.1.23

After being taken away from the deceased, her son stayed in Bermuda for some time but eventually went to the United States to join the United States Navy. It does not appear that, in the interval, he saw his mother again. But some years later deceased received a letter from the 1st Respondent asking her to forgive him as he was going overseas to fight and she might not hear from him again. (The United States entered the 2nd World War in December 1941). Apart from this letter, he appears to have passed out of her life entirely from the time when the Court removed him from her care in 1937 until she communicated with him in 1954, as later is stated.

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When she married her second husband, Horne, does not appear nor how and when this marriage came to an end, but it appears to have been subsisting on some unidentified date, apparently, after the deceased had made her home at Warwick Villa but before her son was taken away from her in 1937 by the Court. No other evidence was given about Mr. Horne, except that one witness, presumably referring to him, stated that she worked her husband very hard.

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R.24.1.7

R.68.1.36

The deceased was not personally entitled to any of the land devised by the Will of her grandfather Adrastus Henry Astwood, the subject of the litigation upon which the 1st Respondent relied as evidence of the alleged Third and Fifth Delusions nor did she ever claim ownership or make any other claim, delusional or otherwise, on her own behalf to any of the properties mentioned in the statements of such alleged delusions, all of which she is wrongly alleged in such statements

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to have claimed as her own.

Record

10 The facts in evidence are that her grandfather Adrastus Henry Astwood, who had died in 1901, dealt with his land which he supposed to be about 24 acres, in 3 parcels by his Will. The words of the 3 devises are set out in the Judgment of the Judicial Committee of the 5th October 1953 in Privy Council Appeal No.33 of 1951 and, in a summary form, in the Judgment of the Judicial Committee of the same date in Privy Council Appeal No.42 of 1951.

R.107.1.1
R.109 & 110
R.128.1.41
to 129.1.15

20 The short effect was that he devised the western portion to Samuel Josephus, describing it as supposed to contain about 12 acres and the eastern portion, which he subdivided into 2 parts, describing them as supposed to contain about 8 acres and 4 acres respectively, he devised to other children. These two latter portions some 40-50 years later had become vested in a grandson, the witness Frederick Gunnison Astwood. The Will contained no clear description by which the boundary between the eastern and western parts could be determined, and there seeming to be no natural or artificial boundaries, which and other ambiguities in the description led to the litigation in which the deceased became involved, which is relied upon as showing the alleged delusions A3 and A5 specified by the 1st Respondent.

R.106-107
R.117

30 In 1945 Edward Astwood was still in the United States. The deceased was looking after his land, devised to him by their father, which in their grandfather's Will had been described as "supposed to contain 12 acres" and in 1945 had a surveyor prepare a plan of the property of Adrastus Henry Astwood, from which it seemed that the whole area in that neighbourhood which had belonged to that testator might not be more than between 19 & 20 acres. Eventually during the litigation which followed, and after further survey, the Supreme Court found the whole area demised by the Will to be no more than this. In consequence of this and of the will not containing any clear indication of the boundaries between the 3 devised areas, questions arose as

R.116.1.15
R.116.11.12-42
R.116.11.42-46

Record

to them which gave rise to criminal proceedings against the deceased and civil proceedings against her and others.

R.118.11.7-13

In 1947 Edward Astwood returned to Bermuda and appears to have thereafter resided at Warwick Villa with the deceased. In May 1947 he gave to the deceased a full Power of Attorney to manage his affairs.

R.118.1.42

In September 1947 deceased sold $9\frac{1}{2}$ acres of Edward's land taken as containing 12 acres to the 2nd Respondent (described as a fisherman gardener) who subsequently sold a portion of the land to one Viera.

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R.119.1.7

In October 1947 the 2nd Respondent also gave the deceased a full Power of Attorney, acting under which, in June 1949, she contracted to sell about 2 acres to Ferguson & Leseur, upon which she received a deposit of £500. from each purchaser. This transaction was in abeyance until January 1950 (which was the time when the

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R.121.1.46

deceased gave instructions for and executed her Will of 24th January 1950) after which the Purchasers' Attorneys made some investigation of the title and rejected it and eventually the Purchasers, in 1951, successfully sued for the return of their deposits, judgment in their favour being given in the Supreme Court on the 22nd June 1951, against the deceased and the 2nd Respondent, whose counterclaim for breach of agreement and forfeiture of deposit was dismissed. This dispute was essentially concerned with the question as to whether some of the land sold was part of the land originally devised by the grandfather to the father of the deceased and by him to Edward Astwood or was part of the land

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R.114.1.26

described as "supposed to contain 8 acres" which had devolved by that time from the grandfather to the cousin of the deceased, the witness Frederick Gunnison Astwood; in other words what was the correct boundary between these two lands. This boundary also involved the deceased in litigation with the witness Gibbons, who in 1949 bought land from Frederick Gunnison Astwood, on which was a cottage. The deceased claimed that part of this land was inside the boundary of

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R.60

R.112.1.34

	Edward Astwood's land, which she was alleging to be a full 12 acres, and that the real boundary went through the cottage so, when Gibbons began to make an addition to the Cottage, the deceased is alleged to have pulled it down and to have done other damage. Before this occurred the land upon which part of the cottage stood had been disposed of as before stated, to Viera. It seems that in fact it was he who had done the most of the damage though with the approval and assistance of the deceased.	<u>Record</u> R.111.1.24 R.113.11.23-39
10	However it was only the deceased who was indicted in the Supreme Court in November 1950 for having, on the 3rd September 1950, wilfully and unlawfully damaged a cottage, the property of Gibbons, of which she was convicted and fined £25 and ordered to enter into a recognisance for £10 with sureties to keep the peace for a year.	R.102 R.104
20	The then Chief Justice severely criticised her conduct, which caused her to desire her then Attorney, the witness E.T. Richards, to bring an action against him. He advised her against this, whereupon she withdrew instructions from him in the before mentioned land litigation he was then conducting.	R.65.11.23-28 R.123.11.22-26
30	Thereafter in 1950 Gibbons took action in the Supreme Court against Viera and the deceased claiming damages for wrongful entry upon the land and injury to the cottage and also with an injunction to restrain the defendants from entry. Judgment was given on the 6th April 1951 in this action for the Plaintiff against both Defendants, with damages of £440 and costs. Appeals to Her Majesty in Council were brought against both judgments, that in respect of Gibbons' action becoming Privy Council Appeal No. 33 of 1951 and that in respect of Ferguson and Loseurs' action becoming Privy Council Appeal No. 42 of 1951.	R.60.1.36 R.106 R.108 R.126
40	On her way to England in connection with these appeals she sought out and had the interview with her son in New York of which he gave evidence.	R.22.1.30 to R.23.1.10 R.27.1.6-10 R.108 and R.126

Both appeals were dismissed on the 5th

Record

- R.115.1.18-26 October 1953. It is submitted that the judgments of the Judicial Committee proceeded upon the basis that there was a serious question as to the boundary requiring decision so that, in the words of the Chief Justice in *Ferguson & Leseur v. Horne & Fox*, this was a typical case of a boundary controversy "fraught with much complexity, interweaved by a long standing family feud".
- R.57.1.58 In December 1957 the deceased, who claimed to have discovered fresh evidence, took proceedings to set aside the judgment of the Supreme Court of the 6th April 1951 in *Gibbons v. Viera & Huntington* but the Court held that the evidence was not fresh. Evidence was given by her cousin, Cassie White, that, in the early 1950s, the deceased had asked Cassie White to accompany her to take possession of some land which the deceased said belonged to their ancestors, described by this witness as land to the west of Spice Hill and not identified as any part of the land demised by the Will of Samuel Josephus Astwood, but it does not appear that the deceased did anything else about this land. 10
- R.61
- R.74.11.19-23 Fox, who had been a substantial beneficiary under the 1950 Will, was not benefited by the Will of 22nd March 1961. He had never any natural claim upon her bounty but in 1950 he had been working for her as her handyman for about 13 years, doing the same work as the Appellant, and she had also involved him in her brother Edward's affairs and the consequent litigation which was going on at the time of the making of the 1950 Will. This close association ceased in 1951, though he continued to be friendly with her, but no reason appeared in evidence why he should be a major beneficiary or any beneficiary at all of her bounty. The Appellant had succeeded Fox in 1950 and had at her death in 1961 been, in succession to Fox, her handyman for over 10 years and had a month before her death begun to live in her house. Her brother Edward Astwood, on his return from the United States resided with her but died on the 3rd May 1955. 30
- R.75.11.1-3
- R.47.11.29-39
- R.132

Though the deceased had received a contrite letter from her son when he was about to go to war service in the United States Navy (possibly in 1942-43, the attack by Japan on Pearl Harbour having occurred in December 1941) she is not known to have responded to it. However, though in late 1949 or early 1950, when considering making a will in favour of her brother Edward and Fox, she had not intended to benefit her son, yet she appears to have been easily persuaded by Fox to do so in the manner appearing in the will of the 24th January 1950. Furthermore, when she passed through New York on her way to London, it seems for the hearing of the Privy Council Appeals in 1953, she contacted him, he having returned to civil life, told him of her will and that he an Executor and desired him to return to Bermuda to help her, a proposal which he then rejected, taking no interest in his mother's affairs at all.

Record
R.176.1.23

R.23.11-10
R.25.1.9-13
R.27
R.28.1.14-18
R.29.1.11-12
R.27.1.20

Also when he visited Bermuda on holiday in 1955 he did not want to have anything to do with her but it was she, being very anxious to see him, who did send for him or he would not have seen her, as he then did. She then again expressed the wish that he should return to Bermuda and offered him a free apartment for himself and his family, he to help her in his spare time in her apartment business and his wife to help her in the house. This proposal he rejected, considering that it was nothing more than an invitation to be again her slave. This closed her dealings with him, so that next year she ignored his proposals for a contract under which she was forthwith to assign to him (or perhaps to him and his wife) a percentage of her property in consideration of his coming to Bermuda to help her.

R.29.1.15-23
R.27.1.1
(date)

R.24.11.11-13

R.23.11.26-32
R.25.11.15-18

Thereafter until her death the Appellant continued to be her handyman and faithful servant, apparently her only servant, assisting her to conduct efficiently her lodging house. From 1957 onwards she gave clear indications on several occasions to him that she intended to benefit him by Will, as the Court found.

Record

R.133-6

In 1959 the deceased detained a television set belonging to the wife of a former lodger until paid for damage for which she claimed the wife was responsible. An action by the wife against the deceased ensued, in the course of which the claim was met and the set returned. It was then found in a damaged condition for which the deceased was held responsible and for which and for the value of a missing accessory, judgment against her for £32 and 24/- costs was given.

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R.140

On the 3rd March 1961 she is said to have given to a cousin, Mervyn Astwood, a warning that she intended to take possession of his house on the ground of want of title, indicating that she considered it hers and her cousin Gunnie's (the witness F. Gunnison Astwood) but he heard nothing further. This was relied upon as Delusion 2.

R.6

No. 47 of 1964

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE SUPREME COURT OF BERMUDA

IN THE ESTATE of MARGARET YOUNG
HORNE (also known as Margaret
Young Huntington) deceased.

SWAN

v.

HUNTINGTON & FOX

CASE FOR THE APPELLANT

A.L. BRYDEN & WILLIAMS,
20 Old Queen Street,
London, S.W.1.

Solicitors & Agents for Appellants.