

IN THE PRIVY COUNCIL

No. 18 of 1976

ON APPEAL
FROM THE FIJI COURT OF APPEAL

B E T W E E N:

1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI (all sons of BIDESI)
- (Plaintiffs)
Appellants

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- and -

THE PUBLIC TRUSTEE OF FIJI (Defendant)
Respondent

CASE FOR THE APPELLANTS

1. This is an appeal from an Order dated 25th July 1975, of the Fiji Court of Appeal (Civil Jurisdiction) (Gould V.P., Marsack J.A.) and McMullin J.A. dismissing with costs the Appellants' appeal from a judgment of Tuivaga J., dated 27th November 1974, in the Supreme Court of Fiji (Civil Jurisdiction). By that judgment Tuivaga J. dismissed the Appellants' claim for revocation of the Probate granted on 21st April 1959 of the pretended Will ("the Will") dated 18th April 1957 of Bidesi (Son of Chuman) deceased ("the deceased"), for a pronouncement against the validity of the Will, and for a grant to the Appellants of Letters of Administration of the estate and effects of the deceased; and by the said judgment Tuivaga J. pronounced for the Will in solemn form of law. This appeal is made pursuant to an Order of the Fiji Court of Appeal, dated 5th September 1975, granting leave to appeal to Her Majesty in Council.

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p.242 1.1	2. The deceased was born in or about 1886. At the age of 23 he married his first wife, by whom he had one daughter and four sons; those four sons are the Appellants. Their mother died in 1925 and the deceased married again several years later. He had ten children by his second marriage, six girls and four boys. The boys are the main beneficiaries under the Will.	
p.242 1.11		
p.242 1.14		
p.242 1.15		
p.242 1.38	3. The deceased spent most of his working life in the building trade, starting in a humble capacity and working up by his own efforts to become a successful and wealthy builder and developer. He left a substantial estate consisting mainly of real property, his estate being valued in November 1968 at nearly £102,000. The deceased was a deeply religious man in the best Hindu traditions. He had no formal education and was able neither to read nor write, except to sign his name in Hindustani.	10
p.243 1.23		
p.6 1.27	4. The Will was drafted in about April 1957 by one Harry Wheatley, who at that time was Deputy Registrar General of Fiji. The Will was executed by the deceased on 18th April 1957 and the deceased died on 15th November 1957. By the terms of the Will the Respondent was appointed executor and trustee thereof. Provision was made in the Will for the children of the deceased's second marriage but the Appellants were excluded from any benefit thereunder.	20
p.6 1.19		
p.227 1.28	5. On 21st December 1957 the Appellant, C.P. Bidesi ("C.P."), lodged a caveat against the grant of probate of the Will to the Respondent. C.P. lodged a second caveat on 14th May 1958, and a third on 29th October 1958. On 7th November 1958 the Respondent swore an affidavit in support of an application for a grant of probate of the Will in common form. As a result of an agreement made with the Respondent on or about 9th December 1958, whereby the Respondent agreed to apply for variations of the trusts of the Will, C.P. agreed to discontinue the caveat proceedings. On 16th March 1959 a consent order was	30
p.228 1.26		
p.229 1.2		
p.229 1.4		
p.463		40
p.247 p.10		

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10 obtained in the Supreme Court of Fiji to
discontinue the said proceedings, and on
21st April 1959 a grant of probate in
common form was made to the Respondent.
From 21st April 1959 the Respondent has
acted as executor of the Will and trustee
of the deceased's estate, and as such
executor and trustee as aforesaid has
entered into correspondence with the
Appellants and each of them relating to
various matters concerning the deceased's
estate, in particular the Respondent's
agreement to apply for variation of the
trusts thereof. It is the Appellants'
contention that such dealings were conducted
with the Respondent without prejudice to the
Appellants' rights in these or any other
proceedings.

20 6. On 23rd June 1966 the Appellants
issued a Writ of Summons in the Supreme
Court of Fiji. The indorsement of claim
thereon claimed revocation of the said
grant of probate dated 21st April 1959,
pronouncement against the Will, and a
grant to the Appellants of Letters of
Administration of the estate of the
deceased. The substance of the Appellants'
case, as set out in the statement of claim
indorsed on the writ, was that the Will
was neither read over nor explained to the
deceased, and he neither did nor could
read it himself before it was executed,
and that he was not aware of its nature
and effect.

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30 7. The defence and counterclaim was
delivered on 23rd September 1966. By his
defence the Respondent resisted the
Appellants' claim on four grounds:

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40 (1) the Will was read over and explained to
the deceased, who understood its full
meaning, nature and effect, and approved
its contents;

p.6 1.37

(2) by dealing with the Respondent as the
sole executor of the deceased's estate
since the grant of probate dated 21st
April 1959 the Appellants had recognised

p.7 1.5

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- and dealt with the Respondent as executor and trustee of the Will and were estopped from maintaining their claim;
- p.7 1.15 (3) the Appellants acquiesced in the said grant of probate and in the continued administration of the estate by the Respondent; and
- p.7 1.20 (4) the Appellants were debarred from their claim by laches. 10
- By his counterclaim the Respondent claimed a decree of probate of the will in solemn form of law.
- p.8 8. On 24th August 1967 one Donald Malcolm Noel McFarlane, solicitor to the Respondent, swore an affidavit in the proceedings which deposed that the said Harry Wheatley was then residing in the State of New South Wales, and was unable to travel due to his state of health. On 1st September 1967, by an Order made in Chambers upon the application of the Respondent, Hammett J. appointed one Max Egerton Warburton, Barrister-at-law, to act as Special Examiner for the purpose of taking the evidence of the said Harry Wheatley. On 15th December 1967 the evidence of the said Harry Wheatley was taken on oath before the said Special Examiner in Sydney, New South Wales, and the evidence was later transcribed. 20
- p.13
- p.476
- p.15 9. On 16th February 1967 the Appellants delivered their reply and defence to counterclaim. The Appellants resisted the counterclaim on two grounds :-
- p.16 1.1 (1) the deceased gave no instructions for the Will and it was neither read over nor explained to him, nor did he read it before it was executed, and he was not aware of its nature and effect; and
- p.16 1.8 (2) the Will was not duly executed according to the provisions of the Wills Act 1937. 40

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On 23rd February 1971 the Respondent delivered Particulars of Defence, and on 4th December 1972 the Appellants delivered an amended Statement of Claim by which they claimed revocation of the probate of the Will granted on 21st April 1959, a pronouncement against the validity of the Will, and a grant to them of Letters of Administration of the estate and effects of the deceased.

- 10 10. By a Case for Motion, dated 23rd November 1972, the Respondents applied for the issues numbered (2), (3) and (4) referred to in paragraph 7 hereof to be tried before the trial of the other issues in the action or before the trial of the action; and further or alternatively for the action to be discontinued, stayed or dismissed on the grounds raised by those issues. The action came on for trial before Tuivaga J. on 4th December 1972, and the Case of Motion was heard by Tuivaga J. on 4th December 1972. By a Ruling given on 5th December 1972 the learned Judge directed that the said issues be tried before the other issues in the action and counterclaim, and that the evidence given and tendered upon the said issues should be treated as evidence given and tendered in respect of the other issues in the action and counterclaim.
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11. On the 7th day of the hearing, namely 12th December 1972, the Respondent desired to tender in evidence the transcript of the evidence of the said Harry Wheatley. The Appellants objected to the admission to evidence of the said deposition on the grounds that
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- p.44
- p.106 1.2
- 40 (1) the conditions prescribed by O.38, r.9, Rules of the Supreme Court (1965) had not been complied with;
- (2) insufficient notice had been given to the Appellants of the Respondents' intention to adduce the evidence, in accordance with O.38, r.9(2);
- p.106 1.34

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- (3) the said deposition was not signed as required by O.38. r.9(3) and was accordingly inadmissible in evidence; and
- (4) the Respondent had failed to bespeak office copies of the said deposition.
- p.108 By a Ruling given on 12th December 1972, the learned Judge found against the Appellants on each ground and admitted to evidence the deposition of the evidence of the said Harry Wheatley. 10
- p.203 12. The taking of the evidence was concluded on 21st December 1972, and on 3rd April 1973 the Respondents' Solicitors delivered particulars of defence.
- p.239 13. By his Judgment delivered on 27th November 1974, the learned Judge dismissed the Appellants' claim. On the issues of acquiescence, laches and estoppel, which the learned Judge had ordered to be tried before the other issues in the action (but which were not so tried) the learned Judge held: 20
- p.262 1.43 (1) That the Appellants were precluded by their acquiescence from putting the Will in suit. The learned Judge held that the Appellants had dealt with the Respondents in matters concerning the deceased's estate for a period of 7 years, and that such dealings were on the basis that the Respondent was acting as executor and trustee under the will. The learned Judge further held that the Appellants had not indicated to the Respondent that the said dealings were without prejudice to their right to challenge the Respondent's position, and that the Appellants had abandoned their intention to contest the Will. 30
- p.263 1.8 The learned Judge went on to hold that there were no special circumstances justifying the Appellants' delay in commencing the present proceedings and that their delay was sufficient to induce a belief in the Respondent that the 40

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Appellants would not challenge the grant of probate.

10 (2) That the Appellants were debarred by their laches from putting the Will in suit. The learned Judge held that in the circumstances of the case the Appellants had delayed too long before presenting their claim. The learned Judge held moreover that the Respondent had been prejudiced in so far as he had been unable to call the said Harry Wheatley to give oral evidence, and was only able to adduce in evidence the said deposition. The learned Judge also held that the balance of justice on this issue lay in giving relief to the Respondent.

p.263 l.30
p.266 l.34

20 (3) That in the circumstances the Appellants were not estopped from presenting their claim.

p.266 l.46

30 14. As to the substantive issues in the case, the learned Judge preferred the evidence of the Respondent's witnesses to that of the Appellants' and held that the deceased possessed sufficient knowledge and understanding of the English Language to be able to converse with the said Henry Wheatley. The learned Judge furthermore accepted the evidence of the said Harry Wheatley as to the circumstances under which the Will was made and held that the said instructions were reflected accurately by the terms of the Will. The learned Judge went on to hold that he was satisfied by the evidence of the said Harry Wheatley that the Will was read to the deceased and explained to him, and that the deceased both knew and approved of the terms of the Will. Accordingly, the learned Judge found the Will to be valid and effectual in law, and accordingly he

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- (1) dismissed the Appellants' amended claim,
 - (2) upheld the Respondent's counterclaim and
 - (3) pronounced for the Will in solemn form of law.

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By a separate Judgment, delivered on 15th April 1975, the learned Judge ordered that the Appellants pay the Respondent's costs of the action.

p.301

15. The Appellants appealed to the Fiji Court of Appeal (Civil Jurisdiction) and on 25th July 1975 the appeal was dismissed. The principal judgment of the Court was delivered by McMullin J.A. The learned Judge of Appeal first summarised the course of the proceedings, and then dealt seriatim with the Appellants' grounds of appeal. The first ground of appeal was that Tuivaga J. had erred in holding that the deceased knew and approved of the contents of the Will. McMullin J.A. briefly reviewed the evidence as to the deceased's ability to speak English, the evidence as to the making of the Will given by the said Henry Wheatley, and by B.L. Gregg and by Christine Andrews, and finally the evidence of C.P. as to events subsequent to the reading of the Will. The learned Judge of Appeal held that although normally the Will of a testator who was unable to read English should first have been translated to him in his native tongue, and that fact should be stated in a certificate included in the attestation clause of the will, the absence of such a translation or such a certificate in the present case was satisfactorily explained by the deceased's desire for secrecy. The learned Judge of Appeal went on to hold that there were no circumstances to arouse suspicion in the present case, even though the deceased was a man of deep religious conviction and had not excluded the Appellants from benefiting under an earlier draft of the Will. Moreover, the learned Judge of Appeal held that Tuivaga J. was entitled to prefer the deposition of the said Harry Wheatley to the oral evidence of C.P., and to make the findings that he did that the deceased knew and approved of the contents of the Will.

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16. The Appellants' second main ground of

10 appeal was that the Will was not duly executed according to the provisions of the Wills Act 1837, in that the pages of the Will were separate sheets. Although there was no evidence that the sheets were together so as to form part of a continuous document, the learned Judge of Appeal held that the Respondent was entitled to rely on the maxim "omnia praesumuntur rite et solemniter esse acta" to support his contention that the Will was duly executed. The learned Judge of Appeal went on to hold that even if the Respondent were not entitled to rely on this maxim, in the light of the lapse of time between the grant of probate and the commencement of the present proceedings, the Court should not be over-zealous to assume that the technicalities of execution had not been observed.

20 17. The next main ground of appeal upon which the Appellant relied was that Tuivaga J. erred in ordering a separate trial of the issues enumerated in sub-paragraphs (2), (3) and (4) of paragraph 7 hereof, and that, having so ordered, Tuivaga J. erred in departing from the terms of the said order. McMullin J.A. doubted whether the order should have been made, but held that since the trial took substantially the same form as
30 it would have done had the order not been made, and since no party had been prejudiced by the terms of the order originally made or by any departure from it, this ground of appeal could not succeed.

40 18. As to the Appellants' next ground of appeal, namely that the Court should not have ordered the taking of the deposition of the said Henry Wheatley under O.37, Rules of the Supreme Court (1883), without proof of the existence or non-existence of a convention with New South Wales as to the taking of such evidence, McMullin J.A. held that such proof was not necessary to the making of such an order. As to the ground of appeal that the evidence of the said Henry Wheatley should not have been admitted, the learned Judge said that

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- (1) reasonable notice had been given for the purposes of O.38, rule 9(2), Rules of the Supreme Court (1965) (which applied to these proceedings by the time this action came on for trial at first instance), and in any event, any lack of notice was an irregularity which could properly be cured by the application of O.2, r.1. Rules of the Supreme Court (1965); 10
- (2) the Respondent was under no obligation to bespeak office copies of the deposition of the said Harry Wheatley;
- (3) the failure of the Special Examiner to sign the said deposition in accordance with O.38, r.9(3), Rules of the Supreme Court (1965) was not fatal to the admission in evidence of the said deposition, because the said deposition was sent to the Court together with a letter signed by the said examiner and any irregularity could be cured by the application of the said O.2, r.1; 20
- (4) that there was sufficient evidence that the said Harry Wheatley was beyond the jurisdiction for purposes of O.38, r.9(1), Rules of the Supreme Court (1965); and
- (5) that the failure by the Respondent to file the said deposition within the time laid down by the court was a further irregularity which could be and was cured by the application of the said O.2, r.1. 30

Accordingly, the order of Tuivaga J. to admit the said deposition had been rightly made.

19. McMullin J.A. went on to hold that the learned trial Judge was entitled to prefer the evidence of the said Harry Wheatley, Mr B.L.Gregg and Mrs Chirstine Andrews to that of the second, third and fourth Appellants. 40

20. The Appellants' ante-penultimate ground of appeal was that the Respondents' solicitors, Messrs Cromptons, and their

10 associate Mr Mitchell should not be permitted to act for the Respondent at the trial, because Messrs Cromptons had already acted for the Appellants A.M. Bidesi and C.P. in some of the matters in dispute, and that the Appellants would thereby be caused great injustice. McMullin J.A. held that although information received by Messrs. Cromptons and Mr Mitchell whilst acting for the Appellants was protected from disclosure, the fact that Messrs Cromptons and Mr Mitchell had previously acted for S.M. Bidesi and C.P. was not sufficient to sustain this ground of appeal.

20 21. The learned Judge of Appeal did not deal with the Appellants' penultimate ground of appeal, which related to the issues of acquiescence and laches, holding that it was not necessary to reach a decision on these points in the light of the rest of his judgment. Finally, the learned Judge of Appeal rejected the Appellants' appeal on the question of costs.

22. Marsack J.A. and Gould V.P. both concurred in the judgment of McMullin J.A.

pp. 334-336

30 23. The Appellants respectfully submit that the foregoing circumstances raise the following issues:

- 40 (1) whether or not the deceased knew or approved of the contents of the Will;
- (2) whether or not the Will was duly and validly executed in accordance with the Wills Act 1837;
- (3) whether or not the Court should have ordered the taking of the evidence of the said Harry Wheatley;
- (4) whether or not the learned Judge should have admitted the evidence of the said Harry Wheatley;
- (5) whether it was open to the learned Judge to hold that the Appellants were debarred by their acquiescence from

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putting the Will in suit;

- (6) whether or not the Appellants were guilty of such delay in prosecuting their claim so as to dis-entitle them to the relief sought by reason of laches.

24. As to issue (1), the Appellants respectfully submit that the burden of proving that the deceased knew and approved of the contents of the Will at the time when he executed it lies upon the Respondent, and that this burden has not been discharged. There is in the Appellants' respectful submission strong evidence indicating that the deceased did not understand English sufficiently well for the purposes of comprehending the contents of the Will. In the Appellants' respectful submission the learned trial Judge and the learned Judges of the Fiji Court of Appeal failed to take sufficient account of the Appellants' evidence on this issue. The Appellants' knowledge of the deceased's ability to speak and understand English was gained over a great many years of intimate acquaintance with the deceased during which the Appellants had extended opportunities of observing and assessing the deceased's abilities as aforesaid. In contrast, the dealings of the Respondents' witnesses Mr Wheatley, Mr Gregg, Mrs Andrews and Mr Tetzner (all of whose evidence was preferred to that of the Appellants) with the testator were severely limited both in nature and extent, and were confined almost exclusively to business dealings with the deceased.

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25. Furthermore, in the Appellant's respectful submission, there is strong evidence indicating that the deceased did not wish to exclude the Appellants from benefit under the Will, and that he did not know or approve of its contents in so far as they had that effect. The deceased was during the whole of his lifetime deeply religious in the best Hindu traditions and it would be contrary to the tenets of his

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belief not to make provision at his death for the Appellants, as sons of his first marriage. Moreover the Appellants and the deceased enjoyed a long and close relationship and, in the light thereof, the deceased would not, in the Appellants' respectful submission, have approved of the terms of the Will.

10 26. The Appellants further respectfully submit that no weight can be attached to any alleged explanation contained in the Will to the effect that the deceased excluded the Appellants from benefit thereunder because he had amply provided for them in his lifetime, in that the inclusion of such a provision would be in direct contradiction to the deceased's deeply held beliefs. Moreover, such benefits as the Appellants acquired during the deceased's lifetime were gained wholly or largely by their own efforts and industry, and not by the deceased's generosity, and the said benefits were negligible compared with the value of the corpus of the deceased's estate. Finally, the Appellants respectfully submit that the alleged explanation by the deceased of his exclusion of the Appellants from benefit under the Will is wholly
20 inconsistent with the alleged clause 6(e) thereof, in so far as the said clause 6(e) would effectively deprive the Appellants from participation in management of the deceased's business interests, and thereby further deprive them of benefits or provision made for them by the deceased during his lifetime.
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40 27. As to issue (2), the Appellants respectfully submit that the burden of proving that the Will was duly executed lies upon the Respondent. At the trial of this action the Respondent adduced no evidence as to whether the Will was executed as a continuous document. Accordingly, in the Appellants' respectful submission, the Will should not have been admitted to evidence. The Appellants further respectfully submit that the want

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of evidence on this point cannot be rectified by the application of the presumption "omnia praesumuntur rite et solemniter esse acta". The matters referred to in paragraphs 24 to 26 hereof inclusive raise in all the circumstances of this case a reasonable suspicion and doubt whether the Will reflected the true wishes of the deceased, and accordingly the Respondent should be put to strict proof of the due execution of the Will. Moreover, the Appellants respectfully submit that the omission from the attestation clause of the Will of any certificate to the effect that the terms of the Will had been explained to the deceased is a sufficiently marked irregularity to displace the said presumption and place a strict burden of proof on this issue on the Respondent.

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28. As to issue (3), the Appellants respectfully submit that the Court had no jurisdiction to make an order for the taking of the evidence of the said Harry Wheatley in the absence of proof as to whether there was in force with New South Wales any convention as to the taking of depositions therein for use in the present action. At the time when the learned Judge made the said order there were in force in Fiji the Rules of the Supreme Court 1883. By Order 37, rules 6B and 6C thereof, there was imposed upon the Respondent an obligation to obtain the said evidence by means of the appointment of a Special Examiner or issue of Letters of Request thereunder in the case of any country in respect of which a Convention had been made. In any other case, by rules 5, 6 and 6A thereof there was imposed an obligation to obtain the said evidence by means of appointment of a special examiner or issue of Letters of Request thereunder. The Appellants respectfully submit that the Respondent adduced no evidence as to whether any such convention was in force at that time and that accordingly the Honourable Court had no jurisdiction to make the said order by reason whereof it was not open to

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the learned trial Judge or the learned Judges of the Fiji Court of Appeal to apply the provisions of Order 2, Rule 1, of the Rules of the Supreme Court, 1965.

29. As to issue (4), the Appellants respectfully submit that the evidence of the said Harry Wheatley should not have been admitted because the Respondent did not give to the Appellants reasonable notice of his intention to adduce the said evidence in accordance with Order 38, rule 9(2), of the Rules of the Supreme Court 1965. In the Appellants' respectful submission the complexity of the issues involved in the evidence of the said Harry Wheatley and the vital importance thereof to the issues in this case imposed upon the Respondent an obligation to give to the Appellants notice of at least 28 days of his intention to adduce the said evidence, but the Respondent gave no notice until his learned Counsel's opening address to the learned trial Judge. The importance of the said evidence was of so fundamental a nature that, in the Appellants' respectful submission, it was not open to the learned trial Judge or the learned Judges of the Court of Appeal to apply the provisions of the said Order 2, Rule 1.

30. In the Appellant's further respectful submission, since the Respondent failed to bespeak an office copy of the deposition of the said Harry Wheatley it was not open to the learned Judge to admit the said deposition to evidence, in that the said deposition was not per se evidence in the present case, but the obtaining of office copies thereof was an essential pre-condition of the admission to evidence thereof. In the Appellants' further submission the learned Judges in the Court of Appeal were not entitled to distinguish the authority of Fisher v. C.H.T. Ltd. and Others [1965] 1 W.L.R. 1093, because the decision in that case applies to all depositions taken before an examiner, whether the Court has ordered the production of office copies thereof for examination or the originals thereof.

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31. As to issue (5), the Appellants respectfully submit that there was no long period of delay or acquiescence before the commencement of the present proceedings. As to the period from about 21st December 1957 to about 17th January 1961, the Respondent induced in the Appellants the reasonable belief that the Respondent would apply to the Supreme Court of Fiji for a variation of the trusts of the Will, on condition that the Appellants took no steps to challenge the validity thereof. As to the period from about 17th January 1961 to the commencement of the present proceedings on or about 23rd June 1966, the Appellants respectfully submit that although by his letter, dated 17th January 1961, the Respondent indicated that unless the law of Fiji were altered the said application could not succeed, the Respondent induced in the Appellants a reasonable belief that the law of Fiji would be altered so as to ensure the success of the said application. Accordingly, in the Appellants respectful submission the Respondent was party to and induced any alleged delay on the Appellants' part and cannot rely thereon.

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32. In the Appellants' respectful further submission the period from about 17th January 1961 to about 23rd June 1966 should not have been taken into account by the learned Judge on the issue of whether the Appellants had been guilty of delay. The Appellants respectfully submit that the Honourable Court should have acted by analogy with the period for limitation of actions for claims to the personal estate of a deceased person, namely 12 years from the date when the right to receive a share or interest accrued, and should have disregarded the said period before referred to, because the Appellants brought the present proceedings within the period of 12 years from the deceased's death and further or alternatively within 6 years after discovery of their cause of action in or about January 1961.

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33. The Appellants further respectfully

10 submit that their acts did not induce in
the Respondent the belief that they had
waived their objections to the Will.
The learned trial Judge did not attach
sufficient weight to the Appellants'
evidence that in February 1958 they
intimated to the Respondent that they
would accept the Will and the Respondent's
right to act as executor thereof expressly
without prejudice to their rights to
challenge the Will; and that the
Appellants did not withdraw these
intimations subsequently thereto. The
Appellants respectfully submit further
that the learned Judge did not attach
sufficient weight to the Appellants'
evidence that the Appellants repeatedly
made it clear to the Respondent that
they were dealing with him without
20 prejudice to their rights.

30 34. The Appellants' further respectful
submission on this issue is that all
dealings conducted between themselves and
the Respondent were on the basis that
the dispute as to the Will would be
amicably settled. Accordingly the
Appellants respectfully submit that the
said dealings were conducted impliedly
without prejudice to their rights, if and
in so far as the said dealings were not
expressly without prejudice thereto.

40 35. The Appellants respectfully submit
that their foregoing submissions on this
issue constitute special circumstances
which provide a bona fide and reasonable
explanation for the Appellants' failure
to commence the present proceedings
prior to 23rd June 1966, and that the
foregoing submissions in paragraphs 24 to
27 hereof inclusive constitute reasonable
grounds for disputing the Will, as the
Respondent knew at all material times.

36. As to issue (6) the Appellants
respectfully repeat thereon mutatis
mutandis their submissions set forth in
paragraphs 31 to 35 hereof inclusive,
so far as the same are relevant. The

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Appellants further respectfully submit that the learned trial Judge was not entitled to hold that the Respondent was prejudiced by the Appellants' delay in commencing proceedings because the Respondent was unable to and did not adduce any evidence that he had been prejudiced by the Appellants' conduct. In the Appellants' respectful submission the Respondent was not prejudiced by being obliged to tender in evidence the deposition of the said Harry Wheatley, because the said deposition embraced all the matters upon which the Respondent desired the said Harry Wheatley to testify, and the Respondent had a full opportunity to examine the said Harry Wheatley before the Special Examiner. 10

37. The Appellants also repeat with regard to this issue their submissions in paragraph 31 hereof that the Respondent was party to and caused any delay on the part of the Appellants to such an extent that it is not inequitable now to require the Respondent to prove the Will in solemn form of law. 20

38. The Appellants respectfully submit that the judgments of the Court of Appeal and Tuivaga J. were wrong and should be reversed, that the probate of the Will should be revoked, and that there should be a pronouncement against the validity of the Will and on order for the grant to the Appellants of Letters of Administration of the estate and effects of the deceased, for the following amongst other 30

R E A S O N S

- (1) The deceased did not know or approve of the contents of the Will;
- (2) The Will was not duly and validly executed in accordance with the Wills Act 1837;
- (3) The Court should not have ordered the taking of the evidence of the said Harry Wheatley; 40
- (4) The learned trial Judge should not have admitted the evidence of the said Harry Wheatley;

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- (5) The Appellants are not debarred by their acquiescence from putting the Will in suit;
- (6) The Appellants were not guilty of such delay in prosecuting their claim so as to disentitle them to the relief sought by reason of laches.

D. GIDLEY SCOTT

No. 18 of 1976

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE FIJI COURT OF APPEAL

B E T W E E N :

MUNI DEO BIDESI and OTHERS
(Plaintiffs)
Appellants

- and -

THE PUBLIC TRUSTEE OF FIJI
(Defendant)
Respondents

CASE FOR THE APPELLANTS

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