

IN THE PRIVY COUNCIL

No. 18 of 1976

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

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

- and -

THE PUBLIC TRUSTEE OF
FIJI (Defendant) Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the Appellants

Solicitors for the Respondent

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

B E T W E E N :

1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
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- and -

THE PUBLIC TRUSTEE OF
FIJI (Defendant) Respondent

RECORD OF PROCEEDINGS

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Affidavit of Muni Deo Bidesi verifying list of documents	7th April 1971
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Affidavit of Adrian David Steward Anderson and list of documents annexed thereto	13th April 1971
Affidavit of Plaintiffs and annexure thereto	9th August 1971
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EXHIBITS

Exhibit Mark	Description of Document	Date
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O N A P P E A L

FROM THE COURT OF APPEAL OF FIJI

B E T W E E N :

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

10

- and -

THE PUBLIC TRUSTEE OF FIJI (Defendant) Respondent

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

No. 7 of 1966

In the
Supreme Court

No.1
Writ of
Summons

23rd June
1966

IN THE SUPREME COURT OF FIJI

In the Estate of Bidesi, s/o Chuman, deceased

20

Between MUNI DEO BIDESI, SURYA MUNIDLAL
 BIDESI, CHANDRA PRAKASH BIDESI
 AND SHAR PAL BIDESI
 all sons of Bidesi, Deceased,
 of Suva, Fiji
Plaintiffs

And THE PUBLIC TRUSTEE OF FIJI
1st Defendant
 KAPESRI widow of Bidesi
2nd Defendant

30

ATMA PRASAD, KUMA PRASAD
 MUNI PRASAD AND JAGDISH PRASAD
 all sons of Bidesi
3rd Defendants

In the
Supreme Court
No.1
Writ of
Summons
23rd June 1966
- continued

BRIJMATI, MAYAWATI, BEENA
AND MIRA all daughters of
Bidesi

4th Defendants

WRIT OF SUMMONS

Elizabeth II, by the Grace of God of the United
Kingdom of Great Britain and Northern Ireland
and of Her other Realms and Territories, Head
of the Commonwealth, Defender of the Faith.

To: The Public Trustee of Fiji 1st Defendant 10

Kapesri, widow of Bidesi 2nd Defendant

Atma Prasad, Uma Prasad
Muni Prasad and Jagdish
Prasad, all sons of Bidesi 3rd Defendants

Brijmati, Mayawati, Beena
and Mira all daughters of
Bidesi 4th Defendants 20

of Suva

N.B. - This writ is to be served within twelve
calendar months from the date thereof, or, if
renewed, within six calendar months from the
date of the last renewal, including the day of
such date and afterwards.

The Defendants may appear hereto by
entering an appearance either personally or by
Solicitor at the Supreme Court Registry at Suva.

WE COMMAND you, That within eight days after the 30
service of this Writ on you inclusive of the
day of such service you do cause an appearance
to be entered for you in an action at the suit
of MUNI DEO BIDESI, SURYA MUNIDLAL BIDESI,
CHANDRA PRAKASH BIDESI AND SHAR PAL BIDESI all
sons of Bidesi, deceased of Suva, Fiji.

and take notice that in default of your so
doing the plaintiffs may proceed therein and
judgment may be given in your absence.

WITNESS the Honourable CLIFFORD JAMES 40
HAMMETT Acting Chief Justice of our Supreme
Court, at Suva.

3rd day of August, 1966.

Sgd ?
Solicitors for the Plaintiffs.

In the
Supreme Court
No. 1
Writ of
Summons
23rd June
1966 -
continued

INDORSEMENT OF CLAIM

10 The Plaintiffs claim, as the lawful sons and persons entitled in the event of an intestacy to share in the estate of Bidesi s/o Chuman late of Suva in the Colony of Fiji, who died on the 15th November, 1957, to have probate of a pretended will of the said deceased, dated 18th April, 1957, granted on the 21st April, 1959, revoked and the said will pronounced against, and to have a grant of letters of administration of the estate of the said deceased.

20 This writ is issued against you, the said Public Trustee of Fiji as executor of the said pretended will and against you the said Kapesri, Atma Prasad, Kuma Prasad, Jagdish Prasad, Brijmati, Mayawati, Beena and Mira as beneficiaries thereunder.

CERTIFICATE

A sufficient affidavit in verification of the indorsement on the writ to authorise the sealing thereof has been produced to me the 25th day of June, 1966.

Sgd
(I.R. Thompson)
Chief Registrar

30 This writ was issued by Wm. Scott & Co. Eldon Chambers, Suva, Solicitors for the Plaintiffs who reside in Suva.

STATEMENT OF CLAIM

1. The Plaintiffs are the lawful sons and some of the persons entitled on an intestacy of the estate of Bidesi s/o Chuman late of Suva, in the Colony of Fiji, Building Contractor, who died on the 15th November, 1957, intestate.
 2. On the 21st April, 1959, probate of an alleged will of the said deceased bearing date 18th April, 1957, was granted to the 1st Defendant as sole executor named therein out of the Supreme Court of Fiji.
- 40

In the
Supreme Court

No.1

Writ of
Summons

23rd June
1966 -
continued

3. The deceased at the time of the execution of the said alleged will neither knew nor approved of the contents thereof.

SUBSTANCE OF CASE

The said alleged will was not neither read over nor explained to the deceased, he neither did nor could read it himself before it was executed, and he was not aware of its nature and effect.

Dated this 23rd day of June 1966

10

Wm. Scott & Co.
Solicitors for the Plaintiffs

No..2
Citation
25th June
1966

No. 2

CITATION

IN THE SUPREME COURT OF FIJI
PROBATE JURISDICTION

No. 6486

IN THE ESTATE OF BIDESI SON
OF CHUMAN LATE OF SUVA IN
THE COLONY OF FIJI BUILDING
CONTRACTOR, DECEASED

20

ELIZABETH II, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of Commonwealth, Defender of the Faith.

C I T A T I O N

TO: THE PUBLIC TRUSTEE OF FIJI

Whereas it appears by the Affidavit of Surya Munidlal Bidesi, son of Bidesi, sworn the 16th day of June 1966 that probate of the alleged last Will and Testament of Bidesi, son of Chuman of Suva, deceased, was on the 21st day of April, 1959 granted to you by our Supreme Court of Fiji

30

and that the said Surya Munidlal Bidesi is the lawful son and one of the next of kin of the deceased. And Whereas it is alleged in the said Affidavit that the said deceased died intestate and the said probate ought to be called in, revoked and declared null and void in law.

In the
Supreme Court

No.2
Citation
25th June
1966 -
continued

10 Now this is to command you, the said Public Trustee, that within eight days after service hereof on you inclusive of the day of such service, you do bring into and leave in the Registry of our said Court at Suva the aforesaid probate in order that the said Surya Munidlal Bidesi may proceed in due course of law for the revocation of the same.

If you the within-named Public Trustee neglect to obey this order by the time limited therein, you will be liable to process of execution for the purpose of compelling you to obey the same order.

20 DATED at Suva this 25th day of June 1966.

Sgd
(I.R. Thompson)
CHIEF REGISTRAR

Extracted by Wm. Scott & Co. of Suva, Solicitors.

No. 3

DEFENCE AND COUNTERCLAIM

IN THE SUPREME COURT OF FIJI

In the Estate of Bidesi, s/o Chuman,
deceased

No. 7 of 1966

30 BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL BIDESI, CHANDRA PRAKASH BIDESI and SHAR PAL BIDESI all sons of Bidesi, deceased, of Suva, Fiji

Plaintiffs

No.3
Defence and
Counterclaim
23rd September
1966

In the
Supreme Court

No. 3
Defence and
Counterclaim
23rd September
1966 -
continued

AND: THE PUBLIC TRUSTEE OF FIJI

1st Defendant

KAPESRI widow of Bidesi

2nd Defendant

ATMA PRASAD, KUMA PRASAD,
MUNI PRASAD and JAGDISH PRASAD
all sons of Bidesi

3rd Defendants

BRIJMATI, MAYAWATI, BEENA and
MIRA all daughters of Bidesi

4th Defendants

10

D E F E N C E

1. As to paragraph 1 of the Statement of Claim the first defendant admits that the plaintiffs are the lawful sons and some of the persons who may be entitled on an intestacy in the estate of Bidesi son of Chuman late of Suva, in the Colony of Fiji, Building Contractor, who died on the 15th day of November, 1957 but deny the allegations that the said deceased died intestate. 20
2. As to paragraph 2 of the Statement of Claim the first defendant says:
 - (i) That on the 21st day of April, 1959, probate of the last will and testament of the deceased dated the 18th day of April, 1957, was granted in common form by the Supreme Court of Fiji to the first defendant as sole executor named therein. 30
 - (ii) Save as herein expressly admitted each and every allegation in paragraph 2 of the Statement of Claim is denied.
3. As to paragraph 3 of the Statement of Claim the first defendant says :
 - (i) That the said will dated the 18th day of April, 1957 was read over and explained to the deceased and he understood the full meaning, nature and effect and approved the contents thereof before he signed the same as his true last will and testament in the presence of witnesses. 40

(ii) Save as herein expressly admitted each and every allegation in paragraph 3 of the Statement of Claim is denied.

In the
Supreme Court

No.3
Defence and
Counterclaim

23rd September
1966 -
continued

- 10 4. The first defendant will plead in law that since the grant of probate to the first defendant as sole executor by the Supreme Court of Fiji on the 21st day of April, 1959 the plaintiffs have recognised and dealt with the first defendant as the executor and trustee named in the true last will and testament of the deceased dated the 18th day of April, 1957 and are estopped from maintaining their action.
5. The first defendant will plead that the plaintiffs acquiesced in the grant of probate to the first defendant as aforesaid and in the continued administration of the estate by the first defendant.
- 20 6. The first defendant will plead laches on the part of the plaintiffs.

COUNTERCLAIM

7. The first defendant repeats paragraphs 1, 2, 3, 4, 5 and 6 of the Defence.

WHEREFORE by way of counterclaim the first defendant claims:

- (i) That the Court shall decree probate of the said will in solemn form of law;
- (ii) Costs;
- 30 (iii) Such further or other order as may be just.

DELIVERED this 23rd day of September, 1966.

Grahame & Co.,

(Sgd) ?

Solicitors for the first
Defendant

In the
Supreme Court

No. 4

No.4
Affidavit of
Donald Malcolm
Noel McFarlane

AFFIDAVIT OF DONALD MALCOLM
NOEL McFARLANE

24th August
1967

IN THE SUPREME COURT OF FIJI

Probate Action No. 7 of 1966

IN THE ESTATE of BIDESI s/o Chuman,
Deceased

BETWEEN:

MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHAR PAL BIDESI all sons of
Bidesi, deceased of Suva, Fiji

10

Plaintiffs

A N D :

THE PUBLIC TRUSTEE OF FIJI Defendant

A F F I D A V I T

I, DONALD MALCOLM NOEL McFARLANE of Suva in the
Colony of Fiji Solicitor make oath and say as
follows :-

20

1. I am acting as Solicitor on behalf of the
defendant The Public Trustee of Fiji in
this action.
2. The Plaintiffs seek the revocation of the
Grant of Probate granted by this Honourable
Court to the Public Trustee on the ground
that at the time of the execution of the
alleged last Will and testament of the
testator he neither knew nor approved of
the contents thereof.
3. At the time of the execution of the Will
on the 18th day of April 1957 one Harry
Wheatley then of Suva but now of Sydney was
Assistant Registrar-General in the Depart-
ment of the Registrar-General, Suva.
4. I am informed by the said Harry Wheatley
and verily believe that he knew Bidesi the
testator very well and discussed with the
said Bidesi the matter of Bidesi's Will and
took instructions from Bidesi for the Will
which he embodied in a draft. Later he was

30

40

present when the Will was read over and explained to the testator.

In the
Supreme Court

No.4
Affidavit of
Donald Malcolm
Noel McFarlane

24th August
1967 -
continued

5. One of the witnesses to the Will, namely I. Behn, was a temporary Civil Servant, living in the Colony only for a short time and is now living overseas on the Continent.
- 10 6. I believe that the said Harry Wheatley is a necessary material witness in this action for the defendant The Public Trustee, and I verily believe that without his evidence The Public Trustee cannot fully defend this action.
7. I personally know the said Harry Wheatley and he retired from the service of the Fiji Government some years ago and is now living in Sydney.
- 20 8. I have been in communication with the said Harry Wheatley by letter and I am informed by him and verily believe that recently he suffered a coronary occlusion and he states that he is still receiving specialist treatment.
9. I am informed by the said Harry Wheatley and verily believe that in his present state of health it would be dangerous for him to travel.
- 30 10. I have been informed by the said Harry Wheatley and verily believe that he is willing to give evidence in Sydney before a Special Examiner.
11. From what I have been informed concerning the circumstances surrounding the Will and the execution thereof, I believe that the defendant has a good defence on the merits and this application is made bona fide and not for the purpose of delay.
- 40 12. I have informed M.J.C. Saunders Esquire of Messrs. Wm. Scott & Co. Solicitors for the plaintiffs of the intending application for the appointment of a Special Examiner to take the evidence of the said Harry Wheatley on oath in Sydney, and he has consented to such application.
13. Attached hereto and marked "A" is a Consent by Max Egerton Warburton a Barrister-at-Law of Sydney consenting to act as Special

In the
Supreme Court

Examiner for the purpose of taking the
evidence of the said Harry Wheatley.

No.4
Affidavit of
Donald Malcolm
Noel McFarlane
24th August
1967 -
continued

SWORN by the said DONALD MALCOLM }
NOEL McFARLANE at Suva in the }
Colony of Fiji this 24th day of } (Sgd) ?
August 1967

Before me:

(Sgd) ?

A Commissioner for the Supreme
Court of Fiji for taking affidavits.

10

This is the Consent marked "A" mentioned and
referred to in the annexed affidavit of Donald
Malcolm Noel McFarlane.

Sworn before me:

"A"

(Sgd) ?

A Commissioner &c.

IN THE SUPREME COURT OF FIJI

Probate Action No. 7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, Deceased

20

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI and
SHAR PAL BIDESI all sons of Bidesi
deceased of Suva, Fiji
Plaintiffs

A N D : THE PUBLIC TRUSTEE OF FIJI
Defendant

C O N S E N T

I, MAX EGERTON WARBURTON Barrister-at-Law of
174 Phillip Street, Sydney, New South Wales in
the Commonwealth of Australia HEREBY CONSENT to
act as Special Examiner for the purpose of taking
the evidence in Sydney of HARRY WHEATLEY formerly
of Suva but now of 50 High Street, North Sydney
in the above action.

30

DATED at Sydney this ninth day of August 1967

(Sgd) ?

Witness:

(Sgd) ?

Notary Public
Sydney
New South Wales

In the
Supreme Court

No.4
Affidavit of
Donald Malcolm
Noel McFarlane

24th August
1967 -
continued

No. 5

FURTHER AFFIDAVIT OF
DONALD MALCOLM NOEL
McFARLANE

No.5
Further
Affidavit of
Donald Malcolm
Noel McFarlane

30th August
1967

10 I, DONALD MALCOLM NOEL McFARLANE of Suva in
the Colony of Fiji Solicitor make oath and
say as follows :-

1. I crave leave to refer to my affidavit
herein sworn at Suva on the 24th day of
August, 1967.
2. I have now received a medical certificate
relating to the said Harry Wheatley given
by Dr. Ian W. Fitzpatrick of 701 Military
Road, Mosman, Sydney in the State of New
South Wales in the Commonwealth of
Australia, which is annexed hereto and
marked "A".

20

SWORN by the said DONALD MALCOLM)
NOEL McFARLANE at Suva in the) (Sgd) ?
Colony of Fiji this 30th day of)
August 1967.)

Before me:

(Sgd) ?

A Commissioner for the Supreme
Court of Fiji for taking
Affidavits.

In the
Supreme Court

"A"

No.5
Further
Affidavit of
Donald Malcolm
Noel McFarlane

DR. IAN W. FITZPATRICK
DR. DOROTHY MORRISON
Telephone 96 2344

30th August
1967 -
continued

701 MILITARY ROAD
MOSMAN.

24th August 1967.

Certifying that I have attended Mr.
Harry Wheatley in November 1966, when he
suffered a coronary occlusion, and since.
It is my opinion that he should not travel
to Fiji.

10

(Sgd) Ian W.Fitzpatrick
?

This is the annexure marked "A" referred to in
the Affidavit of Donald Malcolm Noel McFarlane
sworn at Suva this 30th day of August 1967.

Before me:

(Sgd) ?
A Commissioner etc.

20

No. 6

ORDER OF APPOINTMENT OF
SPECIAL EXAMINER

In the
Supreme Court

No.6
Order for
Appointment
of Special
Examiner

1st September
1967

IN THE SUPREME COURT OF FIJI

Probate Action No.7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, Deceased

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHAR PAL BIDESI all sons of
Bidesi, deceased of Suva, Fiji
Plaintiffs

10

A N D : THE PUBLIC TRUSTEE OF FIJI
Defendant

BEFORE THE HONOURABLE MR. JUSTICE HAMMETT
IN CHAMBERS

Friday the 1st day of September, 1967

ORDER FOR APPOINTMENT OF SPECIAL
EXAMINER TO TAKE EVIDENCE ABROAD

UPON HEARING the Solicitors on both sides,
AND UPON READING the affidavits of DONALD MALCOLM
NOEL McFARLANE sworn the 24th day of August, 1967
and the 30th day of August, 1967 IT IS ORDERED
that MAX EGERTON WARBURTON Esquire, a Barrister-
at-Law, of 174 Phillip Street, Sydney, New South
Wales, in the Commonwealth of Australia be
appointed to act as Special Examiner for the
purpose of taking the examination, cross-
examination, and re-examination viva voce, on
oath or affirmation of HARRY WHEATLEY a witness
for the defendant in this action in Sydney in
the State of New South Wales aforesaid.

20

30

AND THAT the defendant's Solicitors do give
to the Plaintiffs' Solicitors seven days' notice
in writing of the date on which they propose to
send out this order for execution, and that
seven days after the service of such notice the
Solicitors for the plaintiffs and defendant
respectively to exchange the names of their
agents in Sydney, New South Wales, aforesaid to
whom notice relating to the examination of the

40

In the
Supreme Court

No.6
Order for
Appointment
of Special
Examiner

1st September
1967 -
continued

said witness may be sent AND THAT seven days (exclusive of Sundays) prior to the examination of the said witness hereunder notice of such examination shall be given by the agent of the party on whose behalf the said witness is to be examined to the agent of the other party (unless such notice be dispensed with).

AND THAT the depositions when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the Examiner, under seal, to the Chief Registrar of the Supreme Court of Fiji within two months of the sealing of the order herein, or such further or other day as may be ordered, there to be filed in the proper office.

10

AND THAT either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions.

20

AND THAT the trial of this action be stayed until the filing of such depositions.

AND THAT the costs of and incidental to this application and such examination be costs in this action.

BY THE COURT

(I.R. Thompson)
CHIEF REGISTRAR

No. 7

REPLY TO DEFENCE AND DEFENCE
TO COUNTERCLAIM

In the
Supreme Court

No.7
Reply to
Defence and
Defence to
Counterclaim

16th February
1971

IN THE SUPREME COURT OF FIJI

Civil Action No.7 of 1966

In the Estate of Bidesi, son
of Chuman, Deceased.

10 BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANLAK PRAKASH BIDESI
and SHIV PAL BIDESI all sons of
Bidesi, deceased, of Suva, Fiji
Plaintiffs

A N D : THE PUBLIC TRUSTEE OF FIJI
Defendant

REPLY TO DEFENCE

1. The Plaintiffs join issue on paragraph (1)
of the Defence.
2. The Plaintiffs join issue on paragraph (2)
of the Defence.
- 20 3. The Plaintiffs join issue on paragraph (3)
of the Defence.
4. The Plaintiffs join issue on paragraph (4)
of the Defence.
5. The Plaintiffs join issue on paragraph (5)
of the Defence.
6. The Plaintiffs join issue on paragraph (6)
of the Defence.

DEFENCE TO COUNTERCLAIM

30 1. That as to the Defendant's Counterclaim,
the Plaintiffs say by way of Defence as follows :-

- (a) That the deceased at the time of the
execution of the said alleged will
neither knew nor approved of the
contents thereof.

In the
Supreme Court

No.7
Reply to
Defence and
Defence to
Counterclaim
16th February
1971 -
continued

SUBSTANCE OF CASE

The deceased never gave any instructions for the said alleged will and the said alleged will was neither read over nor explained to him nor did he read it himself before it was executed and he was not aware of its matter and effect.

(b) The said alleged Will was not duly executed according to the provisions of the Wills Act 1837.

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SUBSTANCE OF CASE

The Plaintiffs put the Defendant to the proof that the provisions of the said Statute were complied with.

DELIVERED this 16th day of February 1971.

KOYA & CO.

Per: (Sgd) ?
Solicitors for the Plaintiffs.

To: The Defendants or its Solicitors Messrs.
Grahame & Co. Solicitors, Suva.

20

No.8
Affidavit
of Adrian
David Steward
Anderson

23rd November
1972

No. 8

AFFIDAVIT OF ADRIAN DAVID
STEWART ANDERSON

IN THE SUPREME COURT OF FIJI
(PROBATE JURISDICTION)

No. 7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, Deceased

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHIV PAL BIDESI all sons of
Bidesi, deceased of Suva, Fiji
Plaintiffs

30

A N D : THE PUBLIC TRUSTEE OF FIJI
Defendant

In the
Supreme Court

No.8
Affidavit of
Adrian David
Steward
Anderson

23rd November
1972 -
continued

I, ADRIAN DAVID STEWARD ANDERSON of Suva
in the Dominion of Fiji The Public Trustee
of Fiji the defendant in the above action
make oath and say as follows :-

1. THAT I am the Public Trustee of the
Dominion of Fiji.
- 10 2. THAT from searches made by me whilst
acting as The Public Trustee of Fiji
of files in the Public Trustee's Office,
of files in the possession of the
Solicitors for the Public Trustee, of
files at the Supreme Court Registry Suva
and files at the Office of Titles Suva
I believe to be true and correct the
facts stated in particulars 1 to 60 of
the Particulars of Defence filed in the
20 above action on the 23rd day of February
1971 a copy of which is attached hereto
and marked with the letter "A".
- 30 3. THAT it is my belief that the trial of
the issues raised by paragraphs 4, 5
and 6 of the Defence, in the above
action filed on the 23rd day of September
1966, a copy of which is hereunto affixed
and marked with the letter "B", before the
other issues in this action would be
the most convenient mode of trying the
issues in the action.

S W O R N by the said
ADRIAN DAVID STEWARD
ANDERSON of Suva the
 23rd day of November 1972)
 Before me:) (Sgd) A.D.S.Anderson

(Sgd) M.V. Bhai
 A Commissioner of the Supreme
 Court of Fiji

40 This Affidavit is filed on behalf of the defendant
 by Messrs. Cromptons of 1st & 2nd Floors, Prouds
 Building, Renwick Road, Suva.

TO: The Plaintiffs and/or their Solicitors
 Messrs. Koya & Co., of Cumming Street, Suva.

In the
Supreme Court

No. 9

No.9
Particulars
of Defence
annexed to
No.8

PARTICULARS OF DEFENCE
ANNEXED TO No.8

23rd February
1971

IN THE SUPREME COURT OF FIJI

No. 7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, deceased

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHAR PAL BIDESI all sons of
Bidesi, deceased, of Suva, Fiji

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Plaintiffs

A N D: THE PUBLIC TRUSTEE OF FIJI

1st Defendant

KAPESRI widow of Bidesi

2nd Defendant

ATMA PRASAD, KUMA PRASAD, MUNI
PRASAD and JAGDISH PRASAD all
sons of Bidesi

3rd Defendants

BRIJMATI, MAYAWATI, BEENA and
MIRA all daughters of Bidesi

20

4th Defendants

PARTICULARS OF DEFENCE

The defendant, The Public Trustee of Fiji
supplies the following particulars of his Defence
in this action :-

Particulars of Facts and Conduct Relied on in
Support of the Defences set out in Paragraphs
4, 5 and 6 of the Defence.

Muni Deo Bidesi

30

1. On or about 30th December, 1957 M.D. Bidesi claimed from the defendant as executor of the will of the deceased (hereinafter called "the will") £1,200.0.0 alleged to have been deposited with the deceased for safe keeping.
2. On or about 17th May 1958, 4th February 1960

and 10th May 1960 claims were made on behalf of M.D.Bidesi upon the defendant for payment of a bonus of £1,200.0.0 from the estate of the deceased.

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No. 8

23rd February
1971 -
continued

3. In the years 1958, 1959, 1960 and 1961 M.D. Bidesi claimed the land in Certificate of Title No. 10317 from the defendant as executor of the will.
- 10 4. On or about 1st December 1960, M.D. Bidesi requested from the defendant as executor of the will a lease of the land in Certificate of Title No. 10317 at a peppercorn rental.
5. On or about the 17th July 1961 M.D. Bidesi took proceedings by originating summons in the Supreme Court (No.139 of 1961) against the defendant as executor of the will claiming the transfer and conveyance to him from the estate of the deceased of the land in Certificate of Title No. 10317.
- 20 6. On or about the 2nd February 1962 a Judge of the Supreme Court in Chambers heard the application of M.D. Bidesi in proceeding No.139 of 1961 and ordered that the application be dismissed with costs.
7. On or about the 11th April 1962 the costs of the defendant in proceeding No.139 of 1961 were taxed and allowed by the Taxing Master.
- 30 8. In or about the year 1963 the defendant as executor of the will levied execution upon M.D. Bidesi in respect of the costs in proceeding No.139 of 1961 and recovered such costs.
9. In or about the year 1962 M.D. Bidesi negotiated, offered or agreed to purchase from the defendant as executor of the will the land in Lot 9 on Deposited Plan No.2527.
- 40

Surya Munidlal Bidesi

10. On or about 19th February 1958 S.M. Bidesi arranged with the defendant as executor of the will (subject to an application to the Supreme Court) to purchase the building business of the deceased and its assets and

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No.8
23rd February
1971 -
continued

- the factory and land in Certificate of Title Nos. 6503 and 6504.
11. On or about 17th May 1958 and later S.M. Bidesi claimed from the defendant as executor of the will £500.0.0 alleged to have been paid on account of the estate of the deceased. On or about 12th July 1960 the defendant as executor of the will paid S.M. Bidesi £420.0.0.
 12. On or about the 17th May 1958, 4th February 1960 and 10th May 1960 S.M. Bidesi on behalf of M.D.Bidesi, S.P.Bidesi and Ram Deo claimed from the estate of the deceased of bonuses of £1,200.0.0. 10
 13. On or about the 9th December 1958 S.M. Bidesi arranged with the defendant as executor of the will that in the event of the Supreme Court not approving the sale of the land in Certificates of Title Nos. 6503 and 6504 the defendant would lease the land to S.M. Bidesi and/or C.P.Bidesi who would purchase the building business of the deceased and its assets. 20
 14. During the year 1959 S.M.Bidesi negotiated with the defendant as executor of the will for the grant of a lease of the land in Certificates of Title Nos. 6503 and 6504 for a term of 10 years.
 15. On or about the 19th November 1959 S.M. Bidesi agreed with the defendant as executor of the will to purchase the building business of the deceased and its assets. 30
 16. On or about the 24th November 1959 S.M. Bidesi repudiated the agreement of 19th November 1959 and made a new agreement with the defendant as executor of the will to purchase the building business of the deceased and its assets.
 17. On or about the 28th November, 1959 S.M. Bidesi entered into a lease with the defendant as executor of the will to lease the land in Certificates of Title Nos. 6503 and 6504 for a term of 10 years from the 15th November 1959. This lease was duly registered under the Land (Transfer and Registration) Ordinance Cap.136. 40

18. On or about the 26th November 1959 S.M. Bidesi entered into a mortgage with the defendant as executor of the will to secure payment of the purchase price for the building business of the deceased and its assets. This mortgage was duly registered under the Land (Transfer and Registration) Ordinance Cap. 136.
- 10 19. On or about the 28th November 1959 under the lease from the defendant as executor of the will S.M. Bidesi took possession of the land in Certificates of Title Nos. 6503 and 6504 as tenant and has since retained possession thereof.
- 20 20. On or about the 24th November 1959 under the agreement of that date S.M. Bidesi took possession as owner from the defendant as executor of the will of the building business of the deceased and its assets.
21. On or about the 9th January 1961 S.M. Bidesi provided the defendant as executor of the will with information as to the state of accounts between the deceased and S.P.Bidesi.
- 30 22. On or about the 17th July 1964 S.M. Bidesi issued a writ in the Supreme Court (No.110 of 1964) against the Defendant as executor of the will claiming specific performance of an alleged agreement for the purchase of the land in Certificate of Title No.6504.
- 40 23. On or about the 16th October 1964 in the statement of claim in action No.110 of 1964 S.M. Bidesi alleged that the will appointed the defendant as the sole executor and trustee thereof and that probate of the will was granted to the defendant on the 21st April 1959 which allegations were admitted by the defence of the defendant on or about the 7th January 1965.
- 50 24. On or about the 21st June 1965 S.M. Bidesi applied for and obtained by consent an order from a Judge of the Supreme Court ordering that action No.110 of 1964 be discontinued and that S.M. Bidesi pay the defendant's costs of the action.

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No.8

23rd February
1971 -
continued

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No.8

23rd February
1971 -
continued

25. On or about the 23rd June 1965 S.M. Bidesi entered into negotiations with the Defendant as executor of the will for a long lease upon the expiry of the lease granted as from the 15th November 1959. These negotiations were contained in letters between the solicitors for S.M. Bidesi and the defendant dated 23rd June 1965, 25th June 1965, 14th August 1965 and in discussions between the solicitors for S.M. Bidesi and the solicitors for the defendant on or about 28th August 1965. 10
26. In or about March 1967 S.M. Bidesi refused to refund to the defendant as executor of the will a proportion of duty paid on a gift to him by the deceased before his death.
27. S.M. Bidesi paid to the defendant as executor of the will rent for the land in Certificates of Titles Nos. 6503 and 6504 from 15th November 1959 to 31st December 1969. 20

Chandra Prakash Bidesi

28. On or about the 21st December 1957, 14th May 1958 and 29th October 1958 C.P. Bidesi lodged caveats against the grant to the defendant of probate of the will.
29. On or about the 17th February 1958 C.P. Bidesi inquired of the defendant whether the defendant wish to propound the will or would object to an application to appoint an interim receiver or administrator. 30
30. On or about the 19th February 1958 C.P. Bidesi arranged with the defendant as executor of the will (subject to an application to the Supreme Court) that S.M. Bidesi would purchase the building business of the deceased and its assets and the factory and land in Certificates of Title Nos. 6503 and 6504. 40
31. On or about the 12th March 1958 C.P. Bidesi informed the defendant as executor of the will that he was consulting with S.M. Bidesi with regard to the proposed purchase of the said business and land and would report to the defendant in due course.

32. On or about the 19th November 1958 C.P. Bidesi appeared as caveator to the warning issued by the Supreme Court in contentious proceedings No. 1 of 1958.
33. On or about the 9th December 1958 C.P. Bidesi arranged with the defendant as executor of the will that in the event of the Supreme Court not approving the sale of the land in Certificates of Title Nos. 6503 and 6504 the defendant would lease the land to S.M. Bidesi and/or C.P. Bidesi who would purchase the building business of the deceased and its assets.
34. On or about the 6th March 1959 C.P. Bidesi issued a summons in contentious proceedings No. 1 of 1958 for the discontinuance of the proceedings and the grant of probate of the will to the defendant.
35. On or about the 16th March 1959 C.P. Bidesi applied for and obtained with the consent of the Public Trustee an order that the caveat entered by C.P. Bidesi on the 29th October 1958 cease to have effect and that contentious proceedings No. 1 of 1958 be discontinued and that probate of the Will be granted to the defendant if entitled thereto.
36. After being informed on or about the 2nd December 1959 by the defendant as executor of the Will that the defendant had leased to S.M. Bidesi the land in Certificates of Title Nos. 6503 and 6504, C.P. Bidesi treated the cottage occupied by him as held from S.M. Bidesi and continued to do so.
37. On or about the 26th January 1960 and 3rd February 1960 C.P. Bidesi refused to pay rent for the period 15th November 1957 to 31st December 1959 for the cottage occupied by him on the grounds that there was no agreement with the deceased or the defendant for the payment of rental.
38. In the years 1960 and 1961 C.P. Bidesi refused to vacate the land in Certificates of Title Nos. 8831 and 9397 and claimed to the solicitors for the defendant

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No.8

23rd February
1971 -
continued

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No.8
23rd February
1971 -
continued

against the estate of the deceased
the ownership of this land.

39. On or about the 1st April 1961 C.P. Bidesi purchased from the defendant as executor of the will the land in Certificate of Title No. 9397 later entered into possession of the land as purchaser and paid the balance of purchase price and received from the defendant as executor of the will a transfer of the land by Transfer dated the 14th January 1967. 10
40. On or about the 25th January 1962 C.P. Bidesi offered to purchase from the defendant as executor of the will the land in Certificate of Title No.4153.
41. On or about the 31st January 1967 C.P. Bidesi refused to refund to the defendant as executor of the will a proportion of duty paid on a gift to him by the deceased before his death. 20

Shar Pal Bidesi

42. On or about the 29th November 1957 the defendant as executor of the will authorized S.P. Bidesi to operate on various trade accounts on behalf of the estate of the deceased and so notified the persons with whom those accounts were to be operated. Under this authority S.P. Bidesi on behalf of the estate of the deceased operated those accounts until about the 20th November 1959. 30
43. In the years 1957, 1958, 1959, 1960 and 1961 S.P. Bidesi made claims upon the defendant as executor of the will claiming against the estate of the deceased ownership of the land in Certificate of Title No. 8832.
44. In the years 1957, 1958, 1959, 1960 and 1961 S.P. Bidesi made claims upon the defendant as executor of the will claiming payment for plans prepared for the deceased. 40
45. On or about the 17th May 1958, 4th February 1960 and 10th May 1960 claims were made on behalf of S.P. Bidesi upon the defendant as executor of the will for payment of a bonus of £1,200.0.0 from the

estate of the deceased. On or about the 1st July 1960 and on or about the 19th October 1960 the defendant as executor of the will paid S.P. Bidesi as bonus sums amounting to £300.0.0.

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No.8

23rd February
1971 -
continued

- 10 46. On or about the 9th December 1958 S.P. Bidesi arranged with the defendant as executor of the will that in the event of the Supreme Court not approving the sale of the land in Certificates of Title Nos. 6503 and 6504 the defendant would lease the land to S.M. Bidesi and/or C.P. Bidesi who would purchase the building business of the deceased and its assets.
- 20 47. On or about the 18th February 1960 S.P. Bidesi wrote to the defendant as executor of the will giving an explanation with regard to the payment of a debt to one Gangaram.
48. On or about the 12th September 1960 the defendant The Public Trustee of Fiji as executor of the will commenced an action in the Supreme Court (No. 212 of 1960) claiming £2,344.14.5 as moneys due to the estate of the deceased.
- 30 49. In action No. 212 of 1960 S.P. Bidesi by his defence alleged payment to the deceased of part of the sum claimed and a release and discharge by the deceased of the balance. At the trial of action No. 212 of 1960 the defendant The Public Trustee of Fiji as executor of the will recovered judgment on or about 27th October 1961 for £2,344.14.5 and costs.
- 40 50. In Civil Appeal No. 24 of 1961 S.P. Bidesi appealed to the Court of Appeal against the judgment in action No. 212 of 1960. On or about the 13th April 1962 the Court of Appeal allowed the appeal and entered judgment for S.P. Bidesi with costs of the appeal and trial. These costs were duly taxed and paid to S.P. Bidesi by the defendant The Public Trustee of Fiji as executor of the will.
51. On or about the 24th January 1961 S.P. Bidesi purchased from the defendant as executor of the will the land in Certificate of Title No. 8830 later entered into

In the
Supreme Court

No. 9
Particulars
of Defence
annexed to
No.8
23rd February
1971 -
continued

- possession of the land as purchaser and paid the balance of purchase price and received from the defendant as executor of the will a transfer of this land by Transfer No. 83391 dated the 16th May 1963.
52. On or about the 23rd August 1961 S.P. Bidesi commenced an action (No. 163 of 1961) against the defendant as executor of the will claiming £818.0.0 for plans prepared for the deceased. 10
53. On or about the 18th December 1962 S.P. Bidesi obtained judgment in action No. 163 of 1961 against the defendant as executor of the will for £453.0.0 and costs. These costs were duly taxed and the amount of the judgment and costs was paid to S.P. Bidesi by the defendant as executor of the will.
54. On or about the 1st July 1961 S.P. Bidesi commenced an action (No. 130 of 1961) against the defendant as executor of the will claiming against the estate of the deceased ownership and the transfer and conveyance to him of the land in Certificate of Title No. 8832 and damages or alternatively the sum of £290.0.0 for work done and money expended. 20
55. In action No. 130 of 1961 the defendant counterclaimed that S.P. Bidesi be ordered to vacate the land in Certificate of Title No. 8832. 30
56. On or about the 24th January 1962 the action No. 130 of 1961 was settled between counsel for the parties and the action and counterclaim were withdrawn by leave of the Court.
57. On or about the 19th February 1962 S.P. Bidesi purchased from the defendant as executor of the will the land in Certificate of Title No. 8832 later took possession of the land as purchaser and paid the balance of purchase price and received from the defendant as executor of the will a transfer of the land by Transfer dated the 5th June 1967. 40
58. S.P. Bidesi purchased from the defendant as executor of the will the land in

Certificate of Title No. 8829, took possession as purchaser, paid the purchase price and received from the defendant as executor of the will a transfer of the land by Transfer No. 81677 dated the 17th October 1962.

In the
Supreme Court

No.9
Particulars
of Defence
annexed to
No.8

10 59. On or about the 18th February 1962 S.P. Bidesi claimed from the defendant as executor of the will the sum of £300.0.0 alleged to be due from the estate of the deceased.

23rd February
1971 -
continued

60. On or about the 30th January 1967 S.P. Bidesi refused to refund to the defendant as executor of the will a proportion of duty paid on a gift to him by the deceased before his death.

General

20 61. Each of the plaintiffs at all material times knew of each of the facts and items of conduct set out in the particulars above.

62. Each item of conduct by a plaintiff set out in the particulars above was done with the knowledge, approval and/or authority of each of the other plaintiffs.

30 63. Each of the plaintiffs at all material times knew of the contents of the will and the grant of probate thereof to the defendant.

64. As a result of and in reliance upon the facts and items of conduct set out in the particulars above the defendant has continued to administer the estate of the deceased under the grant of probate in common form.

DATED the 23rd day of February, 1971.

GRAHAME & CO.

40 Per: (Sgd) ?
Solicitors for the defendant
The Public Trustee of Fiji.

To: The plaintiffs and/or their Solicitors
Messrs. Koya & Co. Solicitors, Suva.

In the
Supreme Court
No.10
Case for Motion
23rd November
1972

No. 10

CASE FOR MOTION

IN THE SUPREME COURT OF FIJI
(PROBATE JURISDICTION)

No. 7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, deceased.

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHIV PAL BIDESI all sons of
Bidesi, deceased of Suva, Fiji

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Plaintiffs

A N D : THE PUBLIC TRUSTEE OF FIJI

Defendant

CASE FOR MOTION

W H E R E A S the Chief Registrar of the
Supreme Court of Fiji by Citation dated the
25th day of June 1966 acting on an Affidavit
sworn by Surya Munidlal Bidesi son of Bidesi
sworn the 16th day of June 1966 commanded the
Public Trustee of Fiji to bring into and leave
at the Supreme Court Registry at Suva probate
of the alleged last Will and Testament of
Bidesi son of Chuman granted to the Public
Trustee by the Supreme Court of Fiji on the
21st day of April, 1959.

20

A N D W H E R E A S a Writ of Summons was
issued by the Plaintiffs in the above action
on the 23rd day of June 1966 against The
Public Trustee of Fiji as First Defendant,
Kapesari (widow of Bidesi) as Second Defendant,
Atma Prasad, Kuma Prasad, Muni Prasad and
Jagdish Prasad (all sons of Bidesi) as Third
Defendants and Brijmati, Mayawati, Beena and
Mira (all daughters of Bidesi) as Fourth
Defendants claiming that the Plaintiffs are
the lawful sons and some of the persons
entitled on an intestacy of the estate of
Bidesi son of Chuman late of Suva in the Colony
(Dominion) of Fiji Building Contractor, who
died on the 15th November 1957 and claiming

30

40

further that at the time of the execution of an alleged Will of the said deceased bearing date the 18th day of April 1957 the deceased neither knew nor approved of the contents thereof and claiming further that Probate of the alleged Will was granted to the Public Trustee as sole executor on the 21st day of April 1959.

In the
Supreme Court
No.10
Case for Motion
23rd November
1972 -
continued

10 A N D W H E R E A S the First Defendant
The Public Trustee of Fiji filed a Defence
and Counterclaim to the Plaintiffs' Writ
of Summons admitting that the Plaintiffs
are the lawful sons of the deceased and
some of the persons who may be entitled on
an intestacy but denying that the deceased
died intestate and stating that on 21st
day of April 1959 Probate of the last Will
and Testament of the deceased dated the 18th
day of April 1957 was granted in common form
20 by the Supreme Court of Fiji to the First
Defendant The Public Trustee of Fiji as sole
executor named therein and denying that the
Will was an alleged Will and stating further
that the said Will dated the 18th day of
April 1957 was read over and explained to
the deceased and he understood the full
meaning, nature and effect and approved the
contents thereof before he signed the same
30 as his true last Will and Testament in the
presence of witnesses and denying all other
allegations of the Plaintiffs and stating
further that since the grant of Probate to
the First Defendant The Public Trustee as
sole executor by the Supreme Court of Fiji
on the 21st day of April 1959 the Plaintiffs
have recognised and dealt with the First
Defendant The Public Trustee as the executor
and trustee named in the last Will and
Testament dated the 18th day of April 1957.

40 A N D W H E R E A S Further Particulars
of Defence were filed at the Supreme Court
on the 23rd day of February 1971 giving
further particulars relative to the First
Defendant's statement that since the date
of grant of Probate the Plaintiffs have
recognised the Public Trustee as the Executor
of the last Will and Testament of the said
deceased.

50 The above averments are proved by the
Affidavit of ADRIAN DAVID STEWARD ANDERSON
sworn this 23rd day of November 1972 and
filed herewith.

In the
Supreme Court

No.10
Case for Motion
23rd November
1972 -
continued

T A K E N O T I C E that this Honourable Court will be moved before His Lordship the Judge on Monday the 4th day of December, 1972 at 9.30 a.m. in the forenoon or so soon thereafter as Counsel may be heard by Counsel on behalf of the Defendant to order the following :-

- a) That the questions and issues raised by paragraphs 4, 5 and 6 of the Defence be tried before the trial of the other issues in the action or before the trial of the action;
- b) Further or alternatively that the action be discontinued or forever stayed or that the action be dismissed on the grounds set out in paragraphs 4, 5 and 6 of the Defence and the Particulars supplied thereunder;
- c) Such further or other orders as the Court thinks just.

DATED the 23rd day of November, 1972

(Sgd) ?

for C R O M P T O N S
Solicitors for the Defendant

TO: The Plaintiffs and/or their
Solicitors Messrs Koya & Co.
of Cumming Street, Suva.

No. 11

NOTICE TO PRODUCE

In the
Supreme Court

No.11
Notice to
produce

1st December
1972

IN THE SUPREME COURT OF FIJI

Probate Action No. 7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, deceased.

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDIAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHIV PAL BIDESI all sons of
Bidesi, Deceased of Suva, Fiji

10

Plaintiffs

A N D: THE PUBLIC TRUSTEE OF FIJI

Defendant

NOTICE TO PRODUCE

TAKE NOTICE that you are hereby required to
produce and show to the Court on the trial
of this action all books, papers, letters,
copies of letters, and other writings and
documents in your custody, possession or power
containing any entry, memorandum or minute
relating to the matters in question in this
action and in particular the following
documents :

20

1. A letter dated 12th November 1959 from
the Public Trustee to Mr Munideo
(f/n Bidesi).
2. A letter dated 3rd December 1959 from
the Public Trustee to Mr Munideo.
3. A letter dated 1st November 1960 from
the Public Trustee to Messrs Wm. Scott
& Co., Solicitors for Muni Deo Bidesi.
4. A letter dated 30th November 1962 from
the Public Trustee to Mr Munideo
(s/o Bidesi).
5. A letter dated 19th February 1958 from
the Public Trustee to Mr C.P. Bidesi.

30

In the
Supreme Court

No.11
Notice to
produce

1st December
1972 -
continued

6. A letter dated 19th February 1958 from the Public Trustee to Mr S.M. Bidesi.
7. A letter dated 14th March 1958 from the Public Trustee to Messrs Koya & Co.
8. A letter dated 26th June 1959 from the Public Trustee to Messrs Cromptons, Solicitors for Mr Surya Munidlal Bidesi.
9. A letter dated 19th November 1959 from the Public Trustee to Mr S.M. Bidesi.
10. A letter dated 20th November 1959 from the Public Trustee to Mr S.P. Bidesi. 10
11. A letter dated 20th November 1959 from the Public Trustee to Messrs Cromptons, Solicitors, for Surya Munidlal Bidesi.
12. A letter dated 2nd December 1959 from the Public Trustee to Mr C.P. Bidesi.
13. A letter dated 16th May 1960 from the Public Trustee to Mr S.M. Bidesi.
14. An account dated 16th May 1960 from the Public Trustee to Mr S.M. Bidesi. 20
15. A letter dated 3rd October 1960 from the Public Trustee to Mr S.M. Bidesi.
16. A letter dated 5th January 1961 from the Public Trustee to Mr S.M. Bidesi.
17. A letter dated 17th January 1961 from the Public Trustee to Messrs. Cromptons, Solicitors for Surya Munidlal Bidesi.
18. A letter dated 18th May 1964 from the Public Trustee to Mr S.M. Bidesi.
19. A letter dated 13th August 1964 from the Public Trustee to Mr S.M. Bidesi. 30
20. A letter dated 25th June 1965 from the Public Trustee to Messrs Wm. Scott & Co. Solicitors for Surya Munidlal Bidesi.
21. A letter dated 7th April 1965 from the Public Trustee to Mr. S.M. Bidesi.
22. A letter dated 1st July 1965 from the Public Trustee to Mr S.M. Bidesi.

- | | | | |
|----|-----|--|-------------------------------------|
| | 23. | A letter dated 11th July 1969 from the Public Trustee to Mr S.M. Bidesi. | In the
<u>Supreme Court</u> |
| | 24. | A letter dated 8th May 1958 from Grahame & Co., to Mr C.P. Bidesi. | No.11
Notice to
produce |
| | 25. | A warning dated 13th November 1958 from the Registrar of the Supreme Court to Chandar Prakash Bidesi to cause an appearance to be entered to a Caveat. | 1st December
1972 -
continued |
| 10 | 26. | A letter dated 13th January 1960 from the Public Trustee to Mr C.P. Bidesi. | |
| | 27. | A letter dated 2nd March 1962 from the Public Trustee to Mr C.P. Bidesi. | |
| | 28. | A letter dated 31st October 1962 from the Public Trustee to Mr C.P. Bidesi. | |
| | 29. | An account dated 2nd November 1962 from the Public Trustee to Mr C.P. Bidesi. | |
| | 30. | A letter dated 27th April 1963 from the Public Trustee to Mr C.P. Bidesi. | |
| 20 | 31. | A letter dated 31st May 1963 from the Public Trustee to Mr C.P. Bidesi. | |
| | 32. | A summary dated 14th June 1963 from the Public Trustee to Chandra Prakash Bidesi showing the balance owing upon the sale of C.T. 9397. | |
| | 33. | A letter dated 25th May 1964 from the Public Trustee to Mr. T.J. McNally, Solicitor for Mr C.P. Bidesi. | |
| 30 | 34. | A letter dated 29th November 1957 from the Public Trustee to Mr Shiu Pal Bidesi. | |
| | 35. | A letter dated 12th November 1959 from the Public Trustee to Mr. H.A.L. Marquardt-Gray, Solicitor for Shar Pal Bidesi. | |
| | 36. | A letter dated 4th December 1959 from the Public Trustee to Mr S.P. Bidesi. | |
| | 37. | A letter dated 13th February 1962 from the Public Trustee to Mr S.P. Bidesi. | |

In the
Supreme Court

No.11
Notice to
produce
1st December
1972 -
continued

38. A letter dated 29th May 1962 from the Public Trustee to Mr Shiu Pal Bidesi.
39. A letter dated 21st December 1962 from the Public Trustee to Messrs Cromptons, Solicitors for Shar Pal Bidesi.
40. Two letters each dated 26th April 1963 from the Public Trustee to Mr Shiu Pal Bidesi.
41. A letter dated 30th May 1967 from the Public Trustee to Mr S.P. Bidesi. 10
42. A letter dated 16th February 1960 from the Public Trustee to Mr S.P. Bidesi.
43. A letter dated 20th May 1962 from the Public Trustee to Mr S.M. Bidesi.
44. A letter dated 20th April 1963 from the Public Trustee to Mr S.M. Bidesi.
45. A letter dated 14th May 1963 from the Public Trustee to Mr S.M. Bidesi.
46. A letter dated 22nd May 1963 from the Public Trustee to S.M. Bidesi, Esq. 20
47. A memorandum of agreement dated 21st December 1956 and made between the deceased and Surya Munidlal Bidesi.
48. A letter dated 13th August 1962 from the Public Trustee to Messrs Cromptons, Solicitors for Shar Pal Bidesi.
49. A letter dated 4th December 1959 from the Public Trustee to Mr C.P. Bidesi.
50. Letter dated 6th August 1960 from the Public Trustee to Mr H.A.L. Marquardt-Gray, Solicitor for Shar Pal Bidesi. 30
51. Letter dated 17th April 1961 from the Public Trustee to Mr H.A.L. Marquardt-Gray, Solicitor for Shar Pal Bidesi.

D A T E D this 1st day of December, 1972.

C R O M P T O N S
(Sgd) ?
Solicitors for the Defendant

TO: The abovenamed Plaintiffs and to their Solicitors, Messrs Koya & Co., of Cumming Street, Suva. 40

No. 12

AMENDED STATEMENT OF CLAIM

In the
Supreme Court

No.12

Amended
Statement of
Claim

4th December
1972

IN THE SUPREME COURT OF FIJI

No. 7 of 1966

IN THE ESTATE OF BIDESI
son of Chuman, deceased.

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHIV PAL BIDESI

10

Plaintiffs

A N D : THE PUBLIC TRUSTEE OF FIJI

1st Defendant

KAPESARI widow of Bidesi

2nd Defendant

ATMA PRASAD, KUMA PRASAD
MUNI PRASAD and JAGDISH
PRASAD all sons of Bidesi

3rd Defendants

20

BRIJ MATI, MAYAWATI, BEENA
and MIRA all daughters of Bidesi

4th Defendants

AMENDED STATEMENT OF CLAIM

(WRIT ISSUED ON 3RD AUGUST, 1966)

1. THE Plaintiffs are the lawful sons and some of the persons entitled on an intestacy of the estate of Bidesi s/o Chuman late of Suva, in the Colony of Fiji, Building Contractor, who died on the 15th November, 1957, intestate.

30

2. ON the 21st April, 1959 probate of an alleged will of the said deceased bearing date 18th April, 1957, was granted to the 1st Defendant as sole executor named therein out of the Supreme Court of Fiji.

3. THE deceased at the time of the execution

In the
Supreme Court

No.12
Amended
Statement
of Claim
4th December
1972 -
continued

of the said alleged will neither knew nor approved of the contents thereof.

SUBSTANCE OF CASE

The said alleged will was neither read over nor explained to the deceased, he neither did nor could read it himself before it was executed, and he was not aware of its nature and effect.

WHEREFORE the Plaintiffs claim:

- (a) THAT the Probate of the pretended will of the/deceased dated 18th April, 1957/said granted on the 21st April, 1959 be revoked; 10
- (b) THAT the Court shall pronounce against the validity of the said pretended will dated 18th April, 1957;
- (c) A grant to them of Letters of Administration of the estate and effects of the said deceased; 20
- (d) SUCH further and other Order as may be just;
- (e) COSTS.

DELIVERED this 4th day of December, 1972.

KOYA & CO.,
Pir: (sgd) S.M. Koya
Solicitors for the Plaintiffs.

IN THE SUPREME COURT OF FIJI

Probate Jurisdiction

Action No. 7 of 1966

IN COURT

Before the Hon. Mr. Justice T.U. Tuivaga
Monday the 4th day of December, 1972 at 9.30 a.m.

Between:

10

- 1. MUNI DEO BIDESI
 - 2. SURYA MUNIDLAL BIDESI
 - 3. CHANDRA PRAKASH BIDESI
 - 4. SHAR PAL BIDESI
- Plaintiffs

- and -

THE PUBLIC TRUSTEE OF FIJI Defendant

Mr. S.M. Koya for the Plaintiffs
Mr. McGarvie Q.C. and Mr. Mitchell for the
Defendant

20

KOYA: There are several matters I would like to mention before we commence the substantive part of the trial. There is a motion before your Lordship for adjournment. In view of the fact there has been a trial in Lautoka in which I was engaged as Defence Counsel has been adjourned on the direction of the Chief Justice, I am now free and would ask your Lordship to withdraw the motion.

30

COURT: Yes, leave is granted to withdraw the motion.

KOYA: Clear from the documents that Mr. Mitchell acted for three of the plaintiffs, namely, S.M. Bidesi, C.P. Bidesi and S.P. Bidesi. In respect of S.M. Bidesi a letter was written by Messrs. Cromptons to the Public Trustee. In respect of C.P. Bidesi Messrs. Cromptons acted in the lodgment of caveat against the Public Trustee. In respect of S.P. Bidesi

In the
Supreme Court

No.13
Proceedings

4th December
1972 -
continued

Bidesi Messrs. Cromptons acted against the Public Trustee. My clients say that nothing should be said by Mr. Mitchell about these matters. Sacrosanct relationship - absolute privilege. Matter is important when we go into question of estoppel and laches. I would like your Lordship's direction on whether anyone associated with Messrs. Cromptons should appear in this case in view of the part they played in this case. Refer to paragraph 1340 of Archbold (37th Edition) Criminal Pleading, Evidence and Practice. Particulars of Defence referred to correspondence relating to conduct of plaintiffs. Now Messrs. Cromptons appear in this case. Two Grounds:

- (1) prejudice to the plaintiffs 20
(2) appearance of injustice

McGARVIE: Submission without substance.

Basic flaw in submission. It happens everywhere. Submission amount to suggestion that once a solicitor appears on one side he cannot appear against that side. Law does disqualify solicitors for that reason. Similar objection made against Mr. MacFarlane who appeared with me as my junior. A duty only relates to this situation not to disclose confidential information. Instructions in the matter do not come from confidential information.

KOYA: Files in Cromptons concerning instructions on this Will.

COURT: In the circumstances of this case I rule against the submission. Should it become necessary, counsel for the plaintiffs may renew his objection to the particular evidence which he considers as breaching the confidential relationship of solicitor and client. I will proceed only on the basis of objection to the evidence adduced and not to counsel.

Sgd

(T.U. Tuivaga)
JUDGE

McGARVIE: I am obliged to you, My Lord.

In the
Supreme Court
No.13
Proceedings
4th December
1972 -
continued

10 KOYA: Original writ of summons was issued by Messrs. Wm. Scott asking for revocation of probate. Third paragraph of Statement of Claim was not repeated. Leave sought to amend Statement of Claim relief to be substituted as filed. No embarrassment to other side who has been informed. No costs involved. Refer to Order 20, rule 5. First note to 20/5 also p.300 paragraph 3 which I adopt. Claim which refers to (a), (b), (d) and (e).

20 McGARVIE: Objection is one of substance and relates to relief (c). If Plaintiffs succeed different issues will arise as regards grant of papers. Entirely inappropriate to encumber these proceedings with quite another and different issue. Submit for these reasons would be undesirable to amend Statement of Claim to include Claim (c).

30 KOYA: This is normal thing. Discretion of Court - refer to Vol. 13 of Atkins on Pleadings. I am not for the proposition of separate trials for separate issues.

McGARVIE: I withdraw my objection to the amendment to save time.

COURT: Leave is granted to amend Statement of Claim by substituting amended relief as filed.

(T.U. Tuivaga)
JUDGE

40 McGARVIE: Support motion for case dated 23/11/72 which has been filed. (Counsel reads). Powers of Court to make orders as sought. Refer to Order 33, rule 3 (p.456), r.4 (p.457). Those two rules give Court power to make order as to para.(a). As regards para.(b), r.7, (p.466) is relevant. Refer to Probate Action rule 15(2). Order 76.

In the
Supreme Court

No.13
Proceedings
4th December
1972 -
continued

COURT: Adjourned at 10.55 a.m. until
11.30 a.m.

(T.U. Tuivaga)
JUDGE

On resumption at 11.30 a.m. appearances
as before.

McGARVIE: Clear two issues in this case -
chronologically arise in this
order - in point of time and in
point of law.

10

- (i) The Plaintiffs precluded by
estoppel, acquiescence and
laches from calling upon the
defendant to prove the Will
in solemn form.
- (ii) If not so precluded, did the
deceased know and approve
contents of Will.

This is action for revocation of
Will. Deceased made Will in April
1957 - died on 15th November, 1957.
Probate granted on 21st April, 1959.
Citation issued on 25/6/66.

20

Pleadings in Case

- (i) Citation issued on 25th June,
1966.
- (ii) Writ issued on 3rd August, 1966.
- (iii) Defence filed on 23rd September,
1966.

Allegations 1, 2 and 3 raise issues whether
deceased has knowledge and approval of Will.
Paragraphs 4, 5 and 6 raise issues of very
different nature. Substantial particulars
given in support of paras. 4, 5 and 6.

30

- (iv) Reply and defence to counterclaim
dated 16th February, 1972.

Refer to authorities in support of these
submissions. (Mortimer on Probate Practice
(1927) pp. 238/239. (Copies supplied).
(Counsel reads).

40

See footnotes (b), (d), (e) and (g) on p.239.
In ordinary case it is open to next-of-kin
to prove Will in common form. Mere delay is

not enough. But there are circumstances in which such delay and conduct of next-of-kin will suffice. Williams on Executors and Administration (14th Ed.) (Copies of extracts supplied) Para.122 (p.81) and para.124 (p.82). In this case executor has propounded Will. Refer para.127 (p.83) If the first of these two issues are not made in favour of plaintiffs burden would be on executor to begin the case. Refer to Tristram & Cootes (23rd Edition) p.776 on Burden of Proof. Revocation proceedings based on alleged commission or omission on the part of the testator - Ground for revocation - want of knowledge and approval or lack of due execution lies on party who propounds the Will to begin. Refer Cross v. Cross (1864) 3 Swadey & Tritam 292 Vol. 164 English Report p.1287 - Will dated 8th September 1839 - dated 16th September 1837. Probate in common form granted on 28th July, 1840. Claim for revocation - p.1288 - which party is to begin - refer Sir Wild. Refer to Copeman v. Staples & Smith (1911) 13 Gazette L.R. 467 at p.468. Patrick v. Havercroft (1921) W.L.R. ?? action for revocation. Submit on issue of knowledge and approval is for deft, executor to open case. Issue (1) is really of a nature of a preliminary objection. Goddard v. Smith (1873) 3 Probate and Divorce. There this was treated as a preliminary issue. Submit on first issue, burden on deft. executor is to prove estoppel and laches. It is for deft. executor to go first on both issues. Application on the action is made on basis that issue of estoppel etc. is really a preliminary objection. Object is to obtain a decision that the defendant is not obliged to propound Will in solemn form. If defendant does not make the objection, the defendant might be held to waive right to raise these issues. This application is made to avoid that type of difficulty. Require a special order before defendant can go to propound the Will in solemn form. The order required will change course of trial. Suggest an order in two parts:

- (i) That questions and issues raised by paras. 4, 5 and 6 of the defence be tried before the other issues in the action and counterclaim.

In the
Supreme Court

No.13
Proceedings
4th December
1972 -
continued

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In the
Supreme Court

No.13
Proceedings
4th December
1972 -
continued

- (ii) That the evidence given and tendered upon the trial of the questions and issues raised by paras. 4, 5 and 6 of the Defence be treated as evidence given and tendered also upon the trial of the issues in the action and counterclaim.

Such an order is well within the rules to which we have made reference and may have the effect that the defendant could waive his right to use evidence to propound Will - no need to repeat evidence. No more than an order which has particular legal effect. Type of order often made in Third Party Directions. Refer to p.205 of Supreme Court Practice 1967 - Order 16, r.4 - p.207 (16/4/9) e.g. Motor Accident Claim - Order won't inconvenience Court or parties. Particulars in support of case for motion appears in affidavit of A.D.S. Anderson, Public Trustee of Fiji. (Counsel reads). Appropriate to make such order at this stage in of justice to make order proposed. 10
20

KOYA: in opposition to motion.

McGARVIE: Relief (b) is not being abandoned. It does not arise at this stage.

KOYA: Serious issues of fact and law are being raised by the pleadings. Only in exceptional cases will separate trial be ordered. Would lead to unnecessary costs and if there should be an appeal - one is likely to come back again. Evidence is necessary. What is being asked is to stay action for ever. Action is based on hearsay evidence of Mr. Anderson. Ask to impose para. 3 - Abuse of Court process. 30

In Civil List Mr. Anderson joined Service in 1962 and came to present position in July 1969 - some three years after issue of writ in this action. One of case for motion - confined to specific purposes. Refer to Vol.13 of Atkins p.338, Order 76, r.20 (p.1054). Ask for order for stay. Relief (b) should be dismissed with costs. Court adjourned at 12.55 until 2.15 p.m. 40

(T.U.Tuivaga)
JUDGE

On resumption at 2.15 p.m. appearances
as before.

In the
Supreme Court

No.13
Proceedings

4th December
1972 -
continued

KOYA: (contd.)

Appointment of Mr. Anderson in
Civil List - 1st March, 1972 p.52.
In regard to Relief (b) is an
afterthought. Matter adjourned
from time to time to enable defendant
to file particulars of defence and
for discovery of documents. This
has now been done. Why should
Court be burdened with this matter.
Mr. Anderson's evidence has no
probative value. Dealing with
Relief (a) Refer to p.239 of
Mortimer. Testator could not have
known contents of Will. Did not
understand English language.

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30

There will be real issues in dispute. Burden
proof irrelevant - what is material is that
rejection of motion does not jeopardise
defendant's case. Court should hear
evidence on all issues before determining
matter. In judgment Court should deal with
paras. 4, 5 and 6 first - only for purpose
of judgment but not for purpose of trial.
If Court tries these issues - inherent
danger of multiple appeals. As regards
form of order suggested probably means to
transfer evidence - all evidence be adduced.
No support - except reliance on Third Party
procedure.
Submit also application with respect to
relief (a) should be dismissed. Usual mode
of trial should be followed. We have joined
issue on all matters raised in paras. 4, 5
and 6. Refer to p.240 of Mortimer. Particulars
of defence are mere paraphrasing - Denials
and explanations required.

40

McGARVIE: Relief (b) - no order required at
this stage - take place after the
evidence. Not relying on Mr. Anderson's
affidavit except in formal sense.
Relief (a) deals with the way in which
trial is to be heard.

50

Mr. Anderson's affidavit is admissible - only
to get matter before this Court. We call
evidence - our other side call his evidence.
Order applied for merely legal effect - only
to protect defendant's evidence. From
authorities cited this morning - there is
risk to waive right. Concerned here with

In the
Supreme Court

No.13
Proceedings
4th December
1972 -
continued

question of law. No disadvantage
appropriate for legal reasons. No one
would be prejudiced.

COURT: Adjourned to 5/12/72 at 10 a.m. for
ruling on motion.

4.12.72

(T.U. Tuivaga)
JUDGE

No.14
Ruling
5th December
1972

No. 14
RULING

IN THE SUPREME COURT OF FIJI
Probate Jurisdiction

10

Action No.7 of 1966

2nd Day of Hearing

IN COURT

Before the Hon. Mr. Justice T.U. Tuivaga
Tuesday the 5th day of December, 1972 at 10 a.m.

Between:

- 1. MUNI DEO BIDESI
 - 2. SURYA MUNIDLAL BIDESI
 - 3. CHANDRA PRAKASH BIDESI
 - 4. SHAR PAL BIDESI
- 20
Plaintiffs

- and -

THE PUBLIC TRUSTEE OF FIJI
Defendant

R U L I N G

This is an application under Order 76,
rule 20 and Order 33, rules 3 and 4(2) of the
Supreme Court Rules 1968 for a separate trial
of preliminary questions and issues arising
out of the pleadings.

30

I have given careful consideration to all the arguments presented in relation to the application.

In the
Supreme Court

No.14
Ruling

5th December
1972 -
continued

10 In my view the questions and issues raised by paragraphs 4, 5 and 6 of the Defence ought to be tried first as separate issues. I come to this view because not only are those issues quite distinct from the other issues in the action and counterclaim but also, if
20 decided in one way, would be decisive of the present litigation. Furthermore, it is clear that for the purposes of deciding the questions and issues raised by paragraphs 4, 5 and 6 of the Defence it will not be necessary to ascertain any facts beyond those which appear in the Particulars of Defence. It seems to me that to that extent there is no real dispute as to the facts which are necessary for ascertain-
ment in order to enable this Court to deal with those preliminary questions and issues.

30 I am satisfied that in the particular circumstances of this case a separate trial of those issues will not prejudice or embarrass the plaintiffs in their action and that it is in their interest as well as that of the defendant that this procedure be adopted.

In the result and at this stage I order as follows :-

(i) that the questions and issues raised by paragraphs 4, 5 and 6 of the Defence be tried before the other issues in the action and counterclaim; and

40 (ii) that the evidence given and tendered upon the trial of the questions and issues raised by paragraphs 4, 5 and 6 of the Defence will be treated as evidence given and tendered in respect of the other issues in the action and counterclaim.

The costs of this application will be costs in the cause.

5th December, 1972

Sgd
(T.U.Tuivaga)
JUDGE

In the
Supreme Court

No. 15

No.15
Proceedings

PROCEEDINGS

5th December
1972

McGARVIE: I seek directions for all witnesses to be absent before I open my case. Refer to p.22 of Williams on Executors and Administration - matter of discretion - highly desirable. This is contested probate action.

KOYA: I see no reason why we should deviate from usual practice, parties should not be excluded from the Court. 10

COURT: I will allow the parties directly involved in the litigation to remain in Court but other witnesses to remain outside.

(T.U. Tuivaga)
JUDGE

McGARVIE: We wish to call Mr. Tetzner, a Surveyor, who is in New Zealand. He is being flown from New Zealand to arrive in Fiji on Thursday next and to return the following day - Friday. I may have to interpose him as witness during my case. 20

COURT: Point is noted.

McGARVIE OPENS CASE

Mr. Wheatley gave evidence taken on commission in Sydney in 1967. Conversation conducted in English - understood by both. 30

Mr. Bidesi asked him to draft Will. Asked Public Trustee to act in relation to the Will. He wanted distribution to be delayed for 40 years. Mr. Bidesi did not want any interpreter - did not want any Indian to know to avoid leakages. Will read in parts - after which he was taken before Mr. Gregg in office - before European witnesses only. Mr. Bidesi expressed his satisfaction. Other evidence will be called as to surrounding circumstances - recollection not very firm. Will is straightforward. Operative clauses first - powers later. 40

TrustsIn the
Supreme CourtNo.15
Proceedings
5th December
1972 -
continued

- (i) freehold land to be retained by Trustees until distribution;
- (ii) call in money and pay funeral etc. expenses;
- (iii) Trustees retain possession of estate - business land;
- (iv) widow to reside in residence - pay monthly allowance - outgoing on residence;
- (v) Divide remainder of income equally between widow and children of second marriage.

10

1st May, 1997 was date for distribution of corpus (capital) to 4 sons of second marriage.

By clause 6 Trustee given usual powers to trustees. Declaration at end of Will - adequate provisions made to children of 1st marriage. (Will read in full) C.T. 6503 and C.T. 6504 and C.T. 8829 are business and residential houses. Clause 6 contains a variety of powers. Clause 7 (read in full before Clause 6) Common ground that Mr. Bidesi did not read English or write English. Having read the operative part of Will, I now read Clause 6 which I submit, contains conventional powers in a Will.

20

Testator gave discretionary powers to trustee. Passing from 18th April, 1957. Date of Will. On 1st July, 1957 an agreement was entered into with Mr. Bidesi in relation to the purchase of a subdivision. Signed by Mr. Bidesi and Mr. Tetzner. Agreement conducted in English. Knew Mr. Bidesi since 1950. On 15th November, 1957 Mr. Bidesi died. Extract of death will give details of family. On 29th November, 1957 the Public Trustee authorised Mr. S.P. Bidesi to operate accounts also. Most of evidence is contained in documents. A book of documents prepared, a copy given to Mr. Koya. I tender documents for identification only containing documents Numbers 1 to 81 (MFI 1) and an appendix to that book are documents Number 82 to 92. (MFI 2) Not all documents in the book of documents. Summary of events (continued). On 29th November 1957 Public Trustee authorised S.P. Bidesi to operate accounts.

30

40

In the
Supreme Court

No.15
Proceedings
5th December
1972 -
continued

(See p.67 of MFI 1). On 21st December, 1957 a caveat was lodged by Mr. C.P. Bidesi (See p.50 of MFI 1). On 17th Feb., 1958 (p.4 of MFI 1) letter from Mr. Koya to Public Trustee. On 19th Feb., 1958 (p.10 of MFI 1) a letter to C.P.Bidesi by Public Trustee. Involves departure proposed from terms of will in relation to C.T.6503 and C.T. 6504. Court adjourned at 11.05 a.m. until 11.30 a.m.

10

(T.U. Tuivaga)
JUDGE

On resumption at 11.45 a.m. appearances as before.

McGARVIE: (contd)

On 19th Feb. 1958 (p.12 of MFI 1) from P.T. to Mr. S.M. Bidesi on variation of terms of Will. On 12th March 1958 (p.48 of MFI 1) letter from Mr. Koya to Public Trustee. On 14th March, 1958 (p.14 of MFI 1) from Public Trustee to Messrs. Koya and Co.

20

On 8th May, 1958 (p.49 of MFI 1) from Grahame & Co. to Mr. C.P. Bidesi. On 14th May, 1958 (p.51 of MFI 1) a second (present) caveat - unusual routine. On 5th June, 1958 (not included in MFI 1) there was a conference attended by Mr. C.P.Bidesi, Public Trustee, Mr. Koya and Mr. McFarlane. Assumption that it was possible to vary terms of Will for benefit of beneficiaries.

30

Refer

Chapman v. Chapman (1954) 1 All E.R.798
(H.L.)

At page 800 (per Lord Simmons) (Counsel reads) - Took sometime before this change of practice became known. On the 7th November, 1958 Mr. Gregg made an application for probate. On same day (p.53 of MFI 1) letter from Public Trustee to the Registrar, Supreme Court. On 13th November, 1958 (p.56 of MFI 1) warning issued by Registrar and directed to Mr. C.P. Bidesi. On 19th November, 1958 (p.55 of MFI 1) appearance entered to the warning by Mr. C.P. Bidesi. Next event (not in MFI 1) - on 9th December, 1958 a conference took place between Mr. Gregg, Mr. Wheatley, Mr. S.M. Bidesi, Mr. C.P.Bidesi, Mr. S.P. Bidesi as to what might happen if consent of court not obtained. On 4th March, 1959 (not in MFI 1) - we will.

40

tender a number of files from Supreme Court - certain formalities first necessary. Notice of change of solicitors - Grahame & Co. replacing Messrs. Koya & Co. of Lautoka. On 6th March, 1959 (Court record) a summons was issued to Grahame & Co. to show cause why Court's contentious proceedings in this matter (No. 1 of 1958) should not be discontinuedetc.

In the
Supreme Court
No.15
Proceedings
5th December
1972 -
continued

10

On 16th March, 1959 (Court file) appearance before Mr. Hammett, J. - order given for grant of Probate made by CONSENT.

On 26th June, 1959 (p.16 of MFI 1) from Public Trustee to Messrs. Cromptons.

On 11th July, 1959 (p.18 of MFI 1) letter from Messrs. Cromptons to Public Trustee.

On 19th November, 1959 (p.19 of MFI 1) from Public Trustee to Mr. S.M. Bidesi - signature of Mr. S.M. Bidesi on an agreement entered into.

20

On 24th November, 1959 (p.23 of MFI 1) - setting out further terms of the takeover of agreement signed by Mr. Gregg and Mr. S.M. Bidesi.

On 26th November, 1959 Mr. S.M. Bidesi executed a mortgage for £10,000 in favour of P.T. in consideration of amount owing to the Public Trustee. Actual amount to be ascertained (Court file).

30

On 26th November, 1959 lease between Mr. S.M. Bidesi and Public Trustee - C.T.6503 and 6504.

Position as at end of 1959.

Following that numerous transactions between Public Trustee and one or other of the plaintiffs.

40

On 17th Jan., 1961 (p.37 of MFI 1) from Public Trustee to Messrs. Cromptons. No application was made to Supreme Court in light of Chapman's case. Issue of citation on 25th June, 1966 which originated present action. I now turn to Particulars of Defence. Particular No.1 - refer to (p.1 of MFI 1) - letter dated 30th December, 1957 from M.D. Bidesi.

On 12th November, 1959 (p.4 of MFI 1) a letter from P.T. to M.D. Bidesi.

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On 3rd December, 1959 (p.5 of MFI 1) letter from P.T. to M.D. Bidesi.
Particular No.2 - refer to p.2 of MFI 1 - letter dated 17th May, 1958 from Mr. S.M. Bidesi to Mr. Ram Deo (whose wife is daughter of deceased) by first marriage. Son-in-law of late Mr. Bidesi.

On 4th February, 1960 (p.6 of MFI 1) from Messrs. Cromptons to Public Trustee.

Court adjourned at 12.50 p.m. until 2.15 p.m. 10

(T.U. Tuivaga)
JUDGE

On resumption at 2.15 p.m. appearance as before.

McGARVIE:

I would like to raise a matter concerning Mrs. Bidesi who was to go overseas for surgery in Brisbane. I did not want to call her as a witness. Arrangements have been made for her to leave tomorrow. 20

Subpoena has been issued not by us but by plaintiffs. There may be some formal admissions I would be able to make without her being called. I have letter from surgeon in Brisbane which I do not wish to read in open Court. I will hand it to my learned friend and then to your Lordship.

Court sights letter referred to.

KOYA: I appreciate my learned friend's anxiety for Mrs. Bidesi. Mrs. Bidesi is a material witness in this case - especially now she is no longer a defendant in the case. This case is set down for fixed period. I oppose any application for dispensing of witness. 30

McGARVIE: I am instructed she has not been subpoenaed. Hear other evidence first and matter can be adjourned for Mrs. Bidesi to be present. 40

KOYA: I have my prerogative to call witnesses. I want your Lordship to sympathetically consider my application for adjournment. Under summons for directions case was set for 7 days.

COURT: I will allow Mrs. Bidesi to go to Brisbane on medical advice. I will review situation at the end of estimated time for this hearing.

(T.U. Tuivaga)
JUDGE

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McGARVIE: (Particular No.2 contd.)

10 On the 10th May, 1960 there was conference between Mr. S.M. Bidesi, Mr. Wheatley and Mr. Gregg and question of business was discussed in some detail.

Particular No.3 - Affidavit sworn on 7th Feb., 1961 by Mr. M.D. Bidesi in action 139 of 1961 - only documentary evidence (Court file will be produced).

Particular No.4 - On 1st November, 1960 (p.8 of MFI 1) letter to Messrs. Wm. Scott from P.T. Date on Particular should read 1st November and not 1st December, 1960.

20 On 3rd November 1960 a letter (contained in a further book of documents - not yet marked.) Book of documents (MFI 3) No.93 to 116 - Appendix II - MFI 3. (p.113 to MFI 3) letter from H.M.Scott to Public Trustee

Particular No. 5
Court document - Action No.139 of 1961 will be available tomorrow.

30 Particular No. 6
In Court file there is order dated 2nd February, 1962.

Particular No. 7 - In Court file there is certificate from taxing master.

Particular No. 8 - No document at this stage.

Particular No. 9 - On 30th November, 1962 (p.9 of MFI 1) letter from P.T. to Mr. M.D. Bidesi.

40 Particulars on Mr. S.M. Bidesi - Particular No.10
Refer to letter of 19th February, 1958 (p.12 of MFI 1).

Particular No. 11 - On 17th May, 1958 (p.15 of MFI 1) letter from Mr. S.M. Bidesi to P.T.

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On 12th July, 1960 ledger of estate will be put upon Court - an amount of £420 was in fact paid to Mr. S.M. Bidesi.

Particular No. 12 - refer to documents on Particular No.2 on which we also rely here.

Particular No. 13 - I have already referred to conference on 9th December, 1971 between Messrs Gregg, Wheatley, C.P., S.M. and S.P. Bidesi.

10

Particular No. 14 - refer to (p.16 of MFI 1) of letter dated 26th June, 1969 and to p.18 of MFI 1 already referred to and to p.22 of MFI 1 already referred to.

Particular No. 15 - refer again to p.19 of MFI 1 letter of 19th November, 1959, terms of agreement set out.

On 20th November, 1959 (p.21 of MFI 1) letter to S.P. Bidesi from P.T.

Particular No. 16 - refer to p.23 of MFI 1 - agreement between Public Trustee and S.M. Bidesi - a new basis for sale and purchase.

20

Particular No. 17 - Lease is contained in MFI 3 p.110 Refer to p.28 of MFI 1 - letter dated 12th January, 1960 to P.T. from Messrs. Cromptons - cost at p.29. Court adjourned at 3.15 p.m. to 3.20 p.m.

(T.U.Tuivaga)
JUDGE

On resumption at 3.20 appearances as before.

30

McGARVIE: (contd)

Particular No. 18 - refer to p.106 of MFI 3 - mortgage. P.92 of MFI 2 - receipt to P.T. by S.M. Bidesi - advance of £3,000 as working capital. P.109 of MFI 3 - reference to agreement - 24.4.57 is obviously a mistake and should be 24.11.57. Mortgage arrangement signed by Mr. S.M. Bidesi and the Public Trustee - total.

P.98 of MFI 2 - letter of 30th May, 1962 from P.T. to Mr. S.M. Bidesi.

40

P.99 of MFI 2 - letter 30th April, 1963 from P.T. to Mr. S.M. Bidesi.

P.100 of MFI 2 - letter dated 13th May, 1963 from Mr. S.M. Bidesi to P.T.

P.101 of MFI 2 - letter dated 14th May, 1963 from P.T. to Mr. S.M. Bidesi.

P.102 of MFI 2 - letter from Mr. S.M. Bidesi to P.T.

P.103 of MFI 2 - letter from P.T. to Mr. S.M. Bidesi.

10 Particular No. 19 - p.25 of MFI 1 - a letter from P.T. to Mrs. Mary Seetoia dated 22nd November 1959.

P.27 of MFI 2 letter from P.T. to Mr. C.P. Bidesi - dated 2nd December, 1959.

Particular No. 20 -

Particular No. 21 - p.32 of MFI 1 - letter dated 3rd October, 1960 from P.T. to Mr. S.M. Bidesi.

P.35 of MFI 1 - letter dated 5th January, 1961 from P.T. to Mr. S.M. Bidesi.

20 P.36 of MFI 1 - letter dated 9th January 1961 from Mr. S.M. Bidesi to P.T.

Particular No. 22 - Writ issued on 7th July, 1964 (Court file will be available tomorrow).

Particular No. 23 - Words in S/C dated 10th October, 1964, para.3 thereof.

Defence admits paras. 3 and 4 of S/C were admitted on record by defendant.

30 Particular No. 24 - Refer to Action No.110 of 1964. On 21st June, 1965 an order was made by Hammett J in Chambers. Letter dated 24th August, 1966 (p.121 of MFI 3) from Grahame & Co. to Wm. Scott & Co.)

sic

P.122 of MFI 3 letter dated 7th September, 1966 from Wm. Scott to Grahame & Co.

P.123 of MFI 3 letter dated 12th September, 1966 from Wm. Scott & Co. to Messrs. Grahame & Co.

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P.124 of MFI 3 letter dated 15th
September, 1966 from Grahame & Co. to Wm.
Scott & Co.

Particular No. 25 - Letter of 14th August,
1965 is a mistake - we do not rely on it.

P.41 of MFI 1 - letter dated 23rd
June, 1965 from Wm. Scott & Co. to P.T.

P.42 of MFI 1 - letter dated 25th
June, 1965 from P.T. to Wm. Scott & Co.

Particular No. 26 - P.125 of MFI 3 - letter 10
dated 20th December, 1966 from P.T. to
Mr. S.M. Bidesi.

P.130 of MFI 3 - letter dated 29th
December, 1966 from P.T. to Mr. S.M.Bidesi.

Particular No. 27 - P.30 of MFI 1 - letter
dated 16th May, 1960 from P.T. to Mr. S.M.
Bidesi.

PP.33 and 34 of MFI 1 - letters dated
11th November, 1960 - debit note.

P.39 of MFI 1 - letter 18th May, 1964 20
from P.T. to Mr. S.M.Bidesi.

P.40 of MFI 1

P.43, p.44, p.45

P.131 of MFI 3 (9/7/68).

KOYA: I have checked Court record - the
estimated time for hearing of case
was for 2 days.

COURT: Noted.

Court adjourned at 4.25 p.m. to
tomorrow at 9.30 a.m. 30

(T.U. Tuivaga)
JUDGE

5.12.72

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1972

Mr. Koya for the Plaintiffs
Mr. McGarvie & Mr. Mitchell for the Defendant

KOYA: Reading of letters supporting

particulars of Defence unnecessary.
Brief - ref. unnecessary. This will shorten trial.

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McGARVIE: Unusual practice in jurisdiction where I come from. Course proposed would be unfair to Court. Essential to go through particulars.

10 KOYA: I want direction that there should be no pleadings.

COURT: I see no reason why this Court should make any specific directions as to the way counsel wish to conduct their cases provided it is within this Rule.

(T.U. Tuivaga)
JUDGE

McGARVIE: (contd. opening)

20 I propose to tender whole file.
 I tender files No.1 of 1958 Ex.4.
 No.212 of 1960 - Ex.5
 No.130 of 1961 - Ex.6
 No.139 of 1961 - Ex.7
 No.163 of 1961 - Ex.8
 No.110 of 1964 - Ex.9
 Civil App. No.24 of 1961 - Ex.10.

Particular No. 28

30 Caveats already referred to pp.50, 51 and 52 of MFI 1.

Particular No. 29
 p.47 of MFI 1.

Particular No. 30
 p.10 of MFI 1.

Particular No. 31
 pp.48, 49 of MFI 1.

Particular No. 32
 p.54 of MFI 1 - warning is set out.
 p.55 of MFI 1.

40 Particular No. 33
 Evidence will be called for a conference held on 9th December, 1958.

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Particular No. 34

Summons of 6th March 1959 contained in Ex.4

Particular No. 35

Order of 16th March, 1959 contained in Ex.4

Particular No. 36

P.27 of MFI 1 - letter dated 2.12.59 from P.T.
to Mr. C.P.Bidesi.

Particular No. 37

Date 3rd Feb. 1960 is a mistake - not
supported by document.

10

p.27 of MFI 1 - letter from P.T. to Mr. C.P.
Bidesi.

p.56 of MFI 1 - letter 15/11/60 from P.T. to
Mr. C.P.Bidesi (counsel reads letter).

Particular No. 38

p.6 of MFI 1 - letter from Cromptons to P.T.
- in particular last paragraph.

Particular No. 39

p.95 of MFI 1 - Sale Note signed by Mr. C.P.
Bidesi and P.T. - dated 21st March, 1961.

Somewhat unusual transaction because it also
contains an assignment. Document contained
two transactions. 20

- (i) purchase of land by S.P. Bidesi;
- (ii) Transfer of C.P. Bidesi.

Relevant to C.P. and S.P. Bidesi.

p.61 of MFI 1 - letter 31/10/62 from
P.T. to C.P. Bidesi (Counsel reads letter).

P.62 of MFI 1 - Account showing calcula-
tions of amount due on that date -
Discrepancy from amount in letter in p.61. 30

p.63 of MFI 1 - letter 27/4/61 from P.T.
to C.P. (Counsel reads last para. of letter).

p.64 of MFI 1 - letter 31/5/63 from
P.T. to C.P. Bidesi (reads para. 2).

p.68 of MFI 1 - shows calculation -
referred to in letter p.64.

p.66 of MFI 1 - letter 13/5/64 from Mr.
McNally to P.T. (counsel reads letter).

p.67 of MFI 1 - letter 25/5/64 from P.T.
to Mr. McNally. 40

Copy Transfer of 14th January, 1967 from Public Trustee to C.P. Bidesi - C.T. 9397 tendered - Ex.11.
Top left corner refers to Stamp Duty paid on Sale Note.

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Tender certified true copy C.T. 9397 last indorsement on the C.T. in first column - Ex.12.

10 Particular No. 40
p.59 of MFI 1.

COURT: Adjourned at 10.50 until 11.15 a.m.

(T.U.Tuivaga)
JUDGE

On resumption at 11.15 a.m. appearances as before.

McGARVIE:(contd. opening)

20 Particular No. 40
p.59 of MFI 1 - letter dated 25th January, 1962 from C.P. Bidesi to Public Trustee - same lease as C.T. 4153 (Read).

p.60 of MFI 1 - letter 2/3/62 from P.T. to C.P. Bidesi.

Particular No. 41
p.126 of MFI 3 - letter similar to that written to Mr. S.M. Bidesi for refund of duty.

p.139 of MFI 3 - letter 29/12/66 from P.T. to C.P. Bidesi to P.T.

p.68 of MFI 1 - letter 31/1/67 from C.P. Bidesi to P.T.

30 Particular No. 42
p.69 of MFI 1 - letter 29/11/57 from P.T. to S.P. Bidesi.

Particular No. 43
p.70 of MFI 1 - letter 23/12/57 from H.A.L. Gray to P.T.

p.73 of MFI 1 - letter 12/11/59 from P.T. to Mr. Gray - only 3rd para. relevant.

p.89 of MFI 1 - Notice of Caveat dated 13th June, 1961.

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Particular No. 44

Ref. p.72 of MFI 1 - letter 23/12/57 from Mr. Grey to P.T.

p.73 of MFI 1 - letter 12/11/59 from P.T. to Mr. Grey. Only para. 2 relevant.

p.76 of MFI 1 - letter 15/12/59 from Mr. Grey to P.T.

p.114 of MFI 3 - letter 20/6/61 from Cromptons to P.T.

Particular No. 45

Refer Documents in Particular No.2 relied upon.

10

Particular No. 46

No documentary material - Evidence will be called of conference that took place on 9.12.58.

Particular No. 47

p.93 of MFI 2 - letter 16/2/60 from P.T. to S.P. Bidesi.

Particular No. 48

Ref. p.74 of MFI 1 - letter 4/12/59 from P.T. to S.P. Bidesi - amount claimed is greater by £400 than that appears on Particulars of Defence.

20

p.75 of MFI 1 - letter 14/12/59 from Mr. McFarlane to P.T.

(Copy of acknowledgment referred to not available at this stage).

p.112 of MFI 3 - letter 28/7/60 from P.T. to S.P. Bidesi.

30

Ex.5 - Action commenced 12th September, 1960. Amended Statement of Claim 17/6/61 in Ex.5.

p.82 of MFI 1 - letter 1/8/62 from Cromptons to P.T.

Particular No. 49

Refer to Defence in Ex.5 of 26th July, 1961 - Denial by defendant of owing any sum of money - para.3 of defence is relevant. Judgment was entered for plaintiff by Knox-Mawer J.

40

Particular No. 50

Ref. Order of Court of Appeal - Ex.10.

p.88 of MFI 1 - letter of 8th May, 1963
from Cromptons to P.T.

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p.115 of MFI 3 - letter 24/5/63 from P.T.
to Cromptons.

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Particular No. 51

Date should be 6th May, 1963. Refer p.94
to MFI 2 - Sale Note dated 24/1/61.

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p.78 of MFI 1 letter of 13/2/62 from P.T.
to S.P. Bidesi. (Read).

10

p.80 of MFI 1 - letter 29/5/62 from P.T. to
S.P. Bidesi.

p.81 of MFI 1 - letter 30.5.62 from S.P.
Bidesi to P.T.

Notation in red ink for £25.10.0 - amount
of cheque.

p.84 of MFI 1 - letter 21/12/62 from P.T.
to Cromptons.

20

p.85 of MFI 1 - letter 26/4/63 from P.T.
to S.P. Bidesi. I tender certified true
copy of transfer No.83391 dated 6/5/63
from P.T. to S.P.Bidesi - Ex.13. Also C.T.
8830 original dated 3/8/55 - endorsement
dated 6/5/63 - Ex.14.

Particular No. 52

Ref. Writ and S/C dated 8/8/61 contained in
Ex.8. Endorsement on writ for claims of
£818 for professional work. Defence is
dated 13/2/62.

30

Particular No. 53

Refer Entry of Judgment 18/12/62 in Ex.8.
Also Bill of Costs of plaintiff in Ex.8
appears dated 18/12/62.

On 10th Jan. 1964 Certificate of taxing
master.

p.116 of MFI 3 - letter 13/3/64 from Cromptons
to P.T.

p.117 taxing certificate.

p.119 dated 19/3/64.

40

p.120 - receipt dated 21/3/64.

Particular No. 54

Refer Ex.6 - Writ 1/7/61 General endorsement
and S/C 23/8/61.

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Particular No. 55

On 11th September, 1961 - Defence and counterclaim is dated.

Particular No. 56

24th June 1962 date of settlement.

Particular No. 57

Ref. p.96 of MFI 2 - Sale and Purchase Agreement dated 19/2/62 signed by S.P.Bidesi and P.T. p.86 of MFI 1 - letter dated 26/4/63 from P.T. to S.P. Bidesi. (Read) p.87 (copy). 10

p.91 of MFI 1 - letter 30/5/67 from P.T. to S.P. Bidesi. Tender transfer (certified copy) 100221 dated 5/6/67 transfer C.T. 8832 from P.T. to S.P. Bidesi - Ex.15. Top left corner date of stamp duty on sale note. Certified copy of C.T. 8832. Original certificate 3/8/55 - last endorsement 8/6/67 to S.P.Bidesi - Ex.16

Particular No. 58

Included by mistake to be excluded from Particulars of Defence. 20

COURT: Excluded accordingly.

Particular No. 59

Ref. p.82 of MFI 1 - dated 1/8/62 from Cromptons to P.T. - relevant portion is second last para. ("our client.....etc.")

Particular No. 60

Ref. p.90 of MFI 1 - letter 30/11/67 to P.T. from S.P.Bidesi.

In relation to 30

Particular No. 3

referred to Affidavit of M.D.Bidesi - para.8 of Affidavit in matter 139 of 1961 in Ex.7.

Particular No. 4

Ref. p.113 of MFI 3 - letter 3/11/60 from H.M. Scott to P.T.

Particular No. 17

Lease at p.110.

Particular No. 18

Mortgage 72587 at p.106. Certified copy of that mortgage 27/11/59 now available - from Mr. S.M. Bidesi to P.T. - Ex.17. 40

Particular No. 24
 Referred to 5 documents

(i) Order for discontinuance of action
No.110 of 1964 now in Ex.9.

(ii) to (iv) Four letters
 p.121 24/3/66 of MFI 3
 p.122 7/9/66
 p.123 12/9/66
 p.124 15/9/66

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10

Particular No. 26
 Ref. p.125 of MFI 3 letter 20/12/66 from
 P.T. to S.M. Bidesi.

p.130 of MFI 3 - letter 29/12/66 from
 P.T. to S.M. Bidesi.

Can't give reference to letter 2nd
 Feb. 1966 at the moment.

That is material relied on for
 documentary evidence.

20

I had hoped to get these documents
 to be agreed upon so that this could go in
by consent.

We place letters before Court as to
 our efforts to get documents in by consent.

Mr. Koya will admit any documents
 purporting (i) to have been signed by any
 of plaintiffs, (ii) documents emanating
 from Registrar of Titles and Registry of
 this Court.

30

May be necessary to prove other
 documents.

Will not refer to law at this stage.
 That completes my opening.

I now propose to call evidence - first
 to evidence of Mr. Wheatley taken on
 commission.

40

KOYA: I object to this evidence. I cannot
 concede. I have not seen the
 original. Must give reasonable notice
 of intention to use in the trial.
 Refer Order 38 r.9 (p.496) (Read)
 conditions not satisfied.

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continued

COURT: Adjourned at 1 p.m. until 2.15 p.m.

(T.U. Tuivaga)

JUDGE

On resumption at 2.15, appearances as
before.

KOYA: (contd.)

Refer note 38/9/1 and case of
Fisher

Only notice I had was yesterday during
my learned friend's opening. 10

Refer Order 39 rr.9 and 10
Order 39, r.11.

Mr. Wheatley's depositions vital.
Allegations by Deft.

(i) instructions given to him to
prepare a will - usually in
writing.

(ii) taken draft in long hand.

At this stage he should comply with
the Rules first before he should be allowed
to put deposition in evidence. 20

McGARVIE: Several answers.

(i) Exchange of correspondence between
two solicitors. Ask matter be
stood down for a further $\frac{3}{4}$ hour.

(ii) Refer Order 38, r.9 -

(a) has been satisfied - refer to
Court documents showing circum-
stances in which order came
to be made. 30

Ample notice has been given to call
Mr. Wheatley.

In 1967 Mr. Wheatley beyond jurisdiction
of Court because of sickness was unable to
attend the trial.

1. Deposition taken pursuant to Order 39,
rule 1.

2. Material already before Court when considered with the presumption of continuity shows being beyond jurisdiction and unable to attend Court.
3. Plaintiffs have been given reasonable notice of the intention to use Mr. Wheatley's depositions in evidence.
- 10 4. If Court were against us on 3rd submission - amount to no more than an irregularity does not render the taking of evidence void unless Court orders that it should do so.
5. If the signed statement of Mr. Wheatley is not admissible as deposition under the Rules, it is admissible under the Evidence Ordinance - signed statement by Mr Wheatley who is not a party and a
20 person not interested - Evidence Ordinance (Cap.31), ss.3(1) d 5.

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(Refer to cases on meaning of "persons interested")

Court material (2)

1. Summons dated 27th August, 1967 in File No.7 of 1966 (Read).

Emphasise "as a witness for the defendant in this action" in the summons. Supported by two affidavits of
30 (i) Mr. McFarlane.

Emphasise "necessary, material witness" dated 24th August, 1967 (Read)
(ii) Mr. MacFarlane dated 30th August, 1967 which exhibited a medical certificate. (Read)

On 1st September, 1967 Court made order appointing Special Examiner (Read).

- (i) Mr. Wheatley described as witness for defendant.
- 40 (ii) Action stayed until filing of Mr. Wheatley's depositions.

All parties took view that Mr. Wheatley is essential witness.

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Compliance with Order 39, r.1 (I)
under the old rules.

Order consented to by plaintiffs' solicitors, clearly showed Mr. Wheatley was ill and would not be able to attend. Rely on Presumption of continuance

Phipson on Evidence (9th Ed.) pp.107 to 110. Submit Rule 9(1)(b) is satisfied.

In the events of this case, abundant notice was given of intention to rely on evidence. No requirement of notice being given in any particular way. See Mr. MacFarlane's affidavits already referred to. Ample notice.

10

Two letters extracted from our records just now. Refer (i) letter of 12th July, 1967 from Grahame & Co. to Messrs Wm. Scott (Counsel reads letter). (ii) Reply thereto dated 24th July, 1967 (Counsel reads).

20

Court always look at the substance rather than the form of the matter.

Submit Rule 9(2) has been complied with

Alternatively - Court is not fettered by mere technical rules. Refer - Order 2, r.1.

Considerations of justice require that Mr. Wheatley's depositions should be admitted despite the technical objections.

Evidence Ordinance (5th Submission). Refer to Order 38, r.1 - subject meaning of expression "person interested". Phipson (9th Ed.) p.286.

30

Barkway v. South Wales Transport Co.Ltd.
(1950) A.C. 185.

Submit depositions admissible under Order 38 r.9(2) as well as under the Evidence Ordinance.

Under Order 39 r.1 may include evidence of plaintiff.

40

Would like to amend 4th Submission Order 41 r.9(5) ll meaning of word "must" as in Order 39, r.11 and note "deposition" thereunder.

KOYA: Surprise Defendant not come prepared.

In the
Supreme Court

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As to 4th Submission - omission to give notice - entails a surprise - should be put on terms. Refer Fisher v. C.H.T. Ltd. (1965) 1 WLR 1093.

Deprived of opportunity of cross-examining the witness - of watching his demeanour.

10 I am not saying it is not admissible but rules must be complied with.

We have copy of depositions. I do not know Order 39, r.1 was complied with.

Interlocutory matters cannot be used in the trial. Matters to be used have to be proved properly.

On 3rd Submission - reasonable notice in writing.

On 5th Submission

20 Not admissible under Evidence Ordinance - conditions not being fulfilled. Persons interested - Cross on Evidence - (Aust.Ed) p.622.

Document not Statement . Leave is granted only judicially and on terms.

COURT: Adjourned at 4.15 p.m. until 9.30 a.m. tomorrow.

(Sgd) (T.U.Tuivaga)
JUDGE

6.12.72.

In the
Supreme Court

No. 16

NOTICE TO PRODUCE

No.16
Notice to
produce

5th December
1972

IN THE SUPREME COURT OF FIJI

Probate Action No. 7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, Deceased.

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHIV PAL BIDESI all sons
of Bidesi, Deceased of Suva, Fiji 10
Plaintiffs

A N D : THE PUBLIC TRUSTEE OF FIJI
Defendant

NOTICE TO PRODUCE

TAKE NOTICE that you are hereby required to
produce and show to the Court on the trial
of this action all books, papers, letters,
copies of letters, and other writings and
documents in your custody, possession or
power containing any entry, memorandum or
minute relating to the matters in question 20
in this action and in particular the Supreme
Court files covering the following actions
in the Supreme Court of Fiji :

1. No. 1 of 1958

IN THE ESTATE of BIDESI
son of Chuman late of Suva
in the Colony of Fiji
Building Contractor deceased

PUBLIC TRUSTEE Plaintiff 30

and

CHANDRA PRAKASH BIDESI Defendant

2. No. 212 of 1960

BETWEEN THE PUBLIC TRUSTEE as Executor
of the Estate of Bidesi (son
of Chuman) Plaintiff

AND SHIU PAL BIDESI (son of
Bidesi) of Suva in the
Colony of Fiji Architect
Defendant

In the
Supreme Court

No.16
Notice to
produce
5th December
1972 -
continued

3. No. 130 of 1961

BETWEEN SHIU PAL BIDESI (son of
Bidesi) Plaintiff

- and -

10

THE PUBLIC TRUSTEE
as Executor of the
Estate of BIDESI (son
of Chuman) Defendant

4. No. 139 of 1961

IN THE MATTER of the Will
dated the 18th day of April,
1957 of BIDESI son of Chuman
late of Suva in the Colony
of Fiji, Contractor, deceased.

20

BETWEEN MUNI DEO BIDESI son of Bidesi
of Suva, Builder
Plaintiff

AND

30

1. THE PUBLIC TRUSTEE OF THE
COLONY OF FIJI as Executor
and Trustee of the Will of
Bidesi son of Chuman deceased;
2. TAPESARI daughter of Ramdhari,
widow of the late Bidesi
referred to in the aforesaid
Will as Kapesri;
3. ATMA PRASAD BIDESI son of
Bidesi;
4. GYAN WATI BIDESI daughter of
Bidesi wife of Michael Jiwan;
5. KALA WATI BIDESI daughter of
Bidesi;
6. UMA PRASAD BIDESI, JAGDISH
PRASAD BIDESI, MUNI PRASAD
BIDESI all sons of the said
Tapesari and the deceased and

40

In the
Supreme Court

No.16
Notice to
produce

5th December
1972 -
continued

BRIJ KUMARI BIDESI, MAYA
WATI BIDESI, VEENA WATI
BIDESI and MEERA BIDESI all
daughters of the said Tapesari
and the said deceased, infants

Defendants

5. No. 163 of 1961

BETWEEN: SHIU PAL BIDESI
(s/o Bidesi)

Plaintiff

- and -

10

THE PUBLIC TRUSTEE
As executor of the
Estate of BIDESI
(s/or Chuman)

Defendant

6. No. 110 of 1964

BETWEEN: SURYA MUNDILAL BIDESI
son of Bidesi of Suva,
Building Contractor

Plaintiff

AND: THE PUBLIC TRUSTEE OF
FIJI as Trustee of the
Will of Bidesi son of
Chuman late of Suva,
deceased.

20

Defendant

7. Civil Appeal No. 24 of 1961

SHIU PAL BIDESI

Appellant

- and -

THE PUBLIC TRUSTEE

Respondent

D A T E D this 5th day of December, 1972

C R O M P T O N S

(Sgd) ?

Solicitors for the Defendant

30

T O : The Registrar,
Supreme Court Registry,
Supreme Court,
Government Buildings,
S U V A

No. 17

ORDER

In the
Supreme Court

No.17
Order

6th December
1972

IN THE SUPREME COURT OF FIJI

Probate Action No. 7 of 1966

IN THE ESTATE of BIDESI
s/o Chuman, Deceased.

BETWEEN:

MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHIV PAL BIDESI all sons
of Bidesi, Deceased of Suva,
Fiji

Plaintiffs

A N D :

THE PUBLIC TRUSTEE OF FIJI

Defendant

BEFORE THE HONOURABLE SIR JOHN NIMMO
IN CHAMBERS

THE 6TH DAY OF DECEMBER 1972

O R D E R

Upon hearing Mr ROBERT WILLIAM MITCHELL of
Counsel for the Defendant IT IS ORDERED that
the Chief Registrar of the Supreme Court of
Fiji do comply with Notice to Produce dated
th 5th day of December, 1972.

(Sgd) John A. Nimmo C.J.

BY THE COURT

10

20

In the
Supreme
Court

No. 18

PROCEEDINGS

No.18
Proceedings
7th December
1972

Mr. Koya for the Plaintiffs
Mr. Garvie Q.C. & Mr. Mitchell for the
Defendant

KOYA: I am required for a short while
elsewhere - seek adjournment from
10.30 until 2.00 p.m.
Defendants Counsel has agreed.

McGARVIE: I consent subject to undertaking.

COURT: Case will be adjourned as requested
and subject to the undertaking.

10

(Sgd)

(T.U. Tuivaga)
JUDGE

Defendant's
Evidence

No. 19

SERGUIA ALEXANDER TETZNER

No.19
Serguis
Alexander
Tetzner
7th December
1972
Examination

D.W.1 - Sworn on Bible in English. Serguis
Alexander Tetzner - farmer -
Olgina, Paperoa, New Zealand

I formerly lived in Fiji from 1937.

20

In 1949 I commenced practice as Surveyor,
Valuer and Engineer.

I was concerned with subdivision of land
in 1951 in a private capacity.

I came into contact with late Mr. Bidesi
- early fifties. He was conducting a
successful building business.

I had a number of conversations with
him. During these years I had business
conversations conducted in English.

30

His English was not grammatical but he
could make himself understood clearly.

I had no difficulty in making myself

understood by him. At times though I had asked.

I spoke to him normally - did not speak down.

I had discussions too on general topics sometimes besides professional discussions.

In 1956 I formed company Road Builders Ltd. I was director of company. Karsanji Naranji was another director.

10 During 1956 I wanted land for company. Mr. Karsanji made further approaches to Mr. Bidesi.

Mr. Bidesi came to see me. He wanted to sell Mead Road property which comprised a number of titles at £40,000. I offered £35,000 on terms.

20 Negotiations went on for several weeks during which I had several conversations - terms of agreement, the question of 1 acre he wished to retain for his son, Muni.

I reached agreement with him. It was excluded from the deal. To be transferred back to him.

One acre of land was to be surveyed out of land. Terms were made. We paid a deposit of about £5000. Balance to be paid at £3000 per annum at 2½% interest on amount owing.

30 He emphasised about the interest which he said was beneficial to my firm.

Before survey Mr. Bidesi told me where the one acre was actually located. His directions were clear.

Subsequently agreement done for both of us by Messrs Munro, Leys etc.

I see this agreement - it has my signature on last page - Ex.18.

We signed a mortgage later.

40 I had about half dozen conversations with Mr. Bidesi relating to negotiations and bargaining about the land we wanted to purchase.

In the
Supreme Court

Defendant's
Evidence

No.19

Serguis
Alexander
Tetzner

7th December
1972

Examination -
continued

In the
Supreme Court

Defendant's
Evidence
No.19

Serguis
Alexander
Tetzner

7th December
1972
Examination -
continued

We understood each other clearly and fully.

Mr. Bidesi appeared to me as a capable and astute businessman.

Cross-
Examination

Cross-examination of Mr. Tetzner by
Mr. Koya

(Witness shown Ex.8)

This agreement dated 1st July, 1957. There was a subsequent mortgage and a transfer also. I see Mr. Warren's signature.

10

Prior to July 1957 I have no recollection whether there was another agreement.

I cannot remember whether we signed Ex.8 at same time.

I can't remember whether Ex.18 was interpreted to Mr. Bidesi.

I don't think I was ever present when a legal document was interpreted and explained to Mr. Bidesi.

My impression is that he was not a free reader. I have seen him looking at documents. Our transactions were oral and in English.

20

I have seen him pick up papers in English and appear to be reading. Mostly not always was Mr. Karsanji at our meetings. He would take part in the negotiation. He would talk to Mr. Bidesi in a mixture of English and Hindustani.

I had Mr. Karsanji to assist me in my dealing with Mr. Bidesi who was an old man. At times Mr. Karsanji would help in conversation.

30

We haggled about price. $2\frac{1}{2}\%$ interest was accepted. Terms of payment were settled early. We discussed price mainly in the next few conversations.

When I executed Ex.18 I don't remember whether Mr. Bidesi was there.

Mr. S.P.Bidesi was no doubt advising his father on the price of the Mead Road land.

I don't know whether Mr. S.P.Bidesi was helping his father during these negotiations. He did not negotiate the land sale with me. I reached agreement with Mr. Bidesi and not Mr. S.P.Bidesi.

10 I see this memorandum. (Handed to witness). This document refers to Ex.18.

I see my signature on this memorandum. Annotated by Mr. Bidesi in Hindi and for Karsanji and witness by D.J.Warren, and B. Chandra - Ex.A.

Ex.A executed on 3rd May, 1957.

I did go to Mr. Bidesi's business house at Waimanu Road. I may have seen his sons Mr. S.P. and S.M. Bidesi.

20 I came into contact with him professionally as a surveyor. There was some discussion to carry out subdivision of land.

I was not asked to survey Mead Road land. I do not speak Hindustani. I only know a few words.

Mr. Bidesi did raise objection to Mr. Karsanji's presence at these negotiations. I don't know whether Mr. Bidesi was in poor health at end of July, 1957.

30 When Ex.A was signed I don't remember whether we were all present. Ex.A is in Mr. Warren's handwriting.

I knew Mr. B.Chandra, Mr. Warren's clerk. His signature was probably necessary. That's why he was there.

40 If an English document is read slowly he would understand it. He and I discussed fairly complicated matters and no interpretation was required. Mr. Karsanji did clear up a few points. Mr. Bidesi can understand legal document if read slowly without interpretation.

(Copy of Probate handed to witness).

In the
Supreme Court

Defendant's
Evidence
No.19
Serguis
Alexander
Tetzner

7th December
1972

Cross-
Examination
continued

In the
Supreme Court

Defendant's
Evidence
No.19

Serguis
Alexander
Tetzner

7th December
1972
Cross-
Examination
continued

I see language used in the Will. It is in formal language.

I would say with explanations he would understand the Will.

COURT: Adjourned at 10.25 a.m. until 2 p.m.

Sgd.
(T.U. Tuivaga)
JUDGE

On resumption at 2.00 appearance as before

D.W.1 (reminded still on oath)

10

I remember asking question about Clause 6(d).

I said I find no difficulty reading it but if read out himself I would find it difficult.

English language is also an acquired language with me. My English is better than his.

I can't say when exactly I met him - but it would be in the early fifties. I met him in other professional business apart from survey work and agreement to purchase his Mead Road land.

20

I personally visited his house 6 or 7 times and at his business place 2 or 3 times.

I did not prepare any sale note in this case. It is possible I may have entered into conversation with him. I don't know whether he signed any document in front of me in connection with the sale of property. Mr. Jathalal and Mr. Karsanji Naranji were co-directors with me at the time.

30

It was not S.P. Bidesi who negotiated the agreement with myself.

At times Mr. Karsanji did explain to me in English about the negotiations.

Mr. Karsanji was not present all the time during my negotiations with Mr. Bidesi. I never saw him speaking English with anybody else. I have seen contents of Will. It is in

40

legal terminology when he spoke to me he did not use any legal terminology.

Re-Examination

(Counsel asks for Ex.7 - No.139 of 1971)

Mr. Koya asks for further XCM in view of further instructions

10 Mr. Jathalal Naranji has some part to play in this negotiation of the sale of land at Mead Road as co-director. He had no authority to negotiate sale.

I know Mr. Jathalal did not sign the agreement. I can't remember whether Mr. Bidesi was present.

On many occasions Jathalal was present when I had them negotiating with Mr.Bidesi.

Re-examination

I see Affidavit has my signature in action No.139 of 1961 in Ex.7 dated 8th day of February, 1961.

20 (Mr. Tetzner is released)

No. 20

BERTRAND LOVELL GREGG

D.W.2 - Bertrand Lovell Gregg - Sworn on Bible in English

I live at 56 Beach Road, Laucala Bay. I am a retired public servant.

I was Public Trustee of Fiji from 1952 to August 1963. On occasions I was absent on leave.

30 Examination-in-Chief

I have no recollection prior to or in 1957 meeting late Mr. Bidesi. I have no recollection being present when Mr. Bidesi

In the
Supreme Court

Defendant's
Evidence

No.19
Serguis
Alexander
Tetzner

7th December
1972

Cross-
Examination
continued

Re-
Examination

Defendant's
Evidence

No.20
Bertrand
Lovell
Gregg

7th December
1972
Examination

In the
Supreme Court

Defendant's
Evidence
No.20
Bertrand
Lovell Gregg
7th December
1972
Examination
continued

executed a Will.

In 1957 I was a Registrar of Title. I took responsibility of freehold titles. I was Registrar of Titles. I was Registrar of Deeds.

I was Registrar of Deaths, Births and Marriages. I was Registrar of Elections, Trade Unions, Trade Marks, Naturalisation, Patents, Charitable Trusts, Commissioner for Stamp Duties - involves me perusing stamp duties collected previous day.

10

I was Official Receiver in Bankruptcy. I was a magistrate and did a lot of work. In 1957 I still held my duty as magistrate. I carried out administration duties - signing of warrants, bodies for burial.

In 1957 I had lot of people coming to see me in the office. I changed from subject to subject.

In 1957 Mr. Wheatley was Deputy Trustee. He handled trusts and bankruptcies. I confer with him from time to time about his duties.

20

Yesterday I had legal conference with defendant's counsel when I was shown a number of documents.

See P.69 of MFI 1. I see my initials on it. Practice is to initial carbon copies of all letters. A letter register is kept and all outgoing letters are recorded and given to a messenger who post them.

30

I see p.10 of MFI 1. I see my initials on p.11. I signed original letter but sent out through the posting procedure.

I see p.12 of MFI 1. I initialled p.13. I see this document - it contains a memorandum in my handwriting. (Witness reads memorandum). It is initialled by me.

After I wrote letter (p.12) - I became aware that Fiji Court had no powers to vary the Will.

A House of Lords case was drawn to my attention. I see this letter from Grahame & Co. I see second last paragraph of letter. It indicates to me that on or about 10th March, 1958 I was referred to the case of Chapman v. Chapman. I must have read at these then.

40

I see a handwritten record of a conference held on 10th May, 1960. It is in the handwriting of Mr. Wheatley.

In the
Supreme Court
Defendant's
Evidence
No.20
Bertrand
Lovell Gregg
7th December
1972
Examination
continued

Record of conference between myself, Mr. Wheatley - and S.M. Bidesi (Read by witness)

KOYA: I object.

Ex.19 - memorandum dated 5/6/58 of Mr. Gregg. Tender record of conference in handwriting of Mr. Wheatley for identification only at MFI 20.

10

KOYA: My learned friend is leading the witness on Chapman v. Chapman.

(Counsel refers to Ex.4 - File 1 of 1958)

I see this document dated 9/12/58. I can't say whether it is in Mr. Wheatley's handwriting.

COURT: It is agreed by counsel it is in Mr. Wheatley's handwriting.

(Witness reads record of conference).
Tendered for identification only - MFI 21.

20

I see p.16 of MFI. It is initialled by Mr. Wheatley. It is carbon copy of original.

I see p.19 of MFI signed by me and by Mr. Bidesi.

I see p.23 - signed on 24/11/59 by me and S.M. Bidesi.

I see p.37 of MFI 1. I initialled this carbon copy of original which was sent by me.

Two notices to produce were served.

30

KOYA: This being formal evidence I have no objection to being admitted.

COURT: Admit in evidence documents

p.69 of MFI
p.10 of MFI
pp.12 and 13 of MFI
pp.16 and 17 of MFI
pp.19 and 20 of MFI
p.23 and back thereof
pp.37 and 38.

In the
Supreme Court

Defendant's
Evidence
No.20

Bertrand
Lovell Gregg

7th December
1972

Examination
continued

Witness: I see p.4 of MFI 1. It has my initials.

I see pp.14 and 41. Not initialled.
My typed initials (14/3/58).

I see p.21 (20/11/59). Initialled by me.
I see p.27 (2/12/57). I initialled it.
I see p.30 (16/5/60). I initialled it.
I see p.31 (16/5/60).
I see p.32 (3/10/60). I initialled it.
I see p.33 (11/11/60). I see my signature. 10
It is the original.

COURT: Adjourned at 3.20 p.m. until 3.45 p.m.

(T.U. Tuivaga)
JUDGE

On resumption at 3.45 p.m. appearances as before.

I see pp.33 and 34 are the original. There is a note on p.34.

I see p.56 of MFI (13/1/60). I initialled this document.

I see p.60 of MFI. I initialled this letter (2/3/1962). 20

I see p.62 of MFI 1. I initialled carbon copy (12/11/62).

I see p.73 (12/11/59). I initialled it.
I see p.74 (4/12/59). I initialled it.
I see p.78 (13/2/67). I initialled it.
I see p.80 (29/5/62). I initialled letter.
I see p.93 (16/2/60). I initialled and sent it in the manner I have described.

I see p.105 (4/12/59). I initialled it. 30
I see p.112 (28/7/60). I initialled this letter.

I see p.5 (3/12/59). Initialled by Mr. Wheatley.
I see p.8 (1/11/60).
I see p.9 (30/11/62).
I see p.22 (20/11/59).
I see p.25 (22/11/59).
I see p.35 (5/1/61).
I see p.53 (7/11/58). Initially by Mr. Wheatley and sent out in the manner I have described. 40

I see p.61 (31/10/62). Initialled by Mr. Wheatley.

I see page 63 (27/4/63).

I see p.64 (31/5/63). Initialled by Mr. Wheatley.

In the Supreme Court

I see p.65 which is copy of account dated 14/6/63.

Defendant's Evidence

No.20

Bertrand Lovell Gregg

7th December 1972

Examination continued

I see p.84 (21/12/62).

I see p.85 (26/4/63).

I see p.86 (26/4/63). It is the original signed by Wheatley.

I see p.87(26/4/63).

10 I see p.99 (30/4/63).

I see p.101 (14/5/63).

I see p.103 (22/5/63).

McGARVIE: May those documents be admitted now, Sir?

COURT: Very well. Admit documents referred to above and are part of books of documents 1, 2, 3. (MFI 1, 2, 3).

(T.U.Tuivaga)

JUDGE

20 XXM by Mr. Koya

Cross- Examination

After the death of the late Mr. Bidesi I became well known by the Bidesi family.

People have trust in my office.

I see p.10. In that letter I made firm commitment about varying terms of will. I see para.4 of this letter. I then made a firm offer after these caveats were withdrawn.

I see p.54 - it is a warning.

I see p.55 - it is appearance to warning.

30 Between February 1958 and 17/11/58 matter was not yet settled. I do not remember whether I gave instructions to Mr. McFarlane at any time.

McGARVIE: I would like to interfere Mr. Murray to be called tomorrow morning.

COURT: Yes.

COURT: Adjourned at 4.15 p.m. to tomorrow at 9.30 a.m.

40 7.12.72.

(T.U.Tuivaga)

JUDGE

In the
Supreme Court

No. 21

Defendant's
Evidence

HERBERT NORIS MURRAY

No.21
Herbert Noris
Murray

D.W.3 - Affirmed in English.

Herbert Noris Murray

8th December
1972
Examination

I live at Vuvui Street Suva. I am a Company Director. I have been in Fiji employed by M.H. Limited since 1935. I have known late Bidesi for about 20 years.

He was a reputed client of Millers Ltd. a subsidiary of M.H.Ltd.

10

I met him frequently. I have spoken to him about matters other than business -affairs of day, commercial matters, land matters.

I conducted conversations with him in English. English that he used was not polished - but he was competent.

I can't recall having any difficulty with him nor he with me.

I formed the view that Mr. Bidesi was a man of very candid view of business, he was shrewd and careful.

20

I don't know whether he wrote or read English. He traded as Bidesi & Sons. I know Bidesi's sons. I don't know whether S.M.Bidesi ran the business.

I did not see cheques signed by Mr.S.M. Bidesi. I saw late Mr. Bidesi once a week and sometimes more than once.

I can't recollect having dealt with him concerning mortgages.

30

We were in friendly terms for a good many years.

I never entered any contract with him for sale of building materials.

I must have written to the company several times.

He was competent to converse in English. His speech was not perfectly grammatical.

I don't remember whether I had seen him before his death.

40

Re-Examination (By leave)

Sales Manager of Millers Limited during the time I knew Mr. Bidesi (Witness released).

In the
Supreme Court
Defendant's
Evidence
No.21
Herbert Noris
Murray
8th December
1972
Re-Examination

Mr. Gregg (D.W.2) recalled

Sworn on Bible in English. Bertrand Lovell Gregg.

Cross-
Examination

XXM by Mr. Koya (continues)

(Counsel asks to have permission to execution of caveat). Action 1 of 1958 Ex.4).

10 A caveat was lodged sometime in 1957.

I see p.47 of MFI 1. I remember I was reminded of not warning caveator. I can't remember the reason why no steps were taken.

At that time Bidesi's estate was in financial difficulties. I did not reply until 14/3/58 (p.14 to p.47).

On 12th March I had further reminder. There must have been considerable activity in the matter.

20 On 19th February, 1958 I wrote to C.P. and S.M. Bidesi under letters p.10/11 and p.12/13.

My letter to C.P. Bidesi (p.10) was sincere. I do not know I did not enter warning to caveat.

This was apparent to settle that - to get money to pay death duties.

There was no ready cash in the estate. Duties were high - business was at a standstill.

30 I tried to get caveat withdrawn - which seems to be the best approach at the time.

I gave a lot of thought to letter of 19th February 1958. I then considered it best

In the
Supreme Court

Defendant's
evidence

No.21

Herbert Noris
Murray

8th December
1972

Cross-
Examination
continued

to make the offer in these terms set out
in letter of 19th February, 1958.

That was only source of ready cash I
could touch.

Letters at p.10 and p.12 are in almost
identical terms.

I tried to avoid penal duties being paid
on unpaid estate duties. Hence the proposals
I made to Mr. C.P. and S.M. Bidesi. And the
other reason was to restore amicable relations
between the two branches of the family. 10

These two letters were the foundation of
the settlement which was reached months after.

I see p.49 (8/5/58) - letter of Mr.
McFarlane to Mr. C.P.Bidesi. The contents of
the letter seem to be correct.

On 14th May, 1958 Mr. C.P.Bidesi lodged
second caveat (p.51 of MFI 1). Matter had
been in abeyance until then.

On 29th October, 1958 a third caveat was
lodged by Mr. C.P.Bidesi (p.52 of MFI). 20

Between these two caveats I received letters
claiming bonuses. (p.2 and p.15 - dated
17/5/58).

I caused a warning to be lodged on 13th
November, 1958 (p.54 of MFI).

Appearance entered by Mr. C.P.Bidesi on
19th November, 1958 (p.55 of MFI 1).
Action No.1 of 1958 remitted.

After 19th November 1958, after lodgment
of appearance I can't remember what took place. 30

On 5th June 1958 I made a note of inter-
view. It is usual practice to make notes.

On 16th March 1959 a consent order to
withdraw caveat. I can't remember whether I saw
Mr. S.M.Bidesi between 19th November and 16th
March, 1959.

COURT: Adjourned at 10.55 until 11.30 a.m.

(T.U. Tuivaga)
JUDGE

On resumption at 11.30 a.m. appearances as before.

D.W.2 (reminded still on oath)

XXM by Koya

I had this note MFI 21 - 9/12/58.

I see note of 5.6.68 - It seems to be copy of letter 19th February, 1958.

10 After 19/11/58 I had conference on 9/12/58 recorded (MFI 21). It is in Mr. Wheatley's handwriting. I was present.

Agreement was reached along those lines so far as my recollection goes. I can't remember whether early 6th March 1959 I instructed Mr. McFarlane for leave to withdraw caveat.

I see Ex.4 p.7 - it is summons taken out by Mr.McFarlane. He acted for both parties to obtain consent order to withdraw caveat.

20 On 21st April 1959 Probate in common form. It is the original, probate. Ex.B

A lease was executed on 28th November, 1959. I was away on leave from about June to November 1959. I can't remember between April and June 1957 whether I had conference with Mr. S.M.Bidesi.

30 I see pp.16 and 17 - I was not in the country when the letter was written and signed by Mr. Wheatley. On 20th November I also signed the lease. I must therefore have come back by then.

I see pp.26, 26A, 26B. It is the same as p.110.

McGARVIE: I tender certified copy of lease No. 72767 dated 28/11/59. - Ex.22.

I see Ex.22, pp.16 & 17 of Mr.Wheatley's letter and MFI 21 on which agreement was reached.

40 Ex.22 was in respect of C.T.'s 6503 and 6504.

Differences between agreement on the

In the
Supreme Court

Defendant's
Evidence

No.21
Herbert Noris
Murray

8th December
1972

Cross-
Examination
continued

In the
Supreme Court

Defendant's
Evidence

No.21
Herbert Noris
Murray

8th December
1972 -
Cross-
Examination
continued

10/12/59 and lease may be due to further agreement reached whilst I was away on leave.

I can't remember why there was a variation to the period of 10 years.

I see p.37. That was well up to the execution of lease. At the time matter was still under consideration by both sides. Mr. S.M.Bidesi was still relying on his letter of 19.2.58.

I did not go to Court because of difficulties posed by Chapman's case. At the time I wished the law was changed to allow for variation of trusts. (Counsel reads pp.37 and 38).

10

Before 17th January and after execution of lease on 28/11/59, Mr.McFarlane brought my attention to the case of Chapman.

I was doing my best to carry out my undertaking of 19th February 1958.

Mr.McFarlane said change of law during time of Australian Law Journal was under consideration. I said to Mr. S.M.Bidesi that there was no prospect of application to Supreme Court being successful.

20

After writing letter 17/1/61 I left Public Trustee in September 1963. I did not make any application to Supreme Court.

I actually retired in April 1964.

Last time I came back was four years ago. I stayed at Laucala Bay when I came back. I may have met Mr. S.M.Bidesi on occasions in town.

30

I can't remember whether Mr. S.M.Bidesi told me that P.T. had not made application to Supreme Court.

I don't know whether Fiji has got its own legislation like that of U.K. giving powers to Supreme Court to vary trusts.

As regards undertaking of 19th February, 1958 (pp.36 & 37) there was no legislation change as at 17th June, 1971.

40

If legislation was there I could have made an attempt to make an application to

Supreme Court even today if circumstances still remain.

Undertaking was not changed up to time I left office. Mr. S.M.Bidesi may have relied on undertaking. I would not know.

Mr. S.M.Bidesi accepted lease for 10 years. I do not know why period was varied from 20 to 10 years. Lease of 19/11/58 was a temporary measure. I again look at MFI 21.

I don't know whether there was agreement to vary to 10 years. I did say it was a temporary measure.

As far as I can recollect nothing has happened to change the agreement of 9/12/58 (MFI 21).

Building business of the estate could not be run by the Public Trustee Office. I wanted it sold to one of the sons - at proper valuation.

I was prepared to finance Mr. S.M.Bidesi to buy building business subject to his giving a mortgage to his other property. I was asking him within the rules of investment of trusts.

I see pp.19 & 20. On 19/11/59 I wrote to Mr. S.M.Bidesi regarding the taking over of the contracting business.

On 24th November 1959, Mr. S.M.Bidesi called on me (p.23 and at back).

Nothing was discussed concerning Mr. C.P.Bidesi, Mr. S.P.Bidesi and Mr. M.D. Bidesi except Mr. S.M.Bidesi.

Arrangement on 17/11/59 and 24.11.59 was between myself and Mr. S.M.Bidesi.

I don't remember seeing Mr. C.P.Bidesi or S.P.Bidesi after 9/12/58.

After execution of lease 19/11/59, a lot of money was due by Mr.Wheatley. I don't remember seeing Mr. C.P. or S.P.Bidesi.

COURT: Adjourned at 12.50 p.m. until 2.15 p.m.

(T.U.Tuivaga)

JUDGE

In the
Supreme Court

Defendant's
Evidence

No.21
Herbert Noris
Murray

8th December
1972

Cross-
Examination
continued

In the
Supreme Court
 Defendant's
 Evidence
 No.21
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 Cross-
 Examination
 continued

On resumption at 2.15 p.m. appearance as before.

D.W.2 (Reminded still on oath)

XXM by Mr. Koya (continues)

I see pp.37 & 38 - my letter to Cromptons
 - I had no reminder prior to 17/1/61 of writing
 to any plaintiffs to depart from undertaking
 I had given. I think I spoke to Mr. Crompton.
 He was acting for Mr. S.M.Bidesi.

I can't remember having discussion about
 estate of Bidesi before I retired.

10

Mr. Wheatley would be familiar with
 undertaking of 19.2.59 and MFI 21 (agreement of
 19/12/58).

I can't remember whether I received any
 letter from Mr. Bidesi or the other named
 beneficiaries under the Will.

I can't remember whether I told Mr. S.M.
 Bidesi about a likely change of the legislation.

Prior to 5.6.58 I can't say whether Mr.
 McFarlane appeared for C.P. Bidesi and other
 beneficiaries of the Will.

20

I see p.49. I think I did agree to having
 talks about the Will. I wanted to settle
 matter.

Meeting of 5.6.58 (Ex.19) appeared to
 have been done pursuant to letter of 8/5/58
 (p.49).

I think Ex.19 was endorsed on some document.

KOYA: I ask for original document of Ex.19.

McGARVIE: I produce original document containing
 notation Ex.19.

30

KOYA: I object.

D.W.2.

Prior to 5.6.58 I can't remember whether I
 received a letter from Mr. Bidesi.

I see MFI 20. This meeting concerns
 claim for bonus.

I can't say how application to Court made
 during this meeting. It is possible it was Mr.
 S.M.Bidesi who was inquiring. I agree that part
 must have been brought up.

40

I had known Mr. Wheatley for quite a while before he joined my department. I think he joined us in the early fifties.

The practice of making will was referred to Mr. Wheatley who drafted will. Instructions to make will would be recorded.

KOYA: I call for instructions.

10 McGARVIE: I have no instructions in my possession. I take it that there would be a draft of will and final typed before engrossment.

Draft instruction would be shown to the testator after which will amendments be added, if any, then the person in charge would be told it is engrossed. Then arrangement would be made for will to be executed in presence of two witnesses.

An interpreter would be required for a person who is not fluent in English.

20 In the case of a non-European testator it is general rule that there would be an interpretation clause.

For each of these a file would be open containing the draft instructions. There would be a notation as to the events in chronological order. In the case of Bidesi there was a file.

KOYA: I call for the file, Sir.

McGARVIE: I can't produce it. It is not in my possession.

30 As a matter of system I expect Bidesi's file to be still in existence. I can't recollect whether I was present when will was executed.

I haven't seen any instructions being given by Mr. Bidesi. I have no recollection whether I saw draft of Mr. Bidesi's will. My deputy had powers to deal with the will.

I have no recollection whether I had discussion with Mr. Wheatley about accepting trusteeship of Mr. Bidesi's will, nor any recollection about Googoo Becha estate.

40 I see copy of photostat copy of Will and I see my signature on the left.

I see the testator's signature on last page. It is in Hindustani.

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Examination
continued

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Supreme Court
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No.21
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8th December
 1972

Cross-
 Examination
 continued

I have no recollection whether I saw Mr. Bidesi when will was executed nor whether I saw Mr. Wheatley on the day of execution of Will on 18th April, 1957.

Mr. Wheatley was in charge of the section that drafted wills. He would boss his staff.

I did not give any standard instructions as to what should or should not go into the will.

I don't recollect seeing the will after it was executed and before Mr. Bidesi's death. After his death I saw the will. He died on 15th November, 1957.

10

I think I saw the will for first time a few days after his death.

When the will was made it was put in and locked up in the strongroom. After a death it would be brought out and produced to me.

As a matter of system the file would then be brought to me together with the original will. I would expect the draft instructions to be in the File.

20

I did not compare draft with will.

I must have perused terms of Will. I presume I did read Clause 7 of the Will - distribution of the corpus was on 1st May, 1997.

I can't remember whether I discussed Clause 7 with Mr. Wheatley. I can't remember whether I discussed the rule of perpetuity with Mr. Wheatley.

30

I did not seek direction on construction of Clause 7. In fact I can't remember.

I can't remember whether instructions of Will was read out.

I don't know whether Mr. Wheatley took will to be read in Bidesi's business premises.

It is the usual thing for will to be read out to beneficiaries.

Before I saw the will I have no recollection whether Mr. Bidesi had given instructions to Mr. Wheatley. I don't know the deceased. I have never met him.

40

I have never met Mr. Bidesi s/o Chuman.

I can understand elementary Hindustani. To my knowledge Mr. Wheatley could not speak Hindustani nor could Mrs. Andrews nor could Mrs. Behn.

After I saw Will Mr. C.P. and S.M.Bidesi contested the Will. I can't remember whether Mr. C.P.Bidesi called at my office to object to will nor can I remember about Mr.S.M.Bidesi.

10

I can't remember what part Mr. Wheatley played after Mr.C.P.Bidesi raised objection to the Will.

All I know the will was going to be contested.

KOYA: I request to put in copy of original will.

COURT: Ex. C

20

I see Ex.C. The signature of testator is in Hindustani. I know from his name he is an Indian. There is no interpretation Clause in it. I was surprised about it. A copy of original will would be in the file. Only original would be signed by testator.

As a matter of system the will would be attested by members of my staff. This is the normal practice.

Mrs. Andrews and Mrs. Behn and members of my staff did attest the will.

30

In the Trusts section we would have Mr. Wheatley, Mrs. Andrews and Mrs. Behn.

Where it is required we would bring in Fijian or Indian member of staff to be used in interpretation of the Will.

I came to know Mr. C.P.Bidesi had lodged a caveat. First caveat was lodged a month after the death of Mr. Bidesi.

After the lodgment of the first caveat in the Supreme Court, the original Will would be locked up in the safe.

40

COURT: Adjourned at 3.45 p.m. until Monday at 9.30 a.m.

8.12.72

(T.U.Tuivaga)

JUDGE

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Supreme Court

Defendant's
Evidence

No.21

Herbert Noris
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Cross-
Examination
continued

In the
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No.21

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11th December
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Cross-
Examination
continued

Mr. Koya for the Plaintiffs
Mr. McGarvie Q.C. & Mrs. Mitchell for the
Defendant

D.W.2 Sworn on Bible in English

XXM by Mr. Koya (continues)

I see p.10 of MFI 1. Mr. Wheatley was
Deputy Public Trustee at the time -(1958).

Mr. Wheatley would be well aware of
what took place on 18th February, 1958.

I would work closely with Mr. Wheatley.
He would have a hand in the drafting of this
letter. 10

On 9th December, 1958 was present and
the memorandum is in his handwriting.

I see p.23. It concerns a meeting with
Mr. S.M.Bidesi. I see para.(f) thereof.

I see pp.12 and 13. I was anxious to
restore amicable relations between the two
branches of family.

I did not write before I went on retire- 20
ment to say that I will not apply for leave to
vary the terms of the trust under the will.
There was delay for one reason or another.

It took a while to collect money for estate
duties. They did not ask me what the position
was.

I agree it was for me to take the initiative.
The undertaking of 18th February 1958 and 9th
December 1958 were not done to mislead the
Bidesi brothers. I assisted Mr. S.M.Bidesi to 30
raise revenue from my department to keep the
business going.

I took it that the beneficiaries were
informed through their Solicitors.

I don't remember ever meeting Mrs. Bidesi.
I can't remember whether I ever wrote to her or
she to me.

I can't remember who instructed Mr. McFarlane
before this litigation commenced.

In the year 1957 we had several Indian 40
girls as clerks and typists. All typing was
done in the pool in the general office. In the
estate section there were only Mrs. Andrews and
Mrs. Behn as far as I can recall.

I can't recall having seen Mr. M.D.Bidesi
during the negotiations with Mr.S.M.Bidesi.
I can't remember whether I saw Mr. C.P. or Mr.
S.M.Bidesi after the grant of probate in common
form.

(T.U.Tuivaga)
JUDGE

50

Re-Examination by McGarvie Q.C.McGARVIE:

A number of documents have been used in
 XXM which I desire to be admitted absolutely.
 Document at p.49 - 8th May, 1958.
 MFI 21 - now Ex.21.
 MFI 20 - now Ex.20.

Re-Examination continues

10 I see this letter - it is to me dated
 10th March, 1958 from Grahame & Company. I
 made note on margin dated 5.6.58. I read
 letter during conference on 5.6.58.

McGARVIE:

I wish to tender letter.

20 KOYA: I wish to take an objection to letter.
 This letter was written by Mr. Few to witness
 in his capacity as Public Trustee. He was
 acting for beneficiaries. Nothing to do
 with us. Witness may look at letter to
 refresh his memory when letter was written
 and when he was informed of case of Chapman v.
Chapman. It is an internal matter.

I did not XXM letter. I did call for
 it in relation only to the notation. It is
 for a solicitor advising trustee.

McGARVIE:

30 In circumstances I don't propose to
 tender letter. I can't tender only first
 para. and last three paras. of letter.

Witness was XXM as to when he was
 informed of case of Chapman v. Chapman.

COURT: Very well. I am satisfied that the
 letter referred to bearing the original
 notation of the witness is clearly
 relevant to the issue before me and I
 am also satisfied it was properly
 identified. I will therefore admit
 whole of letter of Ex.23.

(T.U.Tuivaga)

JUDGE

(Witness continues:)

Mr.Wheatley had experience in drafting
 wills before he came to me. He had the
 experience in Messrs. Cromptons.

I gave him precedents about wills. There
 were no other specific instructions given to
 him (witness released).

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 Re-Examination

In the
Supreme Court

No. 22

Defendant's
Evidence
No.22
Christine
Andrews

CHRISTINE ANDREWS

D.W.4 Sworn on Bible in English

Christine Andrews

11th December
1972
Examination

I live at 24 Narain Place at Tamavua. I am Assistant Public Trustee of Fiji. I began work sometime in 1957. I continued to work in office of Public Trustee ever since that time.

From 10th January 1958 to 20th February 1958 I held office of estate officer. I held office of account clerk from 1st July 1971 to present time. I am now Assistant Public Trustee.

10

When I left school I used to work as clerk with Messrs. Munro, Warren & Leys.

I worked with that firm of solicitors for a number of years until I went overseas for a time.

I returned in 1951 and took up appointment again with that firm until I went to Public Trustee's office in January 1957. I was employed as a bookkeeper with firm of solicitors. On occasions I would witness wills drawn up by the firm. It was usual for us to act as witness of a will. While working for that firm of solicitors, I had met the late Mr. Bidesi.

20

McGARVIE:

I wish to interpose Mr. Kurup.

Ram Kurup

I am acting Public Trustee. Pursuant to order of Hon. C.J. I produce book containing original Will.

30

KOYA: I object. I want to XXM.

D.W.4 (continues)

I can't remember when I first met Mr. Bidesi. But I met him when he came to see the solicitor in that firm.

It was part of duty to do special typing of firm's partnership accounts and confidential typing. I have witnessed a number of Wills when I came to work with Public Trustee.

40

When will is executed I would usually be one of the witnesses to the will.

I recall doing something in relation to Mr. Bidesi's Will. I was asked to type the Will.

It was not normal for me in Public Trustee's office to type the Will. I was asked to type Wills. I received draft Will in Mr. Wheatley's handwriting. I typed that.

10 When I had typed it, I gave it back to Mr. Wheatley. The next thing I remember being asked to be a witness to Mr. Bidesi to execute Will. Mr. Wheatley asked me. Mrs. Behn also came to witness Will. I was present when Mr. Bidesi signed the Will.

I see Book of Probates 3326.

I can remember the other witness and Mr. Wheatley being present when the Will was signed.

After Mr. Bidesi signed, I signed and then Mrs. Behn. I signed on the left hand side of the page. After we all signed I placed the original Will in the Register of Wills. I can't recall whether Mr. Gregg was also present.

20 I did not know other discussion about the Will until his death.

Mr. Wheatley also handled book of documents in relation to Mr. Bidesi's accounts. I dealt with accounts of estate after Mr. Wheatley left. I have conducted search in relation to Bidesi's estate. A number of files had come into existence in relation to the estate.

30 After Court hearing in January last year, I conducted search for a file which may have been in existence containing instruction for Bidesi's Will. I did not find it. I can't remember finding any such file.

At times files have been mislaid from the Public Trustee's office. I am familiar with documents in book of documents (MFI 1,2,3).

I identified Mr. Bidesi's signature, Mrs. Behn and myself in original will.

I see our initials on previous page of Will.

COURT: Adjourned at 10.55 a.m. until 11.30 a.m.

40

(T.U. Tuivaga)
JUDGE

On resumption at 11.30 a.m. Appearance as before.

D.W.4 (reminded still on oath)

Examination-in-Chief continues

I see Affidavit filed on 8th April, 1959. I signed Affidavit on date set out.

Application for probate was made by form1 affidavit.

I see Affidavit made on 7th November, 1958.

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Supreme Court

Defendant's
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No.22
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11th December
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Examination
continued

In the
Supreme Court
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 Andrews
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 Examination
 continued

It is signed by Mr. Gregg, previous witness. This is usual practice. If Supreme Court Registry wants further information it would be supplied.

My affidavit was made some months after Mr. Gregg's. This was probably done in reply to requisition by Supreme Court. These may be made verbally or in writing.

I have no recollection having been asked to make affidavit of 8th April, 1959. I can't recall who drafted the affidavit.

According to practice the Affidavit would have been drafted by Mr. Gregg or Mr. Wheatley. I would be consulted upon the facts on which Affidavit was based.

Over the years with Public Trustee I have made numerous affidavits on a number of matters. I would ensure affidavit was true.

I have recently read of Affidavit of 8th April, 1959 and my recollection would have been clear then. I see para 2 of my Affidavit of 8th April, 1959. I do not recollect now the contents of para 2. I see para. 3. I cannot recollect now those facts. I would have spoken to Mr. Bidesi on formal matters. But I can't recall now the subject matter. I spoke to him in the English language.

McGARVIE:

Three documents put in Court

- Affidavit of Mr. Gregg of 7th November, 1958.
- Affidavit by Mrs. Andrews.
- Certified copy of Will.

I tender these documents in lieu of original.

COURT: Ex.24

Witness continues

I was responsible for supervision of Bidesi's estate when Mr. Wheatley left.

Payment from accounts have been made in terms of Will.

Practice was to initial copy letters and the original to be posted by messenger.

Where original letters available those have been included in book of documents. If a letter is returned undelivered it is date stamped and placed in the relevant file. (Witness handed book of documents 1, 2 and 3).

I checked date of appointments of certain officers in the department. Mr. K.S.Few was the P.T. from 3/4/64 to 6/2/64.

I am familiar with Mr. Few's handwriting.
 I see p.39. It bears Mr. Few's initials.
 It would have been sent under posting
 procedure I have described. I see p.40.
 The writing and initials are mine.

I see p.42 - Mr. Few's typed initials on
 left.

I see p.43. It bears Mr. Few's initials.
 I see p.67 - it bears Mr. Few's initials
 10 (25/5/64).

I see p.125 - it bears Mr. Few's initials
 (20/12/66).
 Similarly p.126, p.127.

I see p.44 which was initialled by me
 (1/7/65).

I see p.91. It bears my typed initials.
 I see p.128 - it bears my typed initials.
 20 (29/12/66).

Similarly is letter p.129 (29/12/66).

Similarly is letter p.130 which I
 initialled (29/12/66).

I see p.131. It bears my typed initials.

I see p.45, I am familiar with Mr.
 Daugunu's initials. It is in Mr. Dauguni's
 initials.

I see p.98. I am familiar with signature
 of Mr. Stevenson. It is in Mr. Stevenson's
 handwriting.

I see p.115. It bears Mr. Raman Kurup's
 30 initials. It is carbon copy set out in manner
 described.

I see p.119. I am familiar with the
 signature of the person who wrote it. It is
 in Mr. Raman Kurup's handwriting (19/3/64).

I see p.75. I am acquainted with Mr.
 McFarlane's handwriting and signature. The
 letter bears his signature.

I see p.121. In the course of my work,
 I had a number of dealings with firms of
 40 solicitors. I am familiar with Mr. Jannadas's
 handwriting. The letter bears his initials.

I see p.124. It bears initials of Mr.
 Jannadas. Firm of Grahame & Co. was acting for
 P.T. during the periods 26th November 1966 and
 September 1966.

I see p.66. I am familiar with handwriting
 of Mr. T.T.McNally. The letter bears his
 signature (13/5/64).

I see pp.70 and 71. I am familiar with
 50 Mr. Gregg's signature. Letter bears his
 signature.

I see p.72. Again the letter bears his
 signature.

I see p.76. I am familiar with signature
 of Mr. T.A.Ali. Letter bears his signature.

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Supreme Court

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No.22
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 Andrews

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Examination
 continued

In the
Supreme Court

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Andrews

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Examination
continued

I see p.6. Over years I have become familiar with letterheads used by Messrs. Cromptons. We had dealings with that firm. I had telephone conversations as well as correspondence with the firm. The initials J.N.F. is that of Mr. Falvey.

I see p.18. Initials also refer to Mr. Falvey.

Again p.28.

I see p.57. The initials AL refers to Mr. Abdul Lateef, then a partner with the firm.

Similarly p.58, p.82, p.88, p.114.

I see p.116. I see reference GMN. I do not know to which partner it refers.

I see p.120. I am familiar with form of receipt used by Messrs Cromptons in 1964. This is a form of receipt.

I see p.41. Over the years in the course of my duties we had numerous transactions with firm of Wm. Scott Ltd. Had telephone conversation and correspondence. I see initials MJCS. They refer to Mr. Saunders.

I see p.113. The reference initials HMS belongs to Sir Maurice Scott.

I see p.122. The reference initials are that of Mr. Saunders a partner of Wm. Scott & Co. Again p.123.

McGARVIE:

COURT: Admit absolutely all letters to which reference have been made by this witness. 30

Witness continues

Last week I spoke to Mr. Wheatley by telephone. Before that I booked a telephone call to Sydney, Australia. Following that booking I spoke to Mr. Wheatley. I had some conversation with him.

In course of conversation I asked him two questions which had been written down.

I see the piece of paper. It contains the two questions. 40

KOYA: I object to this line of question asking against the rule of hearsay.

Secondly Mrs. Andrews is a material witness who is contacting another witness. Deliberate hearsay.

McGARVIE:

I refer to Phipson on Evidence (9th Ed) commencing at p.8 (Counsel reads).

Examples given at p.83 under heading "Declarations as to health and feeling". 50

Question as to how a person feels is often regarded as an exception to the hearsay rule e.g. in negligence claims and workmen's compensation are always admissible evidence.

Use of the relevant issues in the admissibility of the statement made by Mr. Wheatley in his handwriting and his depositions taken on commission.

10 I wish to put question as to state of health and then his feeling as to travel to Fiji.

TO COURT:

I recognise the voice on phone. It was Mr. Wheatley's voice.

COURT: Very well. I will admit evidence of witness. I asked Mr. Wheatley about his health and feeling at the moment. He said "not good".

20 I put another question to him. "Do you feel capable of attending the hearing of the Supreme Court in Fiji to give evidence?"

He answered "I do not".

COURT: Adjourned at 12.50 until 2.15 p.m.

(T.U.Tuivaga)
JUDGE

On resumption at 2.15 p.m. appearance as before.

D.W.4 (Reminded still on oath)

XXM by Mr. Koya

30 In course of my duties at Public Trustee's office I have made Affidavits in respect to application for Wills.

I see Ex.24 and my Affidavit therein. This is only Affidavit I made in respect of due execution of Wills.

I am now aware of the practice of Chief Registrar requesting for affidavits where the Wills have been executed by a person other than Europeans.

40 This is only occasionally, I personally made requisition. Other affidavits have been made in by other members of staff.

I see original Will. I agree that there is no attestation clause to the extent that the will was read over to the testator. The lines in para. 2 of my Affidavit from the testator line is usually contained in an attestation clause.

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Supreme Court

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No.22
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Examination
continued

Cross-
Examination

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 continued

I do not know the reason why that portion was not in the original will. I can recall now who read over to the testator in the English language the Will.

Mr. Wheatley could have read and explained it. I did not read it nor did Mrs. Behn.

I can't remember now whether Mr. Gregg was present or whether the Will was executed in Mr. Gregg's presence. 10

On the 8th April, 1959 I made the categorical statement in para.2 of the Will.

At the point of time I can't recall the circumstances in which the Will was executed.

Mr. Gregg could help in the circumstances of execution. The two other persons - Mr. Wheatley and Mrs. Behn are now overseas.

I can't recall who in particular read over Will to Mr. Bidesi.

I can't give any reasons why I can't recollect. 20

I can't recollect now why I made the statement in para.2 of my Affidavit.

I don't know whether he wrote with his right or left hand.

I can't recollect whether Mr. Bidesi made his signature in Hindi. He must have.

Mr. Bidesi must have requested in accordance with line 8. He must have otherwise I would never have sworn the Affidavit. 30

I see para.3 of my Affidavit. I did say I saw Mr. Bidesi at firm of Ellis, Munro, Warren and Leys. I was ushering clients to the solicitors.

I started with Ellis etc. when I was at school. I can't remember whether Mr. Bidesi would be accompanied out there occasionally by Mr. S.M.Bidesi or Mr. S.P.Bidesi. I had no dealing with him as client of firm.

I am unable to say anything now about his ability to speak and understand English. It must have been otherwise I would not have sworn the Affidavit. 40

At the time of execution of Will I don't remember whether there was any discussion between Mr. Wheatley and Mr. Bidesi about Googoo Becha's estate. Mr. Bidesi was the original executor of that testator.

I see Clause (3) of original Will. I can't recall whether there was any discussion about the clause between Mr. Wheatley and Mr. Gregg and Mr. Bidesi. Nor can I recall any discussion about Clause (4) or Clause (5) between Mr. Wheatley or Mr. Gregg and Mr. Bidesi.

10 I see Clause (7). I can't recall any discussion between Mr. Wheatley or Mr. Gregg and Mr. Bidesi about this Clause.

It could be true that Mr. Wheatley took a prominent part in preparation of Mr. Bidesi's Will.

20 There was a system that instructions for drafting Will to be made in writing. I have never seen Mr. Bidesi's instructions as regards his Will. As part of system some instructions were put in file and some were not. Documents are sometimes numbered in the P.T.'s file. There are no set down instructions about the numbering of documents. At present we do not number our papers in the file in sequence.

Minutes are not numbered.

As regards instructions for a Will we do not open a file. I do not know where we keep draft instructions.

30 The instructions for Mr. Bidesi's Will cannot be found anywhere in the file. Such instructions should have been in the file. I did look for them but couldn't find them.

I did not deal with Mr. Bidesi's Will until Mr. Wheatley went away.

Importance attached by system to varying of instruction. There was no instruction about the signing by testator of draft instructions.

40 Today we do not require much importance on initials to the draft instructions.

As a matter of system I would expect to find these instructions in the P.T.'s general file. As regards the hand draft Will which I typed, I would expect to find it in P.T.'s general file.

I am not surprised that the draft instructions and draft Will could not be found.

50 I did not know that Mr. C.P. Bidesi lodged a caveat against the Will a month after. I came to know about dispute over Will after Mr. Wheatley left. I think sometime in 1964.

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Supreme Court

Defendant's
Evidence
No.22
Christine
Andrews

11th December
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Cross-
Examination
continued

In the
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continued

That was I think during the time of
Mr. Few at about 2nd April 1964.

I handed the file from about that date.

I can't remember matter in respect of
action No.110 of 1964 against defendant - an
executor by Mr. S.M.Bidesi claiming specific
performance.

I held the file from time Mr. Few commenced
his office until the present time. On 20th
June, 1966 I was handling file.

10

Grahame & Co. instructed P.T. to defend
action.

At that stage no one was looking for
written instruction of Mr. Bidesi to my
knowledge. Nor was anyone looking for long
hand draft of Mr. Wheatley.

I remember on 21st January, 1971 this action
came on for hearing. I was on leave then until
June last year. On my return we all looked
for draft instruction of Mr. Bidesi in long-
hand draft Will of writing of Mr. Wheatley.
It was when Messrs Cromptons took over from
Grahame & Co. that these things were searched
for. I searched myself. Original Will would
be contained in envelope. No copies. We have
a Wills register. When I typed Will I can't
remember whether a carbon copy was kept.
System requires carbon copy to be kept.

20

COURT: Adjourned at 3.20 p.m. until 3.45 p.m.

(T.U.Tuivaga)
JUDGE

30

On resumption at 3.45 p.m. appearance as before.

D.W.4 (reminded still on oath)

XXM by Mr. Koya (continues)

I can't recollect whether a carbon copy
of Will was signed by Mr. Bidesi.

I can't recall the fact of Mr. Bidesi's
death in November, 1957.

I can't recollect seeing Mr. C.P. Bidesi
after death of Mr. Bidesi.

40

I can't recall conversation how I came to
be a witness to his father's Will.

I can't remember he said to me why persons

who couldn't speak Hindustani happened to be witnesses.

I was estate officer during November 1957 - in the accounting side.

After Mr. Bidesi's death I did not prepare any accounts for purpose of getting probate of Will.

10 I see in Ex.24 Mr. Gregg's affidavit dated 7th November, 1958. I see para.6 thereof. I do think Mr. Wheatley prepared the account showing the amount in para.6.

Mr. Wheatley prepared the probate papers in regard to Mr. Bidesi's estate. A typist and not me would type the papers.

I see my Affidavit in Ex.24 on due execution.

20 I can't recall whether I was told that there was dispute involving Mr. C.P. Bidesi which was then settled. I can't recall date when probate was granted.

After execution of Will I don't think Mr. Wheatley was showing particular interest in the Will.

After Mr. Bidesi's death I have not seen anyone else dealt with Mr. Bidesi's File. Day to day matter was dealt with by Mr. Gregg.

I did say that instructions might be mislaid.

30 I can't say whether they were destroyed. I found out yesterday Mr. Wheatley's address in Sydney.

I was asked to communicate with Mr. Wheatley on Wednesday or Thursday last week - either 6th or 7th December 1972 when this trial was going on.

40 I last saw Mr. Wheatley I can't remember whether before or after the instructions of this action. I must have last seen him after Mr. Few took over. He did come to the office when his ship was in port and he was to go on pre-retirement leave.

When I last saw Mr. Wheatley he was walking around and in apparent good health.

When I was with Ellis, Munro, Warren and Leys I could not remember how many times I spoke to Mr. Bidesi. I have never subscribed my name to any document signed by Mr. Bidesi during work with that firm.

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continued

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Examination
continued

I was in front counter. I would enquire of clients whom they wanted to see.

There would not be any reason for me to talk business with him other than attending to him. I can't recall whether I would have any to assess his ability to speak and understand English.

I stated in 1957 that testator understood English language. All I can say is that I could not have sworn the Affidavit if it was not true. 10

I came to know of plaintiffs allegations when I saw writ of summons at the time.

I was not given any written statement by Grahame & Co. about the circumstances under which Will was executed. Up till now I have not been asked to give statement.

I have been awaiting preparation of defence from month of June 1966 until now. Neither Mr. Gregg nor Mr. Wheatley was in the Service any longer. Nor was Mrs. Behn. Responsibility for preparation of the case rests in me and the Public Trustee. 20

After Mr. Wheatley left in 1964 I was still Estate Officer.

KOYA: Ask Mr. Anderson to see file 110 of 1964 - Ex.9

COURT: Yes.

Adjourned at 4.25 p.m. for tomorrow at 9.30 a.m. 30

(T.U.Tuivaga)

11th December, 1972

JUDGE

12th December
1972

Mr. Koya for the Plaintiffs
Mr. McGarvie Q.C. & Mr. Mitchell for the Defendant

D.W.4. Sworn on Bible in English
XXM by Koya (continues)

I have had opportunity of looking at file Action 110 of 1964 this morning.

I was at time handling Mr. Bidesi's file.

I can't remember whether Mr. Wheatley was there when action was instituted in 1964. 40

I can't remember conference between Mr. S.M.Bidesi and Mr. Saunders and Mr. McFarlane and Mr. Few.

I lived in one of Mr. Bidesi's flats at Princes' Road, Tamavua. It was got before I bought my property in 1963. I stayed there for one month only.

10 I don't recollect seeing Mr. C.P.Bidesi at flat or talking to him concerning Mr. Bidesi's flat.

I don't recall Mr. C.P.Bidesi said Public Trustee was delaying the distribution of estate.

Mr. Few took over from Mr. Wheatley who remained for a while before he left Fiji. After Mr. Few Mr. Smith took over.

After that Mr. Anderson took over probably in 1968.

20 I telephoned Mr. Wheatley last week. I don't personally know his present whereabouts.

I see p.10 and p.12, both dated 19th February, 1958. I am not familiar with the arrangements discussed in the letter.

I may have seen these letters after Mr. Wheatley's departure.

I don't remember any application to court to vary the Will.

Mrs. Behn was Danish. She couldn't speak Hindustani nor could I.

30 I can't recollect whether you speak in Hindustani when Will is executed.

I can't give any reason why Mr. Wheatley did not believe in subscribing witness to the Will nor can I give any reason why a Hindustani person did not witness the Will.

We do not keep minutes concerning execution of Will.

(T.U.Tuivaga)
JUDGE

40 Re-Examination by Mr. McGarvie

When I last heard of Mrs. Behn she was in Denmark - this would be about over ten years ago.

I have checked on Mr. Wheatley's address - 55 High Street, North Sydney, Australia.

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Supreme Court

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continued

Re-
Examination

In the
Supreme Court

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Evidence

No.22

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Re-Examination
continued

Mr. Bidesi's affairs were contained in different files.

I searched for files relating to Bidesi estate. I found last file since you (Mr. McGarvie) came to Fiji.

I found an agreement in that file relating to Bidesi's estate.

In 1964 many people came to see me in my office.

McGARVIE:

I ask leave to put two letters to Mrs. Andrews.

10

COURT: Yes.

Witness continues

sic. I am familiar with the handwriting of Mrs. Wheatley. This is carbon copy signed by Mr. Wheatley of original which was sent out under our posting procedure.

KOYA:

If this letter was not included in the affidavit of document I would object to its being used. This letter is addressed to a third party. At this late stage I cannot accept it. Also not relevant. Whole object of disclosure is to prevent creating surprise. Contents of letter are highly controversial. Will prejudice my clients' case.

20

McGARVIE: I have just discovered that it is item No.37 in the Affidavit of Documents. Ask for letter to be marked for identification only at this stage.

30

Witness continues

I see this letter sent to Messrs Tetzner & Ryan on 12th May, 1959. It bears Mr. Wheatley's initials.

COURT: MFI 25.

I see this letter - received from Messrs Wm. Scott by Mr. Saunders (10th June, 1965) to Messrs. Grahame & Co.

40

COURT: Ex.26

By leave XXM by Koya

I see MFI 25. This is not one of letters I just found.

(T.U.Tuivaga)
JUDGE

(Witness excused)

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No. 23

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McGARVIE:

10 The first was dated 29th November, 1972 from Messrs. Cromptons to Messrs Koya & Co. letter which enclosed the book of documents.

There was another letter of same day in reply thereto from Messrs. Koya.

Another of 30th November, 1972 from Messrs. Cromptons which enclosed the first appendate to the book of documents.

I tender these three letters together with documents dated 8th December, 1972.

20 COURT: All four documents admitted together as Ex.27

McGARVIE: Refer to p.29 and p.28.

KOYA: No objection.

COURT: Admit document p.29 and p.28.

McGARVIE:

30 I have a number of documents all admitted except following documents.
1. Document p.24 - Draft mortgage.
2. Draft lease p.26.
3. Account dated 14.6.63 - p.65.
4. Letter 13/3/64 - p.116.

I tender absolutely exhibits MFI 1,2,3.

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continued

COURT: Now Ex. 1, 2, 3.

I turn now to evidence taken on commission of Mr. Wheatley. Original depositions are awaited in Court - I ask that it be produced.

KOYA: I object to this procedure. In view of case I have stated, my learned friend should have had to bespeak a copy.

Mr. Wheatley's evidence is crucial to this case - his credibility is being attached. Refer Fisher case (1955) W.L.R. 1093

10

McGARVIE:

What I had proposed to do is to read Mr. Wheatley's depositions.

We rely on fact the original document is in Court. No need to bespeak copy of original.

It has been proved that the deponent is beyond the jurisdiction of the Court - proved in two ways :-

- (i) By Mrs. Andrews - book a call spoke to Mr. Wheatley
- (ii) she was cross-examined as to his address in North Sydney, Australia.

20

Sufficient to satisfy rule 9(1), (a) and (b).

Reasonable notice has now been given (Wednesday) when learned friend informed. The depositions consist of number of pages with letter making certain amendment under letter-head of Mr. Warburton. Now open to deft. to read deposition in Court.

KOYA: On question of procedure there is a categorical statement in Fisher's case at p.1025 that only office copy be bespoken.

30

Submit Order 38, r.9 has not been complied with.

Refer to Cross on Evidence (Australian Edition) p.231 - when question of credibility is involved.

Court will not readily admit depositions. Mr. Wheatley's credibility was attacked at the commission. He is a witness that ought to be called.

40

On question of notice, I do not consider why learned friend's notice was reasonable. Rules are there for observation. I did not receive any notice prior to the opening. I was entitled to infer that it should not be put in because there was no letter received and no verbal communication.

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Supreme Court
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continued

10

Notice must be reasonable - before the trial.

Not fatal but there should be an adjournment on terms in fairness to my clients.

McGARVIE:

Reasonable notice is always a matter of fact. Unbelievable to believe that a week's notice is not enough.

In murder cases a notice of additional evidence.

20

Refer to Cross not of assistance. Question was whether order should be made. Here it was made by consent.

Plaintiffs were very competently represented in Sydney.

COURT: Adjourned at 11.15 a.m. to 2.15 p.m. for Ruling on objection to Mr. Wheatley's depositions having been admitted as evidence.

30

Sgd
(T.U.Tuivaga)
JUDGE

On resumption at 2.15 p.m. appearance as before.

In the
Supreme Court
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No. 24
RULING

IN THE SUPREME COURT OF FIJI

Probate Action

Action No. 7 of 1966

8TH DAY OF HEARING

IN COURT

Before the Hon. Mr. Justice T.U. Tuivaga
On Tuesday, 12th day of December, 1972
at 2.15 p.m.

10

- 1. MUNI DEO BIDESI
 - 2. SURYA MUNIDLAL BIDESI
 - 3. CHANDRA PRAKASH BIDESI
 - 4. SHAR PAL BIDESI
- Plaintiffs

- and -

THE PUBLIC TRUSTEE OF FIJI Defendant

Mr. Koya for the Plaintiffs
Mr. McGarvie Q.C. and Mr. Mitchell for the
Defendant

R U L I N G

20

Objection has been raised in this case against the reception in evidence of Mr. Wheatley's depositions which were taken in Sydney on Friday, 15th December, 1967, before Mr. M.E. Warburton as a Special Examiner.

It is claimed that the conditions prescribed by Order 38, rule 9 have not been complied with. It is said that this Court should not receive Mr. Wheatley's depositions in evidence until the requisite conditions under the Rules have been fulfilled.

30

Order 38, rule 9 is in the following terms:-

- (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless -

(a) the deposition was taken in pursuance

of an order under Order 39,
rule 1, and

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Supreme Court

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continued

- (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

10

- (2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

- (3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

20

I have carefully considered the material before me in the light of submissions made by both counsel.

I am satisfied that Mr. Wheatley's depositions which have been filed in this Court were taken in pursuance of an order under what is now Order 39, rule 1. There can be no doubt that an Order dated 1st September 1967 was issued out of this Court appointing Mr. M.E. Warburton as a Special Examiner for the purposes of taking of Mr. Wheatley's depositions in Sydney.

30

As regards the giving of notice referred to in rule 9(2) I am satisfied from the circumstances and nature of this case that the plaintiffs can be under no illusions whatsoever that it has always been the intention of the defendant to adduce Mr. Wheatley's depositions in evidence. In his opening counsel for the defendant made it clear that the defendant would rely on Mr. Wheatley's depositions - such depositions having been characterised by both parties as crucial and vital to these proceedings. I find it wholly unrealistic for the plaintiffs at this stage to complain of the alleged failure on the part of the defendant to give them notice of such intention. I further find that there

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50

In the
Supreme Court

Defendant's
Evidence
No.24
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12th December
1972 -
continued

is no element of surprise in the defendant's proposal to use Mr. Wheatley's depositions as part of its case in these proceedings.

As regards the condition prescribed under rule 9(3) I have been informed that the original depositions purporting to be signed by Mr. Wheatley was sent to the Supreme Court Registry under cover of a letter also purporting to be signed by Mr. Warburton, the Special Examiner, appointed by this Court. I have since sighted the covering letter. In my view the contents of the covering letter, which as I have said was sent under the hand of Mr. Warburton, make it clear beyond doubt that Mr. Wheatley's depositions were in fact taken before Mr. Warburton in his capacity as a Special Examiner appointed by this Court pursuant to an Order of this Court. I am satisfied that Mr. Wheatley's depositions have been sufficiently authenticated for the purposes of rule 9(3).

10

20

I am further satisfied that the Order dated 1st September, 1967 was made on the grounds that Mr. Wheatley was then beyond the jurisdiction of this Court and that his state of health was such that his doctor advised against his coming to Fiji to give evidence in this case. In view of the further evidence which has been adduced before me regarding Mr. Wheatley's present condition and fitness to travel to Fiji from Sydney, Australia, for the purpose of this hearing, I am fully satisfied that not only is Mr. Wheatley still beyond the jurisdiction of this Court but also that his state of health is still such as to render it medically inadvisable for him to be required to attend in person at these proceedings.

30

Furthermore, it is clear that Mr. Wheatley's depositions were taken on the initiative and at the instance of the defendant. It is also clear that the evidence thus obtained necessarily belongs to the defendant and is available at its discretion. I see no sound reason for precluding the defendant from making use of Mr. Wheatley's depositions which, after all, were taken upon the defendant's specific request and initiative. I do not consider that the case of Fisher v. C.H. T.Limited (1965) 1 W.L.R. 1093 covers the point in question.

40

In these circumstances I will allow Mr. Wheatley's original depositions to be read and

50

be received in evidence subject to the right of counsel for the plaintiffs to object on legal grounds to such portions of the depositions as he may see fit. It is ordered accordingly.

In the
Supreme Court
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continued

Sgd
(T.U.Tuivaga)
JUDGE

10

No. 25
PROCEEDINGS

No.25
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1972

SUVA,
12th December, 1972.

McGARVIE:

I wish to read letter of 8th June 1968 addressed to the Chief Registrar, Supreme Court from Mr. M.E.Warburton. (counsel reads).

I now hand over letter and copy of probate and copy of original order.

20

KOYA: I take objection.

Depositions were taken on 15th December, 1967. Depositions were despatched out and order not receivable.

COURT: I have noted objection. I will admit depositions.

McGARVIE:

(Reads Mr. Wheatley's depositions from copy and Court checks with the original.

Reading of depositions completed at 3.30 p.m.)

30

Sgd
(T.U.Tuivaga)
JUDGE

In the
Supreme Court

Defendant's
Evidence
No.25
Proceedings
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1972 -
continued

McGARVIE:

I tender documents accompanying deposition
- MFI 28 as Exhibit.

KOYA: I object. Defect can't be rectified.
Have not been properly identified.

Refer to Order 38 in this connection.

McGARVIE:

Clearly document put for mention and
agreed on by both counsels.

COURT:

10

For my part I am satisfied that the copy
probate accompanying the original depositions
was properly identified under the hand of Mr.
Warburton and marked for identification. It
is now in order in my view, to have it admitted
as an exhibit in the proceedings - Ex.28.

Sgd
(T.U.Tuivaga)
JUDGE

McGARVIE:

20

Refer to MFI 25.
Apply to have it admitted under the
Evidence Ordinance, s.3(1).
Relying on proviso - and s.3(2).

No practicable way of getting Mr.Wheatley
to Court. Evidence has been taken on
commission.

KOYA: I object to application. Where is
evidence of witness. Where is the
probative value - we got evidence from
the person himself. There should be a
doctor's certificate. Reception of
depositions cannot be equated with this
application.

30

Refer Order 38, r.9 Evidence Ordinance provides
harsher requirement.

COURT: In my view sufficient basis has been
laid to admit MFI 25 under to Evidence
Ordinance s.3(1)(2) and powers relating
thereto. - Ex.25.

40

McGARVIE:

I tender original depositions including

letter of 8th June 1968 signed by Mr. Warburton to be exhibited as Ex.29.

In the
Supreme Court
Defendant's
Evidence
No.25
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1972 -
continued

KOYA: I object to tendering of depositions as exhibit.

McGARVIE:

That is the evidence defendant proposes to call.

COURT: Adjourned at 4 p.m. to tomorrow at 9.30 a.m.

10

12th December, 1972
Sgd
(T.U.Tuivaga)
JUDGE

Mr. Koya for the Plaintiffs
Mr.McGarvie Q.C. & Mr. Mitchell for the Defendant

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KOYA: Apply for personal copy of Mr. Wheatley's depositions.

COURT: Yes.

20

KOYA: Tomorrow I was supposed to appear before Mr. Justice Grant in a criminal case.

COURT: I point out further about presence in Court of plaintiffs during giving of evidence by other plaintiffs.

KOYA: Parties have right to be present throughout case. Highly desirable for plaintiffs to be here at all time to give instructions.

30

McGARVIE: I submit that there is doubt about Court ruling in this regard.

COURT: I will not make any order in regard to presence of plaintiffs in Court.

Sgd
(T.U.Tuivaga)
JUDGE

In the
Supreme Court
 Defendant's
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 continued

KOYA: I do not propose to open.
 I propose to call Mr. Marlow in
 absence of all the plaintiffs.
 (Plaintiffs return from Court).

No. 26

Plaintiffs'
 Evidence
 No.26
 Alfred Henry
 Marlow
 13th December
 1972
 Examination

ALFRED HENRY MARLOW

Calls.

P.W.1 - Sworn on Bible in English

Alfred Henry Marlow - Malcolm Street, Suva.

I am aged 87 years. I was born in
 England. 10

I have lived in Fiji (1909) about 60 odd
 years. I have been in building contract.
 At moment I am General Manager of Marlows
 Limited.

I know Mr. C.P.Bidesi and Mr. S.M.Bidesi.
 I did know their father.

I have known late Mr. Bidesi since 1912.
 He was living in Suva as I was at the
 time. I know Mr. Bidesi senior has died. 20

He lived in Suva somewhere in Toorak.
 I am not sure.

Mr. Bidesi was for quite a while working
 for my company which was engaged in building
 construction.

He worked for my firm in 1912 or 1913.

I think he worked for me for a couple of
 years.

After he left my work he joined Whan's
 Construction Ltd. We came into contact a lot
 when he went there. 30

He must have left Whan's Construction
 because eventually he started Bidesi Construction
 Limited later on.

I am not sure where he operated on in
 Suva. I had occasion to speak to him very often.

I would speak to him on matters he was working on whilst with us. When he was with Whan's Construction occasionally I would speak to him about it.

After he operated his own business I had occasion to speak to him.

On those occasions my Hindi was not good and his English was on par with my Hindi. But we spoke a kind of lingua-franca and reached some understanding.

He spoke English very poorly.

I see Ex.24 (Will of Bidesi s/o Chuman). I have never seen the document before. I see the first page of original Will.

McGARVIE:

I object to question. Evidence of opinion from the witness is not admissible. It is very issue before Court.

KOYA: He is not an expert. This witness is giving factual evidence.

COURT: The issue of understanding of Mr. Bidesi in regard to his Will is an issue before this Court. Question is inadmissible.

Most of our conversation was in relation to building with which he was au fait.

I can't remember whether we had a contract. He did not always speak in English to me. He sometimes spoke to me in Hindustani. We got across by mixture of two languages together - sort of lingua-franco.

We used to cross trail fairly consistently. Very rarely I would speak to him on subject other than building. We got to understand one another well.

We may have to repeat certain words in both languages. He did not understand English very freely.

XXM by Mr. McGarvie

I first learnt Hindi in the Brothers' School from Brother Claudius - interesting language. I am not good at picking language. Useful to me in my business. Most of my employees language is only Hindi. Very few spoke English.

Mr. Bidesi worked for me in 1912 or thereabouts. He worked for a couple of years or probably more.

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Alfred Henry
Marlow

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Examination
continued

sic

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 continued

He worked for me as a Sirdar - in charge of a small local labourers. This is at the time he left. A Sirdar is a minor foreman. He had a knowledge of carpenters work.

He was in the nature of a building labourer. I would have had a number of employees with whom I communicated in Hindi at that time.

During that time I had a lot of conversation with Mr. Bidesi about the work. We always spoke to each other in a mixture of English and Hindi. 10

Other employees too I would also speak to in a mixture of English and Hindi. We might speak to each other about 3 or 4 times a week - always in a mixture of English and Hindi.

After he left employment when I met him we would speak to each other in a mixture of English and Hindi. 20

He left me to join Whan's Construction. Mr. Whan helped him a lot. He continued as a foreman there increasing his ability and skill.

Eventually he became a Supervising Superintendent.

He had a very senior position.

In that position he was directly responsible to the managing director of the company.

Mr. Bidesi would have been in charge of 300 men at the time. They were doing a great volume of work. He then left Whan's Construction to start his own business. 30

Mr. Bidesi was an intelligent man. He was considered to be very competent in the building trade. He had a good knowledge of building trade.

Over the years from 1912 to 1957 when he died he learned a great deal.

He was a very competent man. He was a very determined man. 40

Important part of building is studying and reading plans. Later he became very capable of reading plans. Mr. Whan taught him how to read plans. He carried out some substantial job. He would have to know how to read plans.

TO COURT:

The plans would be in English.

In 1912 the lower working level of labourers did not speak much English but over the years there has been tremendous rise in standard. Majority of labourers now speak English. 50

(T.U.Tuivaga)
JUDGE

Re-Examination

Different people are now employed in the trade.

The people are now better educated and have a reasonable command of English.

I am speaking of the same type of people.

I have seen him reading plans. He got knowledge of what plans required.

10 He could follow the rules of plans although he might have to guess at the wording.

Later I noticed his English was improving as was my Hindi. His English must have improved. Whole population getting used to English.

Pattern of any conversation with him was the same - we used mixture of both languages.

He took part in Sanatan Dharam Sabha of Fiji.

20 He was also responsible in building the Rishikul School situated at 5 miles Nasinu, Suva.

He was also the President of the Muanivatu Sanatam Daharam Temple situated at Muanivatu.

He used to help in various other organisations as well.

30 At home he practised his religion - in festivals like Diwali and Holi and family worships.

I know one of his sons of the first marriage and so are the other plaintiffs.

I am quite sure he did not understand English colloqually - had a few words - used mostly gesticulations. It was a long time ago.

(Witness excused)

(T.U.Tuivaga)
JUDGE

40

No. 27

CHANDRA PRAKASH BIDESI

No.27
Chandra
Prakash
Bidesi

P.W.2 - Sworn on Bible in English

Chandra Prakash Bidesi. Company Director.

Examination

I live at 1 Davey Avenue, Suva.

In the
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Plaintiffs'
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No.26

Alfred Henry
Marlow

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Bidesi

Examination
continued

I am 50 years' of age.

My father is late Bidesi s/o Chuman. His religion was Hindu - he belonged to branch as Sanatan. He was a very religious man. There was also sister who has since died. She was eldest.

I can't remember when present Mrs. Bidesi married Mr. Bidesi. Children of first marriage lived with them.

All brothers lived together. I lived separately two years after I got married.

10

My father gave me home at 1 Davey Avenue which I am still occupying.

The eldest M.D.Bidesi built himself a house near my father in same compound at Muanivatu.

Mr. S.P.Bidesi lived separately when he built a house at Tamavua. I don't remember where was S.M.Bidesi when my father died in 1957.

All the plaintiffs were then living separately from our father. When he died he was living in Mead Road with his children of second marriage and included Mrs. Bidesi.

20

COURT: Adjourned at 11 a.m. until 11.30 a.m.

Sgd
(T.U.Tuivaga)
JUDGE

On resumption at 11.30 appearance as before.

P.W.2 (reminded still on oath) - XM continues

When I went to primary school my father was working for Whan's construction.

30

He started his own business about 1933. He was living at Muanivatu then. I was living with him and so was Mr. S.M.Bidesi.

My father's first place of business was at Joske's Street behind Police Station.

At the time Mr. S.M.Bidesi, Mr. M.D. Bidesi and Ram Deo were helping him.

As a businessman he could not do the correspondence. My brother, Mr. S.M.Bidesi did correspondence. His business was in building construction.

40

For a builder it was necessary to read plans and specifications. Mr. S.M.Bidesi used to do correspondence and submit tenders. My father can read measurements but Mr. S.M.Bidesi

used to read the plans for him.

Later my father shifted to Waimanu Road- its present location in 1946 or thereabouts. Mr. S.M.Bidesi assisted him there.

If he received invitations he would give it to us to reply. He understood plain English. He would understand "you are telling lies" but would not understand "you are untruthful".

He would bring letters to us to reply.

10

He couldn't read up to time of his death. He couldn't write English and even Hindi. He only knew how to sign his name in Hindi. He couldn't write a sentence in Hindustani nor read Hindustani.

He could speak very simple English. He would mix Fijian and English.

Q. Could he understand the word "issue".

COURT: Yes.

Witness continues

20

I remember well at our office in Waimanu Road when a European gentleman called in. My father called me in to interpret a discussion about building materials.

The man talked about terms which my father would not understand.

Once my father took me with him to Mr. Philport and to Mr. Maurice Scott. With Philport I had to discuss certain contracts. He was manager of M.H.Ltd. My father was to buy building materials. We discussed purchase terms.

30

We talked about discounts. I translated. My father spoke in Hindustani during the conversation.

I remember we went next to see Sir Maurice Scott in his office. This would be about 1953 or 1954.

40

We went to discuss an agreement transaction. It was about a gift of a land to me. On that occasion I translated conversation. My father spoke in Hindi. Mr. Maurice Scott spoke in English. I can't just now remember other instances where I acted as translator for my father.

I have heard him speak in simple English with touch of Hindi. He used to say "Hello Barasayhib Acha Sahib".

50

His friends used to speak to him half English and half in Hindi. For example to speak like this to Mr. Barrack, a part-European and to Mr. Wheatley.

Mr. Barrack used to say "Hello Mr.Bidesi". My father would reply in a mixture of English,

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continued

Fijian and Hindi. Mr. Barrack would use a mixture of English and Fijian.

I also remember a Mr. Beach who lived in Robertson Road. He was a customs officer. He was a regular visitor to Waimanu Road. He used to discuss problems with my father in half English and half Fijian.

My father used ungrammatical English. Mr. Beach could speak in half English and half Fijian. Mr. S.M.Bidesi handled the business cheque account of Bidesi & Sons. 10

My father had no table of his own. He never used to interview visitors. It was my brother S.M.Bidesi who did. Mr. S.M.Bidesi had large office operation in the building.

Visitors who wanted to discuss business would be sent up to see Mr. S.M.Bidesi.

On certain days I used to drive my father in a cargo truck around Suva.

My father had very little knowledge of English. 20

Once I was in Guard of Honour when the Queen was here. I wanted to take him but he was determined to go and visit people. He had arranged with me. He said "these people speak in English which I do not understand".

I think that was in 1953 or 1952.

I remember in 1936 when I passed my school certificate I told him I wanted to go to N.Z. He said "look I was not educated. I have not been to school". That is honest fact. 30

During his lifetime no one was teaching him English.

My father died on 15th November, 1957.

I saw him last the same Tuesday afternoon he died. I saw him at Bidesi Building. I did not notice any improvement in his English up to time of his death.

My relationship with my father at Muanivatu was very good. After I left Muanivatu our relationship was very good. He used to have lunch with me. 40

On the day he died I saw him, I spoke to him. Our relationship was good. He asked me where I was going. I said I was going to the Council meeting.

When I left school in 1936 I worked for my father for 5/- a week.

After I married I continued to work for my father for £1-10-0 a week. I discussed my wages with him. 50

He said "my son this is you people's business".

During year 1957 my father discussed my

property with Mr. S.M.Bidesi. I was present. This was nine months before he died. Conversation took place in our business building at Waimanu Road.

My father had told us that he was going to give another block of land to each brother, including brothers of second wife. He also said all brothers and sisters would get shares in the estate. He was talking about the subject of making wills. I think he said S.M.Bidesi was going to be executor of will. He spoke more to S.M.Bidesi - he was brighter in business matters than all of us and capable of running the business. He was second eldest. I agreed.

Prior to this conversation my father gave a block of land to me and one to S.P. Bidesi.

He spoke of giving another block of land to us. I asked him for a block of land as I wished to build a block of flats.

I had call from my sister as a result of which I telephoned Dr. Dharam Singh. I went to Mead Road and when I arrived near the gate everyone was crying. I was then informed that my father had died.

After the death Mr. S.M.Bidesi made all the funeral arrangements. Cremation took place at Vatuwaqa Cemetery, Suva.

A few days after the funeral I went to our business building. All members of family were there. I was called by Mr. S.M.Bidesi.

When I arrived there, all the brothers were there,

S.M. Bidesi,
S.P. Bidesi,
M.P. Bidesi,
Ram Deo, my brother-in-law,
Mr. Wheatley.

I don't remember other people. I think Atma Bidesi but I am not sure. I don't recollect whether my step mother was there.

Mr. Wheatley read the Will in English. I remember I spoke to him. I said "How come the Will was made in this way" He said "I am very sorry C.P. I can't understand why your father has left you out".

McGARVIE:

I object to the evidence. Not relevant. Not admissible.

KOYA: Mr. Wheatley's credibility is in issue.

McGARVIE: I do withdraw my objection.

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He said "I am very sorry. I don't know why Mr. Bidesi has left you four brothers out". Mr. Wheatley also said he had been left out in the will. He said my father had promised him to give him a block of land behind the Mead Road. He further said that the Will was made by the Public Trustee.

Examination
continued

He said "Just leave the matter for the time being. I'll see what could be done".

10

Q. What was reaction of Mr.S.M.Bidesi, Mr. M.D.Bidesi and Mr. S.P.Bidesi to reading of will?

A. They were upset.
After this interview I saw Mrs. Bidesi, my step mother.
I discussed the subject of Will. He gave a lot of information and indications.

Q. How did you feel?

20

McGARVIE: I object. Not relevant.

KOYA: Relevant to Will and defence.

COURT: I'll allow the question.

A. I felt very bad. After that I came to Government Buildings. This was about four or five days after the funeral.

This was the next day after I spoke to my step mother. I came to Public Trustee's section of Government Buildings.

30

I saw a girl there and then I saw Mrs. Andrews who gave evidence in this case.

I wanted to ask her why she witnessed the Will. I saw the Will at Waimanu Road.

I see Ex.24. I think this is the will I saw.

I asked her "you have witnessed my father's will - did you explain or translate will to him". She said Mr. Wheatley asked her to witness. It was not translated.

40

COURT: Adjourned at 12.50 p.m. until 2.15 p.m.

Sgd
(T.U.Tuivaga)
JUDGE

On resumption at 2.20 p.m. Appearances as before.

P.W.2 (reminded still on oath)

Evidence-in-Chief continues

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I asked Mrs. Andrews whether will was read or who read the will. She said "Nobody read the will. I only know we were called there to put our signature.

10 I said "Mrs. Andrews, surely you must have read the will to my father. How did you explain to my father?" She said "Mr. Bidesi, I was only told to put my signature on the will. The will was not read."

I said "Who is Mrs. Behn." Did you read and translate will? She said "We are civil servants. We do what we are told".

20 I said "Do you mean to say that the will was not read in your presence." She said, "No. It is no good discussing these things here. You go and see Mr. Wheatley." After seeing Mrs. Andrews that morning I saw Mr. Wheatley in his office - Public Trustee Office. He said he was very sorry about the will and asked me to see Mr. Gregg.

30 I challenged Mr. Wheatley about will. I said "Why the will was not translated to my father. You know Mr. Wheatley my father can't speak in English. He wouldn't understand the contents of the will." He said "Yes, I agree with you C.P. I sympathise with you four brothers. It is the P.T. that made will. You better go and see him." I then came away.

40 Before I left I did say to Mr. Wheatley that I had spoken to Mrs. Andrews who claimed that the will was not read over or translated to my father. I asked him to tell me why. He said "It is better for you to see Mr. Gregg". He said "Mr. Gregg had had Mrs. Andrews to sign the will."

Mrs. Andrews said that the will was not read over in her presence. I told Mr. Wheatley this. He said "You see Mr. Gregg I don't know about it. He is responsible for the will."

50 After I saw Mr. Wheatley I saw Mr. Gregg. I don't know whether on the same day I saw him at his office. I said to Mr. Gregg that Mr. Wheatley told me that you were responsible for drawing up the will. Is it

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continued

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continued

true that it was not read and translated to my father?

He called for my father's will which was brought in. I asked him whether this type of will the Public Trustee generally makes. He said "I agree with you that this is not a right way of making will." He then told me it was Mr. Wheatley who drafted will - not him. I was upset. I said "when I went to Mr. Wheatley he said for me to see you. Now you said Mr. Wheatley drafted this will". I told him I was going to challenge the will.

10

I asked Mr. Gregg "can you tell me who read the will to my father and who translated it". He said "Nobody has read the will as far as I know. It was drafted by Mr. Wheatley and signed by two witnesses. He said "Don't do anything at the present moment C.P. I will speak to Mr. Wheatley and I will let you know".

20

I waited for a few days after that. I only discussed matters about Mrs. Bidesi.

COURT: What did you say about Mrs. Bidesi.

McGARVIE: I object to conversation about Mrs. Bidesi. May be taken subject to my admission before Court.

COURT: Yes. Question may be put.

I told Mr. Gregg that my mother told me that Mr. Wheatley had made a blunder. Mr. Gregg said "Yes I agree with you. This will is not good".

30

I said "this will was not translated. It is not proper way. He said "Mr. Wheatley had done this."

I told Mr. Gregg that Mr. Wheatley was upset with Mr. S.M.Bidesi because he wanted 10 acres of land for £1000 and Mr. S.M.Bidesi stopped my father.

Then Mr. Gregg told me that Mr. Wheatley is that type of person.

40

McGARVIE: Object to be taken subject to objection.

COURT: Yes.

Mr. Gregg told me that Mr. Wheatley is that type of person. Mr. Gregg said that Mr. Wheatley had helped Mr. Parshotam to buy land in Cumming Street. I said "No wonder. I see him very often hanging around there buying

vegetables." I told Mr. Gregg I was upset and I would take the matter further. I knew about Mr. Wheatley when he was working for Inland Revenue Department. He used to ask for money from Indians and I'll see him in Court. I then came away.

KOYA: My Lord, it departs me in reference to 10 acre land.

Witness:

10 After this I consulted my other brothers, the plaintiffs. Prior to my father's death I had made enquiries about his health.

On the 21st December 1957 I lodged a caveat against my father's estate.

I see p.50. This is caveat I lodged - this was just over a month from my father's death.

20 After I lodged first caveat I was called in by Public Trustee to his office. I think it was after a week I lodged caveat.

I see p.10 a letter written to me by Mr. Gregg. I remember the letter. Mr. Gregg called me after the caveat was lodged and perhaps two more occasions before 18th Feb. 1958.

30 On that day there was a conference between Mr. Gregg, myself, Mr. S.M.Bidesi and Mr. S.P.Bidesi.

On three other occasions he was saying that I should withdraw the caveat because the estate had no money and the widow could not get any money.

He also wanted money to pay death duties. The business was not running well. He asked me to withdraw the caveat.

After that we had the conference on 18th Feb. 1958.

40 On the 18th Feb. 1958 he discussed the matters contained in letter of 19th February 1958 (p.10).

After that conference he asked me to withdraw caveat and he would apply to court to give me C.T. 6503 and C.T. 6504 to the other brother.

Nothing was signed on the 18th Feb.1958.

50 After I received letter of 19th Feb. (p.10) I discussed it with my brothers. I trusted Mr. Gregg being the Public Trustee.

I see p.48. It is letter in reply through my solicitors. Before that I caused

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continued

my solicitor to write as per p.47.

On our conference of 18th Feb. 1958 I said to Mr. Gregg I would go ahead with court proceedings.

I see p.14 letter written to my solicitors. This letter was brought to my attention.

I see p.49 addressed to me. I accepted that there was going to be a conference without prejudice. 10

After that there was a conference on 5th June 1958 in which our solicitors were present. The conference was without prejudice to my right to proceed with action.

Before this conference I had lodged second caveat on 14th May, 1958.

After the conference of 5th June 1958 I had a further interview with Mr. Gregg who all the time wanted me to withdraw caveat but I was insisting that I wanted something concrete. 20

I see p.52. That's my third caveat dated 29th October, 1958. Up till then the matter was not finalised.

On 13.11.58 the Registrar of Supreme Court lodged a warning to caveat. On same month 19.11.58 I entered an appearance to make matter contentious. It is page 55 of Ex.1.

On 9th December 1958 I was present in conference with Mr. Wheatley and Mr. Gregg and my two other brothers. 30

Up till then Mr. Gregg had not taken any action to apply to Supreme Court.

COURT: Adjourned at 3.25 p.m. until 3.45 p.m.

Sgd
(T.U.Tuivaga)
JUDGE

On resumption at 3.45 p.m. Appearance as before

P.W.2 (Reminded still on oath)

Examination-in-Chief (continues)

At this conference of 9th December 1958 the basis was without prejudice. 40

Before I withdrew caveat there was a further talk with Mr. Gregg on the same subject.

Yes, caveat was then withdrawn on 16th March, 1959. Before that I had a further talk with Mr. Gregg and Mr. McFarlane. I said I will agree. This again was without prejudice. They both assured me things would be alright.

Up to the time I withdrew third caveat it was without prejudice to my rights. 50

Mr. McFarlane agreed to act for both parties. I wanted him to safeguard my interests.

I see Ex. and I notice change of solicitors. From then on Mr. McFarlane acted for me to withdraw caveat. On 6th March 1959 he lodged application to discontinue action I had taken to be heard on the 16th March 1959. I did not go into Chambers.

10 On 4th March, 1959 I accepted offer of Mr. Gregg of 19th Feb. 1958 (p.10).

I also accepted arrangements agreed upon on 9th Dec. 1958.

I withdrew caveat because I had all the confidence in the Public Trustee and on strength of letter of 19th Feb. 1958 and the assurance given to me by Mr. McFarlane in good faith, I thought everything would be alright.

20 The basis of all that was without prejudice to my right to go to Court in the event no amicable settlement being reached.

After 16th March 1959, next important date was the 21st April, 1959 when probate in common form was granted by Supreme Court.

I continued to have talks with my brother Mr. S.M. Bidesi and Mr. Gregg.

30 I wanted Mr. Gregg to apply to Court for approval to sell two lands to me. He told me that he was negotiating with Law Society and that it would take time since we are dealing with the Civil Service.

I used to see Mr. Gregg once a month. He kept on saying not to worry.

When he went on pre-retirement leave, I did not know he had gone on leave. This was in 1964. I saw Mr. Few.

40 The letter of 19th Feb. 1958 to me was referred to my solicitors. At that stage I had not recognised the validity of the will.

After Public Trustee gave lease of C.T. 6503, 6504 to Mr. S.M. Bidesi I did not pay rent or hold land franchise as landlord.

I did not pay rent for period of 15th November 1957 to 31st December 1959 for the cottage I was occupying. It was given to me by my father as a gift after my marriage.

COURT: Adjourned at 4.20 p.m. until tomorrow at 9.30 a.m.

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 Examination
 continued

Mr. Koya for the Plaintiffs
 Mr. McGarvie Q.C. & Mr. Mitchell for the Defendant

P.W.2 Sworn on Ramayan in English

Examination-in-Chief (continues)

C.T.8831 is situated at Tamavua next to my flat and C.T.9397 is situated also at rear of Mead Road.

In 1960 and 1961 I had fenced C.T.8831 - it was land presented to me by my father. I refused to vacate because I claimed it was mine. It was given to me by my father. C.T. 9397 was land close to mine - it is in between my flats and where my father lived in Mead Road. It is in the gully. It comprised 2 acres 2 roods and 27 perches and it was the wish of my father that no one should build a home in between. I claimed ownership of this land in 1960 and 1961.

10

I see p.61 of Ex.1. This letter was written to me. There was an agreement before the sale of this land. I see p.62 - sale note annexed to that letter.

20

Mr. Wheatley made arrangements to sell this land despite our objection and to sell to one late B.N.Singh. I heard about proposed sale and I was very upset.

I explained to Mr. Wheatley that was property my father did not want to sell.

I see pp.63 and 64. I received the letter from Mr. Wheatley. I received Account at p.65 I saw Mr. McNally and he wrote p.66. I see p.67.

30

S.P.Bidesi bought land eventually. I got annoyed with S.P.Bidesi but he said somebody else would have bought it if he didn't buy it.

I see p.95. This is sale note in respect of agreement S.P.Bidesi and P.T. and I took over transfer. This is the sale note referred to in pp.61, 62, 63, 64, 65, 66 and 67. The date was 21st March 1961. Mr. Wheatley was very stubborn.

40

P.T. didn't want to sell to me but they were prepared to sell to Mr. S.P.Bidesi.

I had no choice in respect of C.T.9397. My arrangement with my father was gentleman's agreement. C.T.9397 is just behind my house. We did not ask anyone to live there.

Sale was completed later. Transfer was made in my name.

50

Public Trustee was registered proprietor of C.T. 9397 on 21st March, 1961.

I did not give any recognition to P.T. in respect of this land. He was trying to sell the land very cheaply. I did not recognise the will. I never did.

I see Ex.11 dated 14th January 1967. It is transfer in respect of C.T.9397.

Before the transfer I initiated action on 3rd August 1966.

10 I see p.59. It is in my handwriting. This land is in the rear of my father's home at Mead Road. The land is C.T. 4153.

As at 25th January 1962 the Public Trustee was very anxious to sell all the Bidesi lands at City Council valuation price. My offer was not accepted. Land was sold to my sister.

20 I see p.60. It is the refund to my offer. My offer did not constitute recognition of the Will. The land was in the name of the Public Trustee. I am not sure who was Public Trustee then.

In dealing with C.T.s 8831, 9397 the registered proprietor was the Public Trustee at all material time. I could have negotiated with somebody else who claimed them.

I wanted to purchase 4153 as a commercial transaction. I had no choice but to deal with Public Trustee.

30 I put caveat on C.T.8831 through Cromptons. I did not personally receive notice within 21 days. Notice was received by Messrs Cromptons.

I came to know during the same afternoon when the land was sold to A.P.Bidési, my brother.

I went immediately to see Mr. Sahay. I told him I was upset and worried. I came to see Mr. Wheatley, Mr. Sahay in respect of C.T.8831.

40 Mr. Wheatley said I am very sorry - this land was sold yesterday to Mr. Atma Bidesi. I told him it was not my fault - it is fault of lawyers - you had sent notice to Messrs Cromptons. I said "It is very unfair on your part, Mr. Wheatley". I said, "You are a crook."

My father died on 5th November, 1957.

My first caveat was lodged on 21st December 1957. Public Trustee did not enter any warning.

50 After second caveat 14/5/58, Public Trustee did not enter any warning.

Warning was made in 1959. Public Trustee did not start action immediately to prove the Will.

We issued the writ. It was Public Trustee who delayed showing of Will.

After the 9th December 1958 I removed caveat and it was Public Trustee who delayed action after that.

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After the probate Public Trustee told me that he was waiting for the law to be changed. Mr. Gregg said it, Mr. Wheatley said it, Mr. Few said it.

All said we would honour our agreement. It is government process normally takes longer. The Law Society is looking into matter.

I got satisfied. Every time I enquired I got the same answer.

The agreement refers to letter of 19th Feb. 1958 - p.10 in Ex.1.

I see Ex.9 - I see summons in Action No. 110 of 1964. This was issued to enforce under-taking. I became sure of it at time. I can't remember outcome of action.

This action came on day of 21st January 1971 and was adjourned. On same day I wrote to Grahame & Co. I see this letter (produced). This is letter I wrote. (Witness reads letter).

COURT: Ex.D

Up till now I have received no written or oral reply.

My instructions to Mr. McFarlane were only confirmed to drawing up the caveat.

I have not been informed that Messrs Cromptons were acting for Public Trustee in place of Grahame & Co. and I have not received the files back.

My father was about 74 when he died.

Sgd
 (T.U.Tuivaga)
JUDGE

COURT: Adjourned at 11 a.m. until 11.30 a.m.

P.W.2 (reminded on oath)

I lodged caveat in respect of C.T. 8831.

After my conversation with Mr. Wheatley I checked C.T.8831.

Cross-
 Examination

XXM by McGarvie

My first language is Hindi. It is language in which I spoke to my father up to age when I went to school. I went to school at age of six.

After I left school I still spoke to my father in Hindi.

At times he would use bad English language to me.

A European came to my father's business building. I do know he was a European. He spoke in good proper English. I can't remember whether he had an accent.

All Europeans are alike to me. My father did not understand what the word "terms" meant. I explained to my father.

My father was an intelligent man as far as Indians are concerned.

I would not say that he was a man who learned things quickly.

From that time on he knew the word "terms" because I had explained to him. I do not think he would have known the word unless translated to him.

He was a man with good memory.

He could not understand the English language.

His memory for other things was very good. Things other than English. People had to remark about it.

Q. He was a man who could learn things very quickly.

20 KOYA: I object to that question as inviting opinion of witness.

McGARVIE: This is XXM - a lot of things are revealed.

COURT: Objection noted. Question may be put.

30 My father learned quickly in the Indian way of life. He learned the building trade quickly - over 20 years. In relation to business he was quick to take up things we explained to him. He learned quickly in regard to building trade and the Indian way of life. He was very slow in learning the English language.

KOYA: I object.

COURT: Overruled.

40 My father was very slow in learning the English language. By age of 15 years I spoke English. By the time I left school and up to time my father died he spoke broken English - no improvement over the years. I doubt if my father learned new English words. I explained the word "terms" slowly to him in Hindi. He appeared to understand after you explained it in Hindi

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continued9

If the word "terms" were used again he would not understand. That is my opinion. The reason was he did not go to school - he couldn't write or read Hindi and English.

I told about our visit to Mr. Philport. My father was giving negotiated prices and things like that.

I have been in business myself for a number of years.

There is advantage to be interpreter if a person does not understand the language. It is necessary in legal documents.

We went to see Sir Maurice Scott about a gift of land which my father wanted to make to me.

I did not want to see Mr. Scott. I am old client of his.

I next went and signed agreement in Sir Maurice Scott's office and came away. That was one of the reasons for my going there.

We did not both sign agreement. I signed it in Sir Maurice Scott's office. Later on my father signed when he was called on another day.

I had discussion with Mr. Barrack and Mr. Beach. Mr. Beach had left the Dominion. We the Fiji born don't speak like that. I know Fijians who speak in English often use the word "Turaga" whilst speaking in English.

My father only went to public functions in religious matters.

I have been consulted for a number of years. I have been involved in a number of public functions.

When I took my father to the G.P.H. he did not feel at home. That was the first and last.

I and my three brothers - plaintiffs in this case - are friendly to each other.

We seldom spent time with each other. Only when need arises to discuss with each other then we would meet.

Mr. S.M.Bidesi told me he had discussed with my father about his will. This was some years before my father died. He said he had had discussed with Mr. Wheatley about the sort of will my father would want.

Mr. S.M.Bidesi did not tell me that the will my father proposed was an Indian will and not a bit a white man's will. There was no secret that Mr. S.M.Bidesi was going to be the executor. I don't remember having been told of the conversation between Mr. Wheatley, Mr. S.M. Bidesi and my father.

I was present in 1957 when my father spoke

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to S.M. Bidesi about his will. This was at the Bidesi & Sons buildings. I can't remember whether anyone else was there. My father gave me to understand that he wanted to give a block of land to each brother. This was said many times after this discussion.

He had said he would provide land in the will.

10 Mr. Wheatley got two blocks of land. We complained to my father about his giving those lands to Mr. Wheatley.

I did not say this yesterday because I was not asked. I won't forget it in my whole life.

I was asked yesterday about the conversation. I did not mention about the block given to Mr. Wheatley because I was not asked until today.

20 First time I knew this Mr. S.M.Bidesi was not executor when will was read by Mr. Wheatley at Bidesi and Sons building, Waimanu Road.

Mr. S.M.Bidesi was upset and annoyed. He accused Mr. Wheatley. I can't remember what words were used. He accused Mr. Wheatley because he had wanted the blocks which had been given to Mr. Wheatley.

30 I don't know meaning of expression "to lower face".

Mr. S.M.Bidesi from my observation was very disappointed because the four brothers were left out of the will.

M.D.Bidesi immediately after the reading of will was disappointed. I don't remember what he actually said to indicate his disappointment.

S.P.Bidesi also made it clear that he was very disappointed.

40 I and my three brothers were upset and noviced for 14 days. We had discussed together after the will was read. We had agreed we would fight that will.

After he further read the will I said to Mr. Wheatley "How come the will was made this way. What sort of will is this".

I examined will on the day after Mr. Wheatley read it.

50 I did not have much to do with wills but I have witnessed wills before.

What I meant that I said to Mr.Wheatley is this -

(i) the will was not read, not explained, and translated;

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- (ii) because two European ladies signed;
- (iii) we had no confidence in Mr. Wheatley;
- (iv) Mr. Bidesi had worked hard for the business and he had not mentioned who was to run it and that nobody would make will deferring distribution for 100 years when 1st generation and second generation of first marriage would have to die;
- (v) all the time I had discussion with my father he said not to go to Public Trustee. They will suck blood - charge 7% interest. 10

I had all those things in mind when I said to Mr. Wheatley "How come the will was made this way."

Q. How did you know that the will was not read at that stage.

A. The will was with Mr. Wheatley. I read will myself - it was not written there. 20

I am a businessman. I got suspicion when I saw it was initialled by two European ladies.

Q. At this stage how did you know that it was not read over?

A. I read it there.

Another thing I had in mind was the fact that the distribution was postponed for 46 years. Nobody in his good sense would make this kind of will postponing distribution for 46 years. I had suspicion that my father would never have made a will like that. 30

I also told Mr. Wheatley, "What kind of will is this".

He said "I am sorry C.P. how this happened I can't understand. I suppose Mr. Gregg did that."

My recollection is not that good but I'll never forget in my life the incident of the reading of the will. My heart was broken that day. 40

This action commenced in 1966 when Wm. Scott was acting for me and three other plaintiffs. After Messrs Wm. Scott who handled the action, my brother S.M. Bidesi took over the responsibility.

I did not know that Mr. Wheatley was going to be examined on oath on commission. Mr. S.M.

Bidesi may have told me. I can't remember.

I have given a lot of thought about the will and how it would be set aside.

I don't know whether my three brothers heard me when I spoke to Mr. Wheatley about the will.

10 I don't know whether a domestic situation was created. I was myself very upset. I asked Mr. Wheatley nicely. We were in the building office - Mr. S.M. Bidesi's office.

I can't say whether any of my brothers heard me or not.

I can't remember any other words which Mr. Wheatley might have spoken.

The will was read out two or three days after my father's death.

Q. Do you recall evidence I gave yesterday?

A. Yes. I have said many things.

20 Mr. Wheatley said "Public Trustee had handled the will. You come and see me. Everything will be alright".

I went to see my step-mother a few days after reading of will in Mead Road.

COURT: Adjourned at 12.55 until 2.15 p.m.

Sgd
(T.U. Tuivaga)
JUDGE

30 On resumption at 2.20 p.m. appearance as before

(3 plaintiffs absent)

P.W.2 (reminded still on oath)

XXM by McGarvie (continues)

After conversation with Mr. Wheatley and after reading of will we were all upset.

I saw my step-mother and had conversation. I saw her 4 or 5 days after death of my father at her home at Mead Road.

40 I came to Government Buildings that morning. I saw Mrs. Andrews.

I did say that I did not do anything until after 14 days.

I was not mistaken. I stand by what I said.

I saw Mrs. Andrews. My recollection is quite good. I asked her about the will. I said "Mrs. Andrews, you have witnessed the will."

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She said "Yes."

I asked, "My father can't speak English, why the will was not read and explained and translated?"

She said, "I only did the signature."

She said, "Will was never read or translated."

I also asked about the other lady. She gave same reply.

Mrs. Andrews was shaking when I asked her about the Will. I wouldn't say crying. I was upset as I am now.

I remember what I said about interview with Mrs. Andrews.

I told exactly what took place. She said, "Mr. Wheatley only asked me to sign." Then I asked about Mr. Wheatley.

I asked her whether it was read, explained or translated.

Q. You said to her, Did you explain or translated to him and she said "No.".

I asked Mrs. Andrews, "Who has read this will or explained or translated it".

She said "I don't know. I only did the signature. Mr. Wheatley knows it."

Q. Did she say to you during conversation that day,
 "Nobody read the will."

A. I don't know.

I got it vivid in my mind.

She said, "Mr. Wheatley may have read the will but I don't know. I only did the signature."

The word "afterwards" was not in my mind all these years. It is a slip of tongue. I never used the word "afterwards".

After my interview with Mrs. Andrews I then went to see Mr. Wheatley. After that I had interview with Mr. Gregg. These interviews were important.

I have clear recollection of important things.

Mr. Gregg had one office, Mr. Wheatley another and Mrs. Andrews another.

If you enter Public Trustee Mr. Gregg on left, Mr. Wheatley on right and Mrs. Andrews in the middle.

I have been there many times. After I saw Mrs. Andrews I then saw Mr. Wheatley.

I spoke to him about the will. I said, "Mr. Wheatley told me to come and see you with or about the will. I came to see you."

He then asked me to see P.T. Mr. Gregg. I went to see Mr. Gregg. I discussed things in general with Mr. Wheatley. Can't recollect

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everything. We may have spoken about wealth and other matters.

Mr. Wheatley told me about the will. He sympathised. "You four brothers are missed. I suggest you see Public Trustee."

I recollect saying to him "we are surprised that the will was not made in favour of all the brothers and sisters which was the wish of my father."

10 He said "Yes I sympathise with you. There is nothing I can do."

He was very polite - trying to put me over.

Q. Nothing important you might have left out.

A. So many things have happened.

I think he also said he was surprised why the four brothers were left out. I think he also said he was surprised that the land which was supposed to be given to him was not given to him.

20 So far this exhausts whole of my recollection. May be tomorrow I maybe able to recall other things. He agreed with me that my father did not understand the contents of Will. I don't know whether it was said during that conversation. He had said it many times.

30 I can't repeat what I said yesterday. He did say "I sympathise with you. Your father did not understand the contents of the will".

Q. This was sketchy information you received from Mr. Wheatley.

A. No.

A few minutes before Mrs. Andrews told me to see Mr. Wheatley.

Mrs. Andrews had told me a few months before "Mr. Wheatley may have read the will."

40 Q. Did you say "I challenge you in the will."

"How come the will was not translated to him."

"You knew Mr. Wheatley my father could not read English."

A. Yes.

He said "Yes I agree with you C.P."

Q. That conversation left an indelible impression on you.

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- A. Yes fantastic.
 I was brought up with my father. I know him better than Mr. Wheatley.
- Q. Why can't you remember a short while ago what you said.
- A. I can't remember everything. I am not a machine.
 Either on that day or the next day I went to see Mr. Gregg.
 I talked to him about the will. 10
 I said "I have seen Mr. Wheatley about the will. Will you please see the will."
 He called for will which was brought.
 He read it. He promised he would look into it and he also said that Mr. Wheatley drafted this will.
 I think I mentioned to him about challenging the will.
 Then he said he would look into the matter. 20
 I think he also said he wanted to see both families.
 There may be something else, I can't recollect.
 I don't agree with suggestion that I have no recollection of my interview with Mr. Gregg.
 I said Mr. Gregg said "Nobody has read will as far as I know."
 I remember that now when I am reminded of it.
 I agree it is important matter said by the P.T. 30
- Q. Why did you forget that bit of conversation until last $\frac{1}{2}$ hour.
- A. There are so many things in my mind. I must have forgotten.

After these three conversations I told my brothers. I consulted them. It would be at Bidesi and Sons buildings. They were all there. M.D. Bidesi was not there.

I discussed my interview with Mrs. Andrews and Mr. Wheatley and Mr. Gregg in detail. I told them in detail. I told them what conversation I had at the Government Buildings when I went to see Mr. Wheatley. I told them in detail what took place. 40

I told them - S.M. and S.P. Bidesi - in detail about my conversation with Mr. Gregg.
 I told them within a day or so and I was instructed to see my lawyers. My recollection then was vivid. After we consulted with each other we decided to instruct our lawyers. 50

On many occasions we brothers met to discuss the will. I must have told M.D. Bidesi about my conversation with Mrs. Andrews, Mr. Gregg and Mr. Wheatley. But I don't know when. It was then we decided to go to a lawyer.

I went to see Messrs Koya & Co. I went alone.

I saw Mr. Koya.

10 Q. Did you give him full instructions.

A. Yes.

KOYA: Object to question because it is irrelevant. It is prying into matters between solicitor and client.

I consulted with Mr. Koya a caveat was lodged. A week after Mr. Gregg called me to him a discussion with him. I called on Mr. Gregg.

20 Mr. Gregg and I wanted to settle dispute without recourse to litigation. As far as I know that was also the desire of Mr. S.M., S.P. and M.D. Bidesi.

I had conversation with Mr. Gregg perhaps once a month. He did say that the law had to be changed and the Law Society had to be told. He mentioned this a number of times.

COURT: Adjourned at 3.25 p.m. until 3.45 p.m.

30 Sgd
(T.U.Tuivaga)
JUDGE

On resumption at 3.45 p.m. appearance as before.

XXM by McGarvie (continues)

I have been a businessman and a councillor for a number of years.

I have had a fair amount of conversation with other people in Fiji.

40 Since 1957 I have had a number of correspondence with P.T. I have received letters from Mr. Gregg.

I received letter of 19th Feb. 1958 from Mr. Gregg.

I see this document (produced to me).

Q. You may read it.

KOYA: I object.

McGARVIE:

It is in the No.1 of affidavit of documents.

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KOYA: My grounds that this is not a perfect memorandum of Mr. Gregg. This letter emanated from P.T. I have not ~~XXM~~ on this document. Not relevant. One way of bringing in hearsay evidence.

McGARVIE:

One is entitled any document with a view to asking further questions.

COURT: Document may be put to witness. 10

(Witness reads document).

I have read document. To me it is a small piece of paper.

After the letter of 19th Feb. 1958, I saw Mr. Gregg a number of times. Approximately monthly.

He told me the matter would be taken up with the Law Society. He told me he was still negotiating with Fiji Law Society. He had no results so far. 20

He said he will see Mr. McFarlane who happened to be the Chairman of the Law Society.

He told me that the law needed to be changed. He told me this after I received letter of 19th Feb. 1958.

Q. Had there been trouble between your father and your brothers - co-plaintiffs prior to his death.

A. Not to my knowledge. This is something new to me. 30

I never knew that my father had any dispute with my brother Muni Deo Bidesi. Up till today I have not been told of this.

I have never heard of any dispute between my father and S.M.Bidesi. Never heard of dispute between brothers about money matters.

S.M.Bidesi is well to do in his own right - can't be any dispute over money matters.

I was not in Bidesi and Sons Limited. I don't know what went on there. It never came to my notice that there was any agreement between my father and S.M.Bidesi. 40

Later I came to know that the business was not making any profit.

My father did not tell me that he was worried about the business.

My desire to challenge the will is shared by my brothers including my step brothers.

My basic complaint is my house at 1 Davey St. - C.T.6503 which was given to me by my father. 50

If my father had told me and my other brothers that he had a will in the terms of this will, I don't think we would have had any conflict. We would settle by arbitration. I am sure we would never have gone that far - not my father. I know he told Mr. Wheatley what his wishes were 11 months before he died.

10 I would have gone to see my father if I knew about the terms of will and discussed it with him. I would never complain. My brothers would also have gone to see him to discuss it.

Q. Is it difficult to keep a secret among the Indian Community.

KOYA: I object. Requires expert knowledge on part of witness.
European community in Suva is a small one.

20 They never mix up with the other races. They are not good mixer.

Q. Indian community tends to mix together.

KOYA: I object.

Witness:

Indian community tends to mix with every race.

None of the Europeans who used to drink with my father came to my will.

30 To my knowledge my father did not know Mr. Wheatley. He was a successful businessman - well-known in Suva.

COURT: Adjourned at 4.25 p.m. until 9.15 a.m.

14.12.72

Sgd
(T.U. Tuivaga)
JUDGE

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Mr. Koya for the Plaintiffs
 Mr. McGarvie Q.C. & Mr. Mitchell for the Defendant

P.W.2 Sworn on Ramayan in English

XXM by McGarvie (continues)

KOYA: I object to previous question. Subject matter you asked witness is one that requires high degree of specialised knowledge. Expert opinion is being sought. Prohibition against opinion evidence applies in XXM as well as in Examination-in-Chief. 10
 Refer p.462 on Cross on Evidence (Australian Edition) (Counsel reads).

McGARVIE:

This is merely putting matter which he is probably experienced enough to answer. If not he can say so.

COURT: I do not think the question is really objectionable.

KOYA: I raise the point of further sitting beyond today. We are entering into legal vacation. The plaintiffs case has not been completed. Submit case be adjourned today to another date to be fixed. 20

If legal vacation had been fixed certain arrangements would not have been made by me.

Inconvenience no doubt will follow. But that would not justify this case going on and during vacation.

Counsel and Court reach respite at end of year. Health, comfort and conveniences of judges and counsel should not suffer. 30

McGARVIE:

If at all possible for Court to do so, we would submit balance of convenience that the matter continue until next week without interruption.

Submit not part of concept. But when case started should go on during vacation. Highly desirable this matter proceed. The main reasons:- 40

- (i) Facts of this case are complex - law involved need to be. Enormous advantage to all parties. It is in the interest of justice the case go on.
- (ii) Family dispute - sooner it is concluded the better.
- (iii) Adjournment involved defendant in substantial expenses in requiring counsel to return again.

(iv) case has been delayed because my correspondence had to be proved formally.

This has taken a substantial part of the Court's time.

What is involved is further hearing for a few more days. This would no doubt affect one's health.

10 KOYA: I am not able to tell how my witnesses are called. No possibility of finishing next week. Question of costs of counsel is irrelevant consideration. As regards inconvenience of both parties, we are used to this crucial case had been adjourned from November to February 1973.

20 COURT: In my view Courts exist for convenience of the public. In the circumstances of this particular case I am firmly of the opinion that it is in the true interest of all concerned that the case should continue until all the plaintiffs have been heard in evidence. This may take a few more days. This will be of substantially completes the "guts" of this case. I believe that in the interest of justice that this should be done. I propose to continue to hear this case next week.

30 Sgd
(T.U.Tuivaga)
JUDGE

Witness continues

Europeans have superiority complex. Europeans tend to discuss confidential matters.

Indians keep things to themselves. This is why they are popular in the Dominion.

40 Confidential information has leaked from Government Buildings. I don't know whether there has been any leakage through Indians.

We accepted Mr. Gregg's proposals of 19th Feb. 1958 in good faith and without prejudice. We agree if proposal had been carried we would have left the will alone. We accepted the proposals because there were no alternative. I discussed proposal with S.M. and S.P.Bidesi in presence of Mr. Gregg.

50 I had conference on 5th June 1958 with Mr. Gregg when Mr. McFarlane and Mr. S.M.Koya were present. I see Ex.19. I don't remember whether

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there was discussion on change of law.

KOYA: Now my learned friend as all that subject of Law Society was discussed on that day now put to witness as question of fact that law has to be changed.

Question is most unfair to the witness.

McGARVIE:

We do not make out one's case from one's own witness.

It is common to elicit facts in XCM. Witness claims to have good recollection.

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COURT: I see nothing improper in question. He may or may not know the answer.

Witness continues

I remember conference of 5th June, 1958.

I don't remember discussion with Mr. McFarlane and Mr. Gregg. I was interested in the subject matter of discussion. I do remember speaking to Mr. Gregg.

I have no recollection of anything said during conference with Mr. Wheatley or Mr. Gregg. Mr. Gregg said he would apply to Supreme Court. He said that there would be no difficulty in having the law changed. The change would enable the proposals of 19th Feb. 1953 to be carried out. He said he had to get order from Court.

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My recollection is that Mr. Gregg said the law would have to be changed before the proposals could be carried out.

I told S.M.Bidesi what discussion I had with Mr. Gregg. I also told other brothers. Mr. Gregg said he would see Mr. McFarlane on change of law. I told my brothers about the question afterwards when we met.

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I see Ex.21 - conference of 9th December, 1958. I told Mr. Koya the summary of what we agreed upon. It is not written but it was without prejudice. Summary of things said on that occasion.

All the time we were thinking that the Court would approve order. We reserved our rights over that arrangement.

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Mr. Gregg gave me the assurance in the presence of Mr. McFarlane. I withdrew the caveat. I arranged with Mr. Gregg to withdraw caveat sometime after conference of 9/12/58 and before 11th March, 1959.

I agreed to withdraw caveat without prejudice since Mr. Gregg had given me assurance. It was arranged that Mr. McFarlane would act for me to withdraw caveat. I do not know purpose of withdrawing caveat. Mr. Gregg

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said he would have no difficulty in his application to Court if I withdrew caveat.

I did know that Public Trustee would get probate if I withdrew caveat.

10 By May 1959 there was no discussion with me for grant of lease for 10 years. I did not know until I got letter when C.T.6503 was leased to S.M.Bidesi. My brother told me it was taken on a temporary basis for the time being to run the business until the law was changed. I did find out that the lease was for 10 years in 1966. I had no part in discussion in granting of lease to S.M.Bidesi - or sale of business to him.

COURT: Adjourned at 10.55 a.m. until 11.30 a.m.

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On resumption at 11.30 appearance as before

20 P.W.2 (reminded still on oath)

XXM by McGarvie

I was not surprised that this lease to S.M.Bidesi was for 10 years.

I know all about the action.

30 Action No.110 of 1964 by S.M. Bidesi I knew about. S.M.Bidesi told me about it. I did not know the result until afterwards. I don't remember what the results were. We discussed the results. He mentioned about an undertaking. He did not tell me he had discontinued the action and paid P.T.'s costs.

At end of 1959 S.M.Bidesi took lease of both blocks C.T.'s 6503 and 6504.

I was quite confident that the law would be changed because of assurance by Mr. Gregg.

Change of law would require Act of Parliament and that would take time.

40 I knew the ultimate power vests with Legislative Council to change law.

A long term lease was discussed. I can't remember date. I was party to it. By long term I mean a period of 999 years.

I had discussion on 9/12/58 - Ex.21. My impression and I do remember that the lease was for 999 years. Mr. Wheatley is telling lies - this is not first occasion.

50 We discussed long lease just as good as freehold. Mr. Wheatley said he had power to do it. I don't remember 20 years lease

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being discussed.

If my brother had not taken temporary leases, the business would have gone into bankruptcy.

After 1959 S.M.Bidesi had been handling everything. He would tell us about proceeds but we need not go into details. I myself would give details. Mr.S.M. Bidesi told me in letter of 17/1/61.

I see p.37 of Ex.1. I have no recollection of this letter.

I saw Mr. Few and discussed change of law in 1964. I asked Mr. Few before Mr. S.M. Bidesi commenced action No.110 of 1964. I was alone when I went to see Mr. Few.

Q. Put to you long before this action commenced the proposals of 19th Feb. 1958 were not going to materialise.

A. I did not realise.

C.T. 9397 was situated between my land and my father's.

It was subdivided before my father's death. It is behind my flats. My father promised me C.T.8831. He did not promise me C.T.9397. It was my father's wish that no one should build on C.T. 9397. I did claim ownership of C.T.8831.

I told purchaser not to interfere because family was still in dispute over land. The Public Trustee did not want to sell land to me but to S.P.Bidesi. I wanted to have negotiations with him but he did not want to sell to me.

I did not want at that time for anyone to come between me and my father's house.

S.P.Bidesi negotiated after Mr. Wheatley refused to sell to me. I entered into an agreement with S.P.Bidesi. It is p.95 Ex.95. S.P. Bidesi transferred his interest to me.

I was very slow in making payments under the lease. I was waiting for the will. I had blocked land from being sold. Mr. Wheatley is a crooked man. I knew this from my heart. I have received letter of 31st October 1962. I knew that was my land.

It is time I received letter 31st May 1963 p.64. I also read p.63. I accept contents paras. 192 as true.

When I received letter of 31st May, 1963 I can't remember whether I paid up.

Q. In 1964 did you have a letter written to Public Trustee a misrepresentation about C.T. 9397.

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A. I can't recall that. But I recall a misrepresentation in 1961 because land should have been given to me. I see p.66. That letter was written by my lawyer on his advice.

Q. Did you tell first person.

A. He found out himself. He checked up. Correspondence was shown to him. What is written there is my knowledge. Mr. Wheatley wanted to sell everything.

10

I see p.67. It came to my knowledge. I took no further action. I had no alternative but to pay up. The price was £450 or £500. I had to sell land out of family for £1000. I sold land after 10 years. After paying £180 a year in rent.

My father gave me land on which I built my flats. My father did not give me a penny to build these flats. I did not ask for any.

20

After death of my father estate duty was paid on C.T. 8814 - on which my flats are built. Estate duties were payable. £193 was payable on Estate and business.

I refused to pay in January 1967. It was part of my share out of my father's property.

I see p.65. It is copy of statement of sale of C.T. 9397. I don't know. I could have. I don't deny having received it.

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McGARVIE:

I apply to have it admitted in evidence.

COURT: Admit p.65 in evidence.

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Re-Examination

I was very upset when I was asked about conduct of Indian community.

I have been a business man in this town for 30 years. I have been a councillor for 20 years.

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I have lived in city of Suva for 25 years. There have been over 20 doctors who practice by dealing in confidential matters. Successful. There have been so many Indian lawyers who qualified and practised over the years. They keep confidential matters. I have never been let down by Indian solicitors. In the Inland Revenue Department they deal in confidential matters. Mr. Singh is head of Inland Revenue. In Police Force there have been many Indian officers. A number of them have been promoted - Walli Mohammed, Mam Raj.

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During lifetime of my father people were dealing in confidential matters.

There was a Commission of Inquiry held in public and parties in which Europeans were involved - about 1953.

My father was still alive. Much publicity was given about inquiry into licensing dept.

In clubs if you have been you would hear all that happen during day. My father was still alive.

I know one Mr. Bal Govind. He deals in accounts. I think Mr. Bal Govind handled my father's account. Pearce & Co. also handled my father's accounts.

My father dealt with Ellis, Munro, Warren & Leys once or twice. They had an Indian clerk. My father also dealt with Messrs. Cromptons. My father was very religious. He used to call whiteman "snake in the grass". He would say "Don't trust white men".

He did not disbelieve his own race. He had a high regard for them.

I couldn't believe my father would go to Europeans to draw up will.

I had expected my father to distribute his property to all his children. I was very surprised at the will knowing his religious ways.

He was not an ungrateful man to my knowledge. He was a devoted father. S.M. Bidesi helped my father through in his business. The other brothers had also helped. I expected the will to provide for all of us.

I was surprised when we were not provided. I was surprised that my father did not provide for continuation of business - Bidesi & Sons. This was his wish.

To my surprise there was no mention in the will of Bidesi & Sons.

COURT: Adjourned at 12.55 p.m. until 2.15 p.m.

Sgd
 (T.U.Tuivaga)
JUDGE

On resumption at 2.30 p.m. appearance as before
P.W.2 (reminded still on oath)

Re-Examination (continues)

Certain matters in that surprised me. The basic reason for my disappointment was because no provision was made about 1 Davey Street

where my house is. That was also a part of the reason.

I knew that my father having expressed his wish 11 months before he died in presence of Mr. Wheatley and Mr. S.M. Bidesi - I was there, that would be provided.

10 Being staunch religious man he would like to see all the children get equal share and to live happily together. He also wanted his business name to be kept alive after his death. He used to tell us this - the name of Bidesi & Sons to continue - not to happen like the Lilac Theatre which was sold after Mr. Grant had died. These things were not in the will. I expected him to give me Davey Avenue property because I was the first to get married. My mother picked my wife for me.

20 I did say my father learned the building trade quickly.

My father did not make any improvement in his knowledge of English. He used to deal mainly with Indians and Fijians. Very seldom would he come into contact with European people.

I did say he could not write or read in Hindustani. He was taught to write his signature by my brother.

30 At a later stage Mr. Scott rang for my father to go and sign. He took me with him. I translated for my father who spoke in Hindi.

In 1956 I came to know about discussion between my father concerning the will. It was between Mr. Wheatley, myself and my other brothers. This took place in the building. Mr. Wheatley was acting at the P.T.'s office then.

40 Mr. Wheatley was asked in because he had helped my father a number of times. They were friends. Indian people are not interested in my father's will.

Mr. Wheatley came to our business premises to read will. Mr. S.M. Bidesi accused Mr. Wheatley there - by that we mean that Mr. Wheatley had mislead my father in regard to the will.

50 I looked at the will on that occasion - Ex.24. I mentioned attestation clause. I was very much surprised.

When I went to Mrs. Andrews I had conversation with her. We were still in mourning then. At end of the conversation with Mr. Wheatley, he said "C.P. I agree with you - you see the P.T. made the will".

At the end of my interview with Mr.

In the
Supreme Court

Plaintiffs'
Evidence

No.27

Chandra

Prakash Bidesi

15th December
1972

Re-Examination
continued

In the
Supreme Court
 Plaintiffs'
 Evidence
 No.27
 Chandra
 Prakash Bidesi
 15th December
 1972
 Re-Examination
 continued

Gregg he said "Don't take any action I'll see the families are restored together. Please do not do anything else".

After my visit to Mr. Gregg I consulted my brother. Some weeks later I lodged caveat. The delay was due to P.T. Mr. Gregg said the will would have to be changed.

On 18th Feb. 1958 he talked only about the will not of change in the law.

I see p.10 of Ex.1. Mr. Gregg did not say anything about changing the law.

Mr. Gregg informed that the law should be changed because at moment little prospect of getting Court order 3 to 4 years after - round about 1961.

If I had known what my father was going to put in the will, I would have approached him to lodge my objections.

I see p.66 - first para. The first agreement was with S.P. Bidesi. Mr. Wheatley did not point this out to me.

I see p.37 - I did not want to read because I was upset of the racial issue.

The contents of this letter were brought to my attention before this trial when I looked at our files relating to this action. A week before this trial commenced. I saw a photostat copy.

I went to see Mr. S.M. Bidesi after I saw Mr. Gregg.

I told S.M. Bidesi "why did you take this lease" He said, "It is a temporary lease. Don't worry about it".

I remember the conference of 9.12.58.

I don't know why Mr. Wheatley did not record the long lease - 999 years in Ex.21.

In 1957 there were quite a few Indians in Public Trustee's office - Kurup - Singh - Mrs. Kupsami. There were also Indian typists and stenographers.

In 1957 the Attorney-General was in charge of Mr. Gregg. At the time the Attorney-General was senior official member of the Government.

Last time I spoke about change in the law was with Mr. Few.

Sgd
 (T.U.Tuivaga)
JUDGE

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No. 28

SHIU PAL BIDESI

In the
Supreme CourtPlaintiffs'
Evidence
No.28Shiu Pal
Bidesi15th December
1972
ExaminationP.W.3 Sworn on Ramayan in English

SHIU PAL BIDESI - Company Director.

I live at 228 Princess Road, Tamavua.
I am one of directors of company known as
Bidesi and Sons Limited.

I am 40 years of age. I was born
at Muanivatu. I am son of Bidesi s/o
Chuman.

I was living with my father when I
went to school at Muanivatu. My mother
died when I was about 2 years of age.

When I went to primary school my
father had married present Mrs. Bidesi.
My sister married Ram Deo - living next
door.

There were four brothers living
there and Mrs. Bidesi and the other children.

In 1933 my father was working. I
went to primary school until 1942. My
father was then doing his construction work
at Joske's Street near the Police Station.
I had occasion to talk to my father.

When I was still in primary school
my father spoke very broken English. My
father would talk with Barrack and Tippot
and at times my father would go to the
Polo grounds. He used to speak half
English, half Fijian and half Indian.
If he finds himself in difficulty he would
speak in Fijian and Indian. Mr. Tippot
would understand a little Hindustani.

When I left primary school there
was no improvement in my father's English.
After the War I joined firm of Bidesi &
Sons as a clerk - 1941/42. He was still at
Joske's Street.

My brother M.D.Bidesi, C.P.Bidesi
were working for my father. I think S.M.
Bidesi was working for Mr. G.W. Johnston as
architect draftsman.

I was employed as clerk - also acted
as driver. When I joined firm M.D. Bidesi
was there - S.M. Bidesi was helping the
old man. I worked for two years as clerk.
By then I knew my father could neither read
nor write English. I sometimes drove for
my father.

Yes on occasion I heard my father
speak in broken English.

In the
Supreme Court

Plaintiffs'
Evidence

No.28
Shiu Pal Bidesi
15th December
1972
Examination
continued

Mr. S.M. Bidesi used to do reading of plans to assist my father. If my father could not understand the specifications he would bring them to S.M. Bidesi or Ratu Nacani Mocelutu - foreman at the time.

COURT: Adjourned at 3.55 p.m. to Monday 18th December, 1972 at 9.30 a.m.

Sgd
(T.U.Tuivaga)
A JUDGE

10

18th December
1972

Mr. Koya for the Plaintiffs
Mr. McGarvie Q.C. and Mr. Mitchell for the
Defendant

P.W.3 - SHAR PAL BIDESI - Sworn on Ramayan in
English

Examination-in-Chief (continues)

I am 45. I have checked.

My father had quite a few clients at the time.

At the time he was contacting other races - but not Europeans. There was always someone with him either myself or S.M. Bidesi to explain things to him.

20

My father did not speak fluent English. My father had very little social contact.

At the time polo was being played at my father's house at Laucala Bay.

My father used to go to the Polo Club. He used to be closely associated with late Mr. Hankar Singh who ran the Polo Club. Few Europeans would join them for drinks. After that he would come back home. Conversations were normally restrained because my father did not understand English that is when my father would say "What is he saying"?.

30

In 1948 I went overseas for education. Before that I went to Marist Brothers High School - 1945. I was still living then with my father. I attended Marist School for 3 years.

We used to live at Suva Point. After

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school I used to come to Waimanu Road to the office because bus service was not regular. My father did not then improve his English and Hindi too.

When I went to Australia my father still had building contract.

10 My father changed business from Joske Street to Waimanu Road whilst I was at Marist Brothers School. I was away in Australia for approximately 6 years. I came back to Fiji in 1953. I went to London for a year and came back in 1954.

In 1954 my father was still living in Suva Point - his business was then at Waimanu Road.

20 After I returned from London I acquired a land and I built a house on it. It is my present home. I had registered as an architect after my return from London. He gave me office. I had two draftsmen. For a small sum I helped in business. His attitude towards me was pleasant.

I saw him quite a lot - my house adjoining and we talked about land, subdivision.

I did not find any improvement in his knowledge of English.

30 My land at Tamavua was given to me by my late father. My office was in Waimanu Road, from which I carried on my work as architect. My father did not charge rent.

In 1956 I moved to the present house, four months before I got married.

My father was happy about my marriage but he was not happy my wishing to marry in the western manner. We were married according to Hindu rites.

40 I used to assist in preparing bill of quantities and plans and when S.M. Bidesi was too busy I used to help. Neither his English nor his vocabulary did change. He could not write one alphabet in English. He could not write Hindustani.

In 1957 I knew my father was selling part of his property at Mead Road to Road

In the
Supreme Court

Plaintiffs'
Evidence

No.28
Shiu Pal Bidesi

18th December
1972

Examination
continued

In the
Supreme Court
 Plaintiff's
 Evidence
 No.28
 Shiu Pal Bidesi
 18th December
 1972
 Examination
 continued

Builders. Mr. Tetzener was managing director of the company. I initiated the sale of land with Mr. Tetzener. I rang Mr. Tetzener again to discuss sale of 80 acre of land. I said my father would like an offer from him. I did mention a figure of £40,000. I remember myself, my father, Mr. Tetzener and Bhindi Brothers were present and finally my father agreed to sell at £38,000. The sale and final agreements were drawn by Mr. Warren. They paid a small deposit with balance to be paid with low interest by yearly instalments, I think. I started the first discussion. At these negotiations my father would speak to me in Hindustani. I did the talking - English with Mr. Jethalal, Mr. Tetzener. Bhindi Brothers spoke in Hindustani to my father Jethalal was trying to reduce the price of land. I don't remember date but agreement was signed not long after the negotiations - and bill of sale. 10

I was not there when the agreement was signed. My father sold 2 acres to the Government of Fiji of his Mead Road property. We received offer from Director of Lands. I read letter to my father who was not happy with offer of £5,000. I spoke to Mr. Lloyd, the Director of Lands. Eventually agreement was drawn up in office of Marquardt-Gray. My father signed agreement. I was present. My father wanted whole content read in Hindustani - Mr. Tar Ali, Clerk of Marquardt-Gray interpreted the document. 30

Sale to Government of Fiji took place 3 or 4 years before my father died.

My father commenced living at Tamavua about 1954 or 1955. I can't give exact time. I live in Princess Road - my father lives 14 to 16 chains behind my backyard and at Mead Road. About 8 months to my father's death we were in very good terms. We were in visting sic terms. He would call in for dinner. The night before he died - on Friday morning I got telephone call from my sister Prema - she said, "Come quickly father wishes to see you". I did not change pyjamas. I saw my father standing with sister in front of door. 40

I spoke to him. He said he is not feeling well. I took him to back room.

He said, "You boys look after the business 50

well. Listen to S.M. Bidesi - he has always looked after the business well. He would look after the business. Assist him in the way he has carried out the business in the past."

In the
Supreme Court

Plaintiffs'
Evidence

No.28

Shiu Pal

Bidesi

18th December
1972

Examination
continued

10 He asked for a glass of water. After he drank in a matter of minutes he was dead. My step mother was there all the time. My step-sister was also there. Couple of children were hanging around there. I can't recall who they were. It was almost daylight. Dr. Dharam Singh came in and saw my father and declared that he was dead. I went to Suva Point and informed S.M. and M.D. Bidesi that my father was dead. I was not surprised why my father said to look to S.M. Bidesi - he being eldest brother with so much experience - wanted him to carry on business. My father did not discuss with me about make a will.

20 I attended the funeral - he was cremated at Vatuwaqa in the same afternoon of the day he died. A few days after he died I went to my office. Mr. Wheatley asked us to be gathered in the office in the morning. I attended this meeting. Mr. Wheatley came to the office. He brought envelope.

S.M. Bidesi, C.P. Bidesi, M.D. Bidesi and myself were all present. Members of the other family were not there.

30 Mr. Wheatley read contents of will. After he had read the will, C.P. Bidesi got up and cried he wanted to read the will himself. C.P. Bidesi looked at will. He lost his head. He said to Mr. Wheatley "Who are these two people who witnessed the will". They were signed by Mrs. C.Andrews and Mrs. C.Behn. I see this photostat copy of will. This is copy of will I saw and it shows signatures of Mrs. C. Andrews and Mrs. C. Behn.

40

I see signature of my father in Hindustani. Mr. C.P. lost his head. He was very wild. Mr. Wheatley said, "Take it easy C.P. Don't worry. I didn't do it. This was done by Public Trustee. I'll see the P.T."

C.P. Bidesi said, "These people who signed the will - you know my father can't read. This was not explained to him in Hindustani language." I walked out. Mr. Wheatley was still talking at the corner.

50 S.M. Bidesi said, "I would like to see instructions of my father."

In the
Supreme Court
 Plaintiffs'
 Evidence
 No.28
 Shiu Pal Bidesi
 18th December
 1972
 Examination
 continued

Mr. Wheatley said, "I think the girls must have omitted this. I'll look for file to find instructions." I walked out as I was disappointed with whole thing. Nothing was contained in the will about the business. I see Ex.24. I see signature of my father. This was document read out that day.

After will was read, I was disgusted and disappointed. I told Mr. Wheatley Mr. Bidesi could not have made a will like this. He is strong Sanatan in life. It was surprising that we were eliminated from will. The first thing that came to my mind was the business. Mr. Wheatley said he would go and see Mr. Gregg, the Public Trustee and would let me know later on. According to his philosophy all children, both marriages, should share alike - male or female. My father had a sense of gratitude for things, however small, done for him. It was children of first marriage who worked so hard - seven days a week, to build up the business.

10

20

Prior to my father commencing business I knew he was a carpenter. He used to work for Whan's Construction. Since then he started his business, it was always called Bidesi & Sons. He used to work very hard - Saturdays and Sundays too.

We were second largest builders in Suva at that time. I was surprised that there was no continuation of business under the will.

30

My father did not do anything to upset both families. We have always lived amicably together. His attitude was to maintain harmony.

I was surprised that S.M. Bidesi was not named as executor or manager of the business.

My father always had a high regard for S.M. Bidesi - implicit trust in S.M. Bidesi. Whatever S.M. Bidesi did was never questioned or challenged by my father. Bidesi & Sons used to operate bank accounts with B.N.S.W. Cheques used to be signed by M.D. Bidesi for a short time. After that S.M. Bidesi always signed cheques. I never saw my father sign any cheques. At time of death S.M. Bidesi used to sign cheques. Bidesi & Sons had a

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letterhead. S.M. Bidesi was conducting correspondence for the firm after my return from London.

M.D. Bidesi also appeared disgusted after reading of will and walked out from there.

I told Mr. Wheatley "If you knew we were not provided for in will what made you bring will to read to us".

10 Mr. Wheatley said "It was P.T. who made will and not me." He didn't know contents of will.

After few weeks C.P. Bidesi had discussion with us - we had all agreed that C.P. Bidesi was to lodge caveat against Public Trustee. It had blessing of us three other brothers.

I see p.69. Letter I received. Business carried on as usual after death of my father.

20 S.M. Bidesi was still in the office. I had spoken to Mr. Gregg about this appointment. I spoke to S.M. Bidesi about business. I told him unfair for me to be manager of my business.

30 S.M. Bidesi was upset about whole business. I took up appointment on temporary basis to keep name of company going. Name of Bidesi and Sons was never revoked from the firm named in the letter. Bank account was running but cheques were signed by Mr. Gregg or one of Public Trustee's staff.

Discussion about caveat took place before this. I knew before I took up management that caveat had been lodged. I see p.50. It is first caveat.

COURT: Adjourned at 10.55 a.m. until 11.30 a.m.

Sgd
(T.U.Tuivaga)
JUDGE

40 On resumption at 11.30 a.m. Appearances as before
P.W.3 (Reminded still on oath)
Examination-in-Chief (continues):

In the
Supreme Court
Plaintiffs'
Evidence
No.28
Shiu Pal Bidesi
18th December
1972
Examination
continued

In the
Supreme Court
 Plaintiffs'
 Evidence

No.28
 Shiu Pal Bidesi
 18th December
 1972
 Examination
 continued

I see p.50. It is caveat. After lodging caveat the Public Trustee and the plaintiffs had meeting in Public Trustee's office in February 1958.

I see p.10. I have seen the original of this letter before today. Public Trustee had given us word that he was applying to Court to vary terms of will of my father if C.P. Bidesi uplifted the caveat. There was discussion in relation to (a) of p.10 and there was also discussion in relation to (b) of p.10 - also in relation to paragraph 2. 10

I always understood that they (Public Trustee) were prepared to sell business to S.M. Bidesi and land to C.P. Bidesi. Public Trustee said that she had not very much to say in the will as she was only a tenant-at-will. Mr. Gregg did say that he had to pay death duties within a year.

There was not much money in the trust. 20

Public Trustee had said that the Public Trustee was not competent to run the business and nominated S.M. Bidesi to run the business.

He said the lady was objecting to the sale but she only had a minor interest in property.

We said and made it clear that we were negotiating without prejudice to our rights to challenge the will. He assured us that he would do his best that something could be done. 30

We had accepted his offer without prejudice. We respected Mr. Gregg and held him in high regard and we believed that he was genuine.

When I saw letter p.10 I saw he had written in accordance with conversation we had the day before. Between 19th February 1958 and 9th December 1958 I was still operating the business.

I see Ex.21. It is in Mr. Wheatley's handwriting. I don't recall term of 20 years being discussed. I remember long lease being discussed. We went to get permission from Court to sell C.T.s 6503 and 6504 to S.M. and C.P. Bidesi. 40

I see p.10 of Ex.1 and Ex.21.

Mr. Gregg said if Supreme Court rejected application he would give long lease which would be as good as freehold. Basis of arrangement was the removal of caveat without prejudice and reserved our right to challenge the will.

In the
Supreme Court
Plaintiffs'
Evidence
No.28
Shiu Pal
Bidesi
18th December
1972
Examination
continued

10 Public Trustee had given assurance but he had not applied to Court to approve application. Mr. Gregg would say he was working on it - not to get excited. Caveat was finally withdrawn on 16th March, 1959. A lease was not executed until 20th November 1959. I was still manager of business during that time. Mr. Gregg did not know what he had said for next eight months. To my knowledge Mr. Gregg had not applied for approval to Court.

I see Ex.22. It is in respect of both C.T.s 6503 and 6504 and in favour of S.M. Bidesi only and for term of 10 years.

20 Prior to 20th November 1959 I came to know that S.M. Bidesi had taken a lease. I see p.21. Mr. S.M. Bidesi told me about it. He said he was taking a lease on a temporary basis. Understanding that Mr. Gregg would apply to Court was still subsisting.

30 C.P. and S.M. Bidesi are both business people. S.M. Bidesi is very successful business man. I see Ex.22 and Ex.21. There is a difference in the term of lease granted eventually from that which was discussed on Ex.21.

All I know Mr. Gregg had been saying he would apply to Supreme Court.

I see p.21. We had agreed that S.M. Bidesi will take over the lease and business. He said he would apply to Court in pursuance of his letter of 19th February 1958.

40 He said it was a long process going through legal formalities. If application went through lease would be revoked.

After I received letter p.21 I handed over operation of business to S.M. Bidesi who had run it ever since. The business has been registered Bidesi & Sons Ltd. I am one of the directors.

After I handed over management of business, S.M. Bidesi told me that Public Trustee's

In the
Supreme Court
 Plaintiffs'
 Evidence
 No.28
 Shiu Pal Bidesi
 18th December
 1972
 Examination
 continued

prolonging application to Supreme Court.
 I think we engage Scott & Co. Neither
 Mr. Gregg nor S.M. Bidesi told me the reason
 for delay since 1959. I did not enter into
 any negotiations with Mr. Gregg. S.M. Bidesi
 was handling matter.

I have seen particulars of Defence.

Item 42

When I took over management of business
 no probate was seen then. There was no
 settlement achieved between myself and Public
 Trustee. I left my two elder brothers S.M.
 and C.P. Bidesi to handle the matter. I knew
 about first caveat. I approved lodging of
 caveat by C.P. Bidesi.

10

I was paid wages by Public Trustee for
 my work. This had nothing to do with the will
 - we had reserved right to challenge will.

C.T.8832 adjoins my property - land on
 which I had my house on - area a little of
 $\frac{1}{4}$ acre. The title was in my father's name.
 I had fenced this land in 1954 or 1955, during
 lifetime of my father who had no objection.
 My father had promised giving us block of land
 and since this one adjoining my land, it was
 most desirable that I should get the land to
 avoid unpleasant neighbours. I put fence on
 three boundary lines. I did a lot of improve-
 ment on the land. Title was still in my
 father's name. I had a written undertaking
 from my father about this land before he died.

20

30

I see p.70. Mr. Marquardt-Gray acted for
 me in this matter.

McGARVIE:

I object. What Mr. Marquardt-Gray said
 is not admissible. Original document should
 be produced.

KOYA:

I am dealing with one of defendant.
 Allegation has been made whether true or not.

40

Witness continues:

I had given letter about undertaking
 regarding land C.T. 8832 to Mr. Gray, who
 has it now I would not know.

Document was drawn by Ali of Mr. Gray's

office. My father signed it in my presence. Eventually I had to buy the land when Public Trustee refused to accept the undertaking by letter. I told Mr. Gregg that it was through my effort that my father got £40,000. It was in appreciation of this service my father gave me land. Conference and my father agreed to sell land on reduced price. £500 was unimproved costs and they gave me allowance for improvements. I paid £300.

In the
Supreme Court
Plaintiffs'
Evidence
No.28
Shiu Pal Bidesi
18th December
1972
Examination
continued

10

I see p.72. That is another claim on my behalf. P.73 is a reply.

I see p.75. Mr. McFarlane wrote on my behalf. This is different matter.

After my father's death I could not have proceeded against anybody else other than the Public Trustee in respect of C.T. 8832.

20

Item 44

I made claim for services rendered. The fact that the Public Trustee was executor made no difference. Eventually I was awarded £400 odd only after I had resorted to litigation. I see Ex.8. It deals with the particular litigation.

Item 45

30

I made claims for bonus. Eventually a sum was paid to me by Public Trustee - £300. Receipt of this money had nothing to do with validity of will.

Item 46

I was at conference of 9th December 1958. I was not the one that arranged the conference. I did not arrange that Public Trustee to lease land to S.M. or C.P. Bidesi in the event of Supreme Court not approving sale of the land. Caveat was subsisting at that date.

40

COURT: Adjourned at 12.50 p.m. until 2.15 p.m.

Sgd
(T.U.Tuivaga)
JUDGE

In the
Supreme Court

Plaintiffs'
Evidence
No.28
Shiu Pal Bidesi

18th December
1972
Examination
continued

On resumption at 2.15 p.m.
Appearance as before.

P.W.3 (Reminded still on oath)

Examination-in-Chief (continues);

Item 47

I did not write a letter to Public Trustee on 18th February 1960 regarding payment of debt to one Gangaram. I see p.93 - I recall now that Reliance Construction Company was involved. I remember received this letter. sic 10
In replying to that letter I did not give recognition to Public Trustee. It was my duty to give explanation for my running of estate.

Item 48

I remember Action No. 212 of 1960 brought against me. I did not recognise will. Action was in default of my recognition.

Item 49

It was undertaking given to me by my father. I see p.75 letter to Public Trustee (Mr. McFarlane). I lost case in Supreme Court but won in the Fiji Court of Appeal. 20

Item 50

In this action I was not giving recognition to the will of my father. The release relates to my father.

Item 51

I have C.T. 8830. Five blocks away from my present house. This is letter referred to at p.77 of Ex.1. Mr. Wheatley told me he was selling 3 blocks facing Princess Road. It was Bidesi land. 30

I thought best for me to buy then someone else. It is freehold land. Land was transferred to me. This transaction had nothing to do with my father's will. It was sold in open market.

Item 52

I remember action 163 of 1961. I had nothing to do with recognition of will of my father. 40

Item 53

The payment to me by Public Trustee had nothing to do with my recognition of the will.

Items 54, 55, 56, 57

I remember C.T. 8832 - its transfer to me had nothing to do with recognition of my father's will. I would bring action against whoever claimed land. Public Trustee was registered proprietor of land C.T. 8832. I had no business in matter.

Item 58 (Abandoned)Item 59

I see pp.82/83. Messrs. Cromptons were acting for me then. I see second last paragraph. Claim of £300 was on basis of "without prejudice". I would have made the claim if anyone else other than Public Trustee was executor. I had deposited £150 into the estate. I don't remember what happened eventually.

This matter did not go to Court.

Item 60

Public Trustee made a request to pay duty. I refused to pay duty on gift. It was given to me by my father well before he died. I did not recognise will. From time of reading of will or issue of writ in 1966, Mr. Gregg knew we were going to challenge the will. Mr. Wheatley also knew.

I remember in 1964 sometime Mr. Few became Public Trustee. I remember we had discussion with him concerning letter of 19th February 1958. I said, "What are you going to do about application to Supreme Court to vary will".

He said he would look into it. I would say I saw Mr. Few 7 or 8 months before issue of writ on 3rd August 1966.

From my knowledge of my father's business habits, I knew my father was always cautious about strangers. I doubt if he had much to do with strangers. I have lived all my life in Fiji except when I was absent. He was very proud of Indian race. He associated mainly with this. He is a strong Sanatan.

In the
Supreme Court

Plaintiffs'
Evidence

No.28
Shiu Pal
Bidesi

18th December
1972

Examination
continued

In the
Supreme Court

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Examination
continued

There were always Indian staff in the office. Chuman Lal has been in firm of Bidesi & Sons Ltd. for last 20 years.

I know one Bal Govind. He was my father's bookkeeper and had access to all matters of my father relating to business.

During his lifetime for many years Messrs. Cromptons handled his legal matters. Dean used to be the clerk and did interpretation. Mr. Lateef was a clerk. He dealt with my father on numerous occasions. My father was dealing with his firm in 1954. At time of my father's death there were two Indian Solicitors with Messrs. Cromptons.

10

Dr. Gopalan was his main doctor. During my father's lifetime Mr. Sajjananand was Registrar of Supreme Court. Vijay R. Singh and Raman Kurup were in the office of the Registrar of Titles, Mr. M.T. Khan. I have not heard or seen any dispute of father and son in Bidesi family.

20

I know of no dispute between my father and S.M. Bidesi prior to his death. Relation was happy one between two branches of family. There has been no real discord. I had support from my stepmother and stepbrothers and sisters to make my marriage happy. We had tried to avoid going to Court - to bring amicable settlement to all concerned. This litigation would have been avoided if Mr. Gregg's application had been approved. None of us plaintiffs were anxious to go to Court. It is with great reluctance we had gone to Court. The Public Trustee was responsible for delay as obvious from files. Up till now I have not received any written advice that Public Trustee will not apply to Court to vary will.

30

Cross-
Examination

XXM by McGarvie:

I was disgusted and disappointed after reading will by Mr. Wheatley.

40

I was not necessarily disgusted when I was omitted from will. I was disappointed that no provision was made for running of business. We were concerned with administration of business - not because we were left out under will. I had not expected that will which was totally different. I did not resent just that nothing was left to me under the will. C.P.

Bidesi spoke to me after he had seen Mrs. Andrews, Mr. Wheatley and Mr. Gregg. We had discussion on what we would do. We decided to challenge will.

Sgd
T.U. Tuivaga
JUDGE

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On resumption at 3.45 p.m.
Appearances as before.

10 P.W.3 (Reminded still on oath)

XXM by McGarvie:

Since my brothers worked so hard and suddenly business had come to an end this is what I felt at the time.

I was not concerned with my own position. I had lucrative business. I had substantial education from my father. I received part of land on which my house is built. I was in satisfactory financial position as I am now. S.M. Bidesi was in satisfactory financial position. C.P. Bidesi's financial position now that of M.D. Bidesi.

When my father died he had young children. I do not dispute my father's right to provide for second family. This did not trouble me.

The only thing that troubled me that the business was not left to anybody. My concern was not that the estate was left to second family. I had not objected to my father leaving estate to second family.

I objected to the fact that the business was not left to anyone and the fact it was not my father's will. I have never had dispute with my father.

To my knowledge my other brothers had not had dispute with my father.

I have not received information that S.M. Bidesi had dispute with my father. I have not heard it suggested except in the statement of Mr. Wheatley. I am positive I could not be mistaken. I was defendant in action against Public Trustee for £2400 odd.

40

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I remember Mr. Gould give evidence in that case. Mr. Gould was cross-examined by my counsel. Mr. Gould said, "A series of certain secret". I don't remember hearing him say in XXM. S.M. Bidesi is very influential man in my family and in society. I was very close to my father. He talked to me about business contacts. He did not discuss his office with other plaintiffs. I have no foundation for dispute between S.M. Bidesi and my father. I have read Mr. Wheatley's depositions a number of years ago and again recently. 10

I made inquiries of S.M. Bidesi after reading the depositions who said, "He is a bloody liar". I never heard of any complaints by S.M. Bidesi that he was independent of my father. I knew nothing of any alleged dispute. None came to my ear.

I never heard of any dispute between Muni Deo Bidesi and my father. Not in my presence. 20

I neither knew nor heard of any dispute. S.M. Bidesi was so disgusted after reading of will and refused to remain a manager. I can't recollect exact words. I have good recollection for events that took place 15 years.

We had discussed the matter. S.M. Bidesi was supposed to be executor of will. He asked Mr. Wheatley, "What happened to instructions of my father". With 4 weeks of my father's death, we decided to challenge the will not with anyone of blood. It is exaggeration. 30

COURT: Adjourned to tomorrow until 9.30 a.m.

(Sgd) T.U.Tuivaga

18.12.72

JUDGE

19th December Mr. Koya for the Plaintiffs
 1972 Mr. McGarvie Q.C. and Mr. Mitchell for the Defendant
P.W.3 - SHAR PAL BIDESI - Sworn on Ramayan in English

XXM by McGarvie (continues): 40

KOYA:

My objection relates to what C.P. Bidesi

would have said. Calls for agreement and an opinion over C.P. Bidesi's evidence.

Relying on William Baldwin 18 Cr. App. R. 175 at p.176 and at p.178. (Counsel reads).

Refer to Phipson (10th) page 661.

COURT:

10 In my view the form of XXM employed is quite proper as its main object clearly is to test the witness's recollection of events which allegedly took place in his presence. I don't see evidence of opinion involved here. I do not think that the case referred to covers the point in question.

(Sgd) T.U.Tuivaga
JUDGE

Witness continues

20 The four brothers agreed together to challenge the will. It is not my recollection that we would fight the will with one ounce of blood. I was not troubled by the will leaving everything to the second family. The fact that my father left will to second family did not surprise me. I did not see good reason for my father leaving the will to second family. At that time I thought Mr. Wheatley had done a mischievous thing. He did not have the will interpreted to him. My father was ungrateful to us brothers of first marriage. He was ungrateful to me his pet son. I had rendered services to him. Interest of Bidesi & Sons was major consideration. C.P. and M.D. Bidesi are now in good financial position.

30

40 I said yesterday that my father's religious philosophy would share his property equally. My father would not want to see the family divided. We did not accept will at time. In my view there should be mentioned of children of first and second marriage in the will.

Children of first marriage were referred to in will. Antiquity in the will. I was disappointed by fact that I was not given a piece of land under will. This is a very recent

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 continued

disappointment prior to that. I was disappointed because the business was not mentioned in the will. S.M. Bidesi had an office upstairs in the building premises. Atma Bidesi had been working for Bidesi & Sons since 1950. I had no argument with S.M. Bidesi upstairs. I did not take the side of my father in any dispute between S.M. Bidesi and him. C.P. Bidesi was not working for my father when he died - he left ten or more years before that. I had been assisting my father prior to his death. I never signed any cheques for the firm. I don't know whether S.M. Bidesi moved his belonging prior to my father's death. As far as I know he has always worked for Bidesi & Sons. In 1957 business had not been profiteering very well. That was hard year. I was surprised when Mr. Gregg appointed me to run the business. I was not surprised when S.M. Bidesi refused to manage the business. I have never been manager of business before my father died. I don't remember whether I said in XXM that I was manager of firm in the Court before Knox-Mawer J. I had appealed.

I see Ex.10 p.13 (appeal record). I don't recall whether question was put to me at all of my being manager of Bidesi & Sons.

During 1957 my father did not tell me he was worried about the business. S.M. Bidesi is also known as Mundilal. I did make a claim through S.M. Bidesi for payment of bonus. It was practice of my father to pay bonus.

M.D. Bidesi and Ram Deo were also entitled to a bonus. C.P. Bidesi was not entitled to a bonus. S.M. Bidesi was entitled to bonus for his services to the company. I see Ex.1 pp. 2 & 3. I can't explain why no law is made in respect of S.M. Bidesi

Five or six days after the death of my father, C.P. Bidesi had consultation with us and told us of conversation he had at Government Buildings. The four brothers were present. Held at Bidesi & Sons Ltd., Waimanu Road.

He told us in some detail of conversation he had with Mrs. Andrews and Mr. Wheatley he had at Government Buildings. This action started with my consent. I gave due consideration to the case.

I knew that Mr. Wheatley would give his evidence in Sydney. I was told this by S.M. Bidesi.

C.P. Bidesi said that he had seen Mr. Wheatley and told him, "This is not will of my father."

Mrs. Andrews said to C.P. Bidesi, "I didn't read will, I only signed it."

I read Mr. Wheatley's deposition shortly after they arrived here.

10 I had transaction about July 1957 of a donation of land C.T. 8832 - some four months before his death. I had nothing to do with the preparation of that document. I asked my father and he said clerk would prepare it. My father signed document. I brought action against Public Trustee when he did not honour it. I received it after it was executed before my father died. It was in English. It had no attestation clause. I later learned that attestation clause was necessary when will was read.

20 My father was very careful about signing documents. He was allergic to signing documents. He was an alert man and a clear mind.

When I saw document in p.70, I had no doubt that he fully understood it before he signed.

30 I had a later transaction (7 days before) - shortly before my father's death. My father signed document which released me from payment of certain sums of money. When he signed on 8th November, 1957, he was a bright, clear and alert man.

Document was prepared by T.A. Ali. It was in English. I owed my father £2000. I had come into some money and wanted to discharge. Document of discharge was prepared in office of Mr. Marquardt-Gray. I did not type it. I could not be mistaken.

40 I don't remember whether I said that I typed it before Mr. Knox-Mawer J. I had no recollection whether or not I typed.

COURT: Adjourned at 10.55 a.m. until 11.30 a.m.

(Sgd) T.U.Tuivaga
JUDGE

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On resumption at 11.35 a.m.
Appearances as before

P.W.3 (Reminded still on oath)

XXM by McGarvie (continues):

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continued

I can't remember whether document was signed at the business premises or not.

It was in English. I can't remember whether it was read to him before he signed it.

I remember reading passage in Mr. Wheatley's deposition of Leakage of will. 10

I also remember between April and November 1959 nothing came to my ear that my father had made this will with Public Trustee.

I see p.10 of Ex.1. I had seen letter-long time ago - about 10 years or more. I have seen it since. I did regard letter of 19th February 1958 as basis of application to Supreme Court very important.

KOYA:

I cannot produce original. 20

Bidesi:

I saw original many years ago in 1958. I saw photostat copy from the Book of Documents within the last month. I had no conversation with C.P. Bidesi about the original.

I see p.10. Letter accurately set out our agreement of day before.

It was ultimately accepted by me and my brothers. It was made clear to Mr. Wheatley in presence of C.P. Bidesi, S.M. Bidesi, M.D. Bidesi and myself that proposals in letter was without prejudice. This was made clear on day before letter. Whatever negotiations we had with Public Trustee was without prejudice and reserving the right to challenge the will. We accepted Mr. Gregg's assurance that he would apply to Supreme Court. We had highest confidence in Mr. Gregg and he would not tell lies that he would apply to the Court. 30

I don't remember exact words in which basis of negotiation was made. I knew S.M.Bidesi 40

said it we accept everything without prejudice. He said that to us brothers at the conference of 18th February 1958 whilst we were still in Mr. Gregg's office.

It did not occur to me that the letter of 19th February 1958 was not without prejudice.

10 C.P. Bidesi did not tell me of conference of 5.6.58 at which Mr. McFarlane and Mr. Koya were present.

I don't recall whether I knew within few months of receipt of letter of 19th February 1958 that the law would need to be changed.

I did not know that law need to be changed before proposals would go through.

C.P. Bidesi lodged caveat. Personally I left everything to C.P. and S.M. Bidesi. They were handling on my behalf.

20 I was present at conference of 9.12.58 in which Mr. Wheatley and Mr. Gregg and my brothers were present. There was no discussion of 20 years lease. We discussed long lease - good as freehold - something like 990 years. I was practising as architect. There was no discussion of payment of rent for the lease.

30 I knew terms of will very well in December 1958. I knew estate would not be distributed until 31st May, 1997. I had high regard for Mr. Gregg because of his high office and being Public Trustee. He was saying that he had powers to vary terms of will. I knew he was trustee under the will but I do know that he was obliged to carry out the trusts under the will. I accepted that he had powers to vary the will. Mr. Gregg suggested to him he would go to Court to get the powers.

40 He said if Court did not grant permission to vary will he would grant a very long lease - I can't remember the figure.

To my knowledge no discussion was held in the event of approval not being granted.

I see Ex.21 (Witness reads). I can't

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continued

recall reason why the Supreme Court may not approve application.

I was not a party to any discussion that caveat was going to be withdrawn. I left whole case with Mr. S.M. and C.P. Bidesi.

I can't remember when caveat was withdrawn. I remember seeing Mr. Few once. S.M. Bidesi and I had Mr. Saunders along. Mr. McFarlane could have been there too.

I can't recall S.M. Bidesi's action against Public Trustee about C.T. 6504.

10

I was involved in negotiation with Pond Builders Ltd. I went to see Mr. Tetzener himself at the office about two or three times. I am not in a position to say that father had gone to see him without me.

My father did not speak to Mr. Tetzener in English in my presence. My father always spoke in Hindi and I would translate. I have no doubt about it. My father may have said a word or two in English.

20

My father did not understand Mr. Tetzener's English. My father did not discuss directly with me about making a will.

I don't recall my father having difficulty with the word ("terms") when speaking to Europeans. My father did not know any English alphabet. He did not speak proper Hindi. All he learned was to write "Bidesi" in Hindi.

30

I had a lot of transactions with Public Trustee after death of my father. I regarded Public Trustee bound by letter of 19th February 1958 and so were the Bidesi brothers of first marriage. My claim for C.T. 8832 was to have land transferred to me by Public Trustee. I made clear because they were registered proprietors and I wanted registration to be transferred to me by Public Trustee as executor of will. I made claim for payment for plans prepared for my father. It is my view that Public Trustee had right to pay me the sum because he is executor under will - similarly in regard to claim for bonus.

40

There has been an action against Public

Trustee for £2,344 in 1960. I owed my father that sum of money for the building of my house at Tamavua. My defence was that I was released and that he owed me some money. I did purchase from Public Trustee C.T. 8830. It was transferred to me. I still own it. I took it from former registered owner. Public Trustee could do it as executor of will of my father.

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continued

10 I bought claim for £818 against Public Trustee for plans done. I recovered judgment for about £450 and payment to me through my solicitors.

In 1961 I commenced action against Public Trustee as executor of my father's estate. I had to prove that Public Trustee was executor of my father's estate. They accepted liability or they would have thrown costs out.

20 I still own C.T. 8832. I did not pay death duties in respect of gift to me of C.T. 8731. I refused to refund death duties paid on land by Public Trustee. This land was given to me in 1954 or 1955. I assumed Probate had been granted after the caveat was withdrawn by C.P. Bidesi. I have not recognised the Public Trustee as executor of will for purpose of own transactions. It is not true that I recognised Public Trustee as executor of will since 18th February 1958. If Public Trustee had honoured undertaking I can't say whether we would challenge the will. I had nothing really in mind about it. I am not able to say what our position would have been if the proposals in letter of 19th February 1958 had gone through.

30

COURT: Adjourned at 12.55 until 2.15 p.m.

40

(Sgd) T.U. Tuivaga
JUDGE

On resumption at 2.30 p.m.
Appearances as before

P.W.3 (reminded still on oath)

Re-Examination:

Re-Examination

When I said "it was not my father's will" it was unnatural because he was a religious

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Re-Examination

continued

man and would not leave children of first marriage out altogether. He was not an ungrateful person, not to recognise our contribution to the running of business of Bidesi & Sons - a building business. This concerned me a lot.

When will was read out there was no attestation clause. The instructions of my father to Mr. Wheatley did not follow what he had said in presence of S.M. Bidesi. S.M. Bidesi told us about them.

10

S.M. Bidesi said to Mr. Wheatley, "Where are the draft instructions?" He said, "They are on the file." S.M. Bidesi said, "This was not the will you were asked to draw."

I see p.10 of Ex.1. At end of conference of 18th February 1958 I did not say anything. I accepted what C.P. Bidesi said then. My position at 9.12.58 I was young then. C.P. Bidesi and S.M. Bidesi took the leading role at the conference of 9.12.58. I had not accepted the will at end of conference. I see my Affidavit of Documents dated 9th August, 1971. I can't remember who has original but copy was in my solicitors' possession. It is item No. 35. Mr. Saunders and S.M. Bidesi and myself saw Mr. Few sometime in 1966.

20

I did not personally instruct solicitors concerning Mr. Wheatley's depositions. Mr. S.M. Bidesi gave instructions to solicitor. I remember letter signed by my father in Mr. Gregg's Office. I was not surprised that there was no attestation clause.

30

I purchased property from Public Trustee as executor of will of my father. Will's validity did not arise at all. If Public Trustee had carried out terms of letter we would not have brought this action. That was what S.M. Bidesi wanted. We had consultation with my brother.

40

My father had broken Hindustani nothing new in this country. S.M. Bidesi was there all the time during my father's lifetime in 1957. I had my office in same building. I was helping business for which I was paid minimum wages. I was carrying on business as being own accountant then.

I can't say that one ounce of blood was ever used in our discussion.

(Sgd) T.U.Tuivaga
JUDGE

50

No. 29

SURYA MUNIDLAL BIDESI

P.W.4 - SURYA MUNIDLAL BIDESI, Business
Director - Sworn on Ramayan in English

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 Bidesi

I live at 269 Waimanu Road, Suva.

19th December
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 Examination

I am about 52 years' of age and belong to the Hindu religion. I have served as councillor for Suva City. I have served on several boards.

10 Bidesi s/o Chuman was my father. My mother died in 1925. We were living at Suva Point. Present Mrs. Bidesi is third wife. the second left. I went to primary school at Muanivatu. I was living at Suva Point. That was my father's house until 1955 or 1956 when we shifted to Tamavua.

We were all living together when my father married present Mrs. Bidesi.

20 After I left primary school I attended private boarding school. I joined Mr. Johnston an architect and served with him for 8 years as apprentice. After that I joined my father - sometime in 1940 or 1941.

I can't recollect when my father worked for Whan's Construction. I was still at school. At that time I used to speak to my father in Hindustani. Very rarely would I hear my father talk in English. He spoke in very broken English.

30 In 1933 he was sacked by Whan's Construction. For a year or so he did private work - he took small contracts - he had no office then. I was still at school. The first job was Dudley Church Building. Mr. Johnston helped. My father could understand plans but he could not read. I discovered that when I prepared the estimate. This was after I joined Mr. Johnston, the architect.

40 I helped my father to read plans and specifications. We did this at home. He had no office. We used to have what is called site office - portable office which we would carry around.

He set up office in Joske's Street in

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 continued

1941 or 1942, after I joined my father.

My father could not read English at all. I did not see any improvement in his English.

My job when I joined him was to prepare estimates and to import materials. I did all reading of plans and specifications.

When I joined him my father had a bank account. My brother Muni Deo used to sign. Later I signed cheques. We remained at Joske's Street from 1941 until we moved to new building at Waimanu Road - 1951 or 1952.

10

COURT: Adjourned at 3.25 p.m. until 3.45 p.m.

(Sgd) T.U.Tuivaga
JUDGE

On resumption at 3.45 p.m.
 Appearances as before.

P.W.4 (reminded still on oath)

Examination-in-Chief (continues):

When I joined we had a clerk Laksman Prasad - an Indian.

20

Generally I was managing everything - preparing estimates, read plans and attend to clients. I had no regular remuneration. It was father and son business. Muni Deo worked for my father right from the beginning. C.P. Bidesi worked for a short while. He had broken service. My relationship with my father was excellent. We had trucks, van and the mini vans - but merely temporarily.

30

I signed cheques on behalf of Bidesi & Sons. In my absence Muni Deo would sign but that would be very rare.

My father never signed cheques. I checked the monies coming in. I would place orders with commercial firms. I attended to my duty everyday. My father led a semi-retired life. He came to work everyday. He was very punctual. We used to have European clients - but this would be very rare. He did not transact any business but at times he used to entertain friends at the shop.

40

My father had some freehold lands at Tamavua which was subdivided. I did not take part in the negotiations for sale of the land. My brother S.P. Bidesi carried out the necessary negotiations. My father was strict and hard man. He would never trust strangers particularly.

My father did not lend me any money.

10 I did build block of flats with firm's material. I owed him for that in money - £7,500. This would be about 1943 or 1944.

20 Prior to his death he asked for payment of this debt - this would have been about 1954 or 1955. I settled debt by transferring my mortgage with K.W. March Ltd. to Bidesi & Sons Ltd. After transfer of mortgage he gave me £2,000 in cash. My debt was all cleared up. When my father was penalised by Income Tax people for the sum of £12,000 he blamed me for his being penalised - my negligence. This was reason he asked me to pay him back. I had given free services to him. I expected debt to be paid off. There was originally no talk about my paying for firm's materials. I was still working for my father. We reached a compromise. It was done in Messrs. Cromptons office. After that settlement we were not in good terms for a short while but eventually - 4 or 5 months later we were in good terms again. I was still living at Suva Point with my father when I incurred debt.

30

I continued to work for my father after the settlement. I still carried out my duties at the firm.

40 Twelve months before he died my relationship with my father was good. He did not make any effort to improve his English up to that time. His English was still not good. I read Hindustani. My father did not know how to read and write Hindustani. He knew how to write his name in Hindi. My father chose name of Bidesi & Sons if I remember rightly.

He would tell me that we have built the business and it should be continued even in his absence. To my knowledge my father made a will. The first will was made by Grahame & Co. My father did not tell me about

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 continued

the will. I can remember seeing the will. This was after my father died. It was in the safe in the office. That will is now misplaced or destroyed. I made no enquiries about it with Grahame & Co. It was pretty old so we did not bother about it. My father did discuss making of this will 8 or 9 months prior to his death. I had conversation with him in our shop at Waimanu Road. Mr. Wheatley was also present. Mr. Wheatley first drew Googoo Becha's will in his private capacity in which my father was trustee of the will. He asked Mr. Wheatley to make will for him too - also in a private capacity. Mr. Wheatley used to come to have drinks with my father. My father gave him instructions to prepare the will. Actually I spoke to Mr. Wheatley. He also spoke to Mr. Wheatley. I was going to be executor of will. All children of first and second wives were going to have equal interests - male and female and my step mother was to have interest - whilst she lives she should be maintained as she is maintained today. When youngest child reached 21 years there will be equal distribution. The main shop and the business was to have been handled by me as manager in the name of Bidesi & Sons. I can't remember very well but every child was to have a block of land.

10

20

Mr. Wheatley took these instructions in his own handwriting. At end of meeting Mr. Wheatley said "I'll take it home and have will prepared."

30

Mr. Wheatley was then living at Tamavua and working at the Registrar-General's office. His immediate superior was Mr. Gregg.

Sometime afterwards he came with an engrossed will - about a week after he was given instructions. He brought to shop. I read will and explained it to my father. My father said to Mr. Wheatley to leave document with him. Mr. Wheatley then left will with my father. He had a drink and went away. That was the last I saw of that document. My relationship with my father when Mr. Wheatley brought will was good. My father's state of health was good. At this time when will was brought up my father had property at Tamavua. Mr. Wheatley then wanted to buy 10 acres of land. Prior to the will he was after the land. I drew plan for Mr. Wheatley for block of flats called Belle Aires.

40

50

COURT:

Adjourned at 4.25 p.m. until 9.30 a.m.

(Sgd) T.U. Tuivaga
JUDGE

19.12.72

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Examination
continued

Mr. Koya for the plaintiffs
Mr. McGarvie Q.C. and Mr. Mitchell for the
Defendant

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10 P.W.4 - SURYA MUNDILAL BIDESI - Sworn on
Ramayan in English

Examination-in-Chief:

Roughly about 8 or 9 months some person wanted to purchase land - Mr. Wheatley tried to purchase land. My father told me that Mr. Wheatley was interested in buying land - 10 acres immediately behind Mr. Wheatley's property for £1000.

McGARVIE:

20 I do object if it is relying upon its truth.

Witness continues:

30 Afterwards about a month Mr. Wheatley saw me and said he was keen to buy land. This was not first approach. I told my father not to sell. I told Mr. Wheatley we do not want to sell and in any case the price offered was a small one. He approached me only once. Mr. Wheatley was disappointed. Mr. Wheatley's relationship with my father was good. My relationship with Mr. Wheatley was also good.

Our conversation took place early in 1957.

During my father's lifetime we built Mr. Wheatley's house at Tamavua. I drew plan for him. Immediately behind Belle Aires some years before my father's death.

Belle Aires were built for Mr. Wheatley

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Bidesi

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Examination
continued

by Gangaram. After my father gave Mr. Wheatley instructions for will we saw each other again but there was no conversation about the will.

I never saw the document which was engrossed and brought to my father. After instruction for will was given I was in good terms with my father and was still working for him.

The day before he died their relationship was good. My brother S.P. Bidesi came and told me that my father had died. We all participated in the funeral arrangements. My relationship with my step mother was good as was my relationship with my step brothers and sisters at time of my father's death. At the time I had no financial problems. I owned several flats in Suva town. I was not married then. I was living with my brother M.D. Bidesi at Suva Point near the old family house. I owned roughly 40 flats then. I was not in need of money for any purpose.

10

20

Within a week of my father's death Mr. Wheatley came to my father's business premises. He brought with him a will. All brothers of first family were present - may be two of my step brothers. I am not sure.

Mr. Wheatley called the meeting. He produced the will which he showed to us. Mr. Wheatley very briefly narrated the contents and C.P. Bidesi afterwards took the will and read it. C.P. Bidesi became very cross and asked a number of questions. I spoke first. I said, "This is not will for which my father gave instructions. In the instructions I was supposed to be the executor and all my brothers and sisters were to share alike." I asked Mr. Wheatley, "Where are the instructions?" I think he said, "It must be in the file".

30

I commented then, "This is not my father's will." I said I was present when instructions were given. He said, "Well the Public Trustee had prepared this will."

40

I said, "My father had asked you as an individual to prepare will."

He said, "Well come and see the Public Trustee." C.P. Bidesi took up discussion. He lost his head and said, "We are going to

challenge the will." He became very upset. He said, "This attestation clause is not clear - who read it - who explained it." I saw signatures of two Europeans in the will. I see Ex.24. This is the document I saw that day. I saw my father's signature in Hindustani. C.P. Bidesi had commented, "These persons are strange people to us. How come they signed the will. Who read and explained the will to my father?" Mr. Wheatley was quiet. Mr. C.P. Bidesi was really blowing off. S.P. Bidesi now and then interrupted. M.D. Bidesi was very quiet. He hardly uttered very much.

10

When C.P. Bidesi said he would challenge will Mr. Wheatley said, "Do not lose your temper C.P. Come and see P.T."

He then left with the document.

20

Later C.P. Bidesi reported to me about his visit to the Public Trustee's office. I don't think M.D. Bidesi was there.

He said he had been to the Public Trustee's office and saw Mrs. Andrews and asked whether the will was read and explained to my father. Mrs. Andrews said it was not read or explained to my father. C.P. Bidesi said he also saw Mr. Gregg whom he asked "Who prepared the will?"

30

Mr. Gregg said, "It was prepared by Mr. Wheatley." He said he told Mr. Gregg he would challenge will because it was not my father's will.

Mr. Gregg said, "We'll see about making some amicable arrangements. Mr. Wheatley drew it up and he was also involved in Parshotam affairs. This is all I can remember. Under Mr. Gregg at that time was Mr. Wheatley, Mr. Vijay R. Singh, Mrs. Andrews and an Indian lady.

40

I remember he said he also saw Mr. Wheatley. He also blew him off, "Why the will was not read to my father?" After that we decided to lodge a caveat.

After Mr. Wheatley read the will, I went to my step-mother's place to search for will. My step-mother opened the safe but there was no will. There was £1,500 which I took away but returned it to my step-mother.

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I did find old will prepared by Grahame & Co.

McGARVIE: (Objects).

Bidesi:

After I saw will, I looked for it but could not find it. I made good search for it. The will must have been misplaced. It was made before my father's third marriage.

After reading of will I was so disgusted with whole affair. I had no interest left in the business at that time.

10

First caveat lodged in December 1958. After that Mr. Gregg called us to his office.

I see pp.10 and 11 of Ex.1. I have seen this before. I see p.12 addressed to me. I agree we had conference on 18th February 1958.

We had discussion and Mr. Gregg said he did not want to go into litigation. He said he would try to bring about an amicable settlement. I insisted that the building business should be run under same name by us since my younger brothers were not able to run the business. Mr. Gregg said he might be able to give us the business without charging us.

20

I see p.12. Mr. Gregg did say he would apply to the Supreme Court to sell lands.

I see terms (a), (b) and (c). They were also discussed on the 18th February 1958. He gave us the impression that we would have no difficulty in getting permission of the Court. He did mention the estate had not got any money to pay death duties within 12 months or 10% interest would be charged.

30

I told him that we brothers had helped to build up the business. I told him if the business was running there would be no discord in the family. Mr. Gregg gave us assurance that although the old lady is opposed to sale, she only has a life interest and the Court will have no difficulty of approving sale. He asked for caveat to be removed before he could sell the property. He said he could not obtain probate if caveat was not uplifted.

40

I asked him to give us in writing what we have agreed. After that we came away.

He gave us further assurance.

McGARVIE:

I object to question.

COURT:

Uphold objection.

Witness continues:

10 At the conference the question of will was discussed. We accepted will without prejudice. I received a letter of 19th February 1958. We accepted letter in principle. We reserved our right to challenge the will.

I attended conference on 9th December 1958 at which Mr. Wheatley, Mr. Gregg and my brothers were present. Mr. Wheatley called the conference. I see Ex. 21.

(Witness reads Ex.21)

20 I disagree with terms of 20 years. We agreed in the event of Court not granting permission to take land we would be granted a long lease to be as good as freehold. To pay a premium and a nominal rent.

Question of long lease was first brought up at this meeting. This was decided without prejudice to our right to challenge the will.

The delay was due to Public Trustee not taking action on our agreed proposals.

30 On 21st April 1959 probate in common form was given to Public Trustee. Delay in the sale of property was due to the Public Trustee not taking action. Later Mr. Wheatley said for us to take a short term lease to give them a breathing space. This was again done without prejudice to our rights to challenge the will. I see p.16/17 of Ex. 1. This letter was sent at my request. I see p.19/20. I approved the letter. On 28th November 1959 lease was executed. On 26th November 1959 I gave a mortgage in favour of Public Trustee over property. Loan money
40 obtained was paid to Public Trustee to purchase business. I moved into possession.

Prior to execution of lease and on 24.11.5 sic.

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I saw Mr. Gregg to vary terms of lease.
It is recorded at pp.23/24 and back.

I approached Mr. Gregg several times about the application to Supreme Court. He said it was long process. He would need to see the Law Society. I see letter p.37 to my solicitors by Mr. Gregg. I instructed Messrs. Cromptons on the matter. In that letter there is reference to case of Chapman v. Chapman. After Cromptons showed me letter I came to know of that case and the fact that the law would need to be changed. This was the first time I came to realise by virtue of letter of p.37 that there was slight possibility of the application to Supreme Court being successful. I saw Mr. Gregg again who said he would see Mr. MacFarlane about a change in the law.

10

He did not say anything about not honouring his undertaking.

20

I see Ex.9. I remember taking action for specific performance on 17.7.64 against Public Trustee. After the action was extended for trial I changed my solicitors. Action was discontinued with costs against me.

Mr. Few was Public Trustee then. He called me to the office. He told me Trust Laws are being changed.

If I withdrew action he would be able to apply to Court to honour undertaking. Question of costs came in. He said they would be very low.

30

Action was confirmed on 21st June 1965.
I see p.41.

COURT: Adjourned at 10.55 a.m. until 11.30 a.m.

(Sgd) T.U.Tuivaga
JUDGE

On resumption at 11.30 a.m. Appearance as before.

P.W.4 (reminded still on oath)

Examination-in-Chief (continues):

40

My solicitors wrote on 23rd June 1965.

I see p.42 which is reply to p.41. I

see letter p.41. I discussed with my solicitors. I wanted a long term lease for 999 years to avoid litigation. I was prepared to pay a premium with a nominal rent. This was a request along same line with agreement of 9.12.58. It was again done without prejudice to our rights to challenge will.

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Item 10

10 In respect of Item 10 of Particulars of Defence if they had observed their undertaking I would not have taken this action.

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Item 11

The claim in item had nothing to do with will. I am now contesting. I received payment of £420.

Item 12

A claim for bonus was made and this had nothing to do with validity of will.

Item 13

20 I had already discussed the conference of 9th December 1958. In that conference I did not give any recognition to the validity of will.

Item 14

My obtaining lease C.T.s 6503 and 6504 had nothing to do with validity of will. It was temporary basis. If Public Trustee failed to get approval to sell freehold land I would be given long lease.

30 Items 15 & 16

The agreement of 19th November 1959 had nothing to do with validity of will.

Item 17

The execution of lease had nothing to do with the validity of will.

Item 18

40 The estate never lent any money to me. The estate had no money on 26th November 1959. The mortgage had nothing to do with validity of will.

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Item 19

C.T. 6503 is C.P. Bidesi's land. I did not go into occupation of land. C.P. Bidesi still lives there. C.T.6504 is the workshop premises. I took possession of that. This had nothing to do with validity of will.

Item 20

On 24th November 1953 I took over possession of building business. November have been paid for. This had nothing to do with validity of will. sic. 10

Item 21

I produced accounts to S.P. Bidesi but he had nothing to do with validity of will.

Item 22

I have given explanation for discontinuing action No.110 of 1964. In taking this action I was not giving recognition to validity of will.

Item 23

Until I issued this action 1966 there was no action to challenge the will.

20

Item 24

Action No.110 of 1964 had nothing to do with validity of will.

Item 25

I gave instructions about long lease to my solicitors and such instructions had nothing to do with validity of will.

Item 26

My father did not make any payment to me. None that I can recall. There was no demand for repayment of money due.

30

Item 27

I paid no rent prior to the expiry of lease until 31st December 1969. Prior payment had nothing to do with validity of will.

When Mr. Wheatley narrated will I said, "It was not my father's will". I said this because certain unnatural things took place. One - the distribution was totally against my father's religion - two - my father was not an ungrateful person.

My father believed in Hinduism. According to Hindu custom is to treat every child alike whether male or female.

10

My father was not an ungrateful person. We children of first marriage had sacrificed ourselves to build the business - how could he have left us out from his will.

Thirdly there was no mention in will about continuation of business in which we attach so much sentimental value. I feel very sentimental. The name of business is still Bidesi & Sons. It is now incorporated.

20

Fourthly - I knew my father's nature and he would never break his religion under any circumstances.

Fifthly - His instructions were not carried out. We expected some benefits. I refer to instructions given in my office by my father and myself to Mr. Wheatley.

Lastly - there was no attestation clause in will which we appended as I saw there was no attestation clause when will was produced to us.

30

I was not disappointed that I was not named as executor of will.

My reasons for agreeing to proposals of 19th February 1958 were to maintain accord among family and the running of business.

C.P. Bidesi was always insisting to challenge the will. I was reluctant as I did not want to change our name into Co.

Both parties would have benefited.

40

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XXM by McGarvie :

I own 40 flats. I am not a millionaire.
It could be I am due to being a millionaire. sic.

I was very wealthy man when my father died. I rose to that position whilst I was working for my father. I have a lot of influence with my own family. I am regarded by my brothers of first marriage as leader of family.

I am influential to some extent with community of Fiji. 10

I enjoyed exercising power.

To some extent I like getting my own way. When will was read C.P. Bidesi was very cross. He lost his head to a very substantial extent. It is not my impression that he could have done something to Mr. Wheatley.

C.P. Bidesi said he would challenge the will immediately after reading of will.

After Mr. Wheatley left we discussed the matter and decided to lodge a caveat - I can't say precisely when we decided to challenge C.P. Bidesi was the most angry. My father believed in Hinduism. It is part of Hindu religion that a father would leave estate to children impartial of their financial position. I do not know of an Indian. Little to talk about most of father's religious persuasions concerning the will. I knew I was not being provided under the will. I resented it very much up to this day. Resentment not based on economic needs as far as I am concerned - to remedy religious crisis commitment in the will, to some extent. 20 30

I was not the driving force in bringing this case. We were all driving force equally. I gave the men leadership in regard to the case. It was ungratefulness of my father not to have left me anything.

Whatever I possessed is all obtained by my labour. My father did not help. My father owed me a debt of gratitude at the time of his death because of the work I had done for him. 40

I owed him debt of gratitude at time of

his death - for being my father and brought me up.

I sacrificed myself all my life to bring up business. I acquired 40 flats through my own efforts.

Koya:

I object to question. Implicit question is suggestion of misappropriation.

Court:

10 The question is proper.

Witness continues:

We had discussion at Government Buildings. It is accurate to say we would fight will with every ounce of blood. I was not a party to that decision. I would be present. After C.P. Bidesi had been to see Public Trustee we did decide to fight will.

20 If Public Trustee had played the ball I would have played the ball. When will was read I knew it would cause discord within family. I was concerned in avoiding discord.

It didn't hurt my feeling when I was not named as executor. God had not blessed me with everything. I was concerned with no mention of business.

I was hurt to some extent in not being the executor of the will. I was not surprised when I was not made executor.

30 I didn't have any conversation with C.P. Bidesi about a dispute I had with my father.

I can't remember telling S.P. Bidesi until I said, "Bloody liar" to Mr. Wheatley. I had dispute with my father but none of my family knew about it. It was a minor dispute.

40 Dispute did not last for quite a substantial time. It was settled when one of us retained solicitors. My retained firm of Messrs. Cromptons in relation to that dispute 1954 or 1955: I did not have solicitors myself. My father had asked for payment of money for building of flats. He blamed me

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for tax penalty due to my negligence and carelessness. Dispute went on and off. I did not make allegation that my father underpaid me.

I see p.6 of Ex.1. I did receive remuneration but it was less than what I deserved. I have read paras. 1 & 2. They are not quite accurate. I did not draw my wages at all up to my father's death. Letter appears to have been written under my instructions. The payment for my services with my father had featured prominently in the negotiations. What I enjoyed with him was lodging and board. As far as I can recall I did not say I was unjustly treated by my father.

I raised question of my remuneration for my years of service. I said it was only fair I should be paid for my years of service.

My father was a strict, hard man. He agreed to pay me for my claim for past years service. I don't think my father was amazed when I made the claim. I doubt whether it upset him.

Tax penalty by a big amount I appreciated his position. I was not upset when he said I was careless and negligent. My father could have been upset about my negligence and carelessness. He did get upset. He claimed £7,651.1.6 for Modin Flat. He claimed £1,492.16.3 on my current account. I transferred to my father a mortgage £6,500 together with items amounting to £7,200. In addition my father paid me a sum of £2,000 for my services to him previously. Transaction costs my father £3,838.

I don't know whether my father was very pleased about it.

COURT: Adjourned at 12.55 p.m. until 2.15 p.m.

(Sgd) T.U.Tuivaga

JUDGE

On resumption at 2.15 p.m.
Appearance as before.

P.W.4 (still on oath)

XXM by Mr. McGarvie: (continues)

Up to settling of dispute with my father I was never paid any remuneration for my services. I worked on basis of Indian custom, that is, what is mine is his and what is his is mine. My wealth was my personal efforts unconnected with the business.

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10 We lived under same roof. Whatever obtained I paid for it. I used to practice architecture and certain private business. I practised that till my father's death. I used to deal in tyres and lent moneys. I maintained my flats myself. Firm used to do under my supervision and I used to pay firm. During 1957 firm was not making much profit. My father was worried about that.

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continued

20 During 1956 or 1957 I did not move tyres out of workshop to Bridge Street. During 1956 and 1957 there were frequent discussion with my friend's father at my office upstairs in the building.

Discussions could not have been overheard by anyone. S.P. Bidesi took no part regarding the dispute. He did not take my father's side in dispute. In 1956 and 1957 there was no change in the way business was managed.

30 Before my father died S.P. Bidesi took more responsibility in the management of the business. S.P. Bidesi was not being signatory of firm's cheques before my father died.

I did not destroy record of the business. I knew man called John Chuman Lal. After I bought business I did not ask him to destroy the records. No old records were destroyed. What used to happen is to destroy old records.

40 There was some accounts outstanding in respect of S.P. Bidesi. I remember some request about 1961 was made by the Public Trustee for some accounts.

After the death of my father I was never paid any remuneration. Up to time of his death I was not paid any remuneration. I was still in the business after the settlement. I was paid during settlement for £2,000 for 16 years' service as a manager. I continued as manager after dispute was settled and I was not paid any remuneration. I did

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not ask for it. After my father's death I made claim for bonus to be paid to S.P. Bidesi, M.D. Bidesi and Ram Deo, my brother-in-law. I did not make any claim because I was not paid any wages. Prior to this they were paid bonuses in which I was not included.

S.P. Bidesi told me that Public Trustee wanted him to become manager. I had some discussion with him about it. Prior to that I did not discuss who was to become manager of business before my father's death. I refused to take on as manager when my brother asked me to be manager. I had indicated to Mr. Wheatley I was not going to handle the business. That was after the will was read - some days after S.P. Bidesi saw me. S.P. Bidesi saw me to take my consent. After my refusal they approached S.P. Bidesi. I can't recall when it happened or who were present - must have been myself and Mr. Wheatley and in his office.

10

20

I must have been called to the office.

During 1957 I spent 50% of my time on the business and the other 50% I used to do my own work in my upstairs office. When S.P. Bidesi came I told him I was disgusted and had no interest in the will. I could have said, "To hell with it."

I had great desire to keep business going and manage it. I was a capable manager. I would have been the most experienced to run my father's business after his death. I entered into written agreement after the settlement with my father and his solicitors at his solicitor's office. I can't recollect when the agreement was signed or when the assignment of mortgage was signed. I see this certified copy of a transfer of mortgage. I see self signature on it and my father's signature on it. I doubt whether Mr. Falvey read document to me. I see another statement signed by Mr. Falvey explaining in English the document to my father.

30

40

Ex.30 - Transfer of mortgage No. 63754 between S.M. Bidesi and Bidesi S/o Chuman 21 December 1956.

I don't recall whether my father was present.

McGARVIE:

Mr. Koya, do you produce original agreement 21 December 1956.

KOYA:

I can't produce it.

I see this copy agreement produced to me (witness reads agreement).

McGARVIE:

I will.

10

KOYA:

I object.

McGARVIE:

Notice to produce had been given in relation to all relevant documents. First notice given on 18th January 1971 given by Grahame & Co. A further notice to produce was given by Messrs. Cromptons and added particulars of document.

Witness continues:

20

Each of us received a copy of the signed agreement. Over the years the document got lost. I have not been able to find copy of signed agreement. I now wish to tender.

KOYA:

30

I object to document being tendered. Someone should explain where the original document is. Unless I consent to it, defendant can't produce. Notice to produce not sufficient. Rules of evidence should be strictly applied here.

Mr. McGarvie Q.C. in reply

COURT:

40

I rely on the case of an estate of Trotman, Trotman and Trotman (1964) 108 Sol. Jol. 159 where it is stated that the Probate Court has always done its best to direct the facts of the case it has to bring within too rigid an adherence to the rules of such practice in other courts. I will therefore admit document.

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COURT:

Ex.31 - Agreement.

Witness continues:

I instructed Grahame & Co. to institute the action. I gave Messrs. Wm. Scott and Co. my instructions regarding Mr. Wheatley's examination on commission. I saw letter from Grahame & Co. I instructed Wm. Scott & Co. to reply.

McGARVIE:

10

I asked Mr. Koya to produce original of letter 12.7.1967 written by Wm. Scott & Co.

KOYA:

I have no objection to production of two letters.

McGARVIE:

I tender copy of letter of 12.7.67 - to Wm. Scott & Co. Ex. 32(A).

Copy of letter of 24.7.67 Wm. Scott to Grahame & Co. - Ex. 32(B).

20

I see Ex.32(A) from Grahame & Co. to Wm. Scott & Co. This is letter I saw about that time. I knew from the letter the likely sort of evidence Mr. Wheatley would be giving in Sydney.

I knew a lot of things what Mr. Wheatley was going to say would contradict what I was going to say. After Mr. Wheatley read the will, I must have seen him again after a week's time.

30

I was present at conference of the 18th February 1958. At end of discussion the words "without prejudice" were used.

On the 18th February 1958 the conversation was with Mr. Gregg and not Mr. Wheatley. The conversation was "without prejudice". I said this to him. I think. I told him we accepted the arrangement in principle and without prejudice and reserve the right to challenge the will.

40

On the 9th December 1958 I think I said to Mr. Wheatley that we accepted on long term basis and we would pay premium. I told him that this was without prejudice to challenge the will.

COURT:

Adjourned at 3.25 p.m. until 3.45 p.m.

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10 On resumption at 3.45 p.m.
Appearances as before.

P.W.4 (reminded still on oath)

XXM by Mr. McGarvie (continues):

In 1959 I had discussion with Public Trustee about long term lease 999 years again without prejudice.

20 I entered into lease agreement on 28th November 1959. Before that I made it clear it was without prejudice. I said it to Mr. Wheatley.

In 1957 I entered into agreement to purchase the business. Nothing said about "without prejudice". No condition was attached. It was a straightout sale.

On 24th November 1959 the agreement was also straightout sale.

30 In 1965 when I sought a long lease it was again without prejudice. I have seen a lot of relevant correspondence in the last two weeks. No reference in the correspondence about the negotiations to "without prejudice" except the letter at p.49 of Ex.1. There was nothing in writing after 8th May 1958 to say agreement was "without prejudice". I expected the Public Trustee by the proposals. I also regard my brothers and I being bound by the proposals. When I entered into lease of 16 years I regarded myself bound and so was the Public Trustee.
40 I knew that the will was not my father's will. According to that undertaking I would have withdrawn my challenge to the will if the proposals were carried through.

The caveat was withdrawn to enable

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probate to be granted to Public Trustee. Attitude of Mr. Gregg was one of trying to prevent discord with the family. He was very open and frank in the things he told me. He was not taking sides at any stage. On the 18th February 1958 he did not see any difficulty about applying to Court. We did not have any legal advice until 1961.

It did not come to my knowledge in 1958 that there would be any difficulties in the obtaining of approval of Supreme Court. That was position until I saw letter from Mr. MacFarlane in 1961 that the application to Court might not succeed.

10

I see Ex.21. I was present at this conference. I know Mr. Wheatley's handwriting and Mr. Gregg's handwriting. In that conference the possibility of application to Court might not be successful came to my knowledge.

I was experienced businessman in 1958. We did not receive any letter about the conference. This was just a discussion - not that important in view of undertaking of 19.2.58. I can't remember who raised the subject of the Supreme Court in not approving application to it.

20

After February 1958 most of the discussion with Public Trustee was done by C.P. Bidesi with my approval. I went to see Public Trustee on occasions as well - not fairly regularly. After 19th February 1958 I rarely saw the Public Trustee. I saw him a number of times. He often had some excuse. After 1961 Public Trustee said he would see the Law Society about change in the law.

30

In 1958 this was not brought to my knowledge. I see Ex.20. It is in Mr. Wheatley's handwriting. It could be. I had discussion on 10.5.60.

Application to Court was not discussed. Other parts were discussed and are correct.

40

Reference to application is not correct. Completely without foundation - I couldn't be mistaken about it. I see this document. I see the initials - very similar. I am not familiar with his initials.

McGARVIE:

I tender document for identification.

KOYA:

I object. Mr. Gregg was not there.
Hearsay evidence not admissible. Refer
Comptroller of Customs v. Western Electric Co.

How is it relevant. Not admissible.

McGARVIE:

I only ask for MFI.

COURT:

MFI 33.

10

COURT:

Adjourned at 3.25 p.m. tomorrow at
9.30 a.m.

(Sgd) T.U.Tuivaga
JUDGE

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Mr. Koya for the Plaintiffs
Mr. McGarvie Q.C. and Mr. Mitchell for the
Defendant

21st December
1972

P.W.4 - S.M. BIDESI - Sworn on Ramayan in
English

20

XXM by Mr. McGarvie (continues):

McGARVIE:

I rely to tender MFI 33 in evidence.

I rely on Evidence Ordinance. It dealt
with relevant matters. Is Bidesi Brothers
told of change of law. Mr. Gregg has given
evidence of discussion about change in law.
Common ground. Document has probative value -
it shows attempt by Mr. Gregg he spoke to
Mr. MacFarlane about Admission as a matter
of right and discretion.

30

- Direct oral evidence of approach to
Law Society was made.

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 continued

Matter of Statement has been called - but at time it was not apparent that it was not in issue - It was second thought. There has been reference in Mr. Gregg's evidence of his approach to the Law Society. He was referred to p.37 of Ex.1. Admissible as a matter of law. Mr. Gregg's recollection was nil.

KOYA:

I object to admissibility of exhibit. No authority has been quoted. Departure from rule. I assume reliance is made on s.3 of Evidence Ordinance.

10

- Self-serving statement. Personal knowledge of matter is necessary - lacking here.

Record has been continuous record.

KOYA:

Submit reception of their document would create bad precedent.

20

Refer to Phipson (11th Ed.) para. 1538 (Counsel reads).

MFI 33 is not a document within meaning of Evidence Ordinance.

Refer to Cross (Australian Edition) p. 613 - p. 619 to p.628.

COURT:

I have listened carefully to submissions made by both counsel on the question of admissibility of MFI 33. I am satisfied that the document in question is admissible not only under the provisions of the Evidence Ordinance but also under the general rules of evidence pertaining to the admissibility of documents about which the maker, because of the lapse of time has no recollection whatever other than what is written on the document. Furthermore the document is clearly highly relevant - such relevance only became apparent at a later state of these proceedings.

30

40

In the whole circumstances of the case

I will admit MFI 33 as Ex. 33.

(Sgd) T.U.Tuivaga
JUDGE

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Witness continues:

I see pp.37 and 38 of Ex. 1.

I did not take legal advice on the letter.

I accept there was no possibility of application proceeding until law was changed. Law was changed after we commenced action. I knew I took C.T.s 6503, 6504 from Public Trustee as executor of my father's will.

I told my brother C.P. Bidesi after I got lease. It was a temporary measure.

Agreement of 19th February 1958 was that land was to have been sold to C.P. Bidesi. I commenced action 110 of 1964. Sought specific performance by agreement contained in letter of 19th February 1958.

I had wanted long lease of C.T. 6504. My object by commencing action 110 of 1964 was to put pressure on Public Trustee either to sell property to me or grant me a lease.

Since 19th February 1958 my object was to purchase C.T. 6504 or have a long lease from Public Trustee as executor. When I commenced action 110 of 1964 with a hope of succeeding Public Trustee had said to give a long term lease. I expected defendant to say in action - Court had no power to direct a sale.

The defence of Public Trustee came to my knowledge then. I was relying on agreement of 19.2.58 all the time. I did not put in a caveat to protest agreement. In 1965 I discontinued the action. I did not think the action of 1964 had no prospect of succeeding.

I did see Mr. Few after I had commenced action 110 of 1964. I don't recall whether I did send in letter to inform him I was going to commence action.

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I saw Mr. Few personally. I had personal talks with him.

After action of 1964 was discontinued I entered into negotiations for a lease. The lease in 1965 was not for 99 years at £360 per annum. It was for 999 years. I negotiated for a lease of C.T. 6504 only. The rent I was paying was £360 per annum. I paid £620 for two lots C.T.s 6504 and 6503. The rent I later paid was quite a big reduction.

10

At that stage I did not consider moving the business premises somewhere else.

In 1959 I paid rent of £620 which was amount recommended by Tetzener and Bygrove.

Before that I had discussion as to terms and conditions with Mr. Wheatley.

I negotiated for a lease of 999 years. I knew the term of my father's will well.

It did not occur to my mind that a lease of 999 years would involve Court. Public Trustee in a breach of his trusts. Wm. Scott & Co. were acting for me. The will prepared by Grahame & Co. was in box in the safe in building. I searched for it soon after his death. I did not take legal advice prior to its disappearance. Will appeared to be properly executed as far as I can recall.

20

It might be a week or so when my father died when I found the will. S.P. Bidesi was with me when I discovered it. I can't recall whether I told any member of the family about the will. I made a search but couldn't find any. I can't recall whether I made a statement about will in writing.

30

I was looking for second will which was made in my presence. I did not attach any importance to this first will. I had sworn on oath that I had made search for testamentary documents and did not find any. I swore on affidavit. I did not find any will or testamentary document as far as this case is concerned.

40

I swore Affidavit before this action even commenced. I can't recall ever swearing on

Affidavit before the Registrar of Court. Important to be accurate in swearing an Affidavit. I did not attach any seriousness to the other will of my father. My father had given me a block of land at Princes Road at Tamavua which I later sold to a Mr. Bentley. My father had given a block to C.P. Bidesi. £1,600 was advanced to C.P. Bidesi by the firm.

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10 COURT: Adjourned at 10.55 until 11.30 a.m.

(Sgd) T.U.Tuivaga
JUDGE

On resumption at 11.30 a.m.
Appearance as before.

P.W.4 (reminded still on oath)

XXM by Mr. McGarvie (continues):

20 I see Affidavit of 16.6.66. I swore this Affidavit. I see para.6. I now recollect that I did mention the will to Mr. Saunders and it was old will. At that time my mother had no issue.

At time of will I dan't recall when my stepmother was married. My stepmother is Kaparai.

McGARVIE:

I tender document of Affidavit 16.6.66 by Mr. S.M. Bidesi.

COURT: Ex.34.

Witness continues:

30 I took money from my father's safe and I returned it to my stepmother. I had discussion with Mr. Wheatley about the money and it was amicably resolved. I did not have conversation about will in 1954 in which Mr. Wheatley, my father and myself had been present - Not before the dispute of my father. I have read depositions of Mr. Wheatley. I know Defendant relies on depositions.

I see p.125 of Ex. 3. I recall receiving

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it from Public Trustee. I see p.130 of Ex.3. I can't remember but I must have received it. I had joint interest with my father in animal licence in Suva Point - our main residence. When my father died the licence became mine. Gift duties - subject letters of pp.125 & 130 were not in respect of that licence.

I see p.130. I don't know where the certificate attached to letter is now.

10

I see this document produced to me. I paid estate £65. I see this document. I may have received it - I can't recall it.

From end of 1969 I have not paid rent on C.T.s 6504 and 6503. I am awaiting the result of this case.

(Sgd) T.U. Tuivaga
JUDGE

Re-
 Examination

Re-Examination:

I see Ex. 34. This Affidavit was prepared by Mr. Saunders. I swore Affidavit on Mr. Saunder's advice.

20

If I am right I would like to have my way. During my father's lifetime I did not do anything to have my own way - not even in the matter of will.

When dispute was compromised I received £2,000 for services of 16 years. I dealt with him as my own father and not as my employer.

30

I had discussion with Public Trustee. We have always reserved our right. We have always relied on the Public Trustee during negotiations.

After 1961 I did not receive any further communication regarding the change in the law.

I have not received any letter to say the law will be changed in 1961.

I see p.42. Mr. Few wrote the letter to my solicitors. After that I did not receive any letter about any lease from Public Trustee

40

or from Mr. MacFarlane.

I did not pay arrears of rent. I think I did receive a direct letter from Mr. MacFarlane.

I see p.46 - this is my reply from my present solicitors.

I decided to purchase C.T. 6504 or take my lease from Public Trustee in order to avoid litigation. That desire had nothing to do with undertaking of 19th February 1958. I preferred a freehold property.

All this was based on undertaking of "Without prejudice" to challenge the will.

(Sgd) T.U.Tuivaga
JUDGE

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No. 30

PARTICULARS OF DEFENCE

No.30
Particulars
of Defence
3rd April 1973

IN THE SUPREME COURT OF FIJI

No. 7 of 1966

In the Estate of Bidesi
(s/o Chuman) deceased

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHAR PAL BIDESI all sons
of Bidesi, deceased, of Suva
Fiji. Plaintiffs

AND: THE PUBLIC TRUSTEE OF FIJI
1st Defendant

KAPESRI widow of Bidesi
2nd Defendant

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Supreme Court

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continued

ATMA PRASAD, KUMA PRASAD,
MUNI PRASAD and JAGDISH
PRASAD all sons of Bidesi 3rd Defendants

BRIJMATI, MAYAWATI, BEENA
and MIRA all daughters of
Bidesi 4th Defendants

PARTICULARS OF DEFENCE

1. The defendant, The Public Trustee of Fiji supplies the following particulars of his defence in this action:

10

Particulars of Facts and Conduct Relied on in Support of the Defences set out in Paragraphs 4, 5 and 6 of the Defence

Muni Deo Bidesi

1. On or about 30th December, 1957 M.D. Bidesi claimed from the defendant as executor of the will of the Deceased (hereinafter called 'the Will') £1,200 alleged to have been deposited with the deceased for safe keeping.

Ex 1 - 3 p.1 - 30/12/57 - MDB - PT - claims £1200 deposited with testator in 1954

20

Ex 1 - 3 p.4 - 12/11/59 - PT - MDB - are you prepared to prove your claim for £1200 in open court

Ex 1 - 3 p.5 - 3/12/59 - PT - MDB - unless hear in writing by 21/12/59 will disallow claim

2. On or about 17th May 1958, 4th February 1960 and 10th May 1960 claims were made on behalf of M.D. Bidesi upon the defendant for payment of a bonus of £1,200 from the estate of the deceased.

30

Ex 1 - 3 p.2 - 17/5/58 - SMB - PT - writes recommending payment of bonuses of £1,200 each to SPB, MDB and Ram Deo.

Ex 1 - 3 p.6 - 4/2/60 - Scott & Co. - PT - write on instructions of SMB re bonuses payable to the sons of the testator.

Ex 20 - 10/5/60 - conference Gregg, Wheatley, SMB - explained to SMB why PT would allow bonuses of only £300 each

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3. In the years 1958, 1959, 1960 and 1961 M.D. Bidesi claimed the land in Certificate of Title No. 10317 from the defendant as executor of the will.

10 Ex 7 - applicants affidavit in support of application, paragraph 8

4. On or about 1st November 1960 M.D. Bidesi requested from the defendant as executor of the will a lease of the land in Certificate of Title No. 10317 at a peppercorn rental.

Ex 1 - 3 p.8 - 1/11/60 - PT - Scott & Co. - precluded from granting lease at peppercorn rent - alternative vesting order CT 10317

20 Ex 1 - 3 p.113 - 3/11/60 - Scott & Co. - PT disappointed in attitude to MDB cannot afford £6 per week

5. On or about the 17th July 1961 M.D. Bidesi took proceedings by originating summons in the Supreme Court (No.139 of 1961) against the defendant as executor of the will claiming the transfer and conveyance to him from the estate of the deceased of the land in Certificate of Title No. 10317.

30 Ex 7 - 7/2/61 - affidavit of MDB in support of application

Ex 7 - 17/7/61 - originating summons

6. On or about the 2nd February 1962 a Judge of the Supreme Court in Chambers heard the application of M.D. Bidesi in proceeding No. 139 of 1961 and ordered that the application be dismissed with costs.

Ex 7 - 2/2/62 - order that application be dismissed with costs

40 7. On or about the 11th April 1962 the costs of the defendant in proceeding No.139 of 1961

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were taxed and allowed by the Taxing Master.

Ex 7 - 11/4/62 - Taxing Master's
certificate

8. In or about the year 1963 the defendant as executor of the will was paid costs by M.D. Bidesi in respect of the proceeding No. 139 of 1961.

(Admitted by Mr. Koya on 21/12/72)

9. In or about the year 1962 M.D. Bidesi negotiated, offered or agreed to purchase from the defendant as executor of the will the land in Lot 9 on Deposited Plan No. 2527. 10

Ex 1 - 3 p.9 - 30/11/62 - PT - MDB
unless you purchase Lot 9 on DP 2527
by 7/12/62 will offer lot to others

Surya Munidlal Bidesi

10. On or about 19th February 1958 S.M. Bidesi arranged with the defendant as executor of the will (subject to an application to the Supreme Court) to purchase the building business of the deceased and its assets and the factory and land in Certificates of Title No. 6503 and 6504. 20

Ex 1 - 3 p.12 - 19/2/58 - PT - SMB -
letter sets out the proposal of the PT

11. On or about 17th May 1958 and later S.M. Bidesi claimed from the defendant as executor of the will £500 alleged to have been paid on account of the estate of the deceased. On or about 12th July 1960 the defendant as executor of the will paid S.M. Bidesi £420. 30

Ex 1 - 3 p.15 - 17/5/58 - SMB - PT -
claims £500 paid over in relation to an
account

SMB - XN - there was a payment of £420

12. On or about the 17th May 1958, 4th February 1960 and 10th May 1960 S.M. Bidesi on behalf of M.D. Bidesi, S.P. Bidesi and Ram Deo claimed from the defendant as executor of the will payment from the estate of the deceased of bonuses of £1,200 40

(see particular 2 above)

In the
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13. On or about the 9th December 1958 S.M. Bidesi arranged with the Defendant as executor of the will that in the event of the Supreme Court not approving the sale of the land in Certificates of Title No. 6503 and 6504 the defendant would lease the land to S.M. Bidesi and/or C.P. Bidesi who would purchase the building business of the deceased and its assets.

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continued

10

Ex 21 - 9/12/58 - conference Gregg, Wheatley, SMB, SPB and CPB - course to be taken if Supreme Court not approve sale of property.

14. During the year 1959 S.M. Bidesi negotiated with the defendant as executor of the will for the grant of a lease of the land in Certificates of Title No. 6503 and 6504 for a term of 10 years.

20

Ex 1 - 3 p.16 - 26/6/59 - PT - Cromptons - requested by SMB to contact you re proposed lease - sets out arrangement.

Ex 1 - 3 p.18 - 11/7/59 - Cromptons - PT - enclose draft lease - glad to discuss it with you.

30

Ex 1 - 3 p.22 - 20/11/59 - PT - Cromptons - return lease for engrossing and execution - it correctly sets out agreement between SMB and myself.

15. On or about the 19th November 1959 S.M. Bidesi agreed with the defendant as executor of the will to purchase the building business of the deceased and its assets.

Ex 1 - 3 pp.19 - 20 - 19 and 19/11/59 - first agreement between PT and SMB for sale of business

40

Ex 1 - 3 p.21 - 20/11/59 - PT - SPB - transfer of authority to SMB under lease and business sale takes place tomorrow.

16. On or about the 24th November 1959 S.M. Bidesi repudiated the agreement of 19th November

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 continued

1959 and made a new agreement with the defendant as executor of the will to purchase the building business of the deceased and its assets.

Ex 1 - 3 p.23 - 24/11/59 - substituted agreement between PT and SMB for the sale of business.

17. On or about the 28th November 1959 S.M. Bidesi entered into a lease with the defendant as executor of the will to lease the land in Certificates of Title No. 6503 and 6504 for a term of 10 years from 15th November 1959. This lease was duly registered under the Land Transfer and Registration Ordinance 1955.

10

Ex 22 - 28/11/59 - lease from PT to SMB

Ex 1 - 3 28 and 29 - 12/1/60 - Cromptons - PT - enclosed stamped copy of lease and note of our costs

18. On or about the 26th November 1959 S.M. Bidesi entered into a mortgage with the defendant as executor of the will to secure payment of the purchase price for the building business of the deceased and its assets. This mortgage was duly registered under the Land Transfer and Registration Ordinance 1955.

Ex 17 - 26/11/59 - Mortgage No. 72587 from SMB to PT

Ex 1 - 3 p.92 - 26/11/59 - receipt from SMB to PT for loan of £3000

Ex 1 - 3 p.109 - 26/11/59 - details of advance under mortgage (wrongly called 24/11/59)

30

Ex 1 - 3 p.98 - 30/5/62 - PT - SMB - reduce mortgage quarterly and pay out on 30/9/63

Ex 1 - 3 p.99 - 30/4/63 - PT - SMB - pay off mortgage by 31/12/63

Ex 1 - 3 p.100 - 13/5/63 - SMB - PT - have invested moneys unable to repay.

Ex 1 - 3 p.101 - 14/5/63 - PT - SMB - without prejudice - any counter offer

40

Ex 1 - 3 p.102 - 21/5/63 - SMB - PT -
offer to pay balance of mortgage by
31/12/64

Ex 1 - 3 p.103 - 22/5/63 - PT - SMB -
accept counter offer of 21/5/63

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10 19. On or about the 28th November 1959 under
the lease from the defendant as executor
of the will S.M. Bidesi took possession of
the land in Certificates of Title No. 6503
and 6504 as tenant and has since retained
possession thereof.

Ex 1 - 3 p.25 - 27/11/59 - PT - Mrs.
Seeoia - pay future rents to SMB

Ex 1 - 3 p.27 - 2/12/59 - PT - CPB -
rent of cottage a matter between you
and SMB

20 SMB - XN - I took possession of the
workshop and office block CT 6504 -
did not go into occupation of CT 6503 -
CPB still living there

20. On or about the 24th November 1959 under
the agreement of that date S.M. Bidesi took
possession as owner from the defendant as
executor of the will of the building business
of the deceased and its assets.

SMB - XN - on 24/11/59 I took possession
of the building business - assets are
all paid for.

30 21. On or about the 9th January 1961 S.M.
Bidesi provided the defendant as executor
of the will with information as to the state
of accounts between the deceased and S.P.
Bidesi.

Ex 1 - 3 p.32 - 3/10/60 - PT - SMB -
to enable further particulars to be
provided please have papers produced
at this office

40 Ex 1 - 3 p.35 - 5/1/61 - PT - SMB -
please let me know in writing what
records are available

Ex 1 - 3 p.36 - 9/1/61 - SMB - PT -
provides information

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22. On or about the 17th July 1964 S.M. Bidesi issued a writ in the Supreme Court (No. 110 of 1964) against the defendant as executor of the will claiming specific performance of an alleged agreement for the purchase of the land in Certificate of Title No. 6504.

Ex 9 - 17/7/64 - Writ

23. On or about the 16th October 1964 in the statement of claim in action No. 110 of 1964 S.M. Bidesi alleged that the will appointed the defendant as the sole executor and trustee thereof and that probate of the will was granted to the defendant on the 21st April 1959 which allegations were admitted by the defence of the defendant on or about the 7th January 1965.

10

Ex 9 - 10/10/64 - statement of claim

Ex 9 - 7/1/65 - defence

24. On or about the 21st June 1965 S.M. Bidesi applied for and obtained by consent an order from a Judge of the Supreme Court ordering that action No. 110 of 1964 be discontinued and that S.M. Bidesi pay the defendant's costs of the action.

20

Ex 26 - 10/6/65 - Scott & Co. - Grahame & Co. - instructed to discontinue this action.

Ex 9 - 21/6/65 - consent order

Ex 1 - 3 p.121 - 24/8/66 - Grahame & Co. - Scott & Co. - Suggest £31/19/6 for costs of 110 of 1964

30

Ex 1 - 3 p.122 - 7/9/66 - Scott & Co. Grahame & Co. - your figures on costs seem reasonable - we have asked our client for a cheque

Ex 1 - 3 p.123 - 12/9/66 - Scott & Co. - Grahame & Co. - enclose cheque for £31/19/6 costs in 110 of 1964

Ex 1 - 3 p.124 - 15/9/66 - Grahame & Co. - Scott & Co. - enclose receipt for

40

£31.19.6 costs in l10 of 1964 -
order for discontinuance not
yet sealed or served.

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10 25. On or about the 23rd June 1965 S.M. Bidesi entered into negotiations with the defendant as executor of the will for a long lease upon the expiry of the lease granted as from the 15th November 1959. These negotiations were contained in letters between the solicitors for S.M. Bidesi and the defendant dated 23rd June 1965, 25th June 1965, and in discussions between the solicitors for S.M. Bidesi and the solicitors for the defendant on or about 28th August 1965.

Ex 1 - 3 p.41 - 23/6/65 - Scott & Co. - PT - what chance of SMB obtaining a longer lease now action discontinued - 10 year lease expires 15/11/69 - he owns business.

20 Ex 1 - 3 p.42 - 25/6/65 - PT - Scott & Co. - desirable to give SMB new lease - will seek co operation

SMB - XN - I do not know of the discussions between the respective solicitors

27. S.M. Bidesi paid to the defendant as executor of the will rent for the land in Certificates of Title No. 6503 and 6504 from 15th November 1959 to 31st December 1969.

30 Ex 1 - 3 pp.30 and 31 - 16/5/60 - PT - SMB - pay £620 rent

Ex 1 - 3 pp.33 and 34 - 11/11/60 - PT - SMB - pay £920.17.8 rent

Ex 1 - 3 p.39 - 18/5/64 - PT - SMB - pay £310 rent

Ex 1 - 3 p.40 - 13/8/64 - PT - SMB - pay £310 rent

Ex 1 - 3 p.43 - 7/4/65 - PT - SMB - pay £310 rent

40 Ex 1 - 3 p.44 - 1/7/65 - PT - SMB - pay £310 rent

Ex 1 - 3 p.45 - 11/7/69 - PT - SMB - pay another £10 rent

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Ex. 1 - 3 p.131 - 9/7/68 - PT - SMB -
 pay £310 rent

SMB - XN - I paid rent in respect of
 lease from 15/11/59 to end of lease -
 have not paid any rent since

XXN - I have not paid any rent since
 1969 pending this case

Chandra Prakash Bidesi

28. On or about the 21st December 1957, 14th
 May 1958 and 29th October 1958 C.P. Bidesi
 lodged caveats against the grant to the
 defendant of probate of the will.

10

Ex 1 - 3 p.50 - 21/12/57 - first caveat

Ex 1 - 3 p.51 - 14/5/58 - second caveat

Ex 1 - 3 p.52 - 29/10/58 - third caveat

29. On or about the 17th February 1958 C.P.
 Bidesi inquired of the defendant whether the
 defendant wished to propound the will or would
 object to an application to appoint an interim
 receiver or administrator.

20

Ex 1 - 3 p.47 - 17/2/58 - Koya - FT -
 do you wish to propound will - would you
 object to appointment of interim receiver.

30. On or about the 19th February 1958 C.P.
 Bidesi arranged with the defendant as executor
 of the will (subject to an application to the
 Supreme Court) that S.M. Bidesi would purchase
 the building business of the deceased and its
 assets and the factory and land in Certificates
 of Title No. 6503 and 6504.

30

Ex 1 - 3 p.10 - 19/2/58 - PT - CPB -
 letter sets out the proposal of the PT.

31. On or about the 12th March 1958 C.P. Bidesi
 informed the defendant as executor of the will
 that he was consulting the said business and
 land and would report to the defendant in due
 course.

Ex 1 - 3 p.48 - 12/3/58 - Koya - PT -
 our client CPB is consulting with his
 brother on the matter and will report
 in due course.

40

32. On or about the 19th November 1958 C.P. Bidesi appeared as caveator to the warning issued by the Supreme Court in contentious proceedings No. 1 of 1958.

Ex 1 - 3 p.54 - 15/11/58 - warning

Ex 1 - 3 p.55 - 19/11/58 - appearance to warning

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10 33. On or about the 9th December 1958 C.P. Bidesi arranged with the defendant as executor of the will that in the event of the Supreme Court not approving the sale of the land in Certificates of Title No. 6503 and 6504 the defendant would lease the land to S.M. Bidesi and/or C.P. Bidesi who would purchase the building business of the deceased and its assets.

20 Ex 21 - 9/12/58 - conference Gregg, Wheatley, SMB, SPB and CPB - course to be taken if Supreme Court not approve sale of properties.

34. On or about the 6th March 1959 C.P. Bidesi issued a summons in contentious proceedings No. 1 of 1958 for the discontinuance of the proceedings and the grant of probate of the will to the defendant.

Ex 4 - 6/3/59 - summons

30 35. On or about the 16th March 1959 C.P. Bidesi applied for and obtained with the consent of the Public Trustee an order that the caveat entered by C.P. Bidesi on the 29th October 1958 cease to have effect and that contentious proceedings No. 1 of 1958 be discontinued and that probate of the will be granted to the defendant if entitled thereto.

Ex 4 - 16/3/59 - consent order

40 37. On or about the 26th January 1960 C.P. Bidesi refused to pay rent for the period 15th November 1957 to 31st December 1959 for the cottage occupied by him on the grounds that there was no agreement with the deceased or the defendant for the payment of rental.

Ex 1 - 3 p.27 - 2/12/59 - PT - CPB - rental for cottage for last 2 years

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continued

must be finalized

Ex 1 - 3 p.56 - 13/1/60 - PT - CPB -
call on CPB to pay rent of cottage on
CT 6503 from 15/11/57

Ex 1 - 3 p.57 - 26/1/60 - Cromptons -
PT - CPB has lived rent free in the
house since 1947 by arrangement with
his father - no agreement for payment of
rent

38. In the years 1960 and 1961 C.P. Bidesi 10
refused to vacate the land in Certificates of
Title No. 8831 and 9397 and claimed to the
solicitors for the defendant against the estate
of the deceased the ownership of this land.

Ex 1 - 3 - 4/2/60 - Cromptons - PT -
understand difficulties re blocks
remaining in estate name though evidence
of testator's intention to transfer
them - this could be discussed later.

CPB - XN - CT 8831 land my father 20
promised me - I fenced it - refused to
vacate it - claimed it was mine - I put
a caveat on it.

- XN - CT 9397 - I claimed ownership
in 1960 - 1961

39. On or about the 1st April 1961 C.P. Bidesi
purchased from the defendant as executor of the
will the land in Certificate of Title No. 9397
later entered into possession of the land as
purchaser and paid the balance of purchase price 30
and received from the defendant as executor of
the will a transfer of the land by transfer
dated the 14th January 1967.

Ex 1 - 3 p.95 - 21/3/61 - Sale by PT to
CPB of land in CT 9397

Ex 1 - 3 p.61 - 31/10/62 - PT - CPB -
verbal arrangements cancelled by your
repeated defaults in honouring your
obligations - if you fail to pay £278.4.0
due on CT 9397 within 7 days shall resort 40
to legal remedies without further reference.

Ex 1 - 3 p.62 - 2/11/62 - PT - CPB - summary
showing amount due on purchase of CT 9397

Ex 1 - 3 p.63 - 27/4/63 - PT - CPB -
 agreed to extend payment time -
 repeated failure to honour agreement -
 require £233.4.10 with interest by
 7/5/63

In the
Supreme Court

Plaintiffs'
Evidence

No.30

Particulars
 of Defence

3rd April 1973
 continued

10

Ex 1 - 3 p.64 - 31/5/63 - PT - CPB -
 as you failed to pay £233.4.10 and
 interest by 7/5/63 have no alternative
 but to sell land in CT 9397 and cancel
 your sale note.

Ex 1 - 3 p.65 - 14/6/63 - PT - CPB -
 summary showing amount due on purchase
 of CT 9397

Ex 1 - 3 p.66 - 13/5/64 - McNally - PT -
 alleges misrepresentation in pointing
 out metres and bounds of CT 9397 by
 Wheatley - proposes rescission and
 variation of contract

20

Ex 1 - 3 p.67 - 25/5/64 - PT - McNally -
 denies strongly allegations of misrep-
 resentation - not prepared to consider
 your proposals

Ex 11 - 14/1/67 - Transfer No. 97628
 from PT to CPB of land in C.T. 9397

Ex 12 - Certificate of Title No. 9397 -
 16/1/67

CPB - XXN. I later sold the land right
 out of the family for £1800 after paying
 £180 rates

30

40. On or about the 25th January 1962 C.P.
 Bidesi offered to purchase from the defendant
 as executor of the will the land in Certificate
 of Title No. 4153.

Ex 1 - 3 p.59 - 25/1/62 - CPB - PT -
 offer £257 to purchase lot 10 on DP
 2527

CPB - XN - I do not dispute that the
 land referred to in this letter is that
 in CT 4153

40

Ex 1 - 3 p.60 - 2/3/62 - PT - CPB -
 regret your offer to purchase lot 10 on
 DP 2527 cannot be accepted

In the
Supreme Court

~~Plaintiffs'~~
~~Evidence~~

No.30
Particulars
of Defence

3rd April 1973
continued

41. On or about the 31st January 1967 C.P. Bidesi refused to refund to the defendant as executor of the will a proportion of duty paid on a gift to him by the deceased before his death.

Ex 1 - 3 p.126 - 20/12/66 - PT - CPB - request refund £193.5.0 duty on gift from estate to you

Ex 1 - 3 p.129 - 29/12/66 - PT - CPB - attach Commissioner's certificate re duty paid on gift to you

10

Ex 1 - 3 p.68 - 31/1/67 - duty on father's gifts to me may be a proper charge on the estate but I am not liable to refund the sum

CPB - XXN - I refused to pay the duty - why should I pay part of my share.

Share Pal Bidesi

42. On or about the 29th November 1957 the defendant as executor of the will authorised S.P. Bidesi to operate on various trade accounts on behalf of the estate of the deceased and so notified the persons with whom those accounts were to be operated. Under this authority S.P. Bidesi on behalf of the estate of the deceased operated those accounts until about the 20th November 1959.

Ex 1 - 3 p.69 - 29/11/57 - PT - SPB - authority to operate trade accounts on behalf of the estate

SPB - XN - under that authority I operated the accounts - I was paid wages by PT

30

43. In the years 1957, 1958, 1959, 1960 and 1961 S.P. Bidesi made claims upon the defendant as executor of the will claiming against the estate of the deceased ownership of the land in Certificate of Title No. 8832.

Ex 1 - 3 p.70 - 23/12/57 - Gray - PT - claims gift from testator to SPB of land in CT 8832

Ex 1 - 3 p.73 - 12.11.59 - PT - SPB claim to CT8832 should be heard in open court

40

Ex 1 - 3 p.89 - 13/6/61 - SPB - lodges caveat in respect of CT 8832

SPB - XN - about 1954 - 5 I had fenced

land, planted shrubs and cleared it -
I had undertaking from father shown in
Ex 1 - 3 p.70.

In the
Supreme Court

Plaintiffs'
Evidence

No.30

Particulars
of Defence

3rd April 1973
continued

44. In the years 1957, 1958, 1959, 1960
and 1961 S.P. Bidesi made claims upon the
defendant as executor of the will claiming
payment for plans prepared for the deceased.

10

Ex 1 - 3 p.72 - 23/12/57 - Gray - PT -
on behalf of SPB claim for plans and
architects supervision

Ex 1 - 3 p.73 - 12/11/59 - PT - Gray -
in absence of written evidence reject
claim for £818

Ex 1 - 3 p.76 - 15/12/59 - Gray - PT -
client can produce all plans and
specifications that he drew

Ex 1 - 3 p.114 - 20/6/61 - Cromptons -
PT - proposed to issue proceedings
for £818.

20

45. On or about the 17th May 1958, 4th
February 1960 and 10th May 1960 claims were
made on behalf of S.P. Bidesi upon the
defendant as executor of the will for payment
of a bonus of £1,200 from the estate of the
deceased. On or about the 1st July 1960
and on or about the 19th October 1960 the
defendant as executor of the will paid S.P.
Bidesi as bonus sums amounting to £300.

(See particular 2 above)

30

SPB - XN - eventually a sum of £300
was paid in respect of bonus.

46. On or about the 9th December 1958 S.P.
Bidesi arranged with the defendant as
executor of the will that in the event of
the Supreme Court not approving the sale of
the land in Certificates of Title No. 6503
and 6504 the defendant would lease the land
to S.M. Bidesi and/or C.P. Bidesi who would
purchase the building business of the
deceased and its assets.

40

Ex 21 - 9/12/58 - conference Gregg,
Wheatley, SMB, SPB and CPB - course
to be taken if Supreme Court not
approve sale of properties

In the
Supreme Court

~~Plaintiffs'~~
~~Evidence~~

No. 30
Particulars
of Defence

3rd April 1973
continued

47. On or about the 18th February, 1960 S.P. Bidesi wrote to the defendant as executor of the will giving an explanation with regard to the payment of a debt to one Gangaram.

Ex 1 - 3 p.93 - 16/2/60 - PT - SPB -
please explain why cheque drawn instead
of set-off

SPB - XN - I remember writing to PT in
reply to that letter.

48. On or about the 12th September 1960 the Public Trustee as executor of the will commenced an action in the Supreme Court (No.212 of 1960) claiming £2,344.14.5 as moneys due to the estate of the deceased. 10

Ex 5 - 21/6/61 - amended statement of
claim

49. In action No. 212 of 1960 S.P. Bidesi by his defence alleged payment to the deceased of part of the sum claimed and a release and discharge by the deceased of the balance. At the trial of action No. 212 of 1960 the Public Trustee as executor of the will recovered judgment on or about 27th October 1961 for £2,344.14.5 and costs. 20

Ex 5 - 26/7/61 - defence to amended
statement of claim

Ex 5 - 27/10/61 - judgment entered

50. In Civil Appeal No. 24 of 1961 S.P. Bidesi appealed to the Court of Appeal against the judgment in action No. 212 of 1960. On or about the 13th April 1962 the Court of Appeal allowed the appeal and entered judgment for S.P. Bidesi with costs of the appeal and trial. These costs were duly taxed and paid to S.P. Bidesi by the Public Trustee as executor of the will. 30

Ex 10 - 23/11/61 0 notice of appeal

Ex 10 - 13/4/62 - appeal allowed with
costs

Ex 1 - 3 p.88 - 7/5/63 - Cromptons - PT -
taxed costs of 212 of 1960 and appeal
24 of 1961 are £227.8.4. 40

Ex. 1 - 3 p.115 - 24/5/63 - PT - Cromptons
- enclose cheque for £227.8.4.

In the
Supreme Court

~~Plaintiffs'~~
~~Evidence~~

No.30

Particulars
of Defence

3rd April 1973
continued

10 51. On or about the 24th January 1961 S.P.
Bidesi purchased from the defendant as
executor of the will the land in Certificate
of Title No. 8830 later entered into possession
of the land as purchaser and paid the balance
of purchase price and received from the
defendant as executor of the will a transfer
of this land by Transfer No. 83391 dated the
6th May 1963.

Ex 1 - 3 p.77 - 24/1/61 - Sale by PT to
SPB of land in CT 8830

Ex 1 - 3 p.78 - 13/2/62 - PT - SPB -
£105.10.0 on purchase CT 8830 not paid
by extended date - pay without delay

Ex 1 - 3 p.80 - 29/5/62 - PT - SPB -
pay £105.10.0 on purchase of CT 8830
by 31/5/62

20 Ex 1 - 3 p.81 - 30/5/62 - SPB sends PT
cheque in respect of CT 8830

Ex 1 - 3 p.84 - 2/12/62 - PT - SPB -
pay to 31.2.6 on purchase CT 8830

Ex 1 - 3 p.85 - 26/4/63 - PT - SPB -
pay £30 due on purchase of CT 8830

Ex 13 - 6/5/63 - Transfer No. 83391 from
PT to SPB of land in CT 8830

Ex 14 - 6/5/63 - Certificate of Title
No.8830

30 52. On or about the 23rd August 1961 S.P.
Bidesi commenced an action (No.163 of 1961)
against the defendant as executor of the will
claiming £818.0.0 for plans prepared for the
deceased.

Ex 8 - 23/8/61 - writ and statement of
claim

Ex 8 - 13/2/62 - defence

40 53. On or about the 18th December 1962 S.P.
Bidesi obtained judgment in action No. 163 of
1961 against the defendant as executor of the

In the
Supreme Court

~~Plaintiffs'~~
~~Evidence~~

No.30
Particulars
of Defence
3rd April 1973
continued

will for £453 and costs. These costs were duly taxed and the amount of the judgment and costs was paid to S.P.Bidesi by the defendant as executor of the will.

Ex 8 - 18/12/62 - entry of judgment

Ex 1 - 3 p.84 - 21/12/62 - PT sends Cromptons cheque for amount of judgment

Ex 8 - 18/12/63 - plaintiff's bill of costs

Ex 1 - 3 p.117 - 10/1/64 - Taxing Master's Certificate 10

Ex 1 - 3 p.119 - 19/3/64 - PT sends Cromptons cheque for costs

Ex 1 - 3 p.120 - 21/3/64 - Cromptons receipt for costs

SPB - XXN - PT paid me £480 in respect of the plans

54. On or about the 1st July 1961 S.P. Bidesi commenced an action (No.130 of 1961) against the defendant as executor of the will claiming against the estate of the deceased ownership and the transfer and conveyance to him of the land in Certificate of Title No. 8832 and damages or alternatively the sum of £290 for work done and money expended. 20

Ex 6 - 1/7/61 - writ

Ex 6 - 23/8/61 - statement of claim

55. In action No. 130 of 1961 the defendant counter-claimed that S.P. Bidesi be ordered to vacate the land in Certificate of Title No.8832. 30

Ex 6 - 11/9/61 - defence and counterclaim

56. On or about the 24th January 1962 the action No. 130 of 1961 was settled between counsel for the parties and the action and counterclaim were withdrawn by leave of the Court.

Ex 6 - 24/1/62 - Judge's memorandum

57. On or about the 19th February 1962 S.P. Bidesi purchased from the defendant as executor of the will the land in Certificate of Title No. 8832 later took possession of the land as purchaser and paid the balance of purchase price and received from the defendant as executor of the will a transfer of the land by transfer dated the 5th June 1967.

In the
Supreme Court
Plaintiffs'
Evidence
No. 30
Particulars
of Defence
3rd April 1973
continued

10 Ex 1 - 3 p.96 - February 1962 - Sale
by PT to SPB of land in CT 8832

Ex 1 - 3 p.86 & 87 - 26/4/63 - PT -
SPB - pay £100 due on purchase of
CT 8832

Ex 1 - 3 p.91 - 30/5/67 - PT - SPB -
pay £50 due on purchase of CT 8832

Ex 15 - 5/6/67 - Transfer No. 100221
from PT to SPB of land in CT 8832

Ex 16 - 8/6/67 - Certificate of Title
No. 8832

20 59. On or about the 18th February 1962 S.P. Bidesi claimed from the defendant as executor of the will the sum of £300 alleged to be due from the estate of the deceased.

Ex 1 - 3 p.82 - 1/8/62 - Cromptons -
PT - claim immediate payment of £300
for SPB for bonus, allowance for use
of vehicle and money deposited in 1954.

30 60. On or about the 30th January 1967 S.P. Bidesi refused to refund to the defendant as executor of the will a proportion of duty paid on a gift to him by the deceased before his death.

Ex 1 - 3 p.127 - 20/11/66 - PT - SPB -
request refund £420.11.4 duty on gifts
from estate to you.

Ex 1 - 3 p.128 - 29/12/66 - PT - SPB -
attach Commissioner's certificate re
duty paid on gift to you

40 Ex 1 - 3 p.90 - 30/1/67 - SPB - PT -
duty on father's gifts to me may be a
proper charge on the estate but I am
not liable to refund the sum.

In the
Supreme Court

~~Plaintiffs'~~
~~Evidence~~

No.30

Particulars
of Defence

3rd April 1973
continued

General

61. Each of the plaintiffs at all material times knew of each of the facts and items of conduct set out in the particulars above.

62. Each item of conduct by a plaintiff set out in the particulars above was done with the knowledge, approval and/or authority of each of the other plaintiffs.

63. Each of the plaintiffs at all material times knew of the contents of the will and the grant of probate thereof to the defendant.

10

64. As a result of and in reliance upon the facts and items of conduct set out in the particulars above the defendant has continued to administer the estate of the deceased under the grant of probate in common form.

D A T E D the 3rd day of April 1973.

(Sgd) ?

C R O M P T O N S

Solicitors for the Defendants.

20

No.31
Summary of
Defendant's
Case

Undated

No. 31

SUMMARY OF DEFENDANT'S
CASE

A. The Questions and Issues raised by
Paragraphs 4, 5 and 6 of the Defence

It is accepted that the general onus of proof on these issues is on the Defendant

1. The Plaintiffs are precluded by their
acquiescence from putting the Will in suit

There are 4 elements or considerations involved in acquiescence in this case :-

30

- (i) There has been long acquiescence, (see paragraph 4 below)

- (ii) No special circumstances account for the delay;
(See paragraph 6 below)
- (iii) Since the grant of probate the Plaintiffs have done acts which recognize and depend upon the Will;
(See paragraph 5 below)
- (iv) There is no reasonable ground for doubting the genuineness and validity of the Will.
(See paragraph 3 below)

In the
Supreme Court
~~Plaintiffs'~~
~~Evidence~~
No. 31
Summary of
Defendant's
Case
Undated

10

2. Authority establishes the relevance of these 4 elements or considerations

Dodd & Brooks, Probate Practice (1865)
pp. 539-540.

Mortimer on Probate Law and Practice,
2nd ed. (1927) p. 239.

Williams on Executors and Administrators
14th ed. (1960) p. 83, para. 127.

20

Hoffman v Norris (1805) 161 E.R. 1129

Merryweather v Turner (1844) 163 E.R. 907

In re Wood deceased (1961) Qd. R. 585

There is no reasonable ground for doubting the genuineness and validity of the Will

(The element or consideration referred to in paragraph 1 (iv) above)

30

- (i) Mr. Wheatley's Relationship with the Testator and Knowledge of his English
(Facts)
- (ii) The Drafting of a Will by Mr. Wheatley while he was employed by Inland Revenue
(Facts)
- (iii) The first Interview at the Office of the Public Trustee between Mr. Wheatley and the Testator and the Drafting of the Will
(Facts)
- (iv) Mr. Wheatley's taking the Testator through the Will
(Facts)

In the
Supreme Court

~~Plaintiffs'~~
~~Evidence~~

No. 31

Summary of
Defendant's
Case

Undated
continued

- (v) The Execution of the Will (Facts)
- (vi) Events which concern Mr. Wheatley occurring after the making of the Will (Facts)
4. There has been long acquiescence
- (The element or consideration referred to in paragraph 1(i) above)
- (i) It is clear that Mr. C.P. Bidesi acted on behalf of all the plaintiffs in lodging and withdrawing the caveats (Facts) 10
- (ii) There was a long lapse of time
- (iii) The nature of acquiescence
- Cairncross v Lorimer (1961) H.L. 6 Jur. N.S. 149 at 150
- (1843-60) All E.R. Rep. 174 at 176
- In re Wood deceased (1861) Qd. R. 585 at 593
5. Since the Grant of Probate the Plaintiffs have done acts which recognize and depend upon the Will 20
- (The element or consideration referred to in paragraph 1(iii) above)
- (i) The credit of the plaintiffs as witnesses.
- (ii) The facts set out in the particulars of defence.
- Tallerman & Co. v Nathan's Merchandise Vic Pty. Ltd. (1957) 98 C.L.R. 93 at 110.
6. There are no special circumstances to account for the delay 30
- (The element or consideration referred to in para. 1(ii) above)
- (i) On this element in consideration the onus of proof is on the plaintiffs not the defendant.

Merryweather v Turner (1844) 163
E.R. 907 at 911.

In the
Supreme Court

In re Wood deceased (1961) Qd. R 585 at
593-4

Plaintiffs'
Evidence

No.31
Summary of
Defendant's
Case

Undated
continued

(ii) Facts

For the reasons set out in paragraphs 1
to 6 the defence of acquiescence is made
out.

10 7. The plaintiffs are precluded by laches
from putting the Will in suit

Re Coghlan deceased (1948) 2 All E.R.68

Williams v Evans (1911) P.175

Whereat v Duff (1972) 2 NSW 147

8. Each of the plaintiffs is precluded by
estoppel from putting the Will in suit

Grundt v Great Boulder Gold Mines Pty. Ltd.
(1937) 59 C.L.R. 641 at 674-7

In the Will of Ross (1893) 14 L.R. (N.S.W.)
B & P 35

20 Court of Probate Act 1875 S.77

For these reasons the plaintiffs are not
entitled to put the will in suit.

9. If, contrary to our submissions, the
plaintiffs were entitled to put the will
in suit they may first be obliged to bring
into Court what they have received in their
dealings with the estate

In re Wood deceased (1961) Qd R. 585 at 594.

30 B. The Questions and Issues raised by the other
paragraphs of the Defence and the Counterclaim

Whatever findings are made on the issues
and questions raised by paragraphs 4, 5 and
6 of the defence it is desirable that
findings also be made on these other issues
and questions.

10. The Testator knew and approved of the contents
of the Will

In the
Supreme Court

~~Plaintiffs'~~
~~Evidence~~

No. 31
Summary of
Defendant's
Case

Undated
continued

- (i) Reliance is placed on the submissions made in paragraph 3 above.
- (ii) Authority.
- Mortimer (above) p.64
- Williams (above) p.94.
- Tristram & Coote, Probate Practice 23rd ed. pp.717-719
- Wintle v Nye 1959 1 All E.R. 552 at 554, 558, 561, 562.
11. The Will was executed in accordance with the Wills Act. 10
- (i) Reliance is placed on the submissions made in paragraph 3 above.
- (ii) Authority
- Williams (above) p.81
- Blake v Knight (1843) 163 E.R. 821.
12. Even if the plaintiffs had succeeded in the action they would not have been entitled to a grant of administration
- (i) The desirability of ascertaining the most suitable person as administrator. 20
- (ii) The evidence of Mr. S.M. Bidesi of the existence of another earlier Will made after marriage.

For these reasons it is submitted that the plaintiffs' action should be dismissed with costs.

(Sgd) ?

C R O M P T O N S

No. 32

CHRONOLOGY OF EVENTS -
EVIDENCE

In the
Supreme Court

Plaintiffs'
Evidence

No.32

Chronology
of events -
Evidence

- 1956
- 21/12/56 - Memorandum of agreement between testator and S.M.B. (Ex.31) 3rd April 1973
- 21/12/56 - Assignment of mortgage S.M.B. to testator (Ex.30)
- 1957
- 10 3/5/57 - Memorandum of terms of sale between testator and Road-builders Limited (Ex.A)
- 1/7/57 - Agreement of sale between testator and Roadbuilders Ltd. (Ex.18)
- 3/7/57 - Deceased signed land donation to S.P.B. (Ex. 1-3 p.70)
- 20 8/11/57 - Memorandum by deceased in favour of S.P.B.
- £100 dowry
- receipt £1600
- release \$941.0.5 (Ex.1-3 p.82) sic.
- 15/11/57 - Testator died (Ex. 1-3 p.104)
- 29/11/57 - P.T. S.P.B. - Authority to operate estate accounts (Ex 1-3 p.69)
- 21/12/57 - C.P.B. first caveat (Ex 1-3 p.50)
- 30 23/12/57 - Gray - P.T. - suggest originating summons re land C.T. 8832 (Ex 1-3 p.70)
- 23/12/57 - Gray - PT - claim re S.P.B.'s plans (Ex 1-3 p.72)
- 30/12/57 - M.D.B. claims £1200 from P.T. (Ex.1-3 p.1)

In the Supreme Court	<u>1958</u>			
Plaintiffs' Evidence No.32	17/2/58	-	Koya - P.T. - do you wish to propound will - objection to interim receiver? (Ex 1-3-p.47)	
Chronology of events - Evidence	18/2/58	-	Conference - Gregg, S.M.B., S.P.B. and C.P.B. (C.P.B. XN)	
3rd April 1973 continued	19/2/58	-	P.T. - C.P.B. - prepared to sell properties - apply to Supreme Court - withdraw caveat (Ex 1-3 p.10)	10
	19/2/58	-	P.T. - S.M.B. - similar letter (Ex 1-3 p.12)	
	10/3/58	-	Grahame and Co. advise P.T. of position - refer to Chapman's case (Ex 23)	
	12/3/58	-	Koya - P.T. - following your letter 19/2/58 to C.P.B. - he consulting his brother and will report (Ex 1-3 p.48)	
	14/3/58	-	P.T. - Koya suggest conference between the parties (Ex 1-3 p.14)	20
	8/5/58	-	Grahame and Co. - C.P.B. - suggest without prejudice discussion - if solicitor present so much the better (Ex 1-3 p.49)	
	14/5/58	-	C.P.B. second caveat (Ex 1-3 p.51)	
	17/5/58	-	S.M.B. - P.T. claims family bonuses (Ex 1-3 p.2)	
	17/5/58	-	S.M.B. - P.T. - claims £500 overpaid (Ex 1-3 p.15)	30
	5/6/58	-	Gregg's note re conference with C.P.B. and Koya - explain to C.P.B. - withdraw caveat or contest will - sale of properties consent of the Supreme Court - probably no other purchase - will advise decision (Ex 19 and 23)	
	6/8/58	-	Gregg spoke to McFarlane - amendment to overcome Chapman's case being taken up by Law	40

1958In the
Supreme CourtPlaintiffs'
EvidenceNo. 32
Chronology
of events -
Evidence3rd April 1973
continued

Society (Ex 33)

- 29/10/58 - C.P.B. third caveat Ex 1-3
p.52)
- 7/11/58 - Gregg swore application for
probate (Ex 24)
- 7/11/58 - P.T. - Registrar - issue a
warning to C.P.B. (Ex 1-3
p.53)
- 10 15/11/58 - Warning (Ex 1-3 p.54)
- 19/11/58 - Appearance to warning
(Ex 1-3 p.55)
- 9/12/58 - Note of conference between
the 3 Bidesi's, S.M. C.P.
and M.D. Gregg and Wheatley
- what to happen in event
of Supreme Court not approving
sale of land (Ex 21)

1959

- 20 4/3/59 - 1 of 58, Change of defendants
solicitors (Ex 4)
- 6/3/59 - 1 of 58, Summons to discon-
tinue caveat proceedings and
grant probate to P.T. (Ex 4)
- 16/3/59 - 1 of 58, Order for discontin-
uance of probate (Ex 4)
- 8/4/59 - Affidavit by Christine Andrews
(Ex 24)
- 30 12/5/59 - P.T. Tetzner & Bygrave - seek
assessment of rent for proposal
10 year lease (Ex 25)
- 26/6/59 - P.T. writes to Cromptons re
lease to S.M.B. (Ex 1-3 p.16)
- 11/7/59 - Cromptons send draft lease to
P.T. (Ex 1-3 p.18)
- 12/11/59 - P.T., M.D.B. - are you prepared
to prove your claim for £1200 in
open court (Ex 1-3 p.4)

<p>In the Supreme Court</p> <p>Plaintiffs Evidence No. 32 Chronology of events - Evidence 3rd April 1973 continued</p>	<p><u>1959</u></p> <p>12/11/59</p> <p>19/11/59</p> <p>20/11/59</p> <p>20/11/59</p> <p>24/11/59</p> <p>26/11/59</p> <p>26/11/59</p> <p>26/11/59</p> <p>27/11/59</p> <p>28/11/59</p> <p>2/12/59</p> <p>3/12/59</p> <p>4/12/59</p> <p>4/12/59</p>	<p>- P.T. - Gray - reject claim by C.P.B. for £818 for plans</p> <p>- do you persist in claim to CT 8832 (Ex 1-3 p.73)</p> <p>- Agreement - sale of business - PT to S.M.B. (Ex 1-3 p.19)</p> <p>- P.T. - S.P.B. settlement with S.M.B. tomorrow - appreciate co-operation as manager (Ex 1-3 p.21)</p> <p>- P.T. - Cromptons - draft lease correctly sets out agreement (Ex 1-3 p.22)</p> <p>- S.M.B. repudiated agreement of 19/11/59 - substituted agreement - sale of business P.T. to S.M.B. (Ex 1-3 p.23)</p> <p>- Receipts - S.M.B. - P.T. for £3,000 loan at 5½% (Ex 1-3 p.92)</p> <p>- Mortgage from S.M.B. to P.T. (Ex 17 and 1-3 p.106)</p> <p>- Details of advance under mortgage (wrongly called 24/11/59) (Ex 1-3 p.109)</p> <p>- P.T. - Mrs. Seeoia - pay future rents to S.M.B. (Ex 1-3 p.25)</p> <p>- Lease P.T. - S.M.B. C.T.6503 and 6504 (Ex 22)</p> <p>- P.T. to C.P.B. - rent of cottage a matter between you and S.M.B. - finalize rent for past 2 years (Ex 1-3 p.27)</p> <p>- P.T. - M.D.B. will disallow your claim for £1200 unless hear in writing by 21/12/59 (Ex 1-3 p.5)</p> <p>- P.T. - S.P.B. - claims payment of £2766.5.9 (Ex 1-3 p.74)</p> <p>- P.T. - C.P.B. - let me have £1630.11.1 due by 31/12/59</p>	<p></p> <p></p> <p>10</p> <p></p> <p></p> <p></p> <p>20</p> <p></p> <p></p> <p></p> <p></p> <p>30</p> <p></p> <p></p> <p>40</p>
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	<u>1959</u>			In the Supreme Court
	14/12/59	-	Grahame & Co. - P.T. - act for S.P.B. - enclose copy of acknowledgment signed by deceased - you claim £1600 from him - amount paid to father in terms of the acknowledgment (Ex 1-3 p.75)	Plaintiffs' Evidence No.32 Chronology of events - Evidence
10	15/12/59	-	Gray - P.T. - client S.P.B. can produce plans and specifications (Ex 1-3 p.76)	3rd April 1973 continued
	<u>1960</u>			
	12/1/60	-	Cromptons send P.T. a stamped copy of lease and account (Ex 1-3 p.28 and 29)	
	13/1/60	-	P.T. - C.P.B. call on to pay rent of cottage (Ex 1-3 p.56)	
20	26/1/60	-	Cromptons - P.T. - C.P.B. has lived rent-free in house since 1947 - painted and repaired (Ex 1-3 p.57)	
	3/2/60	-	Cromptons - P.T. - C.P.B. not indebted at all (Ex 1-3 p.58)	
	4/2/60	-	Cromptons - P.T. claim bonus for sons - residential blocks to sons (Ex 1-3 p.6)	
	16/2/60	-	P.T. - S.P.E. - why draw cheque to Gangaram for £415 instead of set-off (Ex 1-3 p.93)	
30	10/5/60	-	Conference Gregg, Wheatley and S.M.B. - explained why lesser bonus allowed - pointed out that application to court may fail completely (Ex 20)	
	16/5/60	-	P.T. - S.M.B. - debit note for £620 rent (Ex 1-3 p.30)	
	3/10/60	-	P.T. - S.M.B. - need further particulars for S.P.B. action (Ex 1-3 p.32)	

In the Supreme Court	<u>1960</u>		
Plaintiffs Evidence No. 32 Chronology of events - Evidence	1/11/60	-	P.T. Scott & Co. says precluded from granting MDB lease at peppercorn rent - alternatively vesting order (Ex 1-3 p.8)
3rd April 1973 continued	3/11/60	-	Scott & Co. - P.T. - disappointed in attitude to M.D.B. - can't afford £6 per week (Ex 1-3 p.113)
	11/11/60	-	P.T. to S.M.B. - debit note for £920 (Ex 1-3 p.33)
			10
	<u>1961</u>		
	5/1/61	-	P.T. - S.M.B. - let me know what records are available for further particulars (Ex 1-3 p.35)
	9/1/61	-	S.M.B. - P.T. S.M.B. replies (Ex 1-3 p.36)
	17/1/61	-	P.T. - Cromptons - no hope because of Chapman v. Chapman (Ex 1-3 p.37)
	24/1/61	-	Sale note C.T. 8830 P.T. - S.P.B. (Ex 1-3 p.77)
	21/3/61	-	Sale and purchase agreement - P.T. to C.P.B. C.T.9397 (Ex 1-3 p.61)
	21/3/61	-	Sale note P.T. to S.P.B. C.T.9397 and transfer to C.P.B. (Ex 1-3 p.95)
	13/6/61	-	Caveat lodged by S.P.B. re C.T. 8831 (Ex 1-3 -p.89)
	23/11/61	-	24 of 1961 (appeal from 212 of 1960) notice of appeal (Ex 10)
			30
	<u>1962</u>		
	24/1/62	-	130 of 1961 Action and counter-claim withdrawn by leave - settled (Ex 6)

			In the Supreme Court
	<u>1962</u>		
	25/1/62	- CPB made offer to PT for C.T. 4153 (Ex 1-3 p.59)	Plaintiffs Evidence
	2/2/62	- 139 of 1961 - application on originating summons dismissed with costs (Ex 7)	No.32 Chronology of events - Evidence
	Undated	- 139 of 1961 CR70 - Defendants (P.T.) bill of costs (Ex 7)	3rd April 1973 continued
10	13/2/62	- P.T. - SPB - C.T.8830 - extended time of payment send remittance - overdue (Ex 1-3 p.78)	
	13/2/62	- 163 of 1961 Defence (Ex 8)	
	19/2/62	- Sale and purchase agreement - P.T. to S.P.B. - C.T.8832 (Ex 1-3 p.96)	
	20/2/62	- 163 of 1961 - Reply (Ex 8)	
	2/3/62	- P.T. - CPB - offer of 25/1/62 can't be accepted (Ex 1-3 p.60)	
20	29/3/62	- S.P.B. - P.T. cheque for rates (Ex 1-3 p.79)	
	11/4/62	- 130 of 1961 - taxing master's certificate (Ex 7)	
	29/5/62	- P.T. - S.P.B. - let me have moneys by 31/5/62 re C.T. 8830 (Ex 1-3 p.80)	
	30/5/62	- S.P.B. - P.T. - C.T.8830 enclose cheque (£25.10.0) (Ex 1-3 p.81)	
30	30/5/62	- P.T. - S.M.B. - reduce mortgage quarterly and pay out on 30/9/63 (Ex 1-3 p.98)	
	1/8/62	- Cromptons - P.T. - claim immediate payment of £300 for S.P.B. (Ex 1-3 p.82)	
	31/10/62	- P.T. - CPB - require within 7 days moneys under agreement of	

In the
Supreme Court

21/3/61 C.T. 9397 (Ex 1-3
p.61)

~~Plaintiffs'~~
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No.32

Chronology
of events -
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3rd April 1973
continued

- 2/11/62 - P.T. CPB - amount owing re
C.T. 9397 £258.4.0 (Ex 1-3 p.62)
- 30/11/62 - P.T. - MDB unless you purchase
Lot 9 on D.P. 2527 by 7/12/62
will offer lot to others
(Ex 1-3 p.9)
- 18/12/62 - 163 of 1961 judgment of Macduff
J. for Plaintiff for £453 (Ex 8) 10
- 18/12/62 - 163 of 1961 reasons for judgment
(Ex 8)
- 21/12/62 - P.T. - Cromptons cheque for
£453 re action 163 of 1961. Let
us have balance due on C.T. 8830
(Ex 1-3 p.84)

1963

- 26/4/63 - PT - SPB - let me have £30 due
CT 8830 (Ex 1-3 p.85)
- 26/4/63 - PT - SPB - let me have £101 on 20
CT 8832 (Paid £130.17.6 on
29/4/63) - carbon copy (Ex 1-3 p.
86-7)
- 27/4/63 - PT - CPB - pay balance on CT 9397
by 7/5/63 (Ex 1-3 p.63)
- 30/4/63 - PT - SMB - pay up mortgage by
31/12/63 (Ex 1-3 p.99)
- 1/5/63 - 212 of 1960 - Defendant's Bill
of Costs and Allocatur (Ex 1-3
p.33 to 36) 30
- 7/5/63 - Cromptons - PT - let us have
£227.8.4. costs for SPB in 212
of 1960 and 24 of 1961 (Ex 1-3
p.88)
- 13/5/63 - PT - SMB - have invested moneys
unable to repay (Ex 1-3 p.100)
- 14/5/63 - PT - SMB - Without Prejudice -
any counter offer (Ex 1-3 p.101)

<u>1963</u>			In the Supreme Court
	21/5/63	- SMB - PT offer to pay balance of mortgage by 31/12/64 (£10,000) (Ex 1-3 p.102)	<u>Plaintiffs' Evidence</u> No.32
	22/5/63	- PT - SMB - accept counter-offer of 21/5/63 (Ex 1-3 p.103)	Chronology of events - Evidence
	24/5/63	- PT - Grahame and Co. - acknowledge letter of 7/5/63 - enclose cheque £227.8.4. (Ex 1-3 p.115)	3rd April 1973 continued
10	31 /5/63	- PT - CPB - will sell C.T.9397 and on sale cancel sale note. (Ex 1-3 p.64)	
	14/6/63	- PT - CPB - summary of balance owing on purchase of CT 9397	
	18/12/63	- 163 of 1961 Plaintiffs bill of costs (Ex 8)	
<u>1964</u>			
	10/1/64	- 163 of 1961 - taxing master's certificate (Ex 8)	
20	13/3/64	- Cromptons send PT copy of Allocatur in 163 of 1961 (Ex 1-3 p.116)	
	19/3/64	- P.T. sends £84.18.2 costs in 163 of 1961 to Cromptons (Ex 1-3 p.119)	
	21/3/64	- Crompton's receipt to PT for £84.18.2 costs in 163 of 1961 (Ex 1-3 p.120)	
30	13/5/64	- McNally - PT - CT 9397 - re CPB - land differs from land pointed out by Wheatley - rescind (Ex 1-3 p.66)	
	18/5/64	- PT - SMB - pay overdue rent £310 (Ex 1-3 p.39)	
	25/5/64	- PT - McNally - Wheatley denies allegations of misrepresentation (Ex 1-3 p.67)	

In the Supreme Court	<u>1964</u>			
Plaintiffs Evidence No.32 Chronology of events - Evidence	17/7/64	-	110 of 1964 - writ issued (Ex9)	
	13/8/64	-	PT - SMB - pay overdue rent £310 (Ex 1-3 p.40)	
3rd April 1973 continued	16/10/64	-	110 of 1964 - statement of claim (Ex 9)	
	<u>1965</u>			
	7/1/65	-	110 of 1964 - defence admits will and probate (Ex 9)	10
	7/4/65	-	PT - SMB - pay overdue rent £310 (Ex 1-3 p.43)	
	3/6/65	-	110 of 1964 - change of solicitors from Koya to Scott & Co. (Ex 9)	
	10/6/65	-	Scott & Co. - Grahame & Co. - instructed to discontinue 110 of 1964 (Ex 26)	
	15/6/65	-	Summons leave to discontinue 110 of 1964 (Ex 9)	20
	21/6/65	-	110 of 1964 - order action be discontinued and costs paid to defendant (Ex 9)	
	23/6/65	-	Scott and Co. - PT - Chance of SMB obtaining a longer lease - now action discontinued - 10 year lease expires 15/11/69 - he owns business (Ex 1-3 p.41)	
	25/6/65	-	PT - Scott & Co. - desirable to give SMB new lease - will need co-operation (Ex 1-3 p.42)	30
	1/7/65	-	PT - SMB - pay overdue rent £310 (Ex 1-3 p.44)	
	11/7/65	-	PT - SMB - need another £10 for rent (Ex 1-3 p.45)	

<u>1966</u>		In the <u>Supreme Court</u>
	16/6/66 - Affidavit of SMB initiating revocation action 7 of 1966 (Ex 34)	<u>Plaintiffs'</u> <u>Evidence</u> No.32
	11/8/66 - 7 of 1966 - appearance by PT	Chronology of events -
	11/8/66 - Receipt of S.C. Registry for original Probate	Evidence 3rd April 1973 continued
10	24/8/66 - Grahame and Co - Scott and Co. - let us have cheque for costs 110 of 1964 - £31.19.6 (Ex 1-3 p.121)	
	7/9/66 - Scott and Co - Grahame and Co - costs reasonable 110 of 1964 - asked client for cheque (Ex 1-3 p.122)	
	12/9/66 - Scott and Co - Grahame and Co - enclose cheque for £31.19.6 costs in 110 of 1964	
20	15/9/66 - Grahame and Co. - Scott and Co. - enclose receipt for £31.19.6 costs in 110 of 1964 - order of discontinuance not yet sealed or served (Ex 1-3 p.124)	
	22/9/66 - 110 of 1964 - CR 94 - order action to be discontinued and costs paid to defendant (P.T.) (Actual signature of order) (Ex 9)	
30	20/12/66 - Letters claiming refund re duties from P.T. to SMB, CPB, SPB (Ex 1-3 p.125, 126 and 127)	
	29/12/66 - Letters attaching Estate Duties certificates - PT to SMB, CPB, SPB (Ex 1-3 p.128, 129 and 130)	
<u>1967</u>		
	30/1/67 - SPB - PT - not liable to refund duties (Ex 1-3 p.90)	
	31/1/67 - CPB - PT - not liable to refund duties (Ex 1-3 p.68)	

In the Supreme Court	<u>1967</u>		
Plaintiffs' Evidence No.32 Chronology of events - Evidence 3rd April 1973 continued	7/4/67	-	Action 7 of 1966 - Plaintiffs discontinue against other defendants other than Public Trustee.
	30/5/67	-	PT - SPB - claims balance of instalment on CT 8832 (Ex 1-3 p.91)
	12/7/67	-	Grahame and Co. Scott and Co. - Wheatley ill - will you consent to evidence on commission (Ex 32) 10
	24/7/67	-	Scott and Co. - Grahame & Co. - no objection to Wheatley evidence on commission (Ex 32)
	15/12/67	-	Wheatley examined in Sydney
	<u>1968</u>		
	9/7/68	-	PT - SMB - pay rent £310 (Ex 1-3 p.131)
	<u>1970</u>		20
	2/6/70	-	Koya - Grahame and Co. - improper to proceed with claim for possession (Ex 1-3 p.46)
	<u>1971</u>		
	20/1/71	-	Action 7 of 1966 came on for hearing before Nair J - adjourned
	21/1/71	-	C.P.B. Grahame & Co. - want copy of my written instructions authorizing you to consent to order - files in which you acted as solicitor or counsel - I never authorized you to consent will give evidence on oath at Trial (Ex D) 30

1972

4/12/72 - Action 7 of 1966 heard
to and adjourned

21/12/72

1973

28/3/73 - Addresses commenced

In the
Supreme Court

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Chronology
of events -
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3rd April 1973
continued

(Sgd) ?

C R O M P T O N S

Solicitors for the Defendants

3/4/73

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No. 33

JUDGMENT

No.33
Judgment

27th November
1974

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Probate Action No. 7 of 1966

Between:

1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI all sons
of Bidesi

Plaintiffs

- and -

THE PUBLIC TRUSTEE OF FIJI
Defendant

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Mr. S.M.Koya for the Plaintiffs

Mr. R.E.McGarvie Q.C. and Mr. R.W.Mitchell for
the Defendant

In the
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continued

This is an action brought by the plaintiffs for revocation of probate of the will of their father, Bidesi s/o Chuman (deceased), which was granted in common form on 21st April, 1959 to the defendant as sole executor thereunder and for this Court to pronounce against the validity of the said will.

The will in question which was made on 18th April, 1957 by the deceased who died on the 15th November, 1957 excludes the plaintiffs from any share in the estate of the deceased. The writ of summons commencing this action was not issued until the 25th June, 1966.

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The plaintiffs claim that the said will is invalid on the ground that at the time of execution the deceased neither knew nor approved of the contents thereof because it was never read over nor explained to him and as he could not read or write he was unaware of its true nature and effect. The plaintiffs therefore seek the following relief:

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(a) That the probate of the said will of the deceased dated 18th April, 1957 be revoked;

(b) That the Court pronounce against the validity of the said will;

(c) A grant to them of Letters of Administration of the estate and effects of the deceased; and

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(d) Costs.

By his defence the defendant alleges that the said will was read over and explained to the deceased and that he understood the full meaning nature and effect and approved the contents thereof before signing the same in the presence of witnesses as his true last will and testament.

In addition the defendant claims under paragraphs 4, 5 and 6 of his defence that the plaintiffs cannot maintain this action on the grounds of acquiescence, laches and estoppel.

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The defendant also counterclaims that this Court pronounce for the said will in solemn form of law.

At the commencement of the trial counsel for the defendant moved the Court by way of a preliminary application that the issues raised by paragraphs 4, 5 and 6 of the Defence be tried before the trial of the other issues in the action or before the trial of the action. The motion was resisted but the Court having carefully considered the matter granted the motion and made an order in the following terms :-

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 continued

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(1) That the questions and issues raised by paragraphs 4, 5 and 6 of the Defence be tried before the other issues in the action and counterclaim and

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(2) That the evidence given and tendered upon the trial of the questions and issues raised by paragraphs 4, 5 and 6 of the Defence will be treated as evidence given and tendered in respect of the other issues in the action and counterclaim.

Thus the hearing took a course which obliged this Court to proceed first to deal with the preliminary issues raised in the motion. It is accepted that the general onus of proof on those issues is on the defendant.

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The contention of the defendant in relation to the preliminary issues is threefold namely

- (i) The plaintiffs are precluded by their acquiescence from putting the will in suit;
- (ii) The plaintiffs are precluded by laches from putting the will in suit;and
- (iii) Each of the plaintiffs is precluded by estoppel from putting the will in suit.

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Before I examine further the matters raised in support of paragraphs 4, 5 and 6 of the Defence it is necessary to say something of the background of the case.

Mr. Bidesi senior whom I shall refer to as

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"the testator" was born in or about 1886. At the age of 23 years he married his first wife. There were five children from this marriage, one daughter and four sons. The sons are the present plaintiffs, M.D. Bidesi (59) 1st plaintiff, S.M. Bidesi (56) 2nd plaintiff, C.P. Bidesi (52) 3rd plaintiff and S.P. Bidesi (48) 4th plaintiff (hereinafter to be referred to respectively as "M.D., S.M., C.P., and S.P."). In the early years they lived as a closely knit family at Muanivatu, Suva Point. Their mother died in 1925. The testator married again several years later. This was to the present Mrs. Kapesri Bidesi. This second marriage begot him ten children - six girls and four boys. The boys are the main beneficiaries under the will. They are Atma Prasad (41), Uma Prasad (33), Muni Prasad (30) and Jagdish Prasad (28). The whole family continued to live together at Muanivatur, Suva Point and continued to do so until the plaintiffs moved out in turn on their own years later and set up homes separately. In about 1955 Mr. and Mrs. Bidesi and their younger children moved from Muanivatu to their new freehold residence in Mead Road, Tamavua, where since the death of the testator Mrs. Bidesi and her children have continued to live.

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The testator worked for Marlows Construction Limited in about 1912 where he acquired a smattering of carpentry knowledge. By his own exertions he improved himself and rose to the position of sardar and was in charge of a group of about 10 to 12 men. It would seem that this was the beginning for the testator of a lifelong interest in the building trade. So successful was the testator's involvement in the building trade that when he died he was a wealthy man. He left quite a substantial estate which mainly comprised of real property. In November, 1958 his estate was valued at £101,974.13.6d. The testator was a deeply religious man in the best Hindu traditions. He was active member of the Sanatan Dharam throughout his life. After working with Marlows Construction for a couple of years or so the testator joined the firm of Whan Construction Limited. He continued to make a mark for himself in the construction industry. He worked as a leading hand until 1933 when because of the economic depression he was slackened off. It was during this period that he launched himself into private work beginning with small building contracts

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and since then he never looked back.

In about 1941 the testator opened an office in Joske Street, Suva. The business was carried on from Joske Street until it was moved to a new building which was erected at Waimanu Road in 1951 or 1952. The plaintiffs attended primary school at Muanivatu where the family were living. S.M. later attended a private boarding school and then joined Mr. Johnston an architect with whom he served for 8 years as apprentice architect. After primary schooling S.P. attended Marist Brothers High School in 1945. In 1948 he went overseas for education and was away for about 6 years. In 1954 he went to London for a year and after his return registered as an architect. It would appear that as early as 1941 M.D. and S.M. were quite active in helping their father in his construction business. Later C.P. also lent a hand in the business. Because of his special training in architecture S.M. was able particularly to play a leading role in the flourishing business of his father. The testator had not the benefit of formal education and was able neither to read nor write. For this reason he leaned heavily on S.M. in regard to the book side of the business. In 1954 he was also able to call for assistance from S.P. whom he set up in an office in the firm's new building at Waimanu Road.

As stated above in 1955 the long standing family home at Muanivatu was changed and Mr and Mrs. Bidesi and the younger members of the family shifted to Tamavua to a new residence. M.D. and S.M. remained at Muanivatu where they set up home together. C.P. and S.P. had both married and lived separately on their own.

On 13th November, 1957 the testator suddenly took ill and died the same day of heart attack. His death came as a shock to his relatives and friends as he had given no signs he would go so suddenly. He was about 71 years old at the time of his death.

A few days after the deceased's death Mr. Wheatley assembled the plaintiffs and Mrs. Bidesi at the firm's business premises at Waimanu Road where he read the contents of the will to them. The scene that followed was less

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than agreeable. The plaintiffs made it very clear that they were thoroughly dismayed and dissatisfied with the will and could not accept it as having been made by their father. To them the will could not have been made by their father who because of his religious principles would not discriminate between his children, and they considered that it was inconsistent with their father's strongly held religious beliefs. C.P. was most vociferous in his denunciations for the will and pledged that he would fight it with every ounce of blood in his body. So the scene was set for what turned out to be a long-drawn legal battle. On 21st December, 1957 the first of three caveats was lodged against the grant to the defendant of probate of the will. More will be said later of these caveats.

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I now turn to the preliminary objection raised by the defendant to the consideration by this Court of the issues in the plaintiffs action namely, inter alia, the revocation of probate of the will. The defendant relies on the equitable pleas of acquiescence, laches and estoppel. These pleas will be considered in turn.

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According to the defendant the plaintiffs are precluded by their acquiescence in putting the will in suit. It is said that there are four necessary elements which are relevant to any consideration of acquiescence. These are :-

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- (i) Long acquiescence;
- (ii) No special circumstances account for the delay;
- (iii) Since grant of probate plaintiffs had done acts which are dependent on the will;
- (iv) No reasonable grounds in doubting the genuineness and validity of the will.

Counsel for the defendant submitted that these four elements for consideration have been settled by the authorities. Counsel cited Dodd and Brooks Probate Practice (1965) p.539 (3rd paragraph) which reads :

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"Long acquiescence in the grant may, it should appear, upon principles which are

common to the law of all civilised nations amount to a bar. In this court, however, mere tacit acquiescence, accompanied even by the receipt of a legacy under the will which it is sought to set aside, will not preclude a party from questioning the grant; but to hold that he may impeach it under any circumstances would be contrary to reason and to every principle of justice. The objection must be made before there has been such acquiescence with knowledge, as to induce a reasonable belief that the act will not afterwards be challenged. Acquiescence which would conclude a party deceased will, unless upon some special showing, conclude his representative. When the opposing party, indeed, has been in a position which rendered it impossible or difficult to have proceeded earlier, as if he had been absent from the imbecility, his circumstances may negative his apparent acquiescence; even his local and pecuniary situation is not to be left out of account, but ignorance of the law is no excuse."

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Also the same effect is Mortimer on Probate Law and Practice (2nd Ed. - 1927) where at page 239 it is stated as follows :

"Mere acquiescence on the part of a next-of-kin in an executor taking probate of a will in common form is no bar to his afterwards calling in such probate, and putting the executor to proof of that will per testes. Nor is acquiescence a bar even though accompanied by the receipt of a legacy under the very will afterwards sought to be contested; but before being permitted to contest the will, the legatee must bring his legacy into Court.

"There are circumstances, however, in which long acquiescence accompanied by acts done by the next-of-kin under the will, have been held to amount to such a waiver of his rights as to preclude him from contesting the will, though proved only in common form, if there appears to be no reasonable ground for doubting its genuineness and validity."

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Counsel also cited Williams on Executor Administrators (14th Edition) for the following statement at p.83 (paragraph 127) :

"127. Next-of-kin, as such merely are entitled to call for proof in solemn form of the deceased's will, of common right. The mere acquiescence of a next-of-kin to the probate being taken in the common form is no bar to the exercise of this right, even though he has received a legacy as due to him under the will; for he is still at liberty to call in the probate, and put the executor to proof of that identical will per testes. Long acquiescence, however, unaccounted for by any special circumstances, and acts done by a next-of-kin under the provisions of the will, may (if no fact appears which excites a reasonable suspicion of the genuineness or validity of the will) amount to such a waiver of his rights as to preclude him from putting the will in suit. But where the next-of-kin, who was named executor of the will which he desired to contest, had taken probate in common form and acted as executor and intermeddled with the estate, he was held not to be debarred from afterwards taking proceedings to disaffirm the will."

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Three cases were cited in support of the principles enunciated above: Hoffman v. Norris and White (1805) 161 E.R. 1129, Merryweather v. Turner (1844) 163 E.R. 907 and In re Wood (decd) (1961) Qd. R. 585.

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I accept the law as stated above in relation to the various elements to be considered in connection with the plea of acquiescence. I have directed myself in accordance with it.

The main contention of the defendant with regard to the question of acquiescence is that there has been such a long lapse of time between the grant of probate on 21st April, 1959 and the issue on 25th June, 1966 of the writ of summons initiating this action - a delay of over 7 years. It is claimed that by their inordinate delay in taking any positive action in the matter the plaintiffs had in fact induced in the defendant a reasonable belief that the will would not be challenged. There is no dispute and I find as a

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fact that after the will had been read by Mr. Wheatley the plaintiffs made it abundantly clear that they would challenge the will. C.P. who was most visibly angry about the will acted on behalf of the plaintiffs in lodging the caveats against the grant of probate of the will to the defendant. The first caveat was lodged on 21st December, 1957, the second on 14th May, 1958 and the third on 29th October, 1958. However, as a result of negotiations entered into between the defendant and the plaintiffs on or about the 18th February, 1958 and continued to March the following year caveat proceedings were discontinued by consent. This paved the way for the grant of probate of the will in common form on 21st April, 1959. The correspondence and other documentary material produced at the time, I think, more than anything else give a picture of the true nature of the settlement arrived at in relation to the aforesaid caveat proceedings. On 17th February, 1958 the plaintiffs' solicitors wrote to the defendant in these terms (omitting formal parts);

"Dear Sir,

Re: Estate of Bidesi, deceased

We are instructed by our clients Mr. C.P. Bidesi Jr. to remind you that although caveat has been lodged in this estate, you have not taken any steps to warn the Caveator in accordance with the Probate Rules.

Will you please let us know whether you wish to propound the will allegedly made by Bidesi, deceased, in your favour and whether you would object to an application by our client to appoint an interim receiver or administrator pending the result of Court proceedings in this matter.

Kindly let us have a reply as soon as possible."

On 19th February, 1958 the defendant wrote to C.P. as follows :

"Dear Sir,

Confirming our conversation of the

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18th of February, I have to advise that I am prepared to apply to the Supreme Court for an Order varying the terms of the will of your late father to allow the sale of land and buildings contained in Certificates of Title Nos. 6503 and 6504 on the following terms :

(a) the business of builder to be taken over as a joint concern and the land, factory and stock-in-trade to be sold to your brother, Mr. S.M. Bidesi, for the sum of £14,000;

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(b) the land and cottage on Certificate of Title No. 6503 to be sold to you for a sum of £1,905 which is the present valuation. The purchase price to be secured by a mortgage bearing interest at the rate of 5% and reduceable by monthly instalment.

2. In addition I am prepared to sell you the block of land behind your flats in Princess Road at present temporarily fenced in by you at the present valuation.

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3. Whilst the widow is in favour of selling the land on which the factory and cottage are erected for a sum of £14,000 she is not at present in favour of selling the land and cottage at present occupied by you. As you are aware it will be necessary to apply to the Supreme Court for consent to sell these properties. I do not anticipate that the Court will accept the widow's objection as she had no valid reason for opposing the same. Indeed it is in the interest of the estate both these properties should be sold and it is necessary to raise a large sum to pay Death Duties before November, 1958. Moreover, it is also very desirable to dispose of the business at an early date and it is only right that it should go to the sons of your late father who assisted in building up the business. The widow has only a very minor interest in the estate and she is only one of the life tenants and her opinion cannot carry much weight at all. I have no doubt whatsoever that the Court will agree to both the sales.

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4. Before I can apply to the Court, however, I must have obtained probate and I cannot do this whilst the caveat lodged on your behalf remains in the Supreme Court Registry. If you accept the

above offer you should then withdraw the caveat. I assure you that I will do my utmost to see that everything goes through in accordance with plans underlined above and provided you withdraw the caveat I have no doubt it can be carried out."

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10 A similar letter was written by the defendant to S.M. On 12th March, 1958 a reply was sent on behalf of C.P. in these terms :

"Dear Sir,

Re: Bidesi deceased

Your letter dated 19th February, 1958 addressed to Mr. C.P. Bidesi has been handed to us with instructions to reply.

Our client says that he is consulting his brother on this matter and will report to you in due course."

20 On 14th March, 1958 the defendant wrote to the plaintiffs' solicitors as follows :

"Dear Sirs,

Re: Estate of Bidesi, deceased

I have to acknowledge receipt of your letters of 17th February and 12th March, 1958. There has been considerable activity in the matter in Suva and I have to advise that Mr. S.M. Bidesi has consulted Messrs. Cromptons and the widow and Mr. Atma Bidesi have consulted Messrs. Grahame & Co.

30 "2. I feel that it is desirable in the interests of your client and all persons interested that there should be a conference between the parties in Suva. If you agree to this course, I should be glad if you would let me know when it would be convenient to you and I will get in touch with the other persons concerned."

On the 8th May, 1958 Grahame & Co. addressed a letter to C.P. as follows :

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We have been consulted by Mrs. Bidesi and other beneficiaries under the will of your late father; we have also had several talks with Mr. Gregg, Public Trustee, and are aware that you have lodged a caveat on the title of the freehold property at the corner of Davis Street and Waimanu Road. We understand that you have been living in this property for some time and make certain claims to it. The caveat is holding up the dealing with the estate, and they suggested to Mr. Gregg that you might consult with us and him in this matter. We spoke to him yesterday and he is agreeable to us discussing this matter with you. So we would be greatly obliged if you could make an appointment to see the writer at your earliest convenience, to have a discussion generally on matter of the property. This discussion would be entirely without prejudice to your rights, in order to clear the air. If your solicitors could be present, so much the better.

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We hope that you can give this matter your earliest attention."

On 15th June, 1958 a conference was held in the defendant's office in which were also present Mr. Gregg, Mr. Koya and Mr. McFarlane and C.P. A note was made at the time by the Public Trustee to the following effect :

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"Position explained to C.P. Bidesi -

1. Withdraw caveat or contest will;
2. Sale of property - consent of Supreme Court;
3. Probability no other purchaser will advise decision."

On 9th December, 1958 a conference was held in the defendant's office in which those present were B.L. Gregg, H. Wheatley and S.M., S.P. A note of the conference under the hand of B.L. Gregg states :

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"In the event of the Supreme Court not

10 approving the sale of C.T.s 6503 & 6504 the P.T. will lease these titles to the brothers for a term of 20 years at a rental of £400 p.a. The tenants to pay municipal and water rates, fire insurance and to keep the buildings in good and tenatable repair fair wear and tear excepted. The brothers or S.M. to purchase the plant, stock and works in progress (£15000) or thereabouts. S.P. to ascertain the profit and loss on works in progress. If the building behind the workshop is demolished the proceeds of sale go to the Estate."

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On 16th March, 1959 a consent order was obtained in the Supreme Court to discontinue caveat proceedings.

20 In view of the above documentary matters I think it opposite to set out what each of the three plaintiffs said about them. I therefore set out hereunder the relevant portions of the evidence of C.P., S.M. and S.P.

In his evidence C.P. said :

30 "On the 21st December, 1957 I lodged a caveat against my father's estate. This was just over a month from my father's death. After I lodged first caveat I was called in by the Public Trustee to his office. I think it was after a week I lodged caveat. I see a letter dated 19th February, 1958 written to me by Mr. Gregg. I remember the letter. Mr. Gregg called me after the caveat was lodged and perhaps on two more occasions before 18th February, 1958. On that day there was a conference between Mr. Gregg, myself S.M. Bidesi and S.P. Bidesi. On three other occasions he was saying that I should withdraw the caveat because the estate had no money and the widow could not get any money. He also
 40 wanted money to pay Death Duties. The business was not running well. He asked me to withdraw the caveat. After that we had a conference on 18th February, 1958. He discussed the matters contained in letter of 19th February, 1958. After the conference he asked me to withdraw caveat and he would apply to court to give me C.T. 6503 and C.T. 6504 to the other brother. After I received letter of 19th February I discussed it with my brothers. I trusted Mr. Gregg

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being the Public Trustee. I sent letter dated 12th March, 1958 in reply through my solicitors. At our conference of 18th February, 1958 I said to Mr. Gregg I would go ahead with court proceedings. I expected that there was going to be a conference without prejudice. After that there was a conference on 5th June, 1958 in which our solicitors were present. The conference was without prejudice to my right to proceed with action. Before this conference I had lodged second caveat on 14th May, 1958. After the conference on 5th June, 1958 I had a further interview with Mr. Gregg who all the time wanted me to withdraw the caveat but I was insisting that I wanted something concrete. I lodged my third caveat on 29th October, 1958. Up till then Mr. Gregg had not taken any action to apply to Supreme Court. At this conference on 9th December, 1958 the basis was without prejudice. Before I withdrew the caveat there was further talk with Mr. Gregg on the same subject. Caveat was then withdrawn on 16th March, 1959. Before that I had a further talk with Mr. Gregg and Mr. McFarlane. I said I will agree. This action was without prejudice. They both assured me things would be alright. Up to the time I withdrew the third caveat it was without prejudice to my right. Mr. McFarlane agreed to act for both parties. I wanted him to safeguard my interests. From then on Mr. McFarlane acted for me to withdraw caveat. On 6th March, 1959 he lodged an application to discontinue action I had taken to be heard on 16th March, 1959. On 4th March, 1959 I accepted offer of Mr. Gregg. I also accepted arrangements agreed upon on 9th December, 1958. I withdrew caveat because I had confidence in the Public Trustee and on the strength of letter of 19th February, 1958 and the assurance given to me by Mr. McFarlane in good faith. I thought everything would be alright. The basis of all that was without prejudice to my rights to go to court in the event of no amicable settlement being reached. I wanted Mr. Gregg to apply to court for approval to sell the lands to me. He told me that he was negotiating with the Law Society and that it would take time since we are dealing

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with the Civil Service. I used to see Mr. Gregg once a month. He kept on saying not to worry."

In his evidence S.M. said:

"I agree we had conference on 18th February, 1958. We had discussion and Mr. Gregg said he did not want to go to litigation. He said he would try to bring about an amicable settlement. I insisted that the building business should be run under same name by us since my younger brothers were not able to run the business. Mr. Gregg said he might be able to give us the business without charging us. Mr. Gregg did say he would apply to the Supreme Court to sell lands. The terms were discussed on the 18th February, 1958. He gave us the impression that we would have no difficulty in getting the permission of the Court. He did mention the estate had not got any money to pay Death Duties within 12 months and 10% interest would be charged. I told him that we brothers had helped to build up the business. I told him if the business was running there would be no discord in the family. Mr. Gregg gave us assurance that although the old lady is opposed to the sale, she only has a life interest and the Court will have no difficulty in approving the sale. He asked for the caveat to be removed before he could sell property. He said he could not obtain probate if caveat was not uplifted. I asked him to give us in writing what we have agreed. After that we came away. At the conference the question of sale was discussed. We accepted the will without prejudice. I received a letter of 19th February, 1958. We reserved our right to challenge the will. I attended conference on 9th December 1958 at which Mr. Wheatley, Mr. Gregg and my brothers were present. Mr. Wheatley called the conference. I see Exhibit 21. I disagree with the term of 20 years. We agreed in the event of Court not granting permission to take the land we would be granted a long lease to be as good as freehold and to pay a premium and a nominal rent. The question of long lease was first brought up at this meeting. This was decided

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without prejudice to our rights to challenge the will. The delay was due to the Public Trustee not taking action on our agreed proposal. On 21st April, 1959 probate in common form was given to the Public Trustee. Delay in the sale of property was due to the Public Trustee not taking action. Later Mr. Wheatley said for us to take a short term lease to give them a breathing space. This was again done without prejudice to our right to challenge the Will."

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In his evidence S.P. said :

"After lodging of caveat the Public Trustee and the plaintiffs had a meeting in the Public Trustee's office in February 1958. Public Trustee had given us his word that he was applying to Court to vary terms of will of my father if C.P. Bidesi uplifted the caveat. There was discussion in relation to terms. I always understood that the Public Trustee was preparing to sell business to S.M. Bidesi and land to C.P. Public Trustee said that the old lady did not have much to say in the will as she was tenant at will. Mr. Gregg did say that he had to pay Death Duties within a year. There was not much money in the trust. Public Trustee had said that he was not competent to run the business and nominated S.M. Bidesi to run the business. He said the lady was objecting to the sale but she only had a minor interest in the property. We said and made it clear that we would negotiate without prejudice to our rights to challenge the will. He assured us that he would do his best that something could be done. We had accepted his offer without prejudice. We respected Mr. Gregg and held him in high regard and we believed that he was genuine. Between 14th February, 1958 and 9th December, 1958 I was still operating the business. I see memo in Mr. Wheatley's handwriting. I do not recall term of 20 years being discussed. I remembered long lease being discussed. We wanted to get permission from Court to sell C.T. 6503 and 6504 to S.M. and C.P. Bidesi. Mr. Gregg said that if Supreme Court rejected application he would give long lease which would be as good as freehold. Basis of arrangement was the removal of caveat without prejudice and reserved our right to challenge the will. Public Trustee had given assurance but he had not applied to

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10 Court to approve application. Mr. Gregg would say he was working on it and not to get excited. Caveat was finally withdrawn on 16th March, 1959. A lease was not executed until 20th November, 1959. I was still manager of business during that time. We had agreed that S.M. Bidesi will take over the lease and business. Mr. Gregg said he would apply to Court in pursuance of his letter of 19th February 1958. He said it was a long process going through legal formalities. If application went through the lease would be revoked. After I received letter I handed over operation of business to S.M. Bidesi who has run it ever since."

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20 On the whole of the material before me I think there can be no doubt that the defendant at the outset had it in mind to apply to the Court to have the terms of the will varied in order to enable various sales to be made which would favourably affect the plaintiffs. I think the defendant acted as he did because of the circumstances created by the will. Not only did he want to prevent bad relations developing between the two branches of the testator's family but he wanted and needed the co-operation of the plaintiffs in the

30 conduct of the affairs of the estate for which he was primarily responsible. He clearly took the view, quite rightly as it would seem, that the plaintiffs had been most active and had played a useful role in the running of the construction business of their father and the defendant must have hoped by the actions he contemplated taking, to salvage something for them. However, by June 1958 the defendant realised the difficulty with

40 which he was faced with regard to his proposals. The difficulty arose in the shape of the case of Chapman v. Chapman (1954) 1 W.L.R. 723 which in effect restricted the powers of the Supreme Court to vary the terms of the will. No doubt the problem was discussed at the conference of 9th December, 1958. However, I do not think that there is any basis in fact for saying that at the conference there was

50 any discussion or agreement concerning the duration of the leases to be granted other than that they were to be either for 10 or 20 years. I accept as factually accurate the minute of

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that conference as recorded by Mr. Wheatley. By the time of the conference it must have become quite clear to the plaintiffs that the sales proposed by the defendant and in which C.P. and S.M. were most interested were not likely to be achieved in view of the case of Chapman v. Chapman. I am satisfied that the plaintiffs agreed to discontinue the caveat proceedings on 16th March, 1959 in the full realisation that any application for variation of the terms of the will to enable the proposals set out in the defendant's letter of 19th February, 1958 to C.P. and S.M. was not likely to succeed. I am also satisfied that the plaintiffs were content in the event of such an application being unsuccessful to settle for the leasehold arrangements which were discussed at the conference as an alternative solution. The plaintiffs have strongly protested in evidence that in discontinuing the caveat proceedings they were not in any way abandoning their rights to challenge the will. Indeed they say that at the conferences they had with the defendant and on other occasions they acted without prejudice to their right to challenge the will and this was known to the defendant. This may have been what they felt and what they intended, but I am satisfied that they did not tell the defendant so, and I reject their evidence in this regard. If that had been the true position I am sure it would have been appropriately noted as a matter of record, either on the Public Trustee's files or by letters from the plaintiffs' solicitors. There is no record of this matter. I am fully satisfied that the decision on the part of the plaintiffs to discontinue the caveat proceedings and thereby enable an order for probate in common form to issue was absolute and unequivocal. In my view, if there were in fact any reservations by the plaintiffs concerning any of these matters and these were known to the defendant I am certain that he would not have been content merely to obtain probate in common form but would have taken steps to propound the will in solemn form of law.

The defendant also contended that in view of the long lapse of time before taking action to impeach the will the plea of acquiescence must be sustained unless there are special circumstances which account for the delay. It was for the plaintiffs to establish those special circumstances. In this case it was submitted that having regard to the whole of the evidence no special circumstances

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were present as would account for or justify the long delay which has existed between the grant of probate and the issue of the writ in these proceedings.

10 The plaintiffs' main contention concerning the alleged delay in bringing their action to revoke the grant of probate is that they were led into believing through the defendant's conduct that an amicable settlement with regard to the will could be reached. The defendant must have also believed in it as he had been responsible for initiating the various moves which resulted in the discontinuance of the caveat proceedings. The defendant had himself adopted a vacillating attitude as is clearly evident from his letter of 17th January, 1961 to Messrs. Cromptons who were then acting for the plaintiffs. The letter is in these terms (omitting formal parts) :

20 "Dear Sirs,

re: Estate of S.M.Bidesi

30 I refer to my conversation with your Mr. Crompton recently on the question of an application being made to the Court for the sale of the property in Waimanu Road belonging to the above Estate and I refer also to my letter to Mr. S.M. Bidesi of 19.2.58. Since writing that letter I have had the opportunity of considering the circumstances of the estate and the case law on the subject and would refer you in particular to the case of Chapman & Ors v. Chapman & Ors (H.L.) (1954) 1 A.E.R. 798. The House of Lords in this case discussed Re New and said that that case constituted the high water mark of the exercise by the Court of its extraordinary jurisdiction in relation to trusts.

40 In the case of Bidesi some of the beneficiaries are not sui juris. Further, there are other assets which the trustee would have to realise before the question of "salvage" arose. For instance, there is a mortgage from K.W. March for £11,000 which is repayable on demand. Further, there is a mortgage from Road Builders Ltd. for £27,000 of which the sum of £3,000 is paid annually in reduction.

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These monies could be utilised towards payment of death duties.

In this connection I enclose a copy of an article published in 31 Australian Law Journal 790. Following on this I discussed the matter with Mr. D.N.M. McFarlane who was President of the Fiji Law Society at the time. I suggested that it would be desirable if similar legislation were introduced in Fiji. He advised me that the question of amending legislation with regard to trusts was under a consideration by the Law Society. However, nothing further has been done in the matter.

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I am therefore of the firm opinion that, unless legislation such as was introduced in the United Kingdom is introduced in Fiji there would be not the slightest possibility of an application to the Supreme Court being successful in this case."

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According to the plaintiffs the letter shows that as late as January 1961 the defendant was still entertaining the idea of applying to the Court for variation of the will or in the alternative of seeking through the Fiji Law Society a change in the law of trusts in Fiji. It is also said that the defendant was the Public Trustee and that he held office by virtue of statutory provisions and as such was the repository of public confidence, and for that reason he should always conduct himself in his dealings with members of the public with a high sense of duty and fairness. It is said that it was clear to the defendant after the contents of the will of the testator had been read to the plaintiffs that they did not accept the will as that of their father, and that their subsequent conduct was consistent with their attitude towards the will. The plaintiffs say that despite this the defendant did not think it necessary to prove the will in solemn form as it was incumbent upon him to do so in the circumstances, but instead applied himself over several years in placating the plaintiffs in the hope of bringing about an amicable settlement among the testator's children. It is against this background that the question of the alleged delay by the plaintiffs should be viewed. After all, it is said, acquiescence is an equitable relief which makes it incumbent upon the defendant to show that he was not in any way at fault and did not contribute to the delay. The plaintiffs

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say that if, in this case there has been acquiescence the defendant himself was a party to it.

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10 As against that, the defendant contended in relation to the plea of acquiescence that since the grant of probate the plaintiffs have done acts which are inconsistent with their opposition to the will, and he furnished particulars of no fewer than 42 dealings entered into between the defendant as executor of the will and one or other of the plaintiffs. The plaintiffs claim that these dealings have nothing whatever to do with the validity or any recognition on their part, of the will.

20 It was contended for the plaintiffs that the dealings referred to did not and could not imply recognition of the alleged will on their part, that they were entered into because of the assurances persistently given by the defendant relating to the amicable settlement he was hoping for and wanted to reach, that they were an inevitable consequence of the particular approach adopted by the defendant on the matter. The plaintiffs say they had been led into believing that everything concerning the estate of their father would work out in the manner contemplated by the defendant. They say that the delay that resulted before the commencement of these proceedings was therefore inevitable and was due in the main to the manner in which the defendant dealt with the whole matter at the outset. The defendant had wanted to vary the terms of the will to accommodate the plaintiffs. He had set out to do so and had held out hopes to the plaintiffs by reason of his actions. Even after the defendant had become aware of the decision in Chapman v. Chapman and the 30 restrictions it appeared to place upon the powers of the Supreme Court to vary the will, the defendant did not disabuse the minds of the plaintiffs of the hopes he had induced in them with regard to the assets of the estate.

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In relation to the plea of acquiescence the defendant also contended that there were no reasonable grounds in doubting the

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genuineness and validity of the will. In support of this contention the defendant referred to the evidence relating to (i) Mr. Wheatley's relationship with the testator and knowledge of his English; (ii) drafting of will by Mr. Wheatley when he was employed by the Inland Revenue Department; (iii) the interview between Mr. Wheatley and the testator and the drafting of the will; (iv) Mr. Wheatley taking the testator through the will; (v) execution of the will and (vi) the events which concern Mr. Wheatley's accuracy after the making of the will. Counsel for the defendant in the course of his submissions analysed the evidence in considerable detail and the question of the validity or otherwise of the will which will be examined late in this judgment.

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I have carefully considered the evidence adduced and submissions made in relation to the plea of acquiescence. I do not think that the abortive exercise relating to the variation of the will which dominated the plaintiffs' argument on this issue can be viewed in isolation from the whole of the circumstances of the case. I have noted that since the grant of probate on 21st April, 1959 there has been a series of dealings extending over 7 years between the defendant and each of the plaintiffs relating to and arising from the testator's estate. Although much disputed by the plaintiffs I do not think there can be any doubt that those dealings could not have been carried out unless the defendant was in fact acting as an executor under the will of the testator. It should be observed that in none of those dealings did the plaintiffs make any attempt to indicate to the defendant that in dealing with him they did not recognise him as an executor under the will or that notwithstanding those dealings they reserved the right to contest the will and did not recognise the validity of the will. On the contrary, the evidence abundantly shows that "there were no strings attached" with regard to those dealings. Even when the summons to discontinue the caveat proceedings was heard by a Judge in Chambers on 16th March, 1959 nothing whatever was said about any reservation of rights to contest the will. This is one of the factors which has compelled me to disbelieve the plaintiffs concerned who have alleged that at the various conferences they had with the defendant it was made clear to him that they were acting without prejudice to their rights to challenge the will on

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a subsequent date. I think it is much more probable and there is every indication in the evidence to show that the plaintiffs had completely abandoned their initial and understandable reaction to contest the will as from or about the date of the grant of probate i.e. 21st April, 1959. Even if it be said that up to his letter to Messrs. Cromptons on 17th January, 1961, the defendant led the plaintiffs to acquiesce in the granting of the probate to him in the belief that he would fulfil the arrangements indicated in his letters of 19th February and 14th March, 1958, the position is entirely different after January, 1961 when the plaintiffs knew - if they had not known before - that the defendant would not and as he says, could not carry out the arrangements under which he had obtained the withdrawal of the plaintiffs' caveats. Thereafter any action the plaintiffs took was with knowledge that the defendant had taken probate and if any action taken by the plaintiffs was inconsistent with or dependent upon the grant of probate, such action will provide the basis for the plea of acquiescence.

First, then, M.D. on 17th July, 1961 took out an originating summons against the defendant in the Supreme Court of Fiji claiming the transfer to him of the land in Certificate of Title 10317. The originating summons was heard in February 1962 and dismissed with costs.

Secondly, S.M. in July, 1964 commenced proceedings in the Supreme Court of Fiji claiming specific performance of an alleged agreement by him with the defendant to purchase the land in Certificate of Title 6504 for £7,981. In June 1965 he discontinued that action and paid the costs of it. Again in June 1965 he caused his solicitors to write to the defendant asking for a renewal of his lease of Certificates of Title 6503 and 6504 when they expired in 1969. This land had been leased to him in 1959.

Thirdly, on 21st March, 1961 C.P. wanted to take a transfer of Certificate of Title 9397 and asked for and obtained the consent of the defendant thereto. An agreement for sale

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was made and after a very considerable delay C.P. took a transfer in January 1967. Again, on 25th January, 1962 C.P. offered to purchase Certificate of Title 4153 from his father's estate.

Fourthly, S.P. having notified the defendant as executor of his father's estate that he claimed that his father had made him gift of Certificate of Title 8832 lodged a caveat against that land in June 1961. Further in June 1961 he claimed \$1,636 for professional services rendered to his father during his lifetime and after an action in the Supreme Court in 1962 he was paid \$906 and costs. In 1961 before the Supreme Court he defended a claim by the defendant for \$4,689.45 and after judgment was given against him he appealed successfully to the Fiji Court of Appeal. At no time during those proceedings did he deny the defendant's title to claim. Again on 24th January, 1961 he agreed to buy Certificate of Title 8830 from his father's estate, although it was not until May 1963 that the purchase was finally completed and the land transferred to him. Again in July 1961 he claimed against the defendant for transfer of Certificate of Title 8832 but settled his action by paying \$300 for the land which was eventually transferred to him in June 1967.

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In my view the actions which I have detailed are completely inconsistent with the relief now claimed by the plaintiffs, and so far as some at least of them are concerned, were a fulfilment by the defendant of the promises which he made to the plaintiffs as acts which he would do in the event of the Court deciding against him. It appears to me, therefore, that the plaintiffs cannot now be heard to say that they did not recognise the will propounded by the defendant on the one hand, and on the other that they will accept the compromise which the defendant offered them on condition that they recognised the will, and retain what they have received under the compromise. I am satisfied that the plaintiffs had since the grant of probate acquiesced in all that had taken place between them and the defendant because they accepted the defendant as the sole executor of their father's will. Such a state of affairs has gone on for so long that I think the defendant was entitled to believe as he did in fact believe that the will would not be challenged after the grant of probate in common form.

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In the words of the authorities quoted above:

"The objection must be made before there has been such acquiescence with knowledge, as to induce a reasonable belief that the act will not afterwards be challenged."

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I am also satisfied that there were no special circumstances present to account for the long delay experienced before the commencement of these proceedings. Apart from this (and here I am anticipating) there were no grounds in doubting the genuineness and validity of the will. Again in the words of the authorities earlier referred to :

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"Long acquiescence, however, unaccounted for by any special circumstances and acts done by a next-of-kin under the provisions of the will, may (if no fact appears which excites a reasonable suspicion of the genuineness or validity of the will) amount to such a waiver of his rights as to preclude him from putting the will in suit."

In the result and having regard to the whole of the circumstances of this case the plea of acquiescence must succeed and I find accordingly.

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On the plea of laches counsel for the defendant cited three cases as illustrative of the principles involved; Re Coghlan (deceased) (1948) 2 All E.R. 68; Williams v. Evans (1911) P.175 and Whereat v. Duff (1972) 2 N.S.W.L.R. 147 all of which I have found to be of much assistance. The case of Williams v. Evans illustrates the fact that this equitable relief applies also to a probate action. In discussing this plea in Whereat v. Duff (1972) Asprey J.A. at page 179 said :

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"The terms "laches" as a bar to equitable relief connotes that there has been such delay standing by itself or in association with other facts disclosed by the evidence as makes it inequitable to enforce the claim."

He cited the following passage from the judgment

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of Dixon C.J., Webb and Kitto JJ. in
Fysh v. Page (1956) 96 C.L.R. 233 :

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"If a plaintiff establishes prima facie grounds for relief the question whether he is defeated by delay must itself be governed by the kind of considerations upon which the principles of equity proceed. If the delay means that the grant of relief would place the party whose title might otherwise be voidable on equitable ground in an unreasonable situation, or if, because of change of circumstances, it would give the party claiming relief an unjust advantage or would impose an unfair prejudice on the opposite party, these are matters which may suffice to answer the prima facie grounds for relief."

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Also cited in the judgment of Asprey J.A. was the case of Lindsay Petroleum Co. v. Hurd (1874) L.R. 5 P.C. 221 where at pp. 239-240 it is stated :

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"The doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

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And at page 241 :

"In order that the remedy should be lost by laches or delay, it is, if not universally at all events ordinarily ... necessary that there should be sufficient knowledge of the facts constituting the title of relief."

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The other passage cited by Asprey J.A. was from Erlanger v. New Sombrero Phosphate Co. (1878) 3 App. Cas. 1218 where in approving the above passage Lord Blackburn said at p.1279 :

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"A Court of Equity requires that those who come to it to ask its active interposition to give them relief, should use due diligence, after there has been such notice or knowledge as to make it inequitable to lie by. And any change which occurs in the position of the parties or the states of the property after such notice or knowledge should tell much more against the party in mora, and a similar change before he was in mora should do. I think, from the nature of the inquiry, it must always be a question of more or less, depending on the degree of diligence which might reasonably be required, and the degree of change which has occurred, whether the balance of justice or injustice is in favour of granting the remedy or withholding it."

With regard to the plea of laches the defendant also relies upon the events following the death of the testator to which ample reference has been made. The grant of probate in common form was made as far back as 21st April, 1959. Since then a lot of positive acts pursuant to the probate have taken place. The plaintiffs have also had ample opportunity to appraise their legal position and seek independent legal advice. It seems to me that seven years is far too long a period for any one to be sitting on his rights in the circumstances prevailing in this case. Ignorance of the law can be no excuse. Such delay in bringing action is inexcusable in an age where communications have become relatively easy. In Whereat v. Duff (supra) Asprey J.A. at pp. 180-181 said :

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"Courts today should not measure delay in the enforcement of equitable claims by the yard stick permissible in the more leisurely age of a century or so ago. Times change and Courts must take note of readily available methods of easy communication and the quickening needs of a modern world. Further, delay in taking action for the assertion of rights basically provides some evidence of assent to the enjoyment or otherwise of those rights by someone else, and where that delay is coupled with the existence of other factors which tip the balance of justice towards withholding the relief sought, a relatively shorter period of delay is regarded by a Court of Equity as sufficient."

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In all the circumstances of this case I am completely satisfied that there has been an unreasonable delay on the part of the plaintiffs in bringing their revocation action. Such delay has no doubt caused prejudice to the defendant inasmuch as inter alia the evidence of Mr. H. Wheatley, a key witness, can only now be received in the form of depositions taken on commission. The admission in evidence of his depositions at the trial has been the subject of a bitter attack by counsel for the plaintiffs. This would have been obviated if the plaintiffs had not taken so long in initiating their present action. I think the balance of justice is clearly in favour of granting the relief sought. In my opinion therefore the plea of laches should succeed. I find accordingly.

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The estoppel pleaded here, as I understand it, is an estoppel of the type pleaded in Williams v. Evans (1911) P.175 and would estop the plaintiffs, because they had permitted the defendant to take probate, from challenging the will. To my mind, that contention finds no support in the case mentioned. As Horridge J. there said at p.78:

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"If the plaintiffs has a real honest case he ought to be allowed to have it dealt with by the Court."

In my view the plaintiffs are not estopped from prosecuting these proceedings, whatever may be the result of their actions after probate was

granted to the defendant. In view of my findings on the issues of acquiescence and laches, the defendant would at any rate have been entitled to an order for stay of proceedings in the main action. That would ordinarily have disposed of the whole matter. However, as I may well be wrong in the conclusions I have reached I think it necessary, in the interest of the parties and in order to attain finality so far as this Court is concerned, for me to also deal with the plaintiffs' claim for revocation of probate. This seems most desirable since all the evidence relevant to the claim and the arguments thereon have been fully traversed during the course of the trial.

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The plaintiffs claim that the probate granted in common form to the defendant on 21st April, 1959 should be revoked on the ground that the testator did not know nor approve of the contents of the will. What is therefore in issue is whether the testator understood and approved the contents of the will he executed. To this issue the quality of the testator's understanding is most relevant. The law is clear. It is for the defendant to prove affirmatively the knowledge and approval of the testator with regard to the contents of the will.

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One of the main bones of contention raised by the plaintiffs is that the testator did not understand enough English to be able to converse intelligibly with Mr. Wheatley with regard to the making of his will. Much evidence was led on both sides on this question. According to Mr. Wheatley he knew the testator well and had been closely associated with him for many years prior to his death. He could converse with the testator only in English because he did not understand Hindi. Mr. Wheatley said his vocabulary, though limited, was adequate. He was able to express himself clearly. They used to visit each other's homes quite frequently. They were neighbours. The testator would stop at his place on his way home from work and have a glass of whisky, a chat and a laugh. On several occasions Mr. Wheatley saw him and talked to him outside the workshop. He found no difficulty in understanding the testator who also had no difficulty in understanding him. Their conversation would range over various topics, some of which were abstract.

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They would discuss politics and world affairs.

Sergius Alexander Tetzner gave evidence strongly corroborating the evidence of Mr. Wheatley on the testator's knowledge and understanding of English. Mr. Tetzner who had practised as a surveyor, valuer and engineer in Fiji for many years said he came into contact with the testator about 1950 or shortly thereafter. The testator was then conducting a successful building business. He said his conversations with the testator had been in English. The testator's English was not grammatical but he could make himself understood clearly. He said he had no difficulty in making himself understood by the testator. Besides professional discussions they had also discussed general topics. In 1956 a company with which he was concerned bought land at Mead Road from the testator. Altogether he had half a dozen conversations with the testator before the purchase was concluded. In these conversations they understood each other clearly and fully. He found the testator a capable and astute businessman.

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Herbert Norman Murray said he was employed by Morris Hedstrom Limited since 1935. He had known the testator for about 20 years. The testator was a client of Millers Limited, a subsidiary of Morris Hedstrom Limited of which the witness was manager and director. He said he had met him frequently; he had spoken to him about matters other than business. He said he conducted his conversations with the testator in English. The testator's English was not polished but was competent. Mr. Murray said he could not recall having any difficulty in communicating with the testator or the testator with him. The testator was a shrewd and careful man. He was competent to converse in English.

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As I will note later Mrs. Andrews, in her affidavit of due execution dated the 8th April, 1959, swore to the fact that the testator spoke and understood the English language. She had known the testator over a period of 10 years. This was during the period when she was working as a clerk with the firm of Ellis, Munro, Warren and Leys. The testator often called at the office and any enquiries he made to her would be in English.

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10 Mrs. Andrews joined the office of the Public Trustee in January 1957 as an Estate Officer. C.P. gave evidence that the testator only understood plain English. He would bring letters to the witness to reply to. He could not read up to the time of his death. He could not write English or Hindi. He only knew how to sign his name in Hindi. He would speak very simple English. He would mix English and Fijian in his conversation. C.P. remembered an occasion when the testator called him to interpret a discussion about building materials with an European. The European man talked about terms which the testator could not understand. On other occasions he would translate for the testator from Hindustani. He said his friends used to speak to him in a mixture of English and Hindi and the testator would reply to them in a mixture of Fijian, English and Hindi.

20 S.P. said that the testator did not speak fluent English. He had very few social contacts. He said the testator did not improve his English over the years. He used to help the testator in preparing bills of quantities and plans when S.M. was too busy to help. Neither the testator's English nor his vocabulary improved over the years. He could not write an alphabet in English. He could not write in Hindustani. He recalled the sale of testator's Mead Road property to Mr. Tetzner. At these negotiations the testator would speak to him in Hindustani and he would do the talking in English with Mr. Tetzner. He said he did not find any improvement in the testator's knowledge of English.

30 S.M. gave evidence that as early as he could remember the testator only spoke in broken English and very rarely at that. He said the testator could not read English and that over the years he did not see any improvement in his English.

40 Alfred Henry Marlow said he had known the testator since 1912. The testator worked for his firm in 1912 or 1913. He worked for him for a couple of years. During that time they spoke to each other very often. He would speak to him on matters he was working on. On those occasions the witness's Hindi was not good and the testator's English was on par

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with the witness's Hindi. Thus they spoke in a kind of lingua-franca and reached some understanding. The testator spoke English very poorly then. Mr. Marlow said most of their conversation was in relation to building with which the testator was au fait. The testator did not always speak in English to him. He sometimes spoke in Hindustani to him. Very few of his employees spoke English. The testator did not understand English very well. He said the testator was an intelligent man and was considered to be very competent and knowledgeable about the building trade. He was also a very determined man. They used to cross trail fairly consistently when the testator left him to work for Whan Construction Limited. When they met they would speak to each other in a mixture of English and Hindi. Mr. Marlow said in 1912 the lower level of labourers did not speak much English but over the years there had been a tremendous rise in standard.

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From the evidence it is clear that as early as 1912 the testator did have a smattering of English. It is not disputed that the testator was a man of great ability and a determined one at that. He was clearly an ambitious man. I do not think it is conceivable that such a man should not improve his knowledge of spoken English over the next 40 years or so of his life. A fair knowledge of spoken English was a necessary, 30 if not a vital equipment in his daily business activities. His business was considerable. I do not think that a person with so much natural intelligence and ambition as the testator evidently had would miss out in the general rise in standard of spoken English among the working class over the years. The evidence of Messrs Wheatley, Tetzner and Murray who were speaking on the latter part of the testator's business life concerning his English appears to me 40 reasonable. Mr. Tetzner and Mr. Murray are clearly independent witnesses as is no doubt Mr. Marlow who was called by the plaintiffs. In the circumstances I accept the evidence of Messrs. Wheatley, Tetzner, Murray and Marlow concerning the standard of spoken English of the testator. I also accept Mrs. Andrews' evidence that the testator spoke in English when he enquired at the office of Ellis, Munro, Warren 50 and Leys. I find as a fact that the testator

did possess sufficient knowledge and understanding of spoken English to enable him to converse intelligibly in English with Mr. Wheatley and make himself understood by Mr. Wheatley.

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10 I turn now to the events leading up to the making of the will of the testator dated 18th April, 1957. The trial in this case was originally expected to take place in 1967 or 1968, and since Mr. Wheatley was in poor health it was agreed on 1st September, 1967 by all parties that his evidence should be taken on commission in Sydney. Mr. Wheatley gave evidence and he was cross-examined and his evidence was recorded as a deposition. As his health had not improved by the time the trial actually began in December 1972 applica-
20 tion was made to read his evidence. Objection was made on behalf of the plaintiffs but I was satisfied that Mr. Wheatley was still unable to attend and no good reason being shown by the plaintiffs why the evidence taken on commission specially for the trial of this action, although taken so long before, should not be admitted, I rejected the application to exclude it. I would have expected Mr. Wheatley's recollection of events which took place in 1957 to be much clearer in 1967 when his evidence was taken than it would have
30 been in 1972 when the trial took place. I felt that it would have been unrealistic and contrary to the wider interests of justice to exclude these depositions at the trial. In this connection I find support in the statement of Karminski J. in In the Estate of Trotman, Trotman v. Trotman (1964) 108 S.J. 159 where he said :

40 "The Probate Court has always done its best to elicit facts without to rigid an adherence to rules of evidence applied in other courts."

sic.

In this case the depositions were taken following agreement between both parties with clear appreciation of the probable use to which they would be put.

Mr. Wheatley who has been living ever since he retired at 50 High Street, North Sydney, Australia, said he came to Fiji in 1933 to work as a clerk with Burns Philip (SS) Co.

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Ltd. Later he went to W.R. Carpenter & Co. Ltd. as an accountant. In 1939 he joined Messrs. Cromptons, a firm of solicitors in Suva, as managing clerk. He remained with Messrs. Cromptons until 1946 when he joined the Inland Revenue Department of the Fiji Government as a surveyor of taxes. In 1956 he was transferred to the Registrar-General's Department as Deputy Registrar-General. Mr. Wheatley first met the testator round about 1936. He got to know the testator well when he was at Messrs. Cromptons. The testator was a client of the firm. Mr. Wheatley personally dealt with the testator's affairs and used to see him quite frequently socially. Mr. Wheatley knew that the testator had a large business as a building contractor. In 1946 the testator's firm built a house for him. In 1956 the testator supervised the building of a block of flats for him. The testator was too busy to take the job.

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Mr. Wheatley said that when he was with the Inland Revenue Department the testator came to him and asked him to have a will drafted. He made a draft which he handed to the testator and discussed the draft with him. S.M. was present on that occasion. When the testator heard the draft read he said that it was not what he wanted and that it was a white man's will. The first draft was made sometime before 1956. Mr. Wheatley remembered when he was at the Registrar-General's Department the testator rang him at his office asking to see him. When the testator arrived he talked about making a will. He said he had never discussed it with any of his children but only with his wife who was worried for her children if anything should happen to him. The testator said he had come to the Government and not to him to look after his estate. He wanted it all to be private as he had had trouble with his first family. Mr. Wheatley told him that he would have to see the Public Trustee about it. The testator also inquired what would happen to the Googoo Becha Trust. Mr. Wheatley saw the Public Trustee who agreed to accept the trusteeship for the testator. The testator was brought to the Public Trustee who at that time was Mr. Gregg and they had a short discussion about the will. After that they went back to Mr. Wheatley's office and there Mr. Wheatley

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and testator discussed what the testator wanted and Mr. Wheatley put it down in writing. The testator wanted his wife looked after. He wanted her to be kept as she was then being kept for life. As the wife of a wealthy Indian he did not want her to have more than she was used to but he wanted the Public Trustee just to give her sufficient to enable her to keep her self-respect. He wanted the estate managed and was very anxious that the freehold on which his house stood should not be sold. He wanted that to be a home always for his children. He said he did not want any distribution to be made if it could be helped. He wanted to know how long a distribution could be delayed. He asked whether his estate could be tied up forever. Mr. Wheatley told him it was only quite a small estate and perhaps the date of distribution could be deferred for 20 years. The testator said that was too soon and wanted distribution deferred for 40 years. Mr. Wheatley said that he took a longhand note of the testator's wishes. The note was to be converted into a draft will. Mr. Wheatley said he wanted to have an interpreter but the testator would not have one. Even when the Public Trustee asked him he refused to have an interpreter. The testator wanted an European lady to type the will. He was told that it was customary to have an interpreter. The testator said he did not want any Indian to have anything to do with it because he wanted the will to be secret and he did not want any leakages. He said he had had trouble with his two sons, and had just had a settlement and one son had left the business. Mr. Wheatley said he explained everything clearly to the testator and the main conversation between them occurred when he was taking the longhand note of the conversation to make it into a draft will. Mr. Wheatley said that the last clause "and I declare that during my lifetime I have made adequate provisions for the children of my first marriage" was put in on the express instructions of the testator. Mr. Wheatley said that during their conversation the testator told him that he had looked after the children of his first marriage, had given them employment and that some of them were well todo, and that it was the children of the second marriage that he was worried about. The testator had told Mr. Wheatley while the latter

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was with the Inland Revenue Department there had been strained relations between him and his son S.M. Mr. Wheatley said that he told the testator that whether or not he was disappointed with his children they were all his children and that in his opinion they should share alike in his estate. The testator said that that was the white man's attitude.

After the conversation in which the testator had made known his wishes, Mr. Wheatley told him he would knock it into shape for him and he should come back after three days when he would have a draft typed out which they could go through together. Mr. Wheatley said that he then prepared a draft will which he submitted to the Public Trustee who felt that it was correctly drawn. The will was then engrossed for signature. Mrs. Andrews did the typing of the will. 10

Mr. Wheatley said he saw the testator again later after the testator rang up to inquire whether he was ready to see him. When the testator came in Mr. Wheatley spoke to him and took him through the will which was ready to be signed. Mr. Wheatley said he took the testator through the will slowly. Mr. Wheatley said he read it slowly with pauses at each section. At each section he would ask the testator; "Now, you understand what that means", and they discussed it and Mr. Wheatley saw to it that the testator did understand. He said he knew that the testator understood because they had spoken together in English. During their discussion of the contents of the will the testator asked him again about the Googoo Becha Trust. The testator told him that he had brought up the children of the first marriage and married and established them and had given them work in the business and he had given each one of them a block of land and felt that he had looked after them and that he considered his duty was to the babies coming on because he did not have a very big estate. The testator also told him that he was worried about his business because since the trouble with S.M. there did not appear to be very much profit. Mr. Wheatley said he explained everything in the will clearly to the testator and to the best of his ability. He told the testator that the Public Trustee would look after his wife and children from the income of the 20 30 40 50

estate as he had wished. The Public Trustee would see that his children were educated and would look after his wife and keep her in a proper state from the income from the estate. He said he read the will through and told the testator in plain English what the phrases meant. On each occasion the testator said he understood. He said when he explained the contents of the will he spoke in plain English, e.g. if the will said "living male issue" he would say to the testator "issue are your sons or your children". The testator had asked occasional questions. He had asked what was the meaning of "issue". That was not the only question testator asked. He asked questions about the Googoo Becha Trust. Mr. Wheatley said that if the testator did not understand a word he substituted another which he did understand. Mr. Wheatley could not recall specifically whether he gave any explanation with regard to paragraph 6(d). He recalled that points for explanation were raised by the testator but he could not recall exactly what they were. Mr. Wheatley said that only the two of them were present when the will was read and explained to the testator.

After the will was read and explained to the testator Mr. Wheatley took him into the Public Trustee's office. Mr. B.L.Gregg was the Public Trustee at the time. In Mr. Gregg's office the two witnesses were called. They were Mrs. Andrews and Mrs. Behn. Mr. Wheatley said that either he or Mr. Gregg read the will. He believed it was Mr. Gregg who read it. The will was read in English. It was read straight through. Mr. Wheatley said he was not sure whether any points were raised. He said he could not recall whether any explanation was required at that time. After the reading of the will testator indicated his understanding of it by saying "it is bahoot acha" meaning satisfactory. Mr. Wheatley said he saw the testator signing the will witnessed by Mrs. Andrews and Mrs. Behn. He said that the testator was in very good spirits and very clear mentally. He was not ill.

Mr. B.L. Gregg gave evidence at the trial but his recollection was very limited with regard to the will. He said he had known

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Mr. Wheatley for quite a while before he joined his department after 1950. He said that instructions for a will would be recorded. The draft instructions would be shown to the testator after which amendments, if any, could be made. Mr. Wheatley would draft the wills and would have them engrossed. According to Mr. Gregg an interpreter would normally be required for persons who were not fluent in English. In the case of a non-European testator it was a general rule to have an interpretation clause in the will. A file would be opened containing the instructions for each will and the events annotated in chronological order on the file. In the case of Bidesi there was a file. He said that as a matter of system he would expect Mr. Bidesi's file to be still in existence. Mr. Gregg said he could not recollect whether he was present when the will was executed. He had no recollection of ever seeing a draft of Mr. Bidesi's will. He had no recollection whether he had any discussion with Mr. Wheatley about accepting trusteeship of Mr. Bidesi's will nor any recollection about the Googoo Becha estate. He had no recollection whether he saw either the testator or Mr. Wheatley when the will was executed on the 18th April, 1957. He said Mr. Wheatley was in charge of the section that drafted wills. He did not give any standard instructions as to what should go into a will. He could not recollect whether he saw the will after it was executed and before testator's death. After the testator's death he did see the will. He said when a will was made it was normally locked up in the strong room. As a matter of system after a death the file would be brought to him together with the original will. He said he would expect the draft instructions to be in the file. He did not compare the draft with the will. He said he must have perused the terms of the will. He could not remember whether he discussed the question of distribution of corpus and the rule of perpetuity with Mr. Wheatley. He did not know whether Mr. Wheatley took the will to be read at Bidesi's business premises. He said it was usual for the will to be read out to the beneficiaries. Before he saw the will he had no recollection whether testator had given instructions to Mr. Wheatley. He did not know the testator and had never met him. He could not remember whether C.P. called at his office to

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object to the will nor could he remember about S.M. He could not remember what part Mr. Wheatley played after C.P. raised objection to the will. All he knew was that the will was going to be contested. He said as a matter of system the will would be attested by members of his staff. This was the normal practice. He said Mr. Wheatley had experience in drafting wills with Messrs Cromptons before he came to his office. He had given him precedents about wills. He had not given him any other instructions about wills.

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Mrs. Christine Andrews gave evidence to the effect that she began working in the Public Trustee office sometime in 1957. Prior to that she worked for Messrs Ellis, Munro, Warren and Leys, a firm of solicitors in Suva, and after a stint overseas she returned to the firm in 1951 before coming to the office of the Public Trustee. She was employed as a book-keeper with that firm of solicitors. On occasions she would witness wills drawn up by members of the firm. She said it was usual for clerks to act as witnesses of a will. She had met the testator whilst working with that firm of solicitors. She said she witnessed a number of wills when she came to work with the Public Trustee. She said she was asked to type the will of the testator. It was not normal for her in the office of the Public Trustee to type a will. She only did it because she was asked to do so. She said she received the draft will from Mr. Wheatley and typed it and gave it back to Mr. Wheatley. She remembered being asked to witness testator's will. Mr. Wheatley asked her. The other witness was Mrs. Behn. She said she was present when testator signed the will. After the testator signed she signed and then Mrs. Behn. She signed on the lefthand side of the page. She could not recall whether Mr. Gregg was also present. After they all signed she placed the original will in the Register of Wills. She said that the usual method of making application for probate of a will in which the Public Trustee was executor was by formal affidavit by the Public Trustee, and that this would be made by Mr. Gregg. She said at first that she could not recollect having been asked to make an affidavit in connection with the application on 8th April, 1959.

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She said she could not recall who drafted the affidavit. She said according to the usual practice the affidavit would have been drafted by Mr. Gregg or Mr. Wheatley and she would be consulted upon the facts on which the affidavit was based. She said she would have ensured that the contents of the affidavit were true before swearing to them. She said she could not recollect the facts contained in the affidavit but her recollection would have been clear at the time. In her affidavit Mrs. Andrews deposed as follows :

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- "1. THAT I am one of the subscribing witnesses to the last Will and Testament of the said Bidesi (son of Chuman) Late of Suva, in the Colony of Fiji, Building Contractor, deceased, the said Will being now produced to me marked "A" bearing date the 18th day of April 1957 and referred to in the Oath of the Executor;
2. THAT I make further oath and say that the testator executed the said Will on the date thereof by signing in Hindi at the foot or end thereof as the same now appears thereon in the presence of me and Linnea Behn, the other subscribing witness thereto, both of us being present at the same time who on the request of the said testator in his sight and presence and in the sight and presence of each other subscribed our names as witnesses the Will having been first read over and explained to the testator in the English language when the testator appeared perfectly to understand the meaning and effect thereof and made his signature in Hindi in our presence as aforesaid;
3. AND THAT I make further oath and say that I personally knew the testator over a period of 10 years or more and I know that he spoke and understood the English language and that he fully understood the contents of the said Will."

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When Mr. Wheatley left the office of the Public Trustee in about 1964 the Bidesi estate came under Mrs. Andrews' jurisdiction and since then she had been doing the accounts of the estate. In the course of the preparation of this case she had searched all the files on the testator's estate

which she could find. The search involved quite a number of files. She made a particular search for a file which might have the early instructions in respect of the testator's will. But she was not able to find such a file. Nor could she recall having seen such a file. She said at times files have been mislaid in the office of the Public Trustee.

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10 Then we have the evidence of the
 plaintiffs themselves relating to the
 testator's will. C.P.'s evidence was to
 the following effect. His relationship with
 the testator was good throughout his life and
 up to the time of his death. During 1957 the
 testator discussed the property with S.M.
 when he was present. This was about 9 months
 before he died. The testator told them that
 he was going to give another block of land to
 20 each brother, including brothers of the
 second wife. All brothers and sisters would
 get shares in the estate. The testator was
 then talking about the subject of making a
 will. S.M. was going to be the executor
 of the will. In this discussion he was
 addressing himself more to S.M. as he was
 brighter in business matters and more capable
 of running the business. Prior to this
 discussion the testator had given a block of
 30 land to C.P. and one to S.P. C.P. was present
 with other members of the family when Mr.
 Wheatley read the will at the firm's business
 premises in Waimanu Road. After the will
 was read he said to Mr. Wheatley, "How come
 the will was made in this way?" Mr. Wheatley
 said "I am very sorry, C.P. I can't under-
 stand why your father has left you four out."
 Mr. Wheatley then mentioned that he himself
 had also been left out of the will. Mr.
 40 Wheatley said the testator had promised him
 a block of land behind Mead Road and mentioned
 that the will was made by the Public Trustee.
 Mr. Wheatley then said: "Just leave the matter
 for the time being. I will see what can be
 done." C.P. and his brothers were upset about
 the will. Four of five days later he went to
 the Government Buildings to see the Public
 Trustee. There he saw Mrs. Andrews and told
 her "You have witnessed my father's will. Did
 50 you explain or translate the will to him?"
 She said Mr. Wheatley asked her to witness the
 will; it was not translated. He asked her

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whether the will was read and who read the will and she said, "Nobody read the will." He then said: "Mrs. Andrews, surely you must have read the will to my father. How did you explain to my father?" She said: "Mr. Bidesi, I was only told to put my signature on the will. The will was not read." He said "Did you read and translate the will?" She said, "We are civil servants. We do what we are told." Then he said, "Do you mean to say that the will was not read in your presence?" She said, "No. It is no good discussing these things here. You go and see Mr. Wheatley." After speaking to Mrs. Andrews he went to see Mr. Wheatley in his office. He challenged Mr. Wheatley about the will. He said "Why was the will not translated to my father? You know, Mr. Wheatley, my father cannot speak English. He would not understand the contents of the will." Mr. Wheatley said, "Yes I agree with you, C.P. I sympathise with you four brothers. It is the Public Trustee who made the will. You had better go and see him." C.P. then went away. Before he left, he told Mr. Wheatley that he had spoken to Mrs. Andrews who claimed that the will was not read over or translated to his father. He asked him to tell him why. Mr. Wheatley said: "It is better for you to see Mr. Gregg. Mr. Gregg had had Mrs. Andrews to sign the will." He told Mr. Wheatley that Mrs. Andrews had said that the will was not read over in her presence. He said: "You see Mr. Gregg I don't know about it. He is responsible for the will." He saw Mr. Gregg later and asked him whether it was true that the will was not read over and translated to his father. Mr. Gregg then called for his father's will which was brought in to the office. C.P. asked him whether this was the type of will the Public Trustee generally made. Mr. Gregg said, "I agree with you that this is not the right way of making a will." Mr. Gregg then told him that it was Mr. Wheatley who had drafted the will - not him. C.P. was upset. He told Mr. Gregg, "When I went to Mr. Wheatley he said for me to see you. Now you say Mr. Wheatley drafted this will." He then told Mr. Gregg he was going to challenge the will. He asked Mr. Gregg, "Can you tell me who read the will to my father and who translated it?" He said "Nobody had read the will as far as I know. It was drafted by Mr. Wheatley and signed by two witnesses." He then added, "Don't do anything at the present moment, C.P. I will speak to

Mr. Wheatley and I will let you know."

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10 S.P.'s evidence relating to his father's will was to the following effect. A few days after his father died he went to his office. Mr. Wheatley had asked them to be gathered in the office that morning. S.M., C.P., M.D., and himself were all present. Mr. Wheatley came and read the contents of the will. C.P. looked at the will and was extremely upset. He said to Mr. Wheatley, "Who are these two people who witnessed the will?" Mr. Wheatley said, "Take it easy, C.P. Don't worry. I did not do it. This was done by the Public Trustee. I will see the Public Trustee." C.P. said to him "These people who signed the will - you know my father can't read. This was not explained to him in the Hindustani language." S.M. said to him, "I would like to see the instructions given by my father." Mr. Wheatley said, "I think the girls must have omitted this. I will look for the file to find the instructions". S.P. was disappointed and disgusted with the whole thing. There was nothing in the will about the business. He told Mr. Wheatley his father could not have made a will like that because he had been a strong Sanat an man all his life. It was surprising to him that he and his brothers were eliminated from the will. The first thing that came to his mind was the business. S.P. was surprised that S.M. was not executor or manager of the business. His father always had high regard for S.M. He had implicit trust in S.M. Whatever S.M. did was never questioned or challenged by his father. S.P. told Mr. Wheatley, "If you knew we were not provided for in the will what made you bring the will to read to us?" Mr. Wheatley said it was the Public Trustee who drafted the will and not him. He did not know the contents of the will. A few weeks later C.P. had a discussion with the other brothers and it was agreed that C.P. should lodge a caveat against the granting of probate to the Public Trustee.

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50 S.M.'s evidence relating to the will of his father was to the following effect. His father discussed with him the making of a will 8 or 9 months prior to his death. This was in their office at Waimanu Road. Mr. Wheatley was also present. Mr. Wheatley had drawn up Googoo

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Becha's will in which his father was a trustee. His father asked Mr. Wheatley to make a will for him too. Mr. Wheatley was a friend and used to come and have drinks with his father. His father gave him instructions to prepare the will. S.M. was going to be executor of the Will. All children of the first and second wives were going to have equal shares - male and female and his stepmother was to have a life interest and to be maintained in her present state. 10
When the youngest child reached 21 years' there would be equal distribution among all the children. He was to be manager of the main shop and business in the name of Bidesi & Sons. Mr. Wheatley took these instructions in his own handwriting. At the end of their meeting Mr. Wheatley said, "I will take this home and have a will prepared." Mr. Wheatley was then living at Tamavua and working at the Registrar-General's Office. His immediate superior was Mr. Gregg. Sometime 20
afterwards - about a week after he was given instructions - Mr. Wheatley came with an engrossed will. He brought it to the shop. S.M. read the will and explained it to his father. His father told Mr. Wheatley to leave the document with him. Mr. Wheatley then left the will with his father. He had a drink and went away. That was the last he saw of that document. His relationship with his father when Mr. Wheatley brought the will was good. At the time when the will was brought 30
his father had a property at Tamavua. Prior to the will Mr. Wheatley had wanted to buy 10 acres of land from his father. S.M. drew a plan for Mr. Wheatley for a block of flats at Tamavua called Bel Airs. About a month afterwards Mr. Wheatley saw him and said he was keen to buy land. This was not his first approach. S.M. told his father not to sell. He told Mr. Wheatley that they did not want to sell and in any case the price offered by him was too small. Mr. Wheatley was 40
disappointed. Mr. Wheatley and his father were friends. The conversation took place early in 1957. During his father's lifetime they built Mr. Wheatley's house at Tamavua. After his father gave Mr. Wheatley instructions for the will he saw Mr. Wheatley again but there was no conversation about the will. He never saw the document which was engrossed and brought to his father. After the instructions for the will were given he was on good terms with his father and was still 50
working for him. His relationship was good up to the time his father died. Within a week of his

10 father's death Mr. Wheatley came to his father's business premises. He brought with him a will. All the brothers of the first marriage were present - may be two of his stepbrothers. Mr. Wheatley called the meeting. He produced the will which he showed them. Mr. Wheatley read the contents of the will and so did C.P. C.P. became very cross and asked a number of questions. S.M. spoke first. He said, "This is not the will for which my father gave instructions." He said that in the instructions he was supposed to be the executor and all his brothers and sisters were to share alike. He asked Mr. Wheatley "Where are the instructions?" He said, "They must be in the file." S.M. then said, "This is not my father's will." S.M. told Mr. Wheatley he was present when the instructions were given and Mr. Wheatley said, "Well, the Public Trustee had prepared this will." C.P. took up the discussion. He said, "We are going to challenge the will." He became very upset. He said, "This attestation clause is not very clear - who read it - who explained it?" Referring to the witnesses in the will C.P. commented, "These persons are strange people to us. How does it come they signed the will. Who read and explained the will to my father?" Mr. Wheatley was quiet. After C.P. said he was going to challenge the will Mr. Wheatley said, "Do not lose your temper, C.P. Come and see the Public Trustee." He then left with the document. Later C.P. reported to S.M. about his visit to the office of the Public Trustee.

40 I have carefully considered the evidence concerning the will executed on the 18th April, 1957 by the testator and the question whether the testator knew, understood and approved of the contents of the will. In doing so I have directed myself in accordance with the law as laid down in Wintle v. Nye (1959) 1 All E.R. 552. That case is, however, significantly different from the present in that here Mr. Wheatley has taken no benefit under the will. I have borne in mind also the dictum of Davey L.J. in Tyrrell v. Painton (1894) P.151, where at p.159 he says :

50 "It must not be supposed that the principle in Barry v. Butlin is confined to cases where the person who prepares the will is

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the person who takes the benefit under it - that is one state of things which raises a suspicion; but the principle is, that whenever a will is prepared under circumstances which raise a well-grounded suspicion that it does not express the mind of the testator, the Court ought not to pronounce in favour of it unless that suspicion is removed."

Here the plaintiffs have said that the will is such that it does not express the mind of the testator. Mr. Wheatley has described in detail the circumstances under which he was asked and given instructions by the testator to draw up his will. It is not disputed that the testator approached Mr. Wheatley about his will. However, the circumstances under which he received instructions for the will are the subject of much dispute. Having considered all aspects of the matter I am satisfied and find as a fact that the testator did visit Mr. Wheatley at the office of the Public Trustee and there gave him full instructions from which the will was drawn up. I am also satisfied that those instructions have been reflected accurately in the will. In coming to this conclusion I have not overlooked the fact that the official file containing the testator's instructions has for some reason ceased to exist and was not available for perusal. No one seems to know what could have happened to it. It is possible that such a file has been mislaid as sometimes has happened in the office of the Public Trustee. The matter was not raised with Mr. Wheatley during his cross-examination in Sydney nor did the question of the existence of the testator's instructions appear to have been raised with the Public Trustee at any time before the issue of the writ in this action. Without any concrete evidence one way or the other it is not possible to infer anything positive from the loss of the file containing the testator's instructions for his will. In the circumstances this is not in my judgment a shattering handicap provided the Court is satisfied, as it is satisfied, that the ultimate testamentary document produced to it was properly acknowledged by the testator. In this connection there is no dispute whatever that the will was in fact signed by the testator and his two witnesses in the appropriate places in the document and thereby authenticated. I have also not overlooked the fact that it has

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10 been suggested that the only instructions given to Mr. Wheatley were those which had been given by the testator in the presence of S.M. and which allegedly stated that all the children were to share alike in their father's estate. While these instructions may well have been given it does not preclude the possibility of a subsequent change of heart on the part of the testator. I think the truth of the matter was that whatever the testator's original intention concerning the disposition of his estate may have been, the testator had clearly changed his mind when he saw Mr. Wheatley at his office and instructed him about his will. The testator's second thoughts about his will could well have been due to his disillusionment with his most trusted and helpful son, S.M. and to a lesser degree the other brothers. However, I would prefer to think the reason was more rational than that. It was also suggested that Mr. Wheatley had produced a completely different will from what the testator really wanted because he was disappointed when S.M. prevailed upon the testator not to sell to him the particular block of land in Mead Road which he had wanted badly to buy. I can find no substance in this suggestion inasmuch as it does not explain why the other plaintiffs were also left out of the will. Moreover, the evidence is clear that Mr. Wheatley had enjoyed good relations with the plaintiffs as he had with their father. Indeed Mr. Wheatley's evidence shows that he made some attempt to talk the testator out of excluding the plaintiffs from his will. It is quite apparent from the evidence that Mr. Wheatley enjoyed a special relationship with the testator and that the testator held him in high regard. They were close friends. The testator was an intelligent as well as a shrewd man. No doubt he found in Mr. Wheatley, who was senior Government official in the Fiji Public Service whom he had personally known for many years, a handy and readily accessible associate and confidant. It was therefore, it would seem, a natural thing for the testator to have gone to Mr. Wheatley to discuss his will with him. The testator obviously had more trust in Mr. Wheatley than in anybody else. C.P., S.P. and S.M. gave evidence to the effect that Mr. Wheatley had said that he had nothing to do with the will. It was done by the Public Trustee. I find these

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allegations difficult to believe. They were not in any event put to Mr. Wheatley during the course of his cross-examination in Sydney. By their nature the alleged admission should have had more than a passing interest for the plaintiffs because if the admissions were in fact made they afforded the strongest reason to the plaintiffs for attacking the validity of the testator's will. One would therefore have expected the plaintiffs to have raised the matter in no uncertain manner soon after those admissions were made. However, it appears that the first time one learned of those alleged admissions was late in the trial when C.P., S.P. and S.M. went into the witness box. Whichever way one looks at the matter one cannot resist the impression that the admissions attributed to Mr. Wheatley appear more like an afterthought on the part of the plaintiffs and were probably made in an attempt to bolster their case. In the circumstances I am satisfied that Mr. Wheatley did not make any of the admissions attributed to him by the three plaintiffs concerning the drafting of the testator's will. Similarly I am not convinced with C.P.'s assertions concerning the alleged conversation he had with Mrs. Andrews at the Government Buildings during which Mrs. Andrews was supposed to have made certain admissions to the effect that the testator's will was not read and explained nor translated to him. When considering events which took place several years ago it seems to me more prudent to rely on documentary material made at or closer to the time they occurred.

Human memories are notoriously fallible particularly if the events to be recalled took place, as in the present case, as long ago as fifteen years. Such a document would be Mrs. Andrews' affidavit of due execution which she swore on 8th April, 1959 and to which reference has already been made. It was made in connection with the application by the Public Trustee for the grant of probate of will in common form.

In her affidavit Mrs. Andrews deposed to the fact that the will was read and explained to the testator in the English language and the testator appeared to understand it perfectly.

For my part I prefer to accept this sworn statement which was made closer to the time of

10 the events to which it relates as much more trustworthy than C.P.'s oral evidence to the contrary given so many years later after the alleged events. Moreover, in cross-examination neither Mrs. Andrews nor Mr. Gregg could recall meeting or talking with C.P. at Government Buildings soon after the testator's death. Mrs. Andrews could not recall speaking to C.P. about his father's will. This lack of recollection on their part could be due either to the great lapse of time which has intervened since or to the fact that no meeting such as that described by C.P. ever took place. As I have remarked above in relation to the allegations made by C.P., S.P. and S.M. against Mr. Wheatley, if Mrs. Andrews and Mr. Gregg did in fact make any of the alleged admissions to C.P. concerning the testator's will, I am certain that the plaintiffs would not have agreed to withdraw their caveat proceedings but would have pressed on and vigorously contested the will on the basis of those admissions.

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30 In my view the fact that they had failed to do so does little to enhance C.P.'s credibility in regard to the admissions allegedly made to him. In the circumstances I find myself unable to give any weight whatever to C.P.'s account of the admissions allegedly made to him by Mrs. Andrews concerning the execution of the testator's will. Equally I reject C.P.'s account relating to the admissions allegedly made to him by Mr. Gregg. I am satisfied that the will was read over and explained to the testator before execution as was deposed to by both Mrs. Andrews and Mr. Wheatley. I am perfectly satisfied that the will of the testator was executed in accordance with the Wills Act, 1837. On the question whether the testator knew, understood and approved of the contents of the will I have already found as a fact that his knowledge of spoken English was sufficient to enable him to converse intelligibly in the English language. In my view he had clearly acquired sufficient knowledge of spoken English when he made the will. Mr. Wheatley deposed to the fact that he took the testator through the will section by section slowly with pauses in between during which he

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explained simply and plainly to the testator the meaning of each item of the will. He also deposed to the fact that he saw to it that the testator perfectly understood one section before passing over to the next section of the will. It was said on behalf of the plaintiffs that the will was a highly technical document so that no amount of explanation would enable one not versed in the English language to understand its true meaning and effect. Clause 6(d) was cited as a clause in the will not susceptible of satisfactory explanation except if carried out in the testator's own mother tongue. It was said that without the aid of interpretation the testator could not possibly understand the true meaning and effect of the contents of the will. I am, however, satisfied that Mr. Wheatley had gone through the will most carefully with the testator explaining its contents as he went along. With the testator's acquired knowledge of spoken English the employment of interpreters would not have made any particular difference to his understanding of the contents of the will. It was also suggested that the will could not have been made by the testator because he was a deeply religious person and that under the tenets of his religion he would do right by all of his children by sharing his property among them. It was urged that the will was inconsistent with the testator's character and religious upbringing, and that the testator would never have signed the will if he had known and understood its contents. As far as this aspect of the matter is concerned I think the testator himself has made it very clear why he was excluding his children of the first marriage from the provisions of the will. Apart from his discussion with Mr. Wheatley concerning the matter he made this crystal clear in the last clause of the will which reads :

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"AND I DECLARE that during my lifetime I have made adequate provision for the children of my first marriage."

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In my view no explanation could be clearer than this as to the testator's moral approach to his parental obligations in this matter. The testator was anxious that the contents of his will should not leak out. He realised that its contents would be acutely unpalatable to the plaintiffs as indeed they were. Granted the testator's particular wish in this regard the use by Mr. Wheatley of the

particular witnesses he engaged and the absence of any interpretation clause cannot in the context be regarded as underhand or reprehensible. I am satisfied that Mr. Wheatley had nothing to hide and in the circumstances it was a perfectly legitimate exercise. I am satisfied that the will was the product of the testator's own wishes. Looking at the testamentary document itself, I do not think it can be characterised as complex. It seems fairly ordinary. Therefore given adequate explanation in plain and simple English such as I am satisfied was painstakingly given by Mr. Wheatley, I do not think that anyone with the testator's intelligence and ability would have any difficulty in comprehending the full testamentary message contained in the will. It is true that certain parts of the will have necessarily been cast in technical phraseology. However, I do not think this could as a matter of law affect the position. Whether or not the testator knew and understood the contents of the document in the present case does not depend on the literary manner in which his testamentary wishes have been formulated but on the strength of the explanation given him at the time. This was made clear by Latey L. in Re Morris (deceased) (1971) P.62 at p.79:

"But though he (i.e. the testator) cannot hand over the making of the will, he can entrust someone else with the task of drafting a will which he (the intending testator) wants to make. The scope of the draftsman's authority is to carry into effect the testator's intentions. In some cases (where for example, an expert in law is need to provide the appropriate wording to give effect in law to the testator's intentions) the testator has to accept the phraseology selected by the draftsman without himself really understanding its esoteric meaning, and in such a case he adopts it and knowledge and approval is imputed to him."

In all the circumstances of this case I am satisfied that the testator knew and understood and approved of the contents of the will. It follows that the plaintiffs'

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claim for relief (a), (b) and (c) above must fail and is dismissed.

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For the reasons appearing in the foregoing I find the will of the testator dated 18th April, 1957 valid and effectual in law. Accordingly I uphold the counterclaim of the defendant and pronounce for the testator's will in solemn form of law.

The question of costs, upon which it is necessary to hear counsel, is reserved.

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(Sgd) (T.U.Tuivaga)
JUDGE

Suva,
27th November, 1974

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No. 34
ORDER

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction

Probate Action No.7 of 1966

IN THE ESTATE OF BIDESI
(son of Chuman) deceased

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

A N D: THE PUBLIC TRUSTEE OF FIJI
Defendant

BEFORE THE HONOURABLE MR. TIMOCI U. TUIVAGA
DATED AND ENTERED THE 27TH DAY OF NOVEMBER 1974

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10 THIS ACTION coming on the 4th day of December 1972, 5th day of December 1972, 6th day of December 1972, 7th day of December 1972, 8th day of December 1972, 11th day of December 1972, 12th day of December 1972, 13th day of December 1972, 14th day of December 1972, 15th day of December 1972, 18th day of December 1972, 19th day of December 1972, 20th day of December 1972, 21st day of December 1972, 19th day of February 1973, 28th day of February 1973, 29th day of March 1973, 30th day of March 1973, 2nd day of April 1973, 3rd day of April 1973, 24th day of October 1973, 25th day of October 1973, 26th day of October 1973, 29th day of October 1973 and 27th day of November 1974 for trial before this Court in the presence of Counsel for the Plaintiffs and for the Defendant

20 AND UPON READING the Pleadings and UPON HEARING the evidence adduced herein and what was alleged by the Counsel for the Plaintiffs and for the Defendant AND THIS COURT having on the 27th day of November 1974 ordered that judgment as hereinafter provided be entered for the Defendant IT IS ADJUDGED that the Plaintiffs' claim be and is hereby dismissed and this Court doth pronounce for the

30 testator Bidesi's Will dated the 18th day of April 1957 in solemn form of law AND IT IS ORDERED that the question of costs be and is hereby reserved.

BY THE COURT

(Sgd) M.V. Bhai

DEPUTY REGISTRAR

In the
Supreme Court

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JUDGMENT ON COSTS

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No. 35
Judgment on
Costs

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

15th April
1975

Probate Action No.7 of 1966

Between: 1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI
all sons of Bidesi Plaintiffs 10

- and -

THE PUBLIC TRUSTEE OF FIJI Defendant

Mr. S.M. Koya for the Plaintiffs
Mr. R.W. Mitchell for the Defendant

JUDGMENT ON COSTS

I have now had the benefit of hearing argument from counsel on the question of costs in this action.

In the Probate Court costs generally follow the event, unless the particular case can be brought within one of two classes (see Spiers v. English (1907) P.122; in the Estate of Plant (1926) P.139 and Re Cutcliffe's Estate (1959) P.6). The first of these classes is where the cause of the litigation can be attributed to the fault of the testator or persons interested in the residue, in which case the costs of both sides may be ordered to come out of the testator's estate. The second class is where the circumstances lead reasonably to an investigation of the matter in which case the costs may be left to be borne by those who have incurred them. 20 30

Counsel for the plaintiffs submitted that in all the circumstances of this case the general rule should not be applied but that each side should bear its own costs of the action. Counsel argued that the conduct of the Public Trustee after the execution of the testator's will was mainly responsible for the litigation. He said that the Public Trustee was the repository of 40

public confidence and was therefore expected to act with scrupulous fairness in his dealings with the plaintiffs as members of the public. However, the Public Trustee had not seen fit to produce the testator's written instructions at the initial stage of the dispute when such was clearly indicated. The Public Trustee was at the outset well aware of the plaintiffs' attitude to the testator's will. It is said that the production of the instructions to the plaintiffs would have helped to resolve as soon as possible the question of whether or not the plaintiffs should embark on a litigation in regard to the will. Moreover, the Public Trustee had by his attempt to bring about an amicable settlement between the two branches of the testator's family caused substantial delay in the bringing of the litigation and this was a main factor which subsequently prolonged the ensuing trial and added considerably to costs.

Whilst the plaintiffs may indeed have grounds to feel aggrieved by the conduct of the Public Trustee in his handling of the testator's affairs after the execution of the will I do not think on the authorities that I can properly take such matters into account in deciding the question of costs in this action.

As indicated above the general rule will only be departed from to give relief to the unsuccessful party if it can be shown either that the testator or those interested in the residue were the cause of the litigation or that the circumstances relating to the execution of the will or capacity of the testator lead reasonably to an investigation. As to the first head, I have in my substantive judgment concluded that the will under contest was duly executed having regard to the evidence adduced before me. From such evidence I am satisfied that there are no grounds for saying that the testator contributed to the cause of the litigation. Indeed his going to Mr. Wheatley to discuss his will seemed most reasonable and natural having regard to their particular personal relationship. On the view I take of the evidence I am constrained to hold that the main reason why the litigation was launched was because the plaintiffs were,

In the
Supreme Court

Plaintiffs'
Evidence

No.35
Judgment on
Costs

15th April
1975
continued

In the
Supreme Court
~~Plaintiffs'~~
~~Evidence~~
 No.35
 Judgment on
 Costs
 15th April
 1975
 continued

understandably enough, thoroughly discontented by the terms of their father's will coupled with the inability of the Public Trustee to have the terms of the will varied. After the will was read the plaintiffs were quick and unsparing in their denunciation of the will. However, I do not think the plaintiffs had at that stage any clear notion as to how they would set out to impeach their father's will. Their denunciation of the will savoured more of a sentimental reaction. If they had had some basis for attacking the will I am certain they would never have agreed to withdraw the caveats against grant of probate and opt for a possible amicable settlement of the testator's estate as they did. This head does not cover "cases where a testator by his words either written or spoken, has misled other people, and perhaps inspired false hopes in their bosoms, that they may benefit after his death." (See Re Cutcliffe's Estate (1959) P.6 at p.19). In my view no fault can be attributed to the testator or persons interested in the residue for the present litigation. 10

As to the second head it will be noted that I have also held that the testator had sufficient command and understanding of the English language when he approached Mr. Wheatley to draw up his will and therefore was quite capable of discussing and giving necessary instructions for the will. Although the written instructions for the testator's will were not available at the trial I am satisfied this was initially not an important issue. This is clear from the fact that when Mr. Wheatley gave evidence on commission at Sydney in December 1967 it was apparently not deemed necessary to have him cross-examined at all on whether or not there were any written instructions held in the custody of the Public Trustee. The case proceeded on the basis that the testator was not, because of his limited knowledge of English, capable of giving Mr. Wheatley any instructions for a will and that he could not have understood or appreciated the contents of the disputed will. Indeed if the plaintiffs had in fact doubted the authenticity of the instructions given by the testator to Mr. Wheatley they would certainly have attacked the will on that basis. This they never did. I am quite satisfied that on the whole of the evidence there were no circumstances attending or 30 40 50

surrounding the making and execution of the will or raising questions as to the testator's capacity which might lead reasonably to an investigation. Thus under this head the plaintiffs are not in my view entitled to any discretionary relief as to costs.

In the
Supreme Court
~~Plaintiffs'~~
~~Evidence~~
No.35
Judgment
on Costs
15th April
1975
continued

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In these circumstances the plaintiffs must pay the defendant's costs on the action for revocation of probate of the testator's will. As regards the issues raised in the defence namely, acquiescence, estoppel and laches, no specific argument was addressed in regard to them. However, I am satisfied that having regard to the overall results attained the plaintiffs must also bear the costs of the defendant on that phase of the trial. It is ordered accordingly.

(Sgd) T.U. Tuivaga
JUDGE

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Suva,
15th April, 1975

No. 36

NOTICE AND GROUNDS OF APPEAL

In the Court
of Appeal

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 66 of 1974

Supreme Court Probate Action No.7 of 1966

No.36
Notice and
Grounds of
Appeal

6th December
1974

IN THE ESTATE of BIDESI
(son of Chuman) deceased

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BETWEEN

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

A N D

THE PUBLIC TRUSTEE OF FIJI
RESPONDENT
(Original Defendant)

In the Court
of Appeal

NOTICE OF APPEAL

No.36
Notice and
Grounds of
Appeal
6th December
1974
continued

TAKE NOTICE that the Fiji Court of Appeal will be moved at the expiration of fourteen (14) days from the service upon you of this notice, or so soon thereafter as Counsel can be heard, by Counsel for the abovenamed Appellants/Plaintiffs FOR AN ORDER that the verdict given and the Judgment directed on the trial of the above-mentioned action before His Lordship MR. JUSTICE TIMOCI U. TUIVAGA at Suva on the 27th day of November 1974 whereby it was ordered that the Appellants/Plaintiffs claim be dismissed, that the testator Bidesi's Will dated the 18th April 1957 be pronounced in solemn form of law and that the question of costs be reserved be set aside and FOR AN ORDER that in lieu thereof Judgment be entered herein for the Appellants/Plaintiffs or alternatively FOR AN ORDER that a new trial be had between the parties and the costs of the former trial be paid by the Respondent/Defendant to the Appellants/Plaintiffs or alternatively that the costs abide the result of the new trial AND FOR AN ORDER that the Respondent/Defendant pay to the Appellants/Plaintiffs costs of and occasioned by this Application.

AND FURTHER TAKE NOTICE that the grounds of this application are :

- (a) THAT the learned trial Judge erred in not holding that at the time of the execution of the Will the deceased neither knew nor approved of the contents thereof; 30
- (b) THAT the learned trial Judge erred in not making any decision on the issue raised by the Appellants in Reply namely that

"The said alleged Will was not duly executed according to the provisions of the Wills Act 1837"

- (c) THAT the learned trial Judge erred in accepting the evidence of Mr. Wheatley, Mr. Gregg and Mrs. Andrews. 40

DATED this 6th day of December 1974.

KOYA AND CO.

Per: (Sgd) S.M. Koya
Solicitors for the Appellants/
Plaintiffs

In the Court
of Appeal

No.36
Notice and
Grounds of
Appeal

6th December
1974
continued

This Notice of Motion was taken out by
Messrs. Koya and Co. of Suva, Solicitors for
the Appellants/Plaintiffs whose address for
service is at the Chambers of the said
Solicitors at 23 Cumming Street, Suva.

10 To the Respondent/Defendant and/or to its
Solicitors Messrs. Cromptons of Suva.

No. 37

NOTICE OF APPLICATION FOR
LEAVE TO ADD ADDITIONAL
GROUNDS OF APPEAL

No.37
Notice of
Application
for leave to
add additional
Grounds of
Appeal

2nd July 1975

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 66 of 1974

BETWEEN: 1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI

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(all sons of Bidesi) APPELLANTS

(Original Plaintiffs)

A N D: THE PUBLIC TRUSTEE OF FIJI RESPONDENT
(Original Defendant)

NOTICE OF APPLICATION FOR LEAVE TO ADD ADDITIONAL
GROUNDS OF APPEAL

30 TAKE NOTICE that at the hearing of this
Appeal, Counsel for the Appellants intends to
apply to this Honourable Court for LEAVE to
add and argue the following grounds of Appeal.

"(d) THAT the learned trial Judge erred
in law in ordering separate trial of
the questions and issues raised by

In the Court
of Appeal

No.37
Notice of
Application
for leave to
add additional
Grounds of
Appeal
2nd July 1975
continued

paragraphs 4, 5 and 6 of the Defence and before the trial of other issues in the action and counterclaim and in ordering that the evidence given and tendered upon the trial of issues raised in paragraphs 4, 5 and 6 of the Defence aforesaid be treated as evidence given and tendered in respect of the other issues in the action and counterclaim (See Pages 127-128 of the Record). Having so ordered the trial Judge erred in departing from the terms of the said Order."

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"(e) THAT the learned trial Judge erred in law in admitting in evidence the depositions of Mr. Harry Wheatley taken in Sydney, New South Wales on the 15th December, 1967 the letter dated 8th June, 1968 from M.E.Warburton to the Chief Registrar of the Supreme Court of Fiji and the copy Probate mentioned therein (See Pages 175-180 and Pages 563-590 of the Record).

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"(f) THAT the learned trial Judge erred in admitting in evidence the contents of alleged telephonic conversation between the Defendant's witness Mrs. Christine Andrews and Mr. Harry Wheatley during the week preceding Monday the 11th December, 1972 and during the pendency of the trial of this action (See Pages 166-167 of the Record)."

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"(g) THAT the learned trial Judge erred accepting the written evidence of Mr. Harry Wheatley in preference to the oral evidence given by the 2nd, 3rd and 4th Appellants on all matters which were in issue."

"(h) THAT the learned trial Judge erred in accepting the evidence of Mr. B.L.Gregg in preference to the evidence given by the 2nd, 3rd and 4th Appellants on all matters which were in issue."

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"(i) THAT the learned trial Judge erred in accepting the evidence of Mrs. Christine Andrews in preference to the evidence of the 2nd, 3rd and 4th Appellants on all matters which were in issue."

10 "(j) THAT the learned trial Judge erred in not taking into account fully or at all the effect of the loss of the official file held by the Respondent as Public Trustee relating to the Will in dispute and in particular as to the credibility of Mr. S.M. Bidesi's evidence concerning the drawing up of a Will for Bidesi deceased by Mr. Harry Wheatley wherein it was intended that Mr. S.M. Bidesi be named the Executor (See Pages 237-238 of the Record) and in addition as to the credibility of Mrs. Christine Andrews, Mr. B.L. Gregg and Mr. Wheatley on matters in issue raised by the Appellants."

20 "(k) THAT the learned trial Judge misdirected himself and erred in law in disallowing the Appellants contention that inasmuch Messrs. Cromptons, Solicitors, Suva, had already acted for the Appellants S.M. Bidesi and C.P. Bidesi relating to some of the matters in dispute, Messrs. Cromptons and their Associate Mr. Mitchell should not be permitted to act for the Respondent at this trial and that the continuance of the trial with their instructing counsel (Mr. McGarvie) would cause great injustice to the Appellants. (See Pages 121-122 of the Record)."

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40 "(l) THAT the learned trial judge erred in law in his findings on the issues relating to acquiescence and laches raised by the Respondent in his Defence. The learned Judge in this connection misdirected himself to draw proper inferences from the circumstances leading to the giving of an undertaking in writing by the Respondent to the 2nd and 3rd Appellants on the 19th February, 1958 (See page 418 of the Record) and the conduct thereafter of the Respondent."

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of Appeal

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Notice of
Application
for leave to
add additional
Grounds of
Appeal

2nd July 1975
continued

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of Appeal

No.37
Notice of
Application
for leave to
add additional
Grounds of
Appeal

2nd July 1975
continued

"(m) That the learned trial Judge erred in law in his findings on the issue relating to the making of the alleged Will raised by the Appellants in their Amended Statement of Claim."

"(n) THAT the learned trial Judge erred in law in not directing his mind to the fact that the alleged Will was executed in loose sheets and there was no evidence that they were bound together at the time of the execution and in not holding that therefore the requirements of the Wills Act 1837 and 1852 were not complied with."

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DATED this 2ND day of JULY, 1975

KOYA AND CO.

Per: (Sgd) S.M. Koya

Solicitors for the
Appellants

To:

The Registrar, Fiji Court of Appeal,
S U V A. AND
The above-named Respondent and/or to their
Solicitor Mr. R.W.Mitchell, Dominion
House, SUVA.

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No. 38

JUDGMENT OF McMULLIN J.A.

In the Court
of Appeal

No.38

Judgment of
McMullin J.A.

25th July 1975

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 66 of 1974

Between:

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

Appellants
(Original Plaintiffs)

- and -

THE PUBLIC TRUSTEE OF FIJI

Respondent
(Original Defendant)

Mr. S.M. Koya for Appellants
Mr. R.W. Mitchell for Respondent

Dates of hearing: 10th, 11th, 14th and 15th July,
1975

Delivery of Judgment: 25th July, 1975

JUDGMENT OF McMULLIN J.A.

This is an appeal from the judgment of Tuivaga J. delivered in the Supreme Court of Fiji on the 27th November, 1974, pronouncing in solemn form of law in favour of a will made by one Bidesi, son of Chuman.

The judgment was a lengthy one. It necessarily referred to all the issues which had been raised in the hearing of the action extending over some 25 days. The essential facts are set out in the judgment and need not be referred to in detail, but it will be convenient to trace the history of the litigation in order to provide the background of this appeal and to the submissions made upon it.

The testator, Bidesi, died on the 15th

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of Appeal

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Judgment of
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25th July 1975
continued

November, 1957. His first wife had died in 1925. There were four sons of the first marriage. They are the appellants, M.D. Bidesi, S.M. Bidesi, C.P. Bidesi and S.P. Bidesi who throughout the proceedings in the Supreme Court and in the judgment under appeal have been referred to as M.D., S.M., C.P., and S.P. I propose to adopt that form of reference in this judgment. Some years after the death of his first wife, the testator married for a second time. There were ten children of the second marriage. They are the principal beneficiaries under the purported last will made on the 18th April, 1957. The Public Trustee of Fiji was appointed executor of that will. He is the respondent on this appeal. The widow and other beneficiaries named in the will were originally named as defendants in the proceedings but an order striking them out of the proceedings was subsequently made. In any event, they appear to have taken no part in the hearing of the action. Appellants are not beneficiaries under the will.

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After the death of the testator appellants expressed their disappointment and disgust at the terms of the will and C.P., at least, expressed a determination to contest it to the end. On the 21st December, 1957, he lodged the first caveat against the grant of probate. Conference between representatives of respondent and appellants and correspondence between respondent and solicitors acting for some of the appellants followed. On the 14th May, 1958, C.P. lodged a second caveat to replace the first which had expired with the effluxion of time. A conference was held between respondent and C.P. and his legal adviser at which a variation of the trusts of the will was discussed. It was at that time assumed that these trusts could be varied, an application to that end being made to the Court. On the 29th October, 1958 C.P. lodged a third caveat. Then, on the 7th November, 1958, respondent swore an affidavit in support of an application for the grant of probate in common form. On the 16th March, 1959 C.P., who had meantime changed his solicitor, agreed to discontinue the caveat proceedings and to a grant of probate to respondent. An order to that effect was made. On the 21st April, 1959 a grant of probate in common form was made. From that date on respondent has acted as executor of the will and trustee of testator's estate. Correspondence followed between respondent and appellants or their

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advisers relating to matters affecting testator's estate and, in particular, as to whether the trusts in the will could be varied. There were also conferences between the parties and negotiations culminating in agreement being reached to grant to some of the appellants a better security of tenure of premises owned by the estate but which were then occupied by them. The nature of these negotiations is more relevant to the defences of acquiescence and laches which were reviewed by the learned trial Judge in his judgment.

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25th July 1975
continued

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On the 23rd June, 1966 appellants brought proceedings in the Supreme Court of Fiji for an order revoking the grant of probate made on 21st April, 1959 and for an order for the grant to appellants of letters of administration of the estate of the testator. Appellants stood to gain from the making of such orders because a revocation of the grant of probate on the grounds put forward by them would have meant that the testator would have died intestate and that they would have participated in the distribution of the estate. The grounds put forward by appellants for the revocation of the grant of probate were that the testator at the time of the making of the will neither knew nor approved of its contents, the will not having been read over nor explained to him before he executed it, he not being able to read it himself and not being aware of its nature and effect. The claim was amended on the 4th December, 1972 but the substance of it remained unaltered. Respondent filed a defence on the 23rd September, 1966. In it he pleaded by paragraph (3) that the will was read over and explained to the testator and that he understood the full meaning, nature and effect and approved the contents before he signed the same as his true last will and testament; by paragraph (4) that appellants having recognized and dealt with respondent as executor and trustee named in the will were estopped from maintaining their action, by paragraph (5) that appellants acquiesced in the grant of probate to respondent and in the continued administration of the estate by him; and by paragraph (6) that appellants had been guilty of laches.

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25th July 1975
continued

Respondent by way of counterclaim sought a decree of probate in solemn form. By way of defence to the counterclaim appellants repeated that the testator did not have an understanding of the will and its effect, and alleged that it had not been duly executed according to the provisions of the Wills Act 1837.

The person who had taken instructions from the testator for the will was a Mr. Harry Wheatley. He had known testator for many years and testator, a building contractor of some ability and experience, had at one time supervised the building of a block of flats for Mr. Wheatley. Mr. Wheatley had held a number of positions while he resided in Fiji. He had been employed in the Public Trustee Office. He was present when the will was executed although he did not himself witness it. He also had meetings with some of the appellants after the testator's death. For these reasons it was apparent that Mr. Wheatley would be an important, if not the principal, witness for the respondent. But Mr. Wheatley had left Fiji in 1964 to live in Australia, and did not apparently enjoy good health. In August 1967 an application was made to the Supreme Court of Fiji for the taking of his evidence in Sydney, New South Wales. In two affidavits filed in support of the application, a Mr. McFarlane, then solicitor to respondent, deposed that Mr. Wheatley was living in Australia and that Mr. Wheatley had told him that he had suffered a coronary occlusion. A medical certificate dated 24th August, 1967 to that effect was exhibited. That certificate stated the opinion of Mr. Wheatley's medical practitioner that Mr. Wheatley should not travel to Fiji. On the 1st September, 1967, an order was made, without any apparent opposition, for the taking of the evidence of Mr. Wheatley in Sydney before a Mr. Warburton, a special examiner, and that the depositions so taken should be transmitted to the Supreme Court of Fiji within two months of receiving of the order, and that either party should be at liberty to read them in evidence. Mr. Wheatley's deposition was in fact taken before Mr. Warburton at Sydney on the 15th December, 1967.

On the 3rd April, 1973, respondent filed particulars of facts and conduct relied on in support of the defences of estoppel,

acquiescence and laches.

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25th July 1975
continued

10 The trial commenced on 4th December, 1972. On that day a number of preliminary matters were raised. One is of particular importance. The point was taken by counsel for respondent that the defences of estoppel, acquiescence and laches should first be tried before the other issues in the action and that the evidence given on these questions should be treated as evidence given and tendered also upon the trial of the other issues in the action and counter-claim. It was at the same time accepted by counsel for respondent that the burden of propounding the will rested upon respondent as executor as did also the burden of establishing the substantive defences to which I have already referred. The learned Judge ruled that the questions of estoppel, acquiescence and laches should be tried first as separate issues because, if they were decided in a certain way, they would be decisive of the litigation. He made an order that those defences be tried before the other issues in the action and counter-claim and that the evidence given upon them be treated as evidence given in respect of those other issues. As it happens, the making of that order does not appear to have affected either the form or course of the trial, evidence as to the testator's understanding of English, his understanding of the terms of the will, and of the circumstances in which he gave his instructions for and executed it being given in substantially the same way as it would have been given had all the issues been tried together.

40 In a lengthy judgment in which he reviewed in detail the evidence given and issues raised, the learned Judge first dealt with the affirmative defences and then with the matter of the testator's knowledge and appreciation of the will. In the result he held that appellants were not estopped from prosecuting their claim. But he held that respondent had made out the defences of acquiescence and laches. He proceeded to consider the question of whether the testator knew and approved of

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continued

the contents of the will. He found that he knew, understood and approved the contents of the will which he held to be valid and effectual in law and pronounced for it in solemn form.

Appellants' grounds of appeal were originally three in number but they were granted leave to add further grounds of appeal at the hearing. The grounds of appeal as ultimately considered by this Court were numbered (a) to (o). Some of these grounds overlap but broadly grounds (a) to (c), (e) to (j) and (m) and (n) relate to the making of the will, and testator's knowledge and understanding of it; grounds (k) and (l) relate to the defences of acquiescence and laches; and ground (d) is common to both matters. Ground (o) relates to costs which were the subject of a separate judgment delivered on the 15th April, 1957, costs having been reserved in the original judgment. sic 20

Grounds (a) and (m) may be considered together. They are :-

"(a) That the learned trial Judge erred in holding that at the time of the execution of the will the testator neither knew nor approved of the contents thereof;

(m) That the learned trial Judge erred in law in his findings on the issue relating to the making of the alleged will raised by the appellants in their amended statement of claim." 30

These grounds raise an issue which in my view was fundamental to the claim and counter-claim. Appellants alleged in the amended statement of claim that the will was neither read over nor explained to the testator, he neither did nor could read it himself before it was executed, and he was not aware of its nature and effect. As I have said, it was accepted that the onus of proving that the testator understood the terms of the will rested upon respondent and the learned trial Judge correctly directed himself in this regard. A considerable portion, but not all, of the evidence upon which respondent relied in proof of testator's 40

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continued

10 understanding of the will is to be found
in the evidence of Mr. Wheatley taken on
commission in Australia. Indeed it may be
said that the learned Judge relied heavily
on Mr. Wheatley's evidence. Appellants
in grounds (e), (f) and (g) contend that
Mr. Wheatley's deposition should not have
been admitted at the trial, or if admitted,
should not have been relied upon in the
face of the other evidence. I will deal
with the submissions made under those
grounds later in this judgment and will,
for the present, assume that the evidence
of Mr. Wheatley was rightly admitted. The
law on this question is set out in Theobald
on Wills, 13th Edition, p.43 :

20 "No will can be valid of which the
testator does not know and approve
the contents. A testator cannot,
therefore, delegate his testamentary
power to another person; that is to say,
he cannot adopt and execute a will
made for him without knowing its
contents."

Williams & Mortimer, Executors, Administra-
tors and Probate, p.147 state the law to
be as follows :-

30 "A party who puts forward a document
as being the true last will of the
deceased must establish that the
testator knew and approved of its
contents at the time when he executed
it. The testator's knowledge and
approval of the contents of the will
are part of the burden of proof
assumed by everyone who propounds a
testamentary document."

and at 148

40 "It is not essential to prove that a
will originated with the testator
and, therefore, proof of instructions
may be dispensed with, provided that
it is proved that the testator
completely understood, adopted and
sanctioned the disposition proposed
to him, and that the instrument itself
embodied that disposition."

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of Appeal

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continued

The evidence on this point is voluminous but it was all substantially reviewed by the Judge in the judgment under appeal. The point at issue between the parties arose from appellants' contention that the testator had a poor knowledge of spoken English and that he was quite unable to read English. A Mr. Marlow who had known testator since 1912 and who had employed him about that time said that testator's ability to speak English then was poor with the result that the two men spoke in lingua-franca. Later, and after testator left Mr. Marlow's employment, the two men spoke, when they met, in a mixture of English and Hindi. But Mr. Marlow said that he noticed that testator's knowledge of English was improving. Mr. Marlow said that testator was an independent man who rose to become a supervising superintendent in the building industry being responsible to the managing director of the building company by which he was employed. He became very capable at reading building plans. A Mr. Tetzner, a surveyor, gave evidence. He had met testator about 1950. He said that testator's knowledge of English was not grammatical but that he could make himself understood clearly and that he understood Mr. Tetzner. He said that in several conversations which he had with testator before the purchase of a particular piece of land, testator and he understood each other clearly. Another witness, Mr. H.M. Murray, who had known testator for 20 years before his death, said that he conducted conversations with him in English. He said testator was competent to converse in English.

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Evidence as to events surrounding the execution of the will was given by Mr. Wheatley on commission. He had known testator since 1936. In the judgment there is a detailed review of Mr. Wheatley's evidence. It will be sufficient to say that in it Mr. Wheatley explained the circumstances in which testator gave him instructions for the will and the circumstances in which it was signed. Mr. Wheatley said that testator had given him instructions for the will, that there were discussions between the testator and himself as to its terms and, in particular, as to the date of distribution of the estate. He said

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that he took a long-hand note of testator's wishes which he later converted into a draft. He said that the draft was later made into the final copy of the will which testator executed. He discussed with testator the use of an interpreter but testator told him that he did not want an interpreter because he wanted the will to be secret and he did not want any leakage as to its contents. Mr. Wheatley said he took testator through the will slowly pausing at the end of each section of it to ascertain whether testator knew what it meant. He said that he explained to testator in plain English what the various phrases in the will meant and that testator told him that he understood it. He said that testator asked occasional questions and if there were some words which he did not understand, Mr. Wheatley substituted another for it. After the will had been read and explained to testator, Mr. Wheatley took him into the office of the Public Trustee, Mr. Gregg. Two witnesses, Mrs. Andrews and Mrs. Behn, were called in. He said that either he or Mr. Gregg read the will in English and at the end of it, testator said, "It is bahoot achha" meaning satisfactory. The will was then signed. There were other matters discussed between testator and Mr. Wheatley including his relationship with his sons.

There was evidence from Mr. Gregg and Mrs. Andrews. Their recollection of events was not as good as Mr. Wheatley's. This is not surprising in view of the lapse of time between the giving of the instructions and the giving of evidence. Moreover, Mr. Wheatley whose relationships with testator were friendly and who was well known to him would have had much more reason for remembering the details of the surrounding circumstances than would Mr. Gregg and Mrs. Andrews to whom the occasion was one of business. Mrs. Andrews said in evidence that she had typed testator's will although it was not normal for her to type wills in the office of the Public Trustee. She did this because she was asked to do it. She said she received the draft will from

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Mr. Wheatley and typed it and gave it back to him. She remembered witnessing testator's will at the request of Mr. Wheatley. There were other details which Mrs. Andrews could not remember. Nor could she recollect the facts contained in an affidavit which she swore on the 8th April, 1959 relating to the execution of the will. The will did not contain within the attestation clause a statement to the effect that the contents of it had been explained to testator in the Hindustani language and he appeared fully to understand the same before he executed it. Testator signed it in Hindi and it seems that when the will was submitted for a grant of probate in common form, the Registrar requisitioned for an affidavit of due execution because of the absence from the attestation clause of a certificate to this effect. It was Mrs. Andrews who made the affidavit. In it she deposed that the will had been first read over and explained to the testator in English language when he appeared perfectly to understand the meaning and effect thereof and made his signature in Hindi. She further deposed that she personally knew testator over a period of ten years or more and that she knew that he spoke and understood the English language and that he fully understood the contents of the will.

Subsequent to the death of the testator, there were discussions between Mr. Wheatley and appellants. C.P. gave evidence of this. He claimed that when, following the death of his father, the will had been read by Mr. Wheatley to the members of the family at the firm's business premises in Waimanu Road, he questioned Mr. Wheatley as to how the will had been made in that way. To this question he said Mr. Wheatley replied, "I am very sorry, C.P., I cannot understand why your father has left you four out." He then said that Mr. Wheatley had mentioned that he himself had been left out of the will. He said that the will had been made by the Public Trustee. He said that Mr. Wheatley told him to leave the matter for the time being and he would see what could be done. He further said that he saw Mrs. Andrews and asked whether she had explained or translated the will to testator and that she told him that nobody had read out

the will. Subsequently, he claimed that he saw Mr. Wheatley about the will and asked why the will had not been translated to his father who could not speak English and would not understand the contents of the will. To this Mr. Wheatley allegedly replied that he sympathised with the four appellants but it was the Public Trustee who had made the will. There was evidence from appellants that their father had no knowledge of written English and only a poor knowledge of conversational English. It is unfortunate that when Mr. Wheatley's evidence was taken in Sydney he was not cross-examined upon these matters which must have been as much in the forefront of the case for the appellants as they were in the forefront of their recollection at the time of the trial. The learned trial Judge commented on this fact in his judgment when he pointed out that the first time the alleged admissions by Mr. Wheatley were made known to the Court was when C.P., S.P. and S.M. entered the witness box. He considered that the admissions attributed to Mr. Wheatley were more like an afterthought on the part of the appellants in an attempt to bolster their case. He was satisfied that Mr. Wheatley did not make any of the admissions attributed to him by the three appellants concerning the drafting of the will. Likewise, he was not convinced with the truth of C.P.'s assertion concerning the alleged conversation he had with Mrs. Andrews.

Although in the normal course of events one would have expected that the will of a testator who could not read English should first have been translated to him in his native tongue and that fact substantiated by the inclusion in the attestation clause of the will of a certificate to that effect, the absence of a translation and, accordingly, of such a certificate was satisfactorily explained in the present case by the testator's desire for secrecy and his concern that there should be no leakage of the contents of the will which might have occurred had the will been interpreted to him before he signed it. An interpretation would have necessitated the sharing of the knowledge of the will with

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another person whose respect for its secrecy may not have been as great as Mr. Wheatley's. It is entirely consistent with this desire for secrecy that testator in the last clause in the will gave the reason for disinheriting appellants viz., that he had made adequate provision for them in his lifetime. Testator would not have wished that information to come to the knowledge of appellants. Mr. Wheatley said that testator told him that he had had trouble with some of the appellants. He might have very well have been concerned that they would learn before his death of the fact that they would not benefit under the will and that they might importune and trouble him on that account. 10

Mr. Koya criticised the will because, he said, the Public Trustee gained from its execution in that as executor he was then in a position to make charges for his administration of the estate. He also said that Mr. Wheatley had something to gain from the execution of the will and the appointment of the Public Trustee as executor because on its execution he could claim to have brought to the office of respondent a large estate for his administration. In that way his personal position would have been advanced and the chances of his promotion enhanced. I do not think that there is any substance in this criticism. Respondent would have been in a position to make charges for his administration of the estate if appointed executor of the will whether appellants were made beneficiaries or not. His appointment as executor and his ability to make charges for his administration were in no way related to the distribution of the estate. Likewise, Mr. Wheatley's position and promotion would not have been affected by the terms of the will. They were not enhanced by the exclusion of appellants as beneficiaries. In this connection, Mr. Koya referred to Wintle v. Nye (1959) 1 All E.R. 552. That was the case of a solicitor who prepared a will for an old lady. He was the principal beneficiary under that will. The House of Lords stressed that where a person who has prepared a will takes a benefit under it, a suspicion is created which 50

must be removed by the person propounding the will. Lord Simonds at page 557 said :

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10 "It is not the law that in no circumstances can a solicitor or other person who has prepared a will for a testator take a benefit under it. But that fact creates a suspicion that must be removed by the person propounding the will. In all cases the court must be vigilant and jealous. The degree of suspicion will vary with the circumstances of the case. It may be slight and easily dispelled. It may, on the other hand, be so grave that it can hardly be removed."

20 The position of Mr. Wheatley in the present case is quite different from that of the solicitor in Wintle v. Nye. Mr. Wheatley did not take any benefit under the will. He performed the service by reason of his friendship with testator and his employment by respondent. The case of Tyrrell v. Painton (1894) P.151 is also to be distinguished. In that case the draftsman of the will was the son of the major beneficiary under it. That, of course, raised a suspicion that the will did not express the true mind of the testator, especially since this will was made only two days after
30 another will (made in quite innocent circumstances) left everything to the plaintiff. It cannot be said that suspicions of that kind exist here.

40 Then Mr. Koya criticised the Judge's preference for the evidence of Mr. Wheatley to that of C.P., in that Mr. Wheatley had not been available for the Judge to observe when giving his evidence. While it is true that Mr. Wheatley was not available at the hearing and that the Judge expressed a preference for Mr. Wheatley whom he had not seen against C.P. whom he had seen, it is clear from what the learned Judge said in the judgment that he was not impressed by the evidence of C.P.

Mr. Koya in support of this ground of appeal also referred to events following the death of testator. These events, he claimed,

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'supported his contention that testator had not fully understood the will. He referred to C.P.'s claim that, when seen by C.P. soon after the death of testator, Mr. Wheatley had said that he was unhappy with the will. This and related claims, Mr. Koya said, were indicative of a state of uneasiness on the part of respondent over the circumstances in which the will was made. It seems to me that it was entirely a matter for the Judge to say whether appellants' views on this factual matter were acceptable. It is to be noted that Mr. Wheatley was not cross-examined in Australia over the alleged conversations with C.P. On the evidence before him the Judge was entitled to take account of this fact and to find that the conversations did not take place. 10

A further point made by Mr. Koya in support of his general proposition that testator had not approved of the will was that testator was a religious man who had lived a life according to the tenets of his faith which required that provision should be made for all his children. Testator had, according to S.M., instructed Mr. Wheatley on an earlier occasion (accepted by Mr. Wheatley as being when he was in the employment of the Inland Revenue Department) to prepare a draft will in which S.M. was to be the executor and provision was to be made for the appellants. Mr. Wheatley in fact prepared a draft which he handed to testator in the presence of S.M. Mr. Wheatley said that testator told him that he would go through the draft with a friend but subsequently he said that the draft was not what he wanted. Although the will in issue is very different from the terms of the draft prepared by Mr. Wheatley some years before, Mr. Koya said that there was no evidence that testator had changed his mind in the meantime. This submission overlooks the fact that Mr. Wheatley in his evidence said that testator had given certain reasons to him for disinheriting the appellants. Whether those reasons were valid and whatever the requirements of his faith it was apparent that, if Mr. Wheatley's evidence was accepted, testator had directed his mind to the claims on his bounty and thought that his duty lay to his wife and the children of the second marriage. 20 30 40 50

Mr. Koya asked this Court to consider the "righteousness of the transaction". Testator, he said, was close to Mr. Wheatley as a member of respondent's staff; the effect of the will was to tie up the estate for a long period of time; there was the absence of an interpreter; and there was the delay on the part of respondent in proving the will in solemn form. The "righteousness of the transaction" was referred to in Fulton v. Andrew (1875) L.R. 7 H.L. 448 by Lord Hatherley at 471. There, Lord Hatherley said :

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"There is one rule which has always been laid down by the Court having to do with wills, and that is that a person who has been instrumental in the framing of a will, and who obtains a bounty by that will, is placed in a different position from ordinary legatees who are not called upon to substantiate the truth and honesty of the transaction as regards their legacies. It is enough in their case that the will was read over to the testator and that he was of sound mind and memory and capable of comprehending it. But there is a further onus on those who take for their own benefit, after being instrumental in preparing or obtaining a will. They have thrown on them the onus of showing the "righteousness of the transaction"."

In Williams and Mortimer on Executors, Administrator and Probate at Pages 152-153 reference is made to matters which arouse the suspicion of the Court and matters which raise the "righteousness of the transaction". Mr. Koya referred to circumstances surrounding the execution of the will which he said aroused suspicion. He criticised the Judge's finding that he was satisfied that the instructions given by testator to Mr. Wheatley had been reflected accurately in the will in view of the fact that there was no independent evidence as to what those instructions were. It is true that the evidence of Mr. Gregg was that it was customary for instructions as well as the draft will to be kept on the file. In this

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base it proved impossible to find the instructions for the draft will after the death of testator. But, it is to be remembered, this was an unusual case. Testator wanted to preserve secrecy as to the contents of his will and that could be more effectively done by the retention of only the will itself. Regrettably Mr. Wheatley was not cross-examined in Sydney about the absence of a file containing the instructions and the draft. It is true that the affidavit of documents filed by respondent was not filed until sometime after Mr. Wheatley's evidence was taken in Australia and no criticism can be made of counsel's failure to cross-examine Mr. Wheatley on that account. While, however, proof that the executed will accurately reflects testator's instructions may be strengthened by the production of the instructions and of the draft, the absence of these documents is not fatal to the validity of the will. Mr. Wheatley gave evidence which covered the period from the time when instructions were first given by testator to the time when the will was executed. There was ample evidence from him to enable the learned trial Judge to reach a finding that those instructions had been reflected accurately in the will. Had the absence of the file been known to appellants at the time of the taking of Mr. Wheatley's evidence in Australia and had Mr. Wheatley been cross-examined on the point he might well have explained the absence of the file as being based on the need to preserve secrecy.

On the question of the righteousness of the transaction Mr. Koya also referred to the fact that the will in dispute was very different from the earlier one which testator had asked Mr. Wheatley to draft. The Judge was of the view that whatever testator's original instructions concerning the disposition of his estate, he had clearly changed his mind by the time he saw Mr. Wheatley and gave him instructions for the will in dispute. Mr. Koya said that there was no evidence that after the instructions for the original will had been given (when S.M. was present) testator had changed his views. But there does not have to be specific evidence as to a change of mind. There may have been a number of reasons which led testator to exclude appellants in

favour of the children of the second marriage. In the Court
 I think it is implicit in the submissions of appellants on this point that Mr. of Appeal
 Wheatley had deliberately prepared a will No.38
 not in keeping with testator's instructions Judgment of
 as a fraud on the testator and appellants. McMullin J.A.
 Indeed, any other view is untenable. It is 25th July 1975
 to be noted, however, that Mr. Wheatley continued
 did not personally benefit from the will nor
 has any reason been advanced as to why he
 should have embarked upon such a fraud when
 he himself gained no benefit from it.

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There were other matters referred to
 by Mr. Koya in the course of his submissions
 on grounds (a) and (m) but these related to
 the Judge's selection of evidence and the
 weight to be attached to it. Having
 considered these matters in the light of
 passages in the evidence I am of the view
 that the learned Judge was entitled to make
 the findings which he did. I would hold
 that grounds (a) and (m) must fail.

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Appellants then advanced grounds (b)
 and (n). Ground (b) was :

"That the learned trial Judge erred
 in law in not making any decision on
 the issue raised by the appellants
 in reply namely that ...

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"The said alleged will was duly
 executed according to the provisions
 of the Wills Act 1837."

Ground (n) was :

"That the learned trial Judge erred
 in law in not directing his mind to
 the fact that the alleged will was
 executed in loose sheets and there
 was no evidence that they were bound
 together at the time of the execution
 and in not holding that therefore the
 requirements of the Wills Acts 1837 and
 1852 were not complied with."

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These points were taken before the trial Judge.
 They were raised in the pleadings by the
 appellants. They involve a consideration of
 section 9 of the Wills Act 1837 which was in

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force in Fiji at the date when the will in question was signed. Mr. Koya contended that the will was not executed in accordance with this section in that -

- (i) the pages of the will were separate sheets; and
- (ii) no evidence was given as to when the initials were placed on the individual sheets.

An examination of the pages of the will reveals that each page other than the last, on which testator and witnesses subscribed their names, contained what would appear to be the initials of testator and the two attesting witnesses, as distinct from their full names. Mr. Koya suggested that the several sheets which were said to comprise the will did not form part of a continuous document. When this point was made during the course of the trial, the learned Judge called for the Register of Books in which the original of wills admitted to probate were bound together. The book was dismantled and the pages of the original will were exposed to view. Upon this being done it would appear that Mr. Koya reiterated his submissions that there was no evidence that the sheets were bound together at the time of execution. There is also no evidence that the separate sheets of the will were not together when it was signed. At best for appellants, all that can be said is that there is no evidence that the sheets were together so as to form part of the continuous document. The history of the matter is relevant. C.P., who spearheaded appellants' opposition to the will and lodged three caveats, finally withdrew his opposition to the grant of probate and thereby allowed a grant of probate to be made in common form in 1959. An affidavit by Mrs. Andrews was filed in support of the grant of probate. She deposed in that to the fact that the will was explained to testator before he signed it. Had she been asked to do so at that time she might very well have remembered the circumstances whether the sheets were held together at the time of execution. Had Mr. Wheatley been cross-examined upon the point he too may have been able to throw some light

upon the matter. But the point was not taken on behalf of appellants until the 3rd April, 1973 during the course of the trial. I think that, there being no evidence to the contrary, respondent is able to rely on the maxim "omnia praesumuntur rite et solemniter esse acta". However, if this maxim has no application in the present circumstances then it seems to me that the Court should not be over-zealous to assume that some technicality has not been observed. In Williams on Executors and Administrators 14th Edition, Vol.1, P.81 the learned authors say :-

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"Where a party who is thus entitled to call in the probate and put the executor to proof of the will chooses to let a long time elapse before he takes this step, he is not entitled to any indulgence at the hands of the court. He is entitled to have the law strictly administered and to nothing beyond it. In such circumstances the court (having regard to the infirmity of the witnesses' memory after the lapse of time) is, it would seem, somewhat astute to discover circumstances whereupon to found an inference that the formalities required for a due execution of the will have been gone through."

That passage has particular application here. After the lapse which the appellants allowed to occur between 1959, when probate in common form was granted, and 1966, when this action was commenced, this Court should not in the case of a will prepared in the office of a public official who gained nothing from its terms be too astute to entertain points of this kind on mere speculation and without a scintilla of evidence.

Ground (c) was :

"That the learned trial Judge erred in accepting the evidence of Mr. Wheatley, Mr. Gregg and Mrs. Andrews."

I propose to deal with this ground, as did counsel, together with grounds (g), (h) and (i).

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Ground (d) was :

"That the learned trial Judge erred in law in ordering a separate trial of the questions and issues raised by paragraphs 4, 5 and 6 of the defence and before the trial of other issues in the action and counter-claim and in ordering that the evidence given and tendered upon the trial of issues raised in paragraphs 4, 5 and 6 of the Defence aforesaid be treated as evidence given and tendered in respect of the other issues in the action and counter-claim (see pages 127-128 of the Record). Having so ordered the trial Judge erred in departing from the terms of the said Order." 10

In my review of the history of these proceedings I have referred to the order made by the Judge as to the trial of separate issues. 20
The order was based on an application supported by an affidavit made by Mr. Anderson on the 23rd November, 1972, a matter of about ten days before the commencement of the trial. There was no opportunity to argue the application before the trial itself and so it was argued on the first day as a preliminary matter. The trial Judge made his ruling in favour of respondent on the second day. I have already referred to the terms of that ruling. Provision 30
for the making of an order relating to the mode of trial and for the trial of one or more questions or issues before others is made in Order 33, Rule 4 (1967 White Book). Such a course can on occasions have beneficial effects in shortening litigation and a failure to avail himself of the procedure may sometimes result in a litigant facing on adverse order as to costs. An order for the trial of some issues before others should, however, only be 40
made in "exceptional and extraordinary cases" or where the Judge has serious reason to believe that the trial of the issue will put an end to the action - per Jessel M.R. in Piercy v. Young 15 Ch.D 475 at 480. With respect, I have considerable doubts as to whether such an order should have been made in the present case. Whatever was to be said of the defences of estoppel, acquiescences and laches, and whatever

evidence might have been directed to them, it seems to me that in the forefront of this case there was the question of testator's understanding of the contents of the will. That was raised by appellants in the original pleadings when revocation of the grant of probate in common form was sought. Respondent raised it in his pleadings seeking a grant of probate in solemn form on which it was accepted that the burden of proof fell upon him. As it appears to me, the pith and substance of the action and counter-claim was testator's knowledge and approval of the contents of the will. While in some circumstances defences of estoppel, acquiescence and laches might themselves, collectively or individually, have been rocks upon which appellants case could founder, an order for the trial of those issues before the issue of knowledge and approval of the will, does not seem to have been likely to accomplish any real purpose when the order itself contemplated that the evidence given and tendered upon the trial of the substantive defences was to be treated as evidence given and tendered in respect of the other issue. As it happened, however, the trial took substantially the same form as it would have taken had the order not been made. The parties adduced evidence on all the issues and counsel addressed the Court at length upon them all. In particular, the issue of testator's knowledge of the contents of the will was canvassed in the evidence and the submissions made upon it. Although he dealt first in his judgment with the defences of estoppel, acquiescence and laches the learned trial Judge considered the other issue and reviewed the evidence upon it at considerable length. Indeed not much less than one-half of his long and careful judgment was so devoted to that issue. Mr. Koya also complained that the order once made had not been adhered to during the trial. I recorded the final comment of his submission as follows :-

"As far as I was concerned we just went along with the trial of all issues."

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With respect, that comment fairly described

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the situation. The trial was so conducted by both parties that all the issues were at large and no criticism can be made of the judgment on that account. No party has been prejudiced by the terms of the order originally made or by any departure from it, once made. There is therefore no substance in this ground of appeal.

Ground (e) was :

"That the learned trial Judge erred in law in admitting in evidence the depositions of Mr. Harry Wheatley taken in Sydney, New South Wales on the 15th December, 1967 the letter dated 8th June, 1968 from M.E.Warburton to the Chief Registrar of the Supreme Court of Fiji and the copy Probate mentioned therein (see pages 175-180 and pages 563-590 of the Record)." 10

The order for the taking of the evidence of Mr. Wheatley and the appointment of Mr. Warburton was made on the 1st September, 1967. It provided that the depositions when taken should be transmitted to the Registrar of the Supreme Court of Fiji within two months of the sealing of the order or such further or other date as might be ordered, there to be filed in the proper office and either party to be at liberty to give them in evidence. There is no evidence as to when the order was sealed but Mr. Koya said that this took place on the 1st September, 1967. Mr. Wheatley's deposition was taken on the 19th of December, 1967. On the 8th January, 1968 Mr. Warburton forwarded the depositions to the Registrar. The depositions were certainly not received in the period of two months stated in the order. Mr. Koya submitted that the deposition of Mr. Wheatley should not have been received in evidence for several reasons. These were :- 20 30 40

A. That the order for the taking of his evidence should never have been made in the first place because the jurisdiction to make such an order for the taking of evidence outside Fiji existed only if the country where it was to be taken permitted that course

or there was a convention in existence.

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10 When on the 1st September, 1967 an
order was made for the taking of Mr.
Wheatley's evidence the rules of Court in
force in Fiji were those contained in the
Annual Practice 1934. By the time the
deposition was received in evidence at the
trial the rules in force were those to be
found in the 1967 White Book. Order 37,
Rules 5, 6, 6A, 6B and 6C set out in the
1934 Annual Practice prescribed the procedure
in force in 1967 for the taking of evidence
on commission. Rule 5 gave the Court power
to make an order in any case where it
appeared necessary in the interests of
justice for the examination upon oath before
the Court or any Judge or any officer of
the Court, or "any other person" at any
place and empowered any party to give the
20 deposition in evidence. The note to the
1934 Annual Practice indicates that there
were three methods of obtaining evidence
out of the jurisdiction, namely -

- (a) by appointment of a special
examiner under Rule 5 or in the
case of countries in which
conventions had been made under
Rule 6;
- 30 (b) By a Commission under Rule 6 (then
practically obsolete);
- (c) by Letters of Request under Rule 6A
or, in the case of countries in
which conventions had been made,
under Rule 6B.

These rules were gathered together,
consolidated and a more uniform practice
established in Order 39 set out in the 1967
White Book. Order 39, Rule 1 provides :

- 40 (i) A court may, in any cause or matter
where it appears necessary for the
purpose of justice, make any order
(in form No.32 in Appendix (A)) for
the examination on oath before a
judge, or an officer or "some other
person" at any place, of any person.

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Order 39, Rule 2 provides that where a person whose evidence is sought to be taken is out of the jurisdiction an application may be made :-

- (a) for an order for the issue of a letter of request to the judicial authorities of the country where the witness is to take his evidence there, or
- (b) if the government of that country allows the person to be examined before a person appointed by the Court for an order appointing a special examiner for the taking of the evidence. 10

In the present case a letter of request was not issued nor was there any evidence before the Court that the Commonwealth of Australia or the State of N.S.W. allowed a person in that country or State to be examined for the purposes of an action in another country. 20
Mr. Koya submitted that there was therefore no jurisdiction for the order to be made. There seem to me to be a number of points which can be made in answer to that submission.

First, the order was made under Order 37 (1934) which did not refer to the necessity for the proof of the convention or the existence of a law allowing the evidence to be taken in that country. Nor does there seem to be any requirement of that kind positively imposed by Order 39, Rule 2 (1967) White Book. The two modes referred to in that rule are not the only modes in which evidence can be taken. 30
The use of the word "may" is clearly permissive and not mandatory. Order 39 Rule 2 does not limit the situations in which evidence can be taken. It merely amplifies the procedure.

Secondly, Mr. Koya did not oppose the making of the order nor did he, although he took other points relating to the taking of the evidence, take this point before the trial Judge. Accepting, but without deciding, that Mr. Koya's argument that consent does not 40

confer jurisdiction, I do not think that even if the Commonwealth of Australia or State of N.S.W. expressly forbade the taking of the evidence of a person resident there for use in the Courts of another country, the evidence taken would necessarily be inadmissible. A fortiori if, without forbidding it, the Commonwealth or State made no express provision for it.

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10 Thirdly, it was never suggested on
the making of the order or at the trial
that the Commonwealth of Australia or State
of N.S.W. did not permit the taking of the
evidence. The indications are rather that
it did. Mr. McGarvie, senior counsel at
the trial for respondent, was an Australian
counsel and Mr. Warburton and the two
counsel appearing before him for the taking
of the evidence were counsel admitted in
20 New South Wales. It is not without signifi-
cance that no one of them suggested that
the taking of the evidence was not permiss-
ible. Accordingly, I am not impressed by
this submission.

B. That Order 38, Rule 9(2) had not
been complied with in that respondent had
not given reasonable notice of his intention
to use the deposition in evidence.

30 This matter was raised by Mr. Koya at
the trial. The record does not show clearly
when the notice was given of respondent's
intention to use the evidence although it
is recorded that Mr. McGarvie told the
trial Judge that the notice had been given
a week before. The learned Judge said that
counsel in opening the case for the respondent
(seven days before) had said that respondent
would rely on Mr. Wheatley's deposition and
that appellants could not have been under
40 any illusion that respondent intended to
rely on it. With respect, I would agree.
One has only to read the record to appreciate
it that it must have been common ground
between the parties long before the trial
commenced that Mr. Wheatley's evidence was
to be tendered in evidence. However, if need
be, I would invoke Order 2, Rule 1 (1967 White
Book) and treat any failure to give notice as

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'being an irregularity arising from non-compliance with the Rules of such a kind that it should not be allowed to nullify the proceedings. In this connection I note that Mr. Koya is on record at the trial as saying that the failure to give reasonable notice was not fatal to the admission of the evidence.

C. That, based on the case of Fisher v. C.H.T. Ltd. and Others (1965) 2 All. E.R.601; (1965) 1 W.L.R. 1093, an office copy of the deposition should have been bespoken. In Fisher's case the wording of the order for the taking of evidence of a witness in U.S.A. provided that... "... an office copy or copies ... may be read and given in evidence on a trial of this cause". Edmund Davies J. at 602; 1095 said :

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"I think that what is taken before an examiner does not per se become evidence in the case. The office copy must be bespoken by a party desiring to make use of it."

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The order made in the present case was that "... the depositions when so taken...be filed in the proper office and that either party be at liberty to read and give such deposition in evidence at the trial of this action...". As counsel for the respondent submitted to the trial Judge at the hearing on tendering the original deposition there was no need to bespeak an office copy. The original was available. Fisher's case is distinguishable on the ground the order there was for the production of an office copy of the examination. In the present case the order was for the production of the actual depositions and it was this which senior counsel for the respondent sought leave to read at the trial.

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D. That the original depositions were not signed, contrary to Order 38 Rule 9(3). That rule provides that a deposition purported to be signed by the person before whom it was taken shall be received in evidence without proof of the signature of that person. Although the actual deposition taken was not signed by Mr. Warburton he wrote to the Registrar of the

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Supreme Court of Fiji on the 8th of June, 1968 enclosing the deposition. In my view the letter and the accompanying deposition can be treated as the one document and the signature of Mr. Warburton on the letter amounts to the signing of the deposition by him. If need be I would, however, invoke Order 2, Rule 1 and regard the matter as an irregularity of no substance.

In the Court
of Appeal

No. 38
Judgment of
McMullin J.A.
25th July 1975
continued

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E. That there was no evidence to show that Mr. Warburton was beyond the jurisdiction and unable from sickness or other infirmity to attend the trial. Such a state must be proved to the satisfaction of the Court as a prerequisite for the receipt in evidence of the deposition at the trial - Order 38, Rule 9(1). There was evidence from Mrs. Andrews that in the week before she gave evidence she booked a telephone call to Sydney, Australia and following that booking spoke to Mr. Wheatley with whom she had previously worked and whose voice she recognised on the phone. She enquired as to Mr. Wheatley's health and as to whether he felt capable of attending the hearing in Fiji to give evidence. It is not necessary for the respondent to prove both that Mr. Wheatley was beyond the jurisdiction and unable from sickness or other infirmity to attend the trial. It was sufficient that he proved one or other of these requirements. Clearly Mrs. Andrews' telephone call to Mr. Wheatley and the circumstances in which it was made are as much admissible in evidence in proof of the fact that Mr. Wheatley was beyond the jurisdiction as if at that time she had seen him physically in Australia. It is unnecessary to decide whether Mrs. Andrews' conversation with Mr. Wheatley as to his state of health was admissible.

F. That the depositions were not filed within the period of two months provided by the Order. Clearly they were not filed within this period of time. It is to be noted that the order provided that the deposition had to be filed within two months or "such further or other date as may be

In the Court
of Appeal

No. 38
Judgment of
McMullin J.A.

25th July 1975
continued

ordered". It does not appear from that wording that time was of the essence of the order and it would have been open to the Court at any time on application being made to it to enlarge the time. I would treat respondent's application to tender Mr. Wheatley's deposition at the trial as being an informal application to the trial Judge to enlarge the time and admit the evidence. I would regard the Judge as having informally made that order. Again, however, I would regard the matter as being a mere irregularity not going to the substance of the matter.

10

I turn now to ground (f). This was :

"That the learned trial Judge erred in admitting in evidence the contents of alleged telephonic conversation between the Defendant's witness Mrs. Christine Andrews and Mr. Harry Wheatley during the week preceding Monday the 11th December, 1972 and during the pendency of the trial of this action (see pages 166-167 of the Record)."

20

In view of what I have said under the previous ground it is unnecessary to say anything further on this ground.

Ground (g) was :

"That the learned trial Judge erred in accepting the written evidence of Mr. Harry Wheatley in preference to the oral evidence given by the 2nd, 3rd and 4th Appellants on all matters which were in issue."

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The submissions made by Mr. Koya under this head relate to the preference expressed by the trial Judge for the evidence of Mr. Wheatley over other evidence and to the weight which he attached to the evidence. It was entirely for the trial Judge to assess the evidence and to give it such weight as he thought. The Judge did not see Mr. Wheatley as a witness although he saw appellants but he was still entitled to prefer Mr. Wheatley's evidence to that of the appellants and to treat Mr. Wheatley's deposition as a credible narrative. It is to be noted too, that Mr. Wheatley gave evidence

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in 1967. Appellants did not give evidence until some years later.

In the Court
of Appeal

Ground (h) was :

No.38
Judgment of
McMullin J.A.

"That the learned trial Judge erred in accepting the evidence of Mr. B.L.Gregg in preference to the evidence given by the 2nd, 3rd and 4th Appellants on all matters which were in issue."

25th July 1975
continued

10 The learned Judge heard Mr. Gregg's evidence and was entitled to give it such weight as he chose. Mr. Gregg did not have a detailed memory for events surrounding the execution of the will and on some points he did not support Mr. Wheatley. That is not surprising after a long lapse of time and in view of the fact that Mr. Gregg's interest in and knowledge of the Testator's affairs had not been as close as that of Mr. Wheatley.

Ground (i) was :

20 "That the learned trial Judge erred in accepting the evidence of Mrs. Christine Andrews in preference to the evidence of the 2nd, 3rd and 4th Appellants in all matters which were in issue."

30 Mr. Koya said that Mrs. Andrews was vague and was not to be relied on. She could not remember the contents of her previous affidavit. That affidavit, it is to be noted, had been sworn in in 1959, just two years after the making of the will and at a time when events were relatively fresh in her memory. Although she was unable to remember at the time of the trial the matters referred to in her affidavit she did say that if they were recorded they would be true. The learned Judge was entitled to take account of that fact particularly when the evidence of the appellants was not given until some thirteen years later.

40 It is convenient to refer at this stage to ground (c). This is as follows :

"That the learned trial Judge erred in accepting the evidence of Mr. Wheatley, Mr. Gregg and Mrs. Andrews."

In the Court
of Appeal

No. 38
Judgment of
McMullin J.A.

25th July 1975
continued

Enough has been said on grounds (g),
(h) and (i) to dispose of this ground.

Ground (j) was :

"That the learned trial Judge erred in not taking into account fully or at all the effect of the loss of the official file held by the respondent as Public Trustee relating to the will in dispute and in particular as to the credibility of Mr. S.M. Bidesi's evidence concerning the drawing up of a will for Bidesi testator by Mr. Harry Wheatley wherein it was intended that Mr. S.M. Bidesi be named the executor and in addition as to the credibility of Mrs. Christine Andrews, Mr. B.L. Gregg and Mr. Harry Wheatley on matters in issue raised by the appellants."

10

In considering grounds (a) and (m) I have already commented on the loss of the official file. There is nothing in the judgment to suggest that the Judge did not give this matter its proper weight and he was entitled to have regard to the fact that although the official file was not available for production there were good reasons why neither the instructions nor the draft will had been kept.

20

Ground (k) was :

"That the learned trial Judge misdirected himself and erred in law in disallowing appellants contention that inasmuch as Messrs. Cromptons, Solicitors, Suva, had already acted for the appellants S.M. Bidesi and C.P. Bidesi relating to some of the matters in dispute, Messrs. Cromptons and their associate Mr. Mitchell should not be permitted to act for the respondent at this trial and that the continuance of the trial with their instructing counsel (Mr. McGarvie) would cause great injustice to the appellants. (See pages 121-122 of the Record)."

30

40

The record shows that Mr. Koya objected on the 1st day of the trial to Mr. Mitchell's appearance as one of respondent's counsel although the indications are that the main

objection was to ensure that Mr. Mitchell should say nothing about certain matters which had taken place between respondent and S.M., C.P. and S.P. at the time when Cromptons were acting for them. It would appear that in May 1969 Mr. Mitchell commenced employment with Cromptons as a qualified clerk and continued his association with them either in that capacity or as a partner until the 31st December, 1974. Since the 1st January, 1975 he has been in practice on his own account. Cromptons took over the conduct of the action on behalf of respondent in September 1972 and remained on the record as solicitors for respondent until the 31st January, 1975. On that date a notice of change of solicitors was filed in favour of Mr. Mitchell. In 1959, 1960 and 1961 Cromptons on behalf of C.P. and S.M. acted in claims relating to the estate though it is not said that Mr. Mitchell handled these matters personally. Their association did, however, relate to matters which might have a possible relevance to the defences of estoppel, acquiescence and laches which were prepared on behalf of respondent by Cromptons. It was Mr. Mitchell who signed the particulars of these defences on which the respondent intended to rely. Mr. Koya submitted that the trial Judge should not have allowed Mr. Mitchell to appear. However, the Judge let him appear and said that if it became necessary Mr. Koya could renew his objection to the particular evidence which he considered to be in breach of the confidential relationship of solicitor and client. He said that he would proceed on the basis that an objection could be raised to the evidence adduced and not to counsel. The point was not raised again during the trial. It was not suggested that in the conduct of the proceedings either counsel for the respondent made any use of information gained by Cromptons or by Mr. Mitchell while Cromptons were acting for C.P. and S.M. In support of his objection Mr. Koya referred to Halsbury's Laws of England, 3rd Edition, Vol. 36 p.95 para. 131. In my view, while this passage does define the obligations of solicitors as to the confidentiality of

In the Court
of Appeal

No.38
Judgment of
McMullin J.A.

25th July 1975
continued

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In the Court
of Appeal

No. 38
Judgment of
McMullin J.A.
25th July 1975
continued

information received by them while acting for clients, it does not support Mr. Koya's contention. It seems to me that if Mr. Koya had any objection to make it was to the fact that Cromptons were on the record as solicitors and not to Mr. Mitchell's appearance. I do not think that this ground of appeal can be sustained. If there is any basis for Mr. Koya's complaint either against Cromptons or Mr. Mitchell it seems to be a matter of domestic discipline though I am far from suggesting that there was any impropriety on the part either of Cromptons or Mr. Mitchell.

10

Ground (1) was :

"That the learned trial Judge erred in law in his findings on the issues relating to acquiescence and laches raised by the respondent in his defence. The learned Judge in this connection misdirected himself to draw proper inferences from the circumstances leading to the giving of an undertaking in writing by the respondent to the 2nd and 3rd appellants on the 19th February, 1958 (see page 418 of the Record) and the conduct thereafter of the respondent."

20

In view of the judgment I have arrived at on what I perceive to be the more fundamental issue raised on this appeal I do not think it necessary to consider the defences of acquiescence or laches. To succeed on this appeal, appellants must show that the Judge was wrong in his judgment on testator's knowledge and approval of the will and on the defence of acquiescence and on the defence of laches. If they fail on any one of the grounds of appeal then it must be dismissed. Not only do I think that the Judge is not shown to be in error in his judgment on testator's knowledge and approval of the will but I think that there was an abundance of evidence available to support his findings. Indeed, it would have been difficult for him to take any other view.

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In my opinion not one of appellants' grounds can be sustained. Being of that view I would dismiss the appeal.

There was a further ground added during the hearing of the appeal. It is ground (o). Ground (o) provides :

"That the learned trial Judge having regard to all circumstances of the case erred in awarding costs against the appellants."

In the Court
of Appeal

No. 38

Judgment of
McMullin J.A.

25th July 1975
continued

10 This ground falls to be decided irrespective of our decision on the substantive aspects of this appeal. While recognizing that costs generally follow the event Mr. Koya submitted that the Judge ought not to have made an order for costs against appellants as the cause of litigation was respondent's failure to implement an undertaking to secure a change in the law of Fiji to overcome the decision in Chapman v. Chapman (1934) 1 W.L.R. 723. I do not agree. Respondent could not himself effect a change in the law. There were other agencies
20 who could better pursue such a course. Even if respondent had the ability to bring about the legislative change necessary, it is likely that appellants could at best, if the change had been effected, secure a variation in the trusts of the will and not their inclusion as beneficiaries under it. In short, any variation in the trusts of the will would have itself recognized the will as a valid testamentary document. The action
30 finally instituted by appellants was an action which directly attacked the efficacy of that document as testator's last will. It was not an action to enable appellants to vary the trusts of the will by obtaining for them a greater security of tenure of lands which they occupied. The action failed. Had it been brought at an earlier stage, it is likely that appellants would have been ordered to pay respondent's costs in respect
40 of it. By reason of the long delays respondent's difficulties of proving the will increased and the litigation was necessarily protracted. I think that the order made by the Judge as to costs was right.

Accordingly, for the reasons I have given, I am of the view that the appeal should be dismissed with costs and the order for costs made by the learned Judge sustained.

Sgd. McMullin
Justice of Appeal

Suva,
25th July, 1975

In the Court
of Appeal

No. 39

No.39
Judgment of
Marsack J.A.

JUDGMENT OF MARSACK J.A.

25th July 1975

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 66 of 1974

Between: 1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI
(all sons of Bidesi

10

Appellants

- and -

THE PUBLIC TRUSTEE
OF FIJI

Respondent

S.M. Koya for the Appellant
R.W. Mitchell for the Respondent

Date of Hearing: 10th, 11th, 15th July, 1975
Delivery of Judgment: 25th July, 1975

JUDGMENT OF MARSACK, J.A.

I have had the advantage of reading the very full and carefully reasoned judgment of Mr. Justice McMullin with which I am in complete agreement. At the same time there is one short comment which I should like to make.

20

As I see it there has been, in the presentation of the case, some confusion as to the issues which required determination by the Court. This was an action brought by the appellants against the respondent for revocation of probate of the will of their father, which was granted in common form to the respondent as sole executor on the 21st April, 1959. The respondent counter-claimed, asking that the Court grant to him probate in solemn form. The basis put forward by the appellants for their claim that probate of the will should be revoked was that the deceased at the time of the execution of the alleged will neither knew nor approved of its contents.

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That, then, was the issue which the learned trial Judge had to decide. It had to be established to his satisfaction that all legal requirements of the making of a will had been complied with, including the formalities of execution and attestation; that the testator understood what was set out in the will, and that its provisions were strictly in accordance with his wishes.

In the Court
of Appeal

No.39
Judgment of
Marsack J.A.

25th July 1975
continued

10 It is true that a great deal of
evidence was called with reference to this
issue, and fully considered by the learned
trial Judge in his judgment. But there
was also much evidence as to the dissatis-
faction of the appellants with the terms of
the will under which they receive no benefit;
and also to the strenuous efforts made by
the appellants to obtain a family settlement
by which they would obtain some advantages
20 in the disposition of the estate. To my
mind these matters were irrelevant to the
question which had to be decided by the
Court, that is to say the validity of the
will. Accordingly I have grave doubts
whether the matters of laches and acquies-
cence, to which so much time was devoted
during the trial, were not extraneous to
the real subject of the dispute.

30 The learned trial Judge held, on
evidence which in my opinion was thoroughly
adequate for the purpose, that the will
in dispute was in all respects a valid will
of which probate in solemn form should be
granted to the executor, the Public Trustee.
I do not think he was called upon to decide
any other matters.

As I have said, I fully concur with
the judgment of McMullin, J.A. and the order
he proposes thereon.

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Sgd: C.C.Marsack
JUSTICE OF APPEAL

In the Court
of Appeal

No.40

JUDGMENT OF GOULD V.P.

No.40
Judgment of
Gould V.P.

25th July 1975

IN THE FIJI COURT OF APPEALCivil JurisdictionCivil Appeal No. 66 of 1974

Between: 1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI
(all sons of Bidesi) Appellants 10
(Original Plaintiffs)

- and -

THE PUBLIC TRUSTEE OF FIJI

Respondent
(Original Defendant)

S.M. Koya for the appellants
R.W. Mitchell for the respondent

Dates of hearing: 10th, 11th, 14th, 15th July 1975
Delivery of judgment: 25th July, 1975

JUDGMENT OF GOULD V.P.

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I have had the advantage of reading the very painstaking judgment of McMullin J.A. and am in full agreement with his reasoning and conclusions.

All members of the court being of the same opinion the appeal is dismissed with the orders as to costs proposed by McMullin J.A.

Sgd: H. Gould
Vice President

No. 41

In the Court
of Appeal

ORDER

No.41
OrderIN THE FIJI COURT OF APPEAL

25th July 1975

CIVIL JURISDICTION

CIVIL APPEAL NO. 66 of 1974

BETWEEN: 1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI
(all sons of Bidesi)

10

APPELLANTS
(Original Plaintiffs)

A N D: THE PUBLIC TRUSTEE OF FIJI
RESPONDENT
(Original Defendant)

UPON READING the Notice of Motion dated the 6th day of December 1974 and Notice of Additional Grounds of Appeal dated 2nd day of July 1975 on behalf of the Appellants by way of Appeal from the Judgment of the Honourable Mr. JUSTICE TIMOCI U. TUIVAGA given at the trial of this action on the 27th day of November 1974 and 15th day of April 1975 whereby it was adjudged that judgment be entered for the Respondent with costs and whereby he ordered that the Will of BIDESI (son of Chuman) late of Suva deceased and dated the 18th day of April 1957 be pronounced in solemn form

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AND UPON HEARING the said Judgments

AND UPON HEARING Mr. SIDDIQ MOIDIN KOYA of Counsel on behalf of the Appellants and Mr. ROBERT WILLIAM MITCHELL of Counsel on behalf of the Respondent

30

AND MATURE deliberation

IT IS ORDERED that the said Judgment of Mr. JUSTICE TIMOCI U. TUIVAGA be affirmed and that this appeal be dismissed with costs

In the Court
of Appeal

to be paid by the Appellants to the Respondent.

No.41
Order

BY THE COURT

25th July 1975
continued

Sgd: Illegible

REGISTRAR

No.42
Order granting
leave to appeal
to Her Majesty
in Council

No. 42

ORDER GRANTING LEAVE TO
APPEAL TO HER MAJESTY IN
COUNCIL

5th September
1975

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

10

Civil Appeal No. 66 of 1974

Supreme Court Probate Action
No. 7 of 1966

IN THE ESTATE of BIDESI

(Son of Chuman) deceased

BETWEEN: 1. MUNI DEO BIDESI
2. SURYA MUNIDLAL BIDESI
3. CHANDRA PRAKASH BIDESI
4. SHAR PAL BIDESI
(all sons of Bidesi) APPELLANTS 20
(Original/Plaintiffs) sic.

A N D: THE PUBLIC TRUSTEE OF FIJI
RESPONDENT
(Original/Defendant) sic.

BEFORE THE HONOURABLE MR. JUSTICE C.C.MARSACK
IN CHAMBERS

FRIDAY THE 5TH DAY OF SEPTEMBER 1975

UPON READING the Motion for Leave to Appeal to
Privy Council herein filed the 19th day of
August 1975

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AND UPON HEARING MR. VIJAYA PARMANANDAM
of Counsel for the Appellants/Plaintiffs
and MR. ROBERT MITCHELL of Counsel for
the Respondent/Defendant

In the Court
of Appeal

No.42

Order granting
leave to appeal
to Her Majesty
in Council

5th September
1975

continued

10 IT IS THIS DAY ORDERED that the
Appellants/Plaintiffs do have Leave to
Appeal to Her Majesty in Council from
the judgment of the Fiji Court of Appeal
given on the 25th day of July 1975 on
condition that the Appellants/Plaintiffs
do lodge within thirty(30) days from the
date hereof their personal Bond for the
payment of all such costs as may become
payable by the Appellants/ Plaintiffs
by Order of Her Majesty in Council and
that all execution on the said judgment
be stayed upon the condition that the
Appellants/Plaintiffs do prosecute their
20 appeal to Her Majesty in Council with due
diligence

AND that the costs of this Application
be costs in the cause

BY THE COURT

(Sgd) K.P. Shama

(L.S.)

REGISTRAR
FIJI COURT OF APPEAL

Exhibits
Exhibit 1

EXHIBIT 1

BOOK OF DOCUMENTS OF DEFENDANT
NUMBERED 1 to 81

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2. Letter, S.M.Bidesi to Public Trustee	17th May 1958	345	
3. Letter, Public Trustee to M.D.Bidesi	12th November 1959	347	10
4. Letter, Public Trustee to M.D.Bidesi	3rd December 1959	347	
5. Letter, Cromptons to Public Trustee	4th February 1960	348	
6. Letter, Public Trustee to William Scott & Co.	1st November 1960	350	
7. Letter, Public Trustee to M.D.Bidesi	30th November 1962	351	
8. Letter, Public Trustee to C.P.Bidesi	19th February 1958	352	20
9. Letter, Public Trustee to S.M. Bidesi	19th February 1958	353	
10. Letter, Public Trustee to Koya & Co.	14th March 1958	355	
11. Letter, S.M.Bidesi to Public Trustee	17th May 1958	356	
12. Letter, Public Trustee to Cromptons	26th June 1959	357	
13. Letter, Cromptons to Public Trustee	11th July 1959	359	30
14. Letter, Public Trustee to S.M.Bidesi	19th November 1959	360	
15. Letter, Public Trustee to S.P.Bidesi	20th November 1959	362	
16. Letter, Public Trustee to Cromptons	20th November 1959	363	
17. Agreement, between S.M. Bidesi & Public Trustee	24th November 1959	363	

	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>	<u>Exhibits</u>
	18. Mortgage by S.M.Bidesi	26th November 1959	366	Exhibit 1 continued
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	20. Lease, Public Trustee to S.M. Bidesi	28th November 1959	374	
	21. Letter, Public Trustee to C.P. Bidesi	2nd December 1959	380	
10	22. Letter, Cromptons to Public Trustee	12th January 1960	381	
	23. Account, Cromptons to Public Trustee	12th January 1960	382	
	24. Letter, Public Trustee to S.M.Bidesi	16th May 1960	382	
	25. Debit Note, Public Trustee to S.M.Bidesi	16th May 1960	384	
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20	27. Letter, Public Trustee to S.M.Bidesi	11th November 1960	386	
	28. Debit Note, Public Trustee to S.M.Bidesi	11th November 1960	387	
	29. Letter, Public Trustee to S.M.Bidesi	5th January 1961	388	
	30. Letter, S.M.Bidesi to Public Trustee	9th January 1961	389	
	31. Letter, Public Trustee to Cromptons	17th January 1961	390	
30	32. Letter, Public Trustee to S.M.Bidesi	18th May 1964	391	
	33. Letter, Public Trustee to S.M.Bidesi	13th August 1964	392	
	34. Letter, Wm.Scott & Co. to Public Trustee	23rd June 1965	393	
	35. Letter, Public Trustee to Wm. Scott & Co.	25th June 1965	394	
	36. Letter, Public Trustee to S.M.Bidesi	7th April 1965	395	
40	37. Letters, Public Trustee to S.M.Bidesi	1st July 1965	396	
	38. Letter, Public Trustee to S.M.Bidesi	11th July 1969	396	

<u>Exhibits</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page</u>	
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	40. Letter, Koya & Co. to Public Trustee	17th February 1958	398	
	41. Letter, Koya & Co. to Public Trustee	12th March 1958	399	
	42. Letter, Grahame & Co. to C.P.Bidesi	8th May 1958	400	
	43. Caveat by C.P.Bidesi	21st December 1957	401	10
	44. Caveat by C.P.Bidesi	14th May 1958	402	
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	47. Warning to Caveat by the Registrar	13th November 1958	403	
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	49. Letters, Public Trustee to C.P.Bidesi	13th January 1960	406	20
	50. Letter, Cromptons to Public Trustee	26th January 1960	407	
	51. Letter, Cromptons to Public Trustee	3rd February 1960	408	
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	53. Letter, Public Trustee to C.P.Bidesi	2nd March 1962	410	
	54. Letter, Public Trustee to C.P.Bidesi	31st October 1962	410	30
	55. Account, Public Trustee to C.P.Bidesi	2nd November 1962	412	
	56. Letter, Public Trustee to C.P.Bidesi	27th April 1963	413	
	57. Letter, Public Trustee to C.P.Bidesi	31st May 1963	414	
	57A. Account, Public Trustee to C.P.Bidesi	14th June 1963	415	
	58. Letter, McNally to Public Trustee	13th May 1964	416	40

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	59. Letter, Public Trustee to T.J.McNally	25th May 1964	417	Exhibit 1 continued
	60. Letters, C.P.Bidesi to Public Trustee	31st January 1967	418	
	61. Letter, Public Trustee to S.P.Bidesi	29th November 1957	419	
	62. Letter, M.Gray to Public Trustee	23rd December 1957	420	
10	63. Letter, M.Gray to Public Trustee	23rd December 1957	422	
	64. Letter, Public Trustee to M. Gray	12th November 1959	423	
	65. Letter, Public Trustee to S.P.Bidesi	4th December 1959	424	
	66. Letter, Grahame & Co. to Public Trustee	14th December 1959	425	
	67. Letter, M.Gray to Public Trustee	15th December 1959	426	
20	68. Sale Note, S.P.Bidesi to Public Trustee	24th January 1961	427	
	69. Letter, Public Trustee to S.P.Bidesi	13th February 1962	428	
	70. Letter, S.P.Bidesi to Public Trustee	29th March 1962	429	
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30	73. Letter, Cromptons to Public Trustee	1st August 1962	430	
	74. Letter, Public Trustee to Cromptons	21st December 1962	432	
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	76. Letter, Public Trustee to S.P.Bidesi	26th April 1963	434	
	77. Letter, Public Trustee to S.P.Bidesi	26th April 1963	435	
40	78. Letter, Cromptons to Public Trustee	7th May 1963	436	

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Exhibit 1 continued	79. Caveat forbidding any Dealing, Registrar of Titles to Public Trustee	13th June 1962	437
	80. Letter, S.P.Bidesi to Public Trustee	30th January 1967	438
	81. Letter, Public Trustee to S.P.Bidesi	30th May 1967	439

EXHIBIT 1 No. 1

Exhibits
Exhibit 1
No.1c/o Messrs. Bidesi & Sons,
Waimanu Road, Suva.

30th December 1957

Estate of the late Bidesi,
c/o B.L.Gregg, Esq.,
Government Buildings, Suva.

Dear Sir,

10 I hereby most respectfully beg to claim that sometime in the year 1954 I did deposited with Mr Bidesi for safety keep the sum of twelve hundred pounds £1200 which was in his possession at the time of his death and I can substantiate this claim if warranted.

Yours faithfully,

(Sgd) Muni Deo Bidesi

Muni Deo (f/n) Bidesi

EXHIBIT 1 No. 2

Exhibit 1
No.2

20

BIDESI & SONS LTD.
Builders and General Contractors
G.P.O. Box 63, WAIMANU ROAD, SUVA

17th May 1958

The Public Trustee,
Government Buildings,
S U V A

Dear Sir,

Referring to our several verbal conversations

Exhibits
Exhibit 1
No. 2
continued

in relation to bonus paid to family staffs, the writer beg to inform you that it has been the past practice that the firm has been allowing a special bonus every third year. This can be substantiated from the Firm's book. The last bonus to family staffs was paid in 1954.

The writer would like to emphasize here that the future prospect of the undermentioned staffs are not very promising and secured and you would also appreciate and observe from the pay sheets of the firm that the family staffs were not adequately remunerated and the only attraction attached to their wages was a bonus and that also was paid after three years waiting. 10

However, the firm's balance sheet for the year 1957 shows a large profit. The income tax would be someway in the vicinity of 45% of taxable income, and if the income is reduced by paying the undermentioned staffs, the tax on the firm would be considerably decreased to about 30% in lieu of 45% in the other word the firm would be paying to these staffs only £1600 and the balance of £2000 is saved from taxation. 20

The writer would also like to emphasise that the family staffs have worked since the conception of the firm without any brake or leave i.e. 25 years of service and if their due bonus is not favourably considered they can demand their due leave plus pay which would amount to roughly 700-800 pounds each. 30

Under these circumstances, with respect the writer venture to suggest and strongly recommend that the following family staffs be considered and allocated the undermentioned sums as a bonus due to them.

Mr. S.P.Bidesi	}	£1200. each
Mr. M.D.Bidesi		
Mr. Ram Deo		

Your immediate approval and acceptance of this will be highly appreciated. 40

Yours faithfully,
(Sgd) S.M.Bidesi
Smb/arc. S.M. Bidesi

EXHIBIT 1 No. 3

Exhibits
Exhibit 1
No.3

P.T. 7/244

12th November 1959

Mr. Munideo (f/n Bidesi),
c/o Bidesi & Sons,
Waimanu Road,
Suva

Sir,

10 I have to refer to your letter of the 30th
December, 1957, and to enquire whether you
are prepared to prove your claim for £1,200
in open court and, if so, may I be informed
of the name of your Counsel.

Yours faithfully,

B.L.G.

HW:RAY

Public Trustee

EXHIBIT 1 No. 4

Exhibit 1
No. 4

Registered

P.T. 7/244

3rd December, 1959

20 Mr. Munideo,
C/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

re: Your Claim - £1200

30 I have to refer to my letter to you of
the 12th November, 1959, to which I have not
received a reply, and to inform you that, in
the event of my not hearing from you in writing
in this regard by the 21st December, 1959 it is

Exhibits
Exhibit 1
No. 4
continued

my intention to disallow the above claim
against the Bidesi Estate.

Yours faithfully,
(Sgd) Illegible

HW/kv.

PUBLIC TRUSTEE

Exhibit 1
No. 5

EXHIBIT 1 No. 5

CROMPTONS

Barristers, Solicitors and
Notaries Public

Ref: JNF:iem

P.O. Box 300
Suva, Fiji.

10

4th February, 1960

The Public Trustee,
Government Buildings,
SUVA

Dear Sir:

Re: Estate of Bidesi deceased

We have been instructed by Mr. S.M. Bidesi to write to you regarding the question of bonuses payable to the sons of the abovenamed deceased who were employed in the deceased's business during 1957.

20

Mr. Bidesi's contention is that there was an arrangement whereby at three-yearly intervals his father had undertaken to pay bonuses to his sons in respect of their services with his firm. There was consideration for this undertaking, in that it seems unquestionable that Mr. Bidesi's sons received ordinary remuneration at a rate which was unrelated to the value of their services. We know that when differences arose between Mr.S.M. Bidesi and his late father a few years ago, the

30

question of compensation for the many years' service given by Mr. S.M.Bidesi at a low rate of pay featured prominently in the negotiations which ultimately led to a settlement. You may have some knowledge of those negotiations.

Exhibits
Exhibit 1
No. 5
continued

10 We understand that provision for the 1957 bonus was made in the estate accounts as at the 15th November, 1958, but that you now entertain some doubts as to whether they are properly payable. We suggest that these bonuses are commitments inseparable from the business of the deceased and that in paying them you are performing an act which is within the scope of your authority to carry on the business.

20 We have sighted a letter dated the 31st December, 1954 in which Mr. Munideo is advised of the payment of a bonus of £1000 to his deposit account. We have also sighted tax returns of Munideo and Ramdeo which indicate that they have returned their 1954 bonuses as part of their income. It seems therefore that they have always had the expectation that these bonuses would continue to be paid. This would seem to be supported by the fact that all were indebted to the business on building accounts and suggests the probability that their indebtedness was to be liquidated over a period of years by the payment of
30 bonuses from the firm.

We shall be glad if you will let us have your observations on the above matters.

We understand there are certain difficulties regarding title to residential blocks which remain in the name of the estate, although there is evidence of an intention by the late Mr. Bidesi to transfer a block to each of his sons. Perhaps this issue could be discussed at a later date?

40

Yours truly,
(Sgd) Cromptons

Exhibits
 Exhibit 1
 No. 6

EXHIBIT 1 No. 6

P.T. 7/244

1st November, 1960

Messrs. Wm. Scott & Co.,
 Barristers & Solicitors,
 Bank of New South Wales Building,
SUVA

Dear Sir,

re: Munideo - Bidesi Estate

I have to refer to the draft Lease forwarded to me for perusal and to inform you, in view of the terms of the Will of the late Mr. Bidesi, I feel that I am precluded from granting your client a lease of the Certificate of Title No. 10317, at a peppercorn rental. 10

2. The land was valued by this Department for Death Duty purposes at £1,000.0.0 as against a sum of £2,500.0.0 placed upon it by the Commissioner of Inland Revenue. Assuming that the final agreed value is in the vicinity of £1,000.0.0 the Public Trustee would expect to receive a clear £6 per month from the block. 20

3. The alternative to a Lease would be an Application to the Supreme Court for an Order vesting the C.T. 10317 in your client's name.

4. The draft Lease is enclosed.

Yours faithfully,

(Sgd) Illegible

PUBLIC TRUSTEE

EXHIBIT 1 No. 7

Exhibits
Exhibit 1
No.7

P.T. 7/244

30th November, 1962

REGISTERED MAIL

Mr. Munideo (s/o Bidesi)
c/o Messrs. Bidesi & Sons Ltd.,
Waimanu Road,
SUVA

Dear Sir,

10

re: Estate of the late Bidesi

Some weeks ago Mr. S.P.Bidesi advised the writer that you were interested in purchasing lot 9 on D.P.2527, which land had a frontage to the unformed deviation to Mead Road, Tamavua.

20

2. It was pointed out that no title could be given until Mead Road had been re-formed and it was understood that you were willing to enter into a Sale and Purchase Agreement for the purchase of the block for £500 cash and that the money would be paid as soon as the survey pegs were located.

3. Mr. Tetzner replaced the missing pegs about a fortnight ago but as the negotiations have been conducted through a third party and the purchase price has not been received, it could be that you are no longer interested in purchasing.

30

4. I have therefore to inform you that if you do not settle this matter by the 7th December, 1962, it is my intention to proceed to offer the said lot 9 to other interested persons.

Yours faithfully,

(Sgd) Illegible

Public Trustee

HW/vl.

Exhibits
 Exhibit 1
 No. 8

EXHIBIT 1 No. 8

2016

P.T. 7/244

19th February, 1958

Mr. C.P. Bidesi,
 Box 306,
SUVA

Dear Sir,

Confirming our conversation of the 18th of February, I have to advise that I am prepared to apply to the Supreme Court for an Order varying the terms of the will of your late father to allow the sale of land and buildings contained in Certificates of Title Nos. 6503 and 6504 on the following terms :

(a) The business of builder to be taken over as a going concern and the land, factory and stock-in-trade to be sold to your brother, Mr. S.M. Bidesi, for the sum of £14,000;

(b) The land and cottage on Certificate of Title No.:6503 to be sold to you for the sum of £1,905 which is the present valuation. The purchase price to be secured by a mortgage bearing interest at the rate of 5% and reducible by monthly instalments.

2. In addition I am prepared to sell you the block of land behind your flats in Princes Road at present temporarily fenced in by you at the present valuation.

3. Whilst the widow is in favour of selling the land on which the factory and cottage are erected for the sum of £14,000 she is not at present in favour of selling the land and cottage at present occupied by you. As you are aware it will be necessary to apply to the Supreme Court for consent to sell these two properties. I do not anticipate that the Court will accept the widow's objection as she has no valid reason for opposing the sale. Indeed it is in the interest of the estate that both these properties should be sold as it is necessary to raise a large sum to pay Death Duties before November, 1958.

Moreover, it is also very desirable to dispose of the business at an early date and it is only right that it should go to the sons of your late father who assisted in building up the business. The widow has only a very minor interest in the estate as she is only one of the life tenants, and her opinion cannot carry much weight at all. I have no doubt whatsoever that the Court will agree to both the sales.

Exhibits
Exhibit 1
No. 8
continued

10

4. Before I can apply to the Court, however, I must have obtained Probate and cannot do this whilst the Caveat lodged on your behalf remains in the Supreme Court Registry. If you accept the above offer you should then withdraw the Caveat. I assure you that I will do my utmost to see that everything goes through in accordance with plans outlined above and, provided you withdraw the Caveat, I have no doubt it can be carried out.

20

Yours faithfully,

B.L.G.

PUBLIC TRUSTEE

BLG/UB

EXHIBIT 1 No. 9

Exhibit 1
No. 9

2016

P.T. 7/244

19th February, 1958

Mr. S.M. Bidesi,
Waimanu Road,
S U V A

30

Dear Sir,

Confirming our conversation recently, I have to advise that I am prepared to apply to the Supreme Court for an Order varying the terms of the Will of your late father to allow the sale of the land and buildings contained in Certificates of Title Nos. 6503 and 6504

Exhibits

Exhibit 1
No. 9
continued

on the following terms :-

- (a) The business of builder carried on by your father to be taken over by you as a going concern and the land, stock-in-trade, as per list attached, to be transferred to you;
- (b) The purchase price of the land, stock-in-trade, as per valuation attached, to be £14,000 of which the sum of £8,000 will be paid in cash and the balance to be secured by mortgage at 5% reducible by monthly instalments over a period of 5 years; 10
- (c) The land and cottage on C.T.6503 to be sold to Mr. C.P.Bidesi for the sum of £1,905 which is the present valuation. The purchase price to be secured by a mortgage bearing interest at the rate of 5% and reducible by monthly instalments. 20

2. As executor named in the will I am strongly in favour of the above sales and I will support the application to the utmost in the Supreme Court for the following reasons. In the first place it is necessary for the estate to raise a considerable sum of money to pay Death Duties before November, 1958. There is not sufficient money at present as it is all tied up in land or mortgages. In the second place it is desirable in the interest of the Estate that the business should be disposed of at an early date and in my opinion it is right and proper that it should be sold to the sons of your late father who helped to build it up. Finally, I am of the opinion that this sale would tend to restore amicable relations between the two branches of your late father's family. 30

3. Whilst the widow is not in favour of selling the land and house on C.T. 6503, I am certain the Court would over-rule her opposition as she has no valid reason for opposing it. Further she is only a life tenant and her interest in the estate is a comparatively small one. Finally, there is, as I have pointed out above, the strong argument that such a sale would be greatly to the advantage of the estate and beneficiaries. 40

4. Before I can apply to the Court it will be necessary for Mr. C.P. Bidesi to withdraw the caveat lodged on his behalf and I have written to him separately in the matter.

Exhibits
Exhibit 1
No. 9
continued

Yours faithfully,

B.L.G.

PUBLIC TRUSTEE

BLG/UB

10

EXHIBIT 1 No.10

Exhibits
Exhibit 1
No. 10

2016

P.T. 7/244

14th March, 1958

Messrs. Koya & Co.,
Solicitors,
LAUTOKA

Dear Sirs,

Re: Estate of Bidesi, deceased

20

I have to acknowledge receipt of your letter of 17th February, and 12th March, 1958. There has been considerable activity in the matter in Suva and I have to advise that Mr. S.M. Bidesi has consulted Messrs. Cromptons and the widow and Mr. Atma Bidesi have consulted Messrs. Grahame & Co.

30

2. I feel that it is desirable in the interests of your client and all persons interested that there should be a conference between the parties in Suva. If you agree to this course, I should be glad if you would let me know when it would be convenient to you and I will get in touch with the other persons concerned.

Yours faithfully,

BLG/ST.

Public Trustee

Exhibits

EXHIBIT 1 No. 11

Exhibit 1
No. 11

c/o Messrs. Bidesi & Sons
Waimanu Road, Suva

17th May 1958

The Public Trustee,
Government Buildings,
S U V A

Dear Sir,

I hereby most respectfully apply and
claim that a sum of five hundred pounds £500
was over paid by me in relation to an account
with Messrs. Bidesi & Sons, this can be
checked in firm's ledger.

10

I shall be pleased if this over paid amount
is refunded to me at your earliest convenience.

Yours faithfully,

(Sgd) S.M. Bidesi

Smb/arc

S.M. Bidesi

2016

P.T. 7/244

26th June, 1959

Messrs. Cromptons,
Solicitors,
SUVA

Dear Sirs,

Re: Estate of Bidesi (f/n Chuman)
deceased

10 I have been requested by Mr. S.M. Bidesi to contact you in connection with a proposed lease over Certificates of Title Nos. 6503 and 6504 to be given to him by me as Public Trustee when negotiations for the sale of the business to him have been completed.

2. For the sake of convenience it is advisable to have the draft of the proposed lease settled at this stage so that the matter can be readily finalised when Mr. Gould has
20 completed the figures in connection with the sale of the business as at 15th November, 1957, and the adjustments if the hand-over is to take place next month.

3. Apart from the usual clauses the draft lease should embody the following points all of which will be the tenant's responsibility:-

- 30 (a) To keep the workshop and the cottage on C.T. 6504 (presently occupied by Mr. C.P. Bidesi) in a state of good repair. During the term of the Lease considerable repairs must be effected to this cottage;
- (b) To keep the buildings on C.T.s 6503 and 6504 covered by fire insurance to their full insurance value and to pay all premia;
- (c) To pay all town, water and other rates which now are or may hereafter be levied;

Exhibits
 Exhibit 1
 No. 12
 continued

(d) To give notice when he requires the cottage at the rear of the workshop to be demolished and allow the landlord adequate time to advertise and arrange its sale and removal. It is appreciated that this cottage has a limited life and that the land on which it stands is necessary to the business of brick-making and storage.

4. The term of the lease is to be for a period of 10 years from 1st January, 1959, and the rental of £620 per annum payable quarterly in advance. 10

5. The foregoing sets out the arrangement as I understand it. Should your client require further clarification on any point please get in touch with me.

Yours faithfully,

(Sgd) Illegible

HW/St.

PUBLIC TRUSTEE

20

EXHIBIT 1 No. 13

Exhibits
Exhibit 1
No.13

CROMPTONS
BARRISTERS, SOLICITORS AND
NOTARIES PUBLIC

Ref: JNF:iem P.O. Box 300
Suva, Fiji.

11th July 1959

10 The Public Trustee,
P.O. Box 2016,
Government Buildings,
SUVA

Dear Sir,

Re: Estate of Bidesi (f/n Chuman)
deceased

With reference to your letter P.T. 7/244
of the 26th June, we enclose herewith a draft
form of lease for your consideration.

We shall be glad to discuss the draft
with you at your convenience.

20

Yours truly,

Encls.

Cromptons

Exhibits

EXHIBIT 1 No. 14

Exhibit 1

No. 14

P.T. 7/244

19th November, 1959

Mr. S.M. Bidesi,

S U V A

Dear Sir,

This is to confirm our discussion this morning concerning the terms of the take-over by you of the contracting business known as Bidesi & Sons as from the date of your father's death and to set out the matters agreed upon. They are :-

- (i) The grant of a lease to you over Certificates of Titles numbered 6503 and 6504 on the terms set out in the draft lease prepared by Messrs. Cromptons 10
- (ii) When the building behind the workshop is sold for removal you personally will deal with interested buyers and will submit all offers to me for consideration 20
- (iii) The overall take-over is agreed upon at £18,000, subject to certain adjustments of figures as at the date of the signing of a mortgage. In round figures this amount is made up as follows :-

Plant and Equipment	...	...	£2,000	
Stock	...	...	4,000	
Work in progress	...	...	<u>5,100</u>	30
				£11,100
Bank overdraft..	...	...	5,600	
1958 Rent	...	...	600	
Adjustment of payments since date of death - Estate/business	...	...	<u>700</u>	<u>6,900</u>
				<u>£18,000</u>

- (iv) It is agreed that, if required by you, a

further sum of £3,000 is to be advanced by way of working capital.

Exhibits
Exhibit 1
No. 14
continued

10 (v) You will execute a mortgage for £18,000 plus further advances, interest will be at the rate of $5\frac{1}{2}\%$ and payable annually. The mortgage, which will be on demand, will be over your two blocks of flats in Bridge Street, Suva, and your flats in Foster Street, Suva. It will be a condition of the mortgage that these latter flats be completed and ready for occupation not later than the 31st December, 1960. You will also give a collateral Bill of Sale over the plant, stock in trade and equipment of the business.

20 2. If the foregoing meets with your understanding of the arrangement between us would you kindly signify your agreement at the base of the copy of this letter enclosed.

Yours faithfully,

B.L.GREGG

Public Trustee

Encl.
HW:RAY

I approve
(Sgd) S.M. Bidesi Jr.

20/11/59

Exhibits

EXHIBIT 1 No. 15

Exhibit 1
No. 15

2016

P.T. 7/244

20th November, 1959

Mr. S.P. Bidesi,
c/o Bidesi & Sons,
Waimanu Road,
S U V A

Dear Sir,

I have to inform you that the arrangements whereby your brother, Mr. S.M. Bidesi, was to take a lease and to purchase certain of the assets of the business of Bidesi & Sons has now been settled. The transfer of authority from me to Mr. S.M. Bidesi will take place tomorrow, the 21st November, 1959.

10

2. May I express my appreciation of your co-operation in your capacity as Manager of the business from the date of your father's death.

Yours faithfully,

B.L.G.

20

PUBLIC TRUSTEE

HW/kv

EXHIBIT 1 No. 16

Exhibits
Exhibit 1
No. 16

P.T. 7/244

20th November, 1959

Messrs. Cromptons,
Solicitors,
S U V A

Gentlemen,

Re: Estate of Bidesi (F/n Chuman)
deceased

10 I have to refer to your letter of the 11th July, 1959, and to return the draft lease for engrossing and execution.

2. The draft correctly sets out the agreement between Mr. S.M. Bidesi and myself.

Yours faithfully,

Sgd. Illegible

Encl. 1
HW:RAYFor Public Trustee

EXHIBIT 1 No. 17

Exhibit 1
No. 17

20 Mr. S.M. Bidesi called and repudiated the arrangement set out in the letter of 19.11.59 on the grounds that :-

(a) he had surveyed the building activities of the firm for the two years since his father's death as revealed by the 1958 Balance Sheet and the Account books. He stated that the 1958 loss of £6,000 was bigger than he had imagined and the indications were that a further loss would result from the 1959 trading;

30 (b) He had inspected the work in progress

Exhibits
 Exhibit 1
 No. 17
 continued

and found that all progress payments had been collected and there would be very little profit if any, on the remaining work;

- (c) The work in hand would soon be completed and there were no new contracts;
- (d) He was faced with an immediate expenditure of £3,000 to bring the vehicles and plant up to an economical working standard;
- (e) The outlook for the trade was not bright. There was keen competition for the few jobs offering and a spate of labour troubles arising from the attentions of the newly formed Building Workers Union; 10
- (f) He was willing to make a monetary sacrifice to save the family business and to provide employment for his brothers and their families, but he felt that the Estate should bear a fair proportion of losses made under its management; 20
- II. After lengthy discussion the following basis for the take-over was agreed upon :-
- (a) That 15.11.59 be the date for the take-over of the stock,
 plant,
 debtors, work in progress,
 creditors and Running Expense
 accounts,
 Bank Overdraft
 and the granting of the Lease; 30
- (b) That there be an adjustment for Estate moneys received by the firm and for Estate debts paid by the firm during the 2 year period since the death;
- (c) That the Public Trustee advance sufficient funds to cover the foregoing, costs and outgoings and procuration fee and also an advance of £3,000 against the security of a 1st Mortgage, payable On Demand and bearing interest at $5\frac{1}{2}\%$ over the Forster Street block of flats. 40

B.L.GREGG

S.M. BIDESI

(d) To enable Mr. S.M. Bidesi to take over the contracting business at once he will execute a Mortgage for £16,000, which figure is deemed to be in excess of the actual consideration passing and is subject to amendment when the stock figure is finalised and the Estate items extracted from the firm's books of account;

III. In elaboration of the terms of paragraph II:-

10

(a) The physical stocktaking to be carried out by Mr. S.M. Bidesi and the Estate's representative (Mr. Powell of Sands Junor & Co.). The Stock to be sold at cost price. The Manager, S.P. Bidesi estimated the value of the stock to be something under £3,000;

(b) The Sale price for the plant be £1,600 represented as follows :

Rolling Stock

20

Truck	150				
Tip-Truck	<u>200</u>				
	350	less 20%	Dep. for 2 yrs.	224	
Oxford car	334	" 15%	" " 2 "	232	
Sun.Plant	1395	" 10%	" " 2 "	1139	
	<u>2079</u>				
Value at	15.11.57		Value at	15.11.59	<u>£1595</u>

30

(c) The overall value of the Debtors, Work in progress, Creditors and Expense accounts to be offset by the overdraft of £6,446 on the Estates Current Account with the Bank of New South Wales.

B.L. GREGG
24/xi/59

S.M. BIDESI
24/11/59

Exhibits

EXHIBIT 1 No. 18

Exhibit 1
No. 18

FIJI

M O R T G A G E
MUST BE IN DUPLICATE

THE INSTRUMENT OF TITLE MUST BE PRESENTED
HEREWITH. RULE UP ALL BLANKS BEFORE
SIGNING. NO ALTERATION SHOULD BE MADE BY
ERASURE. THE WORDS REJECTED SHOULD BE
SCORED THROUGH WITH A PEN AND THOSE
SUBSTITUTED WRITTEN OVER THEM, THE
ALTERATION BEING VERIFIED BY SIGNATURE
OR INITIALS IN THE MARGIN OR NOTICED IN
THE ATTESTATION ALL NAMES MUST BE TYPED
OR PRINTED

10

- (a) Name, residence, occupation or other description in full, and if not of European descent the father's name, commencing with the personal pronoun I or We
- (b) All prior subsisting encumbrances must be thus noted
- (c) Here state whether Certificate of Title, Crown Grant, Native Lease or Lease

(a) SURYA MUNIDLAL BIDESI (father's name Bidesi) of Suva in the Colony of Fiji Landlord hereinafter called the mortgagor being registered as proprietor subject however to such Mortgages and encumbrances as are notified by Memorandum underwritten or endorsed hereon (b) of the 3 pieces of land described as follows :-

20

Instrument of Title (c)	Number	Description	Province or District		AREA	Undivided Share
			Island	of Town		
					A. R. P.	
O.T.	7747	Lot 1 on D.P. 1794	Viti-Leva	Suva	33.50	whole
u	7748	Lot 2 on D.P. 1794	u	u	26.00	u
C.T.	6989	lot 2 on D.P. 1441	Viti Leva	Suva	1	8.00 whole

(d) In figures
and writing

(e) Name, resi-
dence, occupa-
tion and
description in
full, and if
not European
descent the
father's name

10

20

IN CONSIDERATION of the sum
of ~~£18,000.0.0~~ £16,000.0.0
(~~Eighteen~~ Sixteen thousand
pounds) now due and owing
by the Mortgagor to the Public
Trustee of Fiji (hereinafter
called "the Mortgagee") which
indebtedness the Mortgagor doth
hereby admit and acknowledge
AND IN CONSIDERATION of such
further advances which the
Mortgagee may at the request
of the Mortgagor make to the
Mortgagor from time to time
in his absolute discretion
(the term "further advances"
to include all moneys owing or
indebtedness incurred by the
Mortgagor to the Mortgagee on
any account whatsoever) the
Mortgagor **DOETH HEREBY COVENANT**
with the Mortgagee :-

Exhibits
Exhibit 1
No. 18
continued

1. That he will pay to the
Mortgagee on demand all and
every the sum and sums of money
which are now or shall hereafter
be due and owing together with
interest as hereinafter
provided.

30

2. That until such demand
shall be made and complied with
the Mortgagor will pay to the
Mortgagee interest at the rate
of £5.10.0 (Five pounds and
ten shillings) per centum per
annum. The 1st payment to be
made on the 15th day of November
1960.

(FOR OFFICE USE)

40

MORTGAGE No. 72587
Registered 4.12.59 at 9.30 a.m.
B.L. Gregg
Registrar of Titles.

Exhibits
 Exhibit 1
 No. 18
 continued

3. The Mortgagor will continue to pay interest under this mortgage after the expiry of this mortgage should the principal moneys hereby secured be not paid and any interest accruing due after such term shall be deemed to be secured by this mortgage.

4. The Mortgagor further agree that all interest unpaid by him at due date shall be added to the principal sum and carry interest after the rate aforesaid provided always that nothing herein contained in this paragraph shall take away the powers of foreclosure for non-payment of interest. 10

5. The Mortgagee shall have the right to hold the title deeds of the lands hereby mortgaged until all sums due by him to the said Mortgagee are fully paid up with interest.

6. In the event of foreclosure and sale under this security if the property hereby mortgaged shall fail to realise the amount due for principal and interest at such date together with the cost charges and expenses of such foreclosure the Mortgagor will forthwith pay to the Mortgagee such balance of principal and interest and cost charges and expenses as shall be required to pay the same in full. 20

7. It is hereby agreed that the term "one calendar month" referred to in Section 61 of the Land (Transfer and Registration) Ordinance (Cap. 136) shall for all purposes of this security be reduced to "seven days". 30

8. The Mortgagor will insure and keep insured against fire during the continuance of this mortgage in the name of the Mortgagee the buildings erected or which may hereafter be erected on the lands hereby mortgaged in their full insurable value in some insurance Company to be approved by the Mortgagee and will punctually pay the premiums thereon when due and will hand the receipts for same to the Mortgagee immediately upon the issue thereof and the Mortgagor agree that in the event of failing to pay the said premiums or any of them the Mortgagee may in absolute discretion pay the same and all moneys so paid by the Mortgagee shall be covered by this security and bear interest at the rate aforesaid until repaid to the Mortgagee. 40

9. The Mortgagor will at all times during the continuance of this security duly and punctually pay all rents rates taxes charges duties assessments and all other impositions whatsoever now charged or which may hereafter be charged upon the said mortgaged premises or any part thereof or upon the owner or occupier thereof in respect thereof or any part thereof and in case the Mortgagor shall at any time fail to keep the said premises in good tenantable repair and order or to duly or punctually pay all such rent rates taxes charges duties assessments or other impositions as aforesaid it shall be lawful for but not obligatory upon the Mortgagee to execute pay effect and keep up all such repairs rates duties rents assessments and impositions as aforesaid and all moneys paid in respect thereof shall be debited and charged to the Mortgagor and bear interest after the rate aforesaid from the date of payment and shall immediately thereupon be and become payable by the Mortgagor to the Mortgagee and shall until repayment be covered by this mortgage.

10. Upon default by the Mortgagor in the payment when due of any part of the principal interest or other moneys hereby secured or in the observance or performance of any covenant condition or agreement herein expressed or implied the whole of the principal interest and other moneys then remaining hereby secured shall (at the option of the Mortgagee) become immediately due and payable.

11. Neither the exercise by the Mortgagee of any powers or remedies hereby expressly or impliedly conferred upon him nor the failure of the Mortgagee to exercise any such power of remedy shall extinguish the right or claim of the Mortgagee to recover from the Mortgagor by action in any Court of law any principal interest and other moneys which may be owing hereunder to the Mortgagee or prejudice or take away the right of the Mortgagee to exercise any other rights powers or remedies powers claims or demands at law or in equity of the Mortgagee under or by virtue of any other security heretofore or hereafter given to or held by the Mortgagee for any moneys hereby intended to be secured.

Exhibits
 Exhibit 1
 No. 18
 continued

12. These presents shall be a continuing security notwithstanding any settlement of account intervening payment or other matter or thing and shall remain in full force and extend to cover all or any sums of money which may hereafter become owing by the Mortgagor to the Mortgagee until a discharge hereof shall have been given by the Mortgagee to the Mortgagor.

13. The Mortgagor will cause to be completed a block of flats now being erected on the land comprised in Certificate of Title No. 6989 in accordance with the plans and specifications approved by the Suva City Council not later than the 31st December, 1959. 10

and for the better securing to the mortgagee the repayment in manner aforesaid of the principal sum and interest, the mortgagor hereby MORTGAGES to the mortgagee the land above described.

IN WITNESS whereof I have hereto signed my name this 26th day of November 1959 20

(Sgd) S.M. Bidesi
 Signature or left thumb mark of the
 Mortgagor

THE signature by mark of
 was made in my presence and I verily believe that such signature is of the proper handwriting/
~~left thumb mark~~ of the person described as SURYA MUNIDLAL BIDESI, of Suva aforesaid,
 the Mortgagor and I certify that I read over and explained the contents hereof to the Mortgagor in the English language and the Mortgagor appeared fully to understand the meaning and effect thereof. 30

(f) (sgd) H. Wheatley
 A Commissioner, etc.

Correct for the purposes of the Land (Transfer and Registration) Ordinance (Cap.136)

(Sgd) B.L.Gregg Public Trustee
 Solicitor for the Mortgagee 40

MEMORANDUM OF MORTGAGES AND ENCUMBRANCES, ETC.

(f) If this instrument be signed by
 the Registrar of Titles;
 Registrar of Titles; a Notary Public
 a Commissioner of the Supreme Court
 of Fiji; a Practitioner of the
 Court of Fiji; a Justice of the Peace;
 a Clerk of the Registrar of Titles;
 a Clerk of any local Court; a Licensed
 Surveyor or any person specially
 appointed by the Chief Justice, no
 further authentication is required.
 Otherwise the ATTESTING WITNESS must
 appear before one of the above
 functionaries to make a declaration
 in the annexed form. This applies
 only to instruments signed within the
 Colony. If the parties be resident
 without the Colony, but in any British
 Possession the instrument must be
 signed before a Notary Public; a
 Commissioner of the Supreme Court of
 Judicature empowered to take the
 affidavits in such Court; a Commis-
 sioner of the Supreme Court of Fiji;
 the Mayor or Recorder or other Chief
 Officer of any City or Municipal
 Corporation; a Stipendiary Magistrate
 or any person specially appointed by
 the Chief Justice. And if resident
 at any foreign place, then before the
 British Consular Officer or any person
 specially appointed by the Chief
 Justice.

FORM OF DECLARATION BY ATTESTING WITNESS

Appeared before me at the day
 of one thousand nine hundred and

the attesting witness to this instrument and
 declared that he personally knew

the person signing the same, and whose signature
 the said
 attested, and that the name purporting to be the
 signature of the said
 is his own handwriting, and that he is the person
 therein described as
 of

Exhibits

Exhibit 1
No. 18
continued

THE WITHIN WRITTEN MORTGAGE IS HEREBY WHOLLY
DISCHARGED.

IN WITNESS whereof I have hereto signed my
name this day of 19

.....

Signature or left thumb mark
of the Mortgagee

THE signature by mark of
was made in my presence and I verily believe that
such signature is of the proper handwriting/
left thumb mark of the person described as 10
the Mortgagee and I certify that I read over
and explained the contents hereof to the Mortgagee
in the language and the Mortgagee
appeared fully to understand the meaning and
effect thereof.

.....

Correct for the purposes of the Land (Transfer
and Registration) Ordinance (Cap. 136).

.....

20

Solicitor for the Mortgagor

EXHIBIT 1 No. 19

ExhibitsExhibit 1
No. 19

P.T. 7/

27th November, 1959

Mrs. Mary Seetoia,
c/o Whan Construction Co.Ltd.,
S U V A

Dear Madam,

Re: Estate of the late Bidesi

10 I have to inform you that I, as Trustee
of the above estate, have leased the workshop
together with the property you occupy in
Davey Street, Suva, to Mr. S.M. Bidesi.
Would you please pay your future rents direct
to Mr. S.M. Bidesi.

Yours faithfully,

Public Trustee

HW/RAY

Exhibits
Exhibit 1
No.20

EXHIBIT 1 No. 20

FIJI

L E A S E

MUST BE IN DUPLICATE

THE INSTRUMENT OF TITLE MUST BE PRESENTED
HEREWITH. RULE UP ALL BLANKS BEFORE SIGNING.
NO ALTERATION SHOULD BE MADE BY ERASURE. THE
WORDS REJECTED SHOULD BE SCORED THROUGH WITH
A PEN AND THOSE SUBSTITUTED WRITTEN OVER
THEM, THE ALTERATION BEING VERIFIED BY
SIGNATURE OR INITIALS IN THE MARGIN OR NOTICED
IN THE ATTESTATION, ALL NAMES MUST BE TYPED
OR PRINTED

10

(a) Lessor's name,
residence occupa-
tion or other
description in full,
and if not of
European descent the
father's name

(a) THE PUBLIC TRUSTEE OF
FIJI as Executor and
Trustee of the Will of
Bidesi (Father's name Chuman)
deceased (hereinafter called
the Lessor being proprietor
subject to such Leases,
Mortgages and Encumbrances
as are notified by Memorandum
endorsed hereon (b) of the
following land :-

20

(b) All prior sub-
sisting encumbrances
must be thus noted

(c) Here state nature
of instrument of
title, e.g. C.T.
(Certificate of
Title, C.G., (Crown
Grant) N.L.(Native
Lease) or as the
case may be

C.T.or C.G.(c)	Number	Name of Land	Island
C.T.	6989	Vitilevu	
C.T.	6503	-	Vitilevu
C.T.	6504	-	"

30

(d) If the whole of
the land is leased
write the word
"whole"

District or Town	AREA A. R. P.	Lot No.	Plan No.(d)
Suva	1-8.00	2	D.P.1441 whole
Suva	- -	33.2	3 D.P.1074
"	- -	35.7	4 - 1074

(e) Appellant's Name
residence, occupa-
tion or other
description in full,
and if not European
the father's name

DO HEREBY LEASE to (e) SURYA
MUNIDLAL BIDESI (Father's
name Bidesi) of Suva, Building
Contractor (hereinafter called
the Lessee) all the said land

40

- (f) Except in the case of a lease for a life or lives, the period must be so stated
- (g) In figures and writing
- 10 (h) Here insert times of payment
- (i) Here set forth any modification, &c. See form F in the Schedule of the Ordinance
- 20
- to be held by the Lessee as tenant for the space of (f) TEN YEARS - months - days computed from the FIFTEENTH day of NOVEMBER 1959 at a yearly rental of (g) (£620.0.0) SIX HUNDRED & TWENTY POUNDS payable as follows :- (h) ~~Quarterly~~ half yearly in advance on the 15th days of November, ~~February, May and August~~ during the said term subject to the covenants and powers implied under the "Land (Transfer and Registration) Ordinance, Cap. 120" unless hereby negatived or modified (i) (see over)
- i) and to the following covenants conditions and stipulations:-

Exhibits
Exhibit 1
No. 20
continued

L E A S E No. 72767
Registered 28.12.59 at
10 a.m.

Lodged by
CROMPTONS
SOLICITORS
SUVA, FIJI

(Sgd) B.L.Gregg
Registrar of Titles Date

Documents

- 30 a) The Lessee will forthwith put the workshop on Certificate of Title No. 6503 and the cottage on Certificate of Title No.6504 into good and tenantable repair to the satisfaction of the Lessor and will thereafter keep the demised premises in good and tenantable repair fair wear and tear and damage by fire storm tempest or other inevitable accident alone excepted;
- 40 b) The Lessee will insure and keep insured in the name of the Lessor against fire all buildings fixtures improvements and fittings now or at any time erected and built or used on the said land in the full insurable value thereof in an insurance office to be approved by the Lessor in

Exhibits
 Exhibit 1
 No.20
 continued

the joint names of the Lessor and Lessee and will promptly pay all premia in respect of such insurance as they fall due and will upon the request of the Lessor produce the policy or policies of such insurance and the last receipts for such premia and will cause all sums received in respect of such insurance to be forthwith laid out and expended in rebuilding or repairing or otherwise reinstating the demised premises in accordance with the present construction thereof or otherwise as may be approved in writing by the Lessor and will make up any deficiency in such sums out of his own moneys; 10

c) The Lessee will pay or cause to be paid all municipal and other rates now or hereafter levied upon the demised premises and all charges for water and electricity consumed therein;

d) The Lessee will not transfer assign sublet or part with the possession of the demised premises or any part thereof without the consent in writing of the Lessor first had and obtained; 20

e) The Lessee will not make any alterations in or additions to the demised premises without the consent of the Lessor first had and obtained;

f) The Lessee will keep the demised premises including all sewers and other drains in a clean and sanitary condition and will (except where structural alterations or repairs to such premises shall be required) comply with all by-laws regulations and requirements of the Suva City Council or other local authority in respect thereof; 30

g) The Lessee will not at any time during the said term use the said premises or exercise or carry on or permit or suffer to be exercised or carried on in or upon the demised premises or any part thereof any noxious noisome or offensive art trade business occupation or calling and no act matter or thing whatsoever shall at any time during the said term be done in or upon the premises or any part thereof which shall or may grow to the annoyance nuisance grievance damage or 40

disturbance of the occupier or owners
of the adjoining lands and properties;

Exhibits
Exhibit 1
No. 20
continued

h) The Lessee will permit the Lessor or his agents at all reasonable times during the currency of the said term to enter upon the demised premises to inspect the state and condition thereof;

10 i) The Lessor hereby covenants with the Lessee that the Lessee paying the rent hereby reserved and observing and performing the covenants and conditions herein on his part to be observed and performed shall peaceably and quietly hold and enjoy the premises hereby demised for the term hereby granted without any lawful interruption from or by the Lessor or any persons rightfully claiming from and under them;

20 (j) "The Lessee will paint outside every third year";

k) The Lessor will upon the written request of the Lessee cause to be demolished and removed from the demised premises that cottage which stands at the rear of the workshop on Certificate of Title No.6503 provided that the Lessor shall be allowed adequate time to advertise the said cottage for sale by tender and to arrange for its removal by the successful tenderer;

30

l) It is hereby covenanted and expressly declared that if and whenever any rent shall be in arrear for fourteen days (whether the same shall have been legally demanded or not) or if and whenever there shall be a non-observance of any of the covenants or conditions herein expressed or implied upon the part of the Lessee or if and whenever the Lessee shall be adjudged bankrupt or have a receiving order made against him or compound with or execute an assignment for the benefit of his creditors or any execution shall be levied upon his goods or chattels then and in any of these events the Lessor may

40

Exhibits
Exhibit 1
No.20
continued

re-enter upon the demised land or any part thereof in the name of the whole and take possession of the demised premises and thereupon this Agreement shall determine but without prejudice to any of the rights or powers of the Lessor hereunder in respect of any rent or other moneys due to the Lessor

THE LESSEE hereby accepts this LEASE of the above-described land to be held by the Lessee as tenant and subject to the conditions, restrictions, and covenants above set forth. 10

Dated this 28th day of November 1959

(Sgd) B.L.Gregg Public Trustee
Lessor

(Sgd) S.M.Bidesi Jnr for Lessee

(j) If Lessee or Lessee illiterate he must sign affixing his left thumb mark if possible. The Signature ~~by-mark-of~~ B.L.Gregg Public Trustee was made in my presence and I verily believe such signature is of the proper handwriting of the person described as The Public Trustee of Fiji as Executor and Trustee of the Will of Bidesi (Father's name Chuman) deceased the Lessor, 20

(Sgd) H.Wheatley A Commissioner & etc. and I certify that I read over and explained the contents hereof to the Lessor in the English language and he appeared fully to understand the meaning and effect thereof. 30

(Sgd) J.N.Falvey Solicitor, Suva The signature by mark of (j) "S.M.Bidesi" Jnr was made in my presence and I verily believe that such signature is of the proper handwriting of the person described as Surya Munidlal Bidesi (Father's name Bidesi) of Suva, Building Contractor the Lessee, and I certify that I read over and explained the contents hereof to the lessee in the English 40

Exhibits
Exhibit 1
No. 21

EXHIBIT 1 No. 21

P.T. 7/244

2nd December, 1959

Mr. C.P. Bidesi,
Davey St.,
S U V A

Dear Sir,

Re: Estate of the late Bidesi

I have to inform you that I have leased the Certificates of Title 6503 and 6504 to Mr. S.M. Bidesi for a period of 10 years from the 15th November, 1959. As from that date the rent of the estate cottage occupied by you is a matter between you and Mr. S.M. Bidesi. 10

2. It is understood that up to the date of his death the late Mr. Bidesi allowed you to live in the cottage without payment of rent. This arrangement, however, cannot carry after his death and the matter of rental for the past two years must be finalised. 20

3. I will be pleased to discuss this matter with you or your representative at any time convenient to you within the next 14 days.

Yours faithfully,

(Sgd) Illegible
PUBLIC TRUSTEE

HW:RAY

EXHIBIT 1 No. 22

Exhibits
Exhibit 1
No. 22

—————
CROMPTONS
BARRISTERS, SOLICITORS AND
NOTARIES PUBLIC

Ref: JNF:iem

P.O. Box 300
Suva, Fiji.

12th January, 1960

10

The Public Trustee,
Government Buildings,
SUVA

Dear Sir:

We refer to your letter P.T. 7/244 of
the 20th November.

We now enclose herewith a stamped copy
of the lease from you, as Executor and Trustee
of the Will of Bidesi (f/n Chuman) deceased,
to Surya Munidlal Bidesi.

A note of our costs is also enclosed.

Yours truly,

20

Cromptons

Encls.

Exhibits

EXHIBIT 1 No. 23

Exhibit 1
No.23The Public Trustee,
SUVA

In account with Cromptons, Solicitors, Suva, Fiji.

Re: Estate of Bidesi & S.M. Bidesi

To our charges receiving instructions to draw lease of C.T.'s 6503 and 6504 including special clauses; drawing lease and submitting for approval, engrossing, attending to execution and stamping and registering

10

14 16 3

Paid Stamping and Registration
fees on Lease

4	15	0	£19 11 3
			<u> </u>

With Compliments,
(Sgd) Cromptons
Thomson Street, Suva,
12th January, 1960

Exhibit 1
No. 24

EXHIBIT 1 No. 24

16th May, 1960

20

Mr. S.M. Bidesi,
C/o Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Re: Estate of Bidesi /F/N Chuman) deceased

I attach hereto Debit Note for the sum of £620 and shall be obliged if you will forward your cheque at your early convenience.

Yours faithfully,

30

(Sgd) Illegible

PUBLIC TRUSTEEEncl.
CA:AD

383.

EXHIBIT 1 No. 24

Exhibits

Exhibit 1
No. 24

16th May, 1960

Mr. S.M. Bidesi,
c/o Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Re: Estate of Bidesi (F/N Chuman)
deceased

10

I attach hereto Debit Note for the sum
of £620 and shall be obliged if you will
forward your cheque at your early convenience.

Yours faithfully,

(Sgd) Illegible
PUBLIC TRUSTEE

Encl.
CA:AD

Exhibits

EXHIBIT 1 No. 25

P.T. 7/244

16th May, 1960

Mr. S.M. Bidesi,
c/o Bidesi & Sons,
Waimanu Road,
SUVA

Dr. to The Public Trustee as Executor
& Trustee of the Will of Bidesi
(F/N Chuman) deceased, Govt. Buildings,
Suva

10

1959

Nov. 15	To $\frac{1}{2}$ yearly rental to 14/5/60 payable in advance due this date	310. 0. 0	Paid 18/5/60
---------	--	-----------	-----------------

1960

May 15	To $\frac{1}{2}$ yearly rental to 14/11/60 payable in advance due this date	310. 0. 0
--------	---	-----------

£620. 0. 0

20

(Sgd) Illegible

PUBLIC TRUSTEE

CA:AD

EXHIBIT 1 No. 26

ExhibitsExhibit 1
No.26

P.T. 7/244

3rd October, 1960

Mr. S.M. Bidesi,
C/o Bidesi & Sons Ltd.,
Waimanu Road,
S U V A

Dear Sir,

Re: Public Trustee v. Mr. S.P.Bidesi

10 I have to request your assistance in
the following matter.

2. Messrs. Grahame & Co., Solicitors for
Mr. S.P. Bidesi, have called for further and
better particulars of certain items charged
to Mr. Bidesi's Account in the firm's books
during his late father's lifetime.

20 3. These records are presently held in
your office and I would be grateful if your
Mr. Chuman could produce all papers and
dockets he has in connection with the under-
mentioned items either to this office or to
the Auditors, Messrs. Sands, Junor & Co.

30.	1.55	Materials	2142. 9. 5
31.	12.55	"	639.10. 0
30.	9.56	Niranjan & Sons	25. 5. 8
31.	12.56	Material and Labour	9. 1. 0
11.	2.57	N.M.L.A.	25. 5. 8
6.	5.57	Niranjan & Sons	2. 2.11
5.	11.57	Burns Philp (S.S.) Co.Ltd.	6. 1. 6
5.	11.57	Millers Ltd.	31. 2.10
			<u>2880.19. 0</u>

30

Yours faithfully,

(Sgd) Illegible

HW:RAB

PUBLIC TRUSTEE

Exhibits
Exhibit 1
No. 27

EXHIBIT 1 No. 27

In reply please quote:
P.T. 7/244

OFFICE OF THE PUBLIC TRUSTEE
GOVERNMENT BUILDINGS
SUVA, FIJI

11th November, 1960

Mr. S.M.Bidesi,
C/o Bidesi & Sons,
Waimanu Road,
SUVA

10

Sir,

Re: Estate of Bidesi (F/N Chuman)
deceased

I attach hereto Debit Note for the sum of
£920.17.8 and shall be pleased if you will
forward your cheque on the due date.

Yours faithfully,

(Sgd) Illegible

PUBLIC TRUSTEE

20

EXHIBIT 1 No. 28

ExhibitsExhibit 1
No. 28In reply please quote:
P.T. 7/244OFFICE OF THE PUBLIC TRUSTEE
GOVERNMENT BUILDINGS
SUVA, FIJI

11th November, 1960

10 Mr. S.M. Bidesi,
C/o Bidesi & Sons,
Waimanu Road,
SUVADr. to the Public Trustee as Executor
& Trustee of the Will of Bidesi (f/n
Chuman) deceased, Suva1960

Nov.15	To interest on mortgage from 15/6/60 to date	300.17.8
20	" $\frac{1}{2}$ yearly rental to 15/11/60 payable in advance due 15/5/60	310. 0.0
	" $\frac{1}{2}$ yearly rental to 15/5/61 payable in advance due 15/11/60	310. 0. 0
		<u>£920.17.8</u>
	Paid 29/11/60	<u>610.17.8</u>
		<u>£310. 0.0</u>

B.L. GREGG
PUBLIC TRUSTEE

Exhibits

EXHIBIT 1 No. 29

Exhibit 1
No. 29

P.T. 7/244

5th January, 1961

Mr. S.M. Bidesi,
C/o Messrs. Bidesi & Sons Ltd.,
Waimanu Road,
SUVA

Dear Sir,

re: Public Trustee v. S.P.Bidesi

Further to my telephone conversation today
I now enclose a copy of my letter to you of the
3rd October, 1960.

10

You have stated that your clerk was
unable to locate readily certain dockets
covering goods and materials supplied by the
firm to Mr. S.P.Bidesi, but that the job
cards are intact.

It would be appreciated if you would let
me know in writing what records are available
as the Estate's Solicitor, Mr. H.A.L.Marquardt-
Gray would like to study them.

20

Thanking you,

Yours faithfully,

(Sgd) Illegible

PUBLIC TRUSTEE

HW:PCG

EXHIBIT 1 No. 30

Exhibits
Exhibit 1
No. 30

BIDESI & SONS LTD.

Builders and General Contractors
G.P.O. BOX 63, WAIMANU ROAD, SUVA

9th Jan. 1961

The Public Trustee,
Government Buildings,
S U V A

"Re - Public Trustee v. Mr. S.P.Bidesi"

10 Dear Sir,

We have to acknowledge the receipt of your letters dated 3rd October 1960 and 5th January 1961 respectively, seeking certain particulars in relation to above account.

20 In reply, we beg to inform you that no proper accounts have been recorded for book entry. Material supplied were directly entered in Contract book obviously for Income Tax purpose. No acceptance deliveries or invoiced statements were issued to substantiate any subsequent claim.

The amount stated in your forwarded figures does not agree with our Contract book. According to our records total materials supplied from early January to 31st December 1955 is £2325.14.11. This amount does not include a credit account of £150. which Mr. S.P. Bidesi has deposited with the Firm on 22nd December 1954.

30 The following accounts are normally accepted and allowed as trade expenses and no legitimate claim can be justified.

Niranjan & Sons. Car expenses	25. 5. 8
To materials supplied. Car exp.	9. 1. 0
N.M.L.A. Life assurance	25. 5. 8
Niranjan & Sons. Car expenses	2. 2. 11
Burns (ss) Co. Ltd. Car exp.	6. 1. 6
Millers Limited. Car expenses	<u>31. 2. 10</u>
	<u>92. 1. 4</u>

Yours faithfully,
Smb/arc. (Sgd) S.M.Bidesi Jr Director

Exhibits
 Exhibit 1
 No. 31

EXHIBIT 1 No. 31

P.T. 7/244

17th January, 1961

Messrs. Cromptons,
 Solicitors,
SUVA

Dear Sirs,

re: Estate of S.M. Bidesi

I refer to my conversation with your Mr. Crompton recently on the question of an application being made to the Court for the sale of the property in Waimanu Road belonging to the above Estate and I refer also to my letter to Mr. S.M. Bidesi of 19.2.58. Since writing that letter I have had the opportunity of considering the circumstances of the estate and the case law on the subject and would refer you in particular to the case of Chapman & Ors v Chapman & Ors (H.L.) (1954) 1 A.E.R. 798. The House of Lords in this case discussed Re New and said that that case constituted the high water mark of the exercise by the Court of its extraordinary jurisdiction in relation to trusts.

10

20

In the case of Bidesi some of the beneficiaries are not sui juris. Further, there are other assets which the trustee would have to realise before the question of "salvage" arose. For instance, there is a mortgage from K.W.March for £11,000 which is repayable on demand. Further, there is a mortgage from Road Builders Ltd. for £27,000 of which the sum of £3,000 is paid annually in reduction. These monies could be utilised towards payment of death duties.

30

In this connection I enclose a copy of a article published in 31 Australian Law Journal 790. Following on this I discussed the matter with Mr. D.M.M. McFarlane who was President of the Fiji Law Society at the time. I suggested that it would be desirable if similar legislation

40

were introduced in Fiji. He advised me that the question of amending legislation with regard to trusts was under consideration by the Law Society. However, nothing further has been done in the matter.

Exhibits
Exhibit 1
No. 31
continued

10 I am therefore of the firm opinion that, unless legislation such as was introduced in the United Kingdom is introduced in Fiji, there would be not the slightest possibility of an application to the Supreme Court being successful in this case.

Yours faithfully,

B.L.G.

BLG:pcg

PUBLIC TRUSTEE

EXHIBIT 1 No. 32

Exhibit 1
No. 32

P.T. 7/244

18th May, 1964

20 Mr. S.M. Bidesi,
C/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Estate of Bidesi, deceased

I have to call upon you to pay the rental of £310 which has been overdue since the 1st of January 1964.

Would you kindly let me have your cheque in settlement.

Yours faithfully,

30

(Sgd) Illegible

PUBLIC TRUSTEE

Exhibits

EXHIBIT 1 No. 33

Exhibit 1
No. 33

P. T. 7/244

13th August, 1964

Mr. S.M.Bidesi,
C/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Estate of Bidesi, deceased

I have to call upon you to pay the
rental of £310 which has been overdue since
the 1st of July, 1964.

10

Would you kindly let me have your cheque
in settlement.

Yours faithfully,

(Sgd) K.S.F.

PUBLIC TRUSTEE

CA/VP

EXHIBIT 1 No.34

Exhibits

Exhibit 1

No.34

Wm. SCOTT & CO.
Barristers & Solicitors
Notaries Public
Commissioners for Supreme
Courts of Fiji and New
Zealand

Eldon Chambers,
Suva, Fiji.

10 MJCS:EBB 23rd June, 1965

The Public Trustee,
Government Buildings,
SUVA

Dear Sir,

re: Bidesi deceased

20 Now that this action has been discontinued Mr. S.M.Bidesi, for whom we act, wishes to discuss the chances of obtaining a longer lease than the one which he has at present over the building occupied by Bidesi & Sons Ltd. As you are aware, he has a ten year lease expiring on the 15th November, 1969, and he owns the business, and it seems to us that if he leaves the premises on that date taking with him the business, the estate may well suffer, as we are informed that the property is in an area which is zoned for residence and the present use of the building is only allowed because of the presence of the business.

30 We are checking on this point, but it does seem to us that some negotiations may be possible which would assist the estate.

We should be glad to hear from you and perhaps we could make an appointment to discuss the matter.

Yours faithfully,
Wm. Scott & Co.

(Sgd) Wm. Scott & Co.

Exhibits
Exhibit 1
No.35

EXHIBIT 1 No. 35

P.T. 7/244

25th June, 1965

Messrs. Wm. Scott & Co.,
Box 360, Post Office,
S U V A

Your ref: MJCS:EBB

Dear Sirs,

Bidesi, deceased

With reference to your letter of 23rd June, 1965, I shall be grateful if you will, as a preliminary, put up some idea of what exactly is proposed as regards a new lease, and if you will meanwhile draw your client's attention to the present condition of the buildings, which do not appear to be kept in accordance with his obligations under the present lease. 10

Strictly for your own information, I can say that there will be difficulty as regards a new lease. The widow and second family, who are beneficiaries under the will, feel - and there is some justification for their view - that your client has allowed his natural disappointment over the will to lead him to actions which have caused both unnecessary expense to the estate and avoidable ill-feeling between the two families, and they are not at present favourably disposed to allow him to continue in the premises beyond 15th November, 1969. 20

My own personal view is that it may well be in the interests of both sides to allow your client further and more secure tenure, and I propose to do all I can to ensure that, if this be the case, inter-family dislikes are not allowed to prejudice the position, though it is not within my power nor, I suggest, within yours, to achieve this without some considerable co-operation from our respective clients. 30

In view of the complications, I have asked Mr. MacFarlane to look into the whole matter, and to act for me in connexion with a proposed new lease. I am therefore forwarding the present correspondence 40

to him, and shall be grateful if you will
now deal with him.

Exhibits
Exhibit 1
No. 35
continued

Yours faithfully,

Public Trustee

KSF/MW

c.c. M.V. MacFarlane, Esq.

EXHIBIT 1 No. 36

Exhibit 1
No. 36

P.T. 7/244

7th April, 1965

10 Mr. S.M. Bidesi,
c/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Estate of BIDESI, deceased

I have to call upon you to pay the
rental of £310 which has been overdue since
the 1st of January, 1965.

20 Would you kindly let me have your
cheque in settlement.

Yours faithfully,

(Sgd) Illegible

PUBLIC TRUSTEE

Exhibits
Exhibit 1
No. 37

EXHIBIT 1 No. 37
—————

P.T. 7/244

1st July, 1965

Mr. S.M. Bidesi,
C/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Estate of Bidesi deceased

I shall be pleased to receive payment
of £310 being rent for the 2nd half of 1965
in respect of the above estate property lease.

10

Yours faithfully,

(Sgd) Illegible

PUBLIC TRUSTEE

CA:VP

Exhibit 1
No. 38

EXHIBIT 1 No. 38
—————

P.T. 7/244

11th July, 1969

Mr. S.M. Bidesi,
Bidesi & Sons Buildings,
Box 250,
Waimanu Road,
S U V A

20

Dear Sir,

re: Estate of Bidesi f/n Chuman Dec'd

I refer to your last rent payment of \$610-00
(vide RR. No. 55168) and would be grateful to

receive another \$10-00 as the rent is \$620-00.

Exhibits
Exhibit 1
No. 38
continued

Yours faithfully,

(Sgd)

(J.R.Daugunu)
for: PUBLIC TRUSTEE

EXHIBIT 1 No. 39

Exhibit 1
No. 39

KOYA & CO
BARRISTERS & SOLICITORS
Suva, Fiji Islands

10

2nd June, 1970

Messrs. Grahame & Co.,
Solicitors,
SUVA

Dear Sir,

Re: Bidesi Estate - M.D.Bidesi
& Ors. v. The Public Trustee
of Fiji - Action No.7 of 1966

20

We refer to your letter dated 29th May, 1970 addressed to Mr. S.M. Bidesi.

30

Inasmuch as the very title upon which your client has based his claim to evict our client is being challenged in the Probate action and that the Probate of the Will (we understand) has been surrendered to the Court pursuant to the Citation taken out by our client and other Plaintiffs, we submit that it would be undesirable if not improper for your client to proceed with any claim for possession.

Should your client persist in his claim

Exhibits
Exhibit 1
No. 39
continued

for possession, we propose to move the Court for injunction so that your client may not exercise any of his rights until the final determination of the Probate action.

Yours faithfully,
KOYA & CO.

Per: (Sgd) S.M.Koya

SMK:muc

c.c. Mr. S.M.Bidesi,
Building Contractor,
SUVA.

10

Exhibit 1
No. 40

EXHIBIT 1 No. 40

KOYA & CO.
Barristers & Solicitors

LAUTOKA FIJI

17th February 1958

The Public Trustee,
Government Buildings,
SUVA

Dear Sir,

re: ESTATE OF BIDESI DECEASED

20

We are instructed by our client Mr. C.P. Bidesi, Jnr. to remind you that although Caveat has been lodged in this estate, you have not taken any steps to warn the Caveator in accordance with the Probate Rules.

Will you please let us know whether you wish to propound the will allegedly made by Bidesi deceased in your favour and whether you would object to an application by our client to appoint an Interim Receiver or Administrator pending the result of Court proceedings in this matter.

30

Kindly let us have a reply as soon as possible.

Yours faithfully,
KOYA & CO.
Per: (Sgd) S.M. Koya

EXHIBIT 1 No. 41

Exhibits

Exhibit 1

No. 41

KOYA & CO
Barristers & Solicitors

LAYTOKA FIJI

12th March 1958

The Public Trustee,
Government Buildings,
S U V A

Dear Sir,

re: BIDESI DECEASED

10

Your letter dated 19th February 1958 addressed to Mr. C.P.Bidesi has been handed to us with instructions to reply.

Our client says that he is consulting his brother on this matter and will report to you in due course.

Yours faithfully,

KOYA & CO.

Per: (Sgd) S.M.K.

Exhibits
Exhibit 1
No. 42

EXHIBIT 1 No. 42

8th May, 1958

7420
Mc/jgs

Mr. C.P. Bidesi,
SUVA

Dear Sir,

re: Estate of Bidesi (f/n Chuman)

We have been consulted by Mrs. Bidesi and other beneficiaries under the Will of your late father; we have also had several talks with Mr. Gregg the Public Trustee, and are aware that you have lodged a Caveat on the Title of the freehold property at the corner of Davis Street and Waimanu Road. We understand that you have been living in this property for some time and make certain claims to it. The Caveat is holding up the dealing with the Estate, and have suggested to Mr. Gregg that you might consult with us and him on this matter. We spoke to him yesterday and he is agreeable to us discussing this matter with you, so we would be greatly obliged if you could make an appointment to see the writer at your earliest convenience, to have a discussion generally on matter of the property. This discussion would be entirely without prejudice to your rights, in order to clear the air. If your solicitor could be present, so much the better.

10

20

We hope that you can give this matter your earliest attention.

30

Yours faithfully,
GRAHAME & CO.

EXHIBIT 1 No.43

Exhibits

Exhibit 1
No. 43

FEEES PAID

95433

ON 21/12/57

IN THE SUPREME COURT OF FIJI

PROBATE JURISDICTION

IN THE ESTATE OF BIDESI

Father's name Chuman late
of Suva in the Colony of
Fiji, deceased.....

10

LET NOTHING BE DONE in the estate of BIDESI
Father's name Chuman late of Suva in the Colony
of Fiji, deceased, who died on 15th day of
November, 1957, at Suva aforesaid UNKNOWN to
CHANDAR PRAKASH BIDESI Father's name Bidesi of
Suva having interest.

DATED this 21st day of December, 1957.

(Sgd) C.P. Bidesi Jnr.

Exhibits
Exhibit 1
No. 44

EXHIBIT 1 No. 44

FEES PAID
£-1-0
RR.76285
ON 15/5/58

IN THE SUPREME COURT OF FIJI
PROBATE JURISDICTION

IN THE ESTATE of BIDESI
(Father's name Chuman) late
of Suva in the Colony of
Fiji, deceased

LET NOTHING BE DONE in the estate of BIDESI
(Father's name Chuman) late of Suva in the
Colony of Fiji, deceased, who died on the 15th
day of November, 1957, at Suva aforesaid UNKNOWN
to CHANDAR PRAKASH BIDESI (Father's name Bidesi)
of Suva, having interest.

10

DATED at Suva this 14th day of May, 1958

(Sgd) C.P. Bidesi Jnr.

Exhibit 1
No. 45

EXHIBIT 1 No. 45

FEES PAID
1/-
R.R. 64284
O.N. 29.10.58
R.S.

IN THE SUPREME COURT OF FIJI
PROBATE JURISDICTION

IN THE ESTATE OF BIDESI
(Son of Chuman) late of Suva
in the Colony of Fiji deceased

20

LET NOTHING BE DONE in the estate of BIDESI (son
of Chuman) late of Suva in the Colony of Fiji,
deceased, who died on the 15th day of November, 1957,
at Suva aforesaid UNKNOWN TO CHANDAR PRAKASH BIDESI
(Son of Bidesi) of Suva, having interest.

DATED at Suva this 29th day of October, 1958.

(Sgd) C.P. Bidesi Jnr.

FILED 29/10/58
THE SUPREME COURT OF FIJI
REGISTRY

30

EXHIBIT 1 No. 46

ExhibitsExhibit 1
No. 46

P.T. 7/244

7.11.58

The Public Trustee,
The Registrar of the Supreme Court.

ESTATE OF THE LATE BIDESI

10

I would be pleased if you would issue a warning to Mr. C.P. Bidesi in respect of the Caveat lodged by him on the 29th October, 1958 against Probate in the above estate.

(Sgd) Illegible

PUBLIC TRUSTEE

Precedent No. 317 p. 1186
Tristram and Cootes Probate
Practice.

EXHIBIT 1 No. 47

Exhibit 1
No. 47

IN THE SUPREME COURT OF FIJI
PROBATE JURISDICTION

20

IN THE ESTATE OF BIDESI
SON OF CHUMAN LATE OF SUVA
IN THE COLONY OF FIJI,
BUILDING CONTRACTOR,
DECEASED

To Chandar Prakash Bidesi son of Bidesi of Suva
C/o Messrs. Cromptons Solicitors Suva as agents
for Koya and Co. Solicitors Lautoka.

You are hereby warned, within six days
(exclusive of Sunday) after the service
of this warning upon you, inclusive of the

Exhibits
Exhibit 1
No. 47
continued

day of such service to cause an appearance to be entered for in the said ~~principal~~ probate registry to the Caveat entered by you in the estate of Bidesi son of Chuman of Suva deceased, who died at Suva, on or about the 15th day of November 1957, and to set forth your client's interest.

Struck
out &
initialled
by Clerk
of Supreme
Ct.

And take notice that in default of your so doing the said Court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

10

DATED this 13th day of November, 1958.

Issued at the instance of)
the Public Trustee of the)
Colony of Fiji, the sole)
executor and Trustee of)
the Will of the Estate of)
the said deceased dated)
the 18th April, 1957,)
whose address for service)
of notices is Government)
Buildings, Suva)

B.L. Gregg
Registrar

20

EXHIBIT 1 No. 48

Exhibits
Exhibit 1
No.48

IN THE SUPREME COURT OF FIJI

IN THE ESTATE of BIDESI son
of Chuman late of Suva in
the Colony of Fiji, Building
Contractor, deceased

AND IN THE MATTER of CAVEAT
filed by CHANDAR PRAKASH
BIDESI son of Bidesi of Suva
in the Colony of Fiji

10

APPEARANCE TO WARNING

CAVEAT NO. 2 of 1958 dated the 29th October, 1958

NAME AND RESIDENCE OF DECEASED: BIDESI son of
Chuman late of
Suva Building
Contractor, deceased

PLAINTIFF (the party warning)

NAME IN FULL: PUBLIC TRUSTEE the Executor and
Trustee in the will of the deceased
made on the 18th day of April, 1957

20

DEFENDANT (the party warned)

NAME IN FULL: CHANDAR PRAKASH BIDESI son of Bidesi
of Suva, one of the next of kins
of the said BIDESI son of Chuman
late of Suva, Building Contractor,
deceased

ADDRESS FOR SERVICE: KOYA & CO.
SOLICITORS,
LAUTOKA

30

TOWN AGENTS: MESSRS. CROMPTONS
THOMSON STREET,
SUVA

DATED the 19th day of November, 1958

KOYA & CO.
per (Sgd) S.M. Koya
Solicitors for the Defendant
CHANDAR PRAKASH BIDESI

Exhibits

EXHIBIT 1 No. 49

Exhibit 1
No. 49

13th January, 1960

Mr. C.P. Bidesi,
Davey St.,
Suva

Dear Sir,

Re: Estate of the late Bidesi

I have to refer to my letter to you of
the 2nd December, 1959.

As you have failed to accede to the request 10
made in the last paragraph thereof I now
formally call upon you for payment of rental
of the Cottage situated on Certificate of
Title No. 6503, which you occupy, for the
period 15.11.1957 to 31.12.59 at the rate of
£20 per month namely £510.

Your early attention to payment will be
appreciated.

Yours faithfully,

B.L.G.

20

HW/OAC

PUBLIC TRUSTEE

EXHIBIT 1 No. 50

Exhibits
Exhibit 1
No. 50CROMPTONS
BARRISTERS, SOLICITORS AND
NOTARIES PUBLIC

Ref: AL/sc.

P.O. Box 300
Suva, Fiji

26th January, 1960

The Public Trustee,
SUVA

10 Dear Sir,

re: Estate Bidesi - C.P. Bidesi

Your letter of the 2nd December last and the 13th instant have been handed to us by Mr. C.P. Bidesi with instructions to act in this matter. The writer will be pleased to discuss this matter with you at any time convenient to you but until then we place on record the following matters :-

20 1. That it is since 1947 that Mr. Bidesi has been living in this house rent free. This was by arrangement with his late father. He has all along paid water rates, electricity charges and has maintained the property. After the death of his father he continued to remain in this property on similar terms. At no time prior to the 2nd December 1959 he was told that he would be required to pay rent or that he agreed or acquiesced in paying the same. You will agree also that legally he is not liable

30 to the payment of any rent as there has been no agreement in this direction.

2. Mr. Bidesi further wishes us to inform you that he has subsequent to the death of his father painted the interior and exterior of the dwelling house with two coats of good quality paint and repaired the bathroom and kitchen. It has cost him approximately £400.0.0 to do this.

Yours truly,
(Sgd) Cromptons

40

Exhibits

EXHIBIT 1 No. 51

Exhibit 1
No. 51

—————
CROMPTONS
BARRISTERS, SOLICITORS
AND NOTARIES PUBLIC

Ref: AL/sc

P.O. Box 300
Suva, Fiji

3rd February, 1960

The Public Trustee,
SUVA

Dear Sir,

10

re: C.P. Bidesi and Estate Bidesi

Your letter of the 12th December, 1959 written to Mr. C.P. Bidesi on behalf of his late father's Estate has been handed to us with instructions to say that he is not indebted to the Estate in the amount claimed or at all.

Yours truly,

(Sgd) Cromptons

20

EXHIBIT 1 No. 52

ExhibitsExhibit 1
No. 52The Public Trustee
LessorG.P.O. Box 306 59
Waimanu Rd.,

25th Jan. 1962

Sir,

I offer £257.0.0 Two hundred fifty-seven pounds for the land at Mead Rd. Lot 10 D.P.2527 Area 2r. 39.8 perches.

10 I am prepared to pay deposit after you have approved the sum of £50.0.0 and £100 at the end of the year 1962 and further £107.0.0 at the end of 1963. plus interest.

Hoping Sir that my offer will be accepted.

Thanking you Sir

Yours faithfully,

(Sgd) C.P. Bidesi s/o Bidesi

C.P. Bidesi Jnr

Exhibits
Exhibit 1
No.53

EXHIBIT 1 No. 53

2nd March, 1962

Mr. C.P. Bidesi,
G.P.O. Box 306,
SUVA

Sir,

re: Lot 10 on D.P. 2527

I thank you for your letter of 25th
January, 1962.

Your offer for the purchase of the above
property has been considered, and I regret to
inform you that it cannot be accepted.

10

Yours faithfully,

B.L.G.

PUBLIC TRUSTEE

Exhibit 1
No. 54

EXHIBIT 1 No. 54

P.T. 7/244

31st October, 1962

Mr. C.P.Bidesi,
c/o Messrs. C.P. Bidesi & Bros.,
Waimanu Road,
SUVA

20

Dear Sir,

re: C.T. 9397

TAKE NOTICE that I require within seven
days from the date hereof payment of all monies
due and owing under the sale and purchase
agreement dated 21st March, 1961.

2. Any verbal arrangements have been cancelled

by your repeated defaults in honouring your obligations.

3. The amount of purchase money unpaid plus interest to today's date amounts to £278.4.0.

4. TAKE NOTICE that should you fail to make payment as requested, I shall resort to the remedies open to me in law without further reference to you.

10

Yours faithfully,

(Sgd) Illegible

CS/v1

Public Trustee

Exhibits
Exhibit 1
No. 54
continued

EXHIBIT 1 No. 55

ExhibitsExhibit 1
No. 55

7/244

Suva, Fiji

2nd November, 1962

Mr. C.P. Bidesi,
Waimanu Road, Suva

Dr to Public Trustee

1961	<u>re C.T. 9397</u>		
Apr 1	To Balance of purchase price	300. 0. 0	
10	" Proportion of rates	4. 7. 6	
1962			
Mar 31	" Interest @ 5% to date	15. 4. 5	
Apr 19	By Payment		10. 0. 0
" 30	To interest to date	1. 5. 2	
May 8	By payment		10. 0. 0
June 27	By payment		10. 0. 0
June 30	To interest to date	2.10. 3	
July 31	" " "	1. 4.11	
Aug 22	By payment		10. 0. 0
20 Oct. 31	To interest to date	3.11. 9	
Oct. 31	By payment		30. 0. 0
Oct. 31	By Balance		258. 4. 0
			<hr/>
		£328. 4. 0	£328. 4. 0
			<hr/>

Nov. To balance due and owing
under the demand of
31st October, 1962 £258. 4. 0

(Sgd) B.L.Gregg
PUBLIC TRUSTEE

EXHIBIT 1 No. 56

ExhibitsExhibit 1
No. 56

27th April, 1963

Mr. C.P.Bidesi,
c/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Estate of Bidesi, deceased
C.T. 9397

- 10 I refer to the Sale Note dated the 21st March, 1961, wherein you were required to repay the balance of purchase price on or before the 30th June, 1961.
2. Later at your request, this office agreed to accept £10.0.0 per month in repayment of the balance of £300.0.0 plus interest @ 5%, but you have repeated failed to honour this agreement.
- 20 3. This matter is now the subject of an **audit** query and I am obliged to enforce settlement without further ado.
4. Accordingly please take notice that you are hereby required to repay the sum of £233.4.10, together with interest @ 5% owing from the 1st April, 1963, on or before the 7th May, 1963.

Yours faithfully,

(Sgd) Illegible

Public Trustee

30 CA:LSB

Exhibits
 Exhibit 1
 No. 57

EXHIBIT 1 No. 57

Registered

P.T. 7/244

31st May, 1963

Mr. C.P. Bidesi,
 c/o Messrs. Bidesi & Sons,
 Waimanu Road,
S U V A

Dear Sir,

Estate of Bidesi dec'd - C.T.9397

I refer to my letter of the 27th April 1963, wherein you were required to repay the sum of £233.4.10d plus interest at 5% owing from the 1st of April, 1963, on or before the 7th May, 1963. 10

2. As you have failed to pay the said amount owing, I have no alternative but to offer the above Certificate of Title for sale and upon sale to cancel the Sale Note.

Yours faithfully,

(Sgd) Illegible 20

Public Trustee

CA: RAB

EXHIBIT 1 No. 57A

ExhibitsExhibit 1
No. 57ASUMMARY

Sale of C.T. 9397 to CHANDRA PRAKASH BIDESI

Purchase Price £450 - less deposit paid
21.3.61 £150Balance of £300 to be paid on or before the
30th June, 1961, with interest at 5% as
from 1st April, 1961, also City Rates from
the date hereof and the costs of the Transfer

10

1961

April 1	To Balance purchase price	300. 0. 0	
1	" Share of city rates to 30.6.61	4. 7. 6	

1962

20

Mar. 31	" Interest to date	15. 4. 5	
Apr. 9	By Payment		10. 0. 0
" 30	To Interest to date	1. 5. 2	
May 8	By Payment		10. 0. 0
June 30	To Interest to date	2.10. 3	
" 29	By Payment		10. 0. 0
July 31	To Interest to date	1. 4.11	
Aug. 22	By Payment		10. 0. 0
Oct. 31	To Interest to date	3.11. 9	
" "	By Payment		30. 0. 0
Nov. 30	To Interest to date	1. 1. 2	
Dec. 10	By Payment		20. 0. 0

1963

30

Mar. 31	To Interest to date	3.19. 8	
Apr 2	By Payment		10. 0. 0
"	Balance		<u>233. 4.10</u>
		<u>£333. 4.10</u>	<u>£333. 4.10</u>

1963

March 31	To Balance owing	<u>£233. 4.10</u>
----------	------------------	-------------------

PUBLIC TRUSTEE

14.6.63

Exhibits

EXHIBIT 1 No. 58

Exhibit 1
No. 58T.J. McNALLY M.A. LL.B.
Barrister & Solicitor
P.O. Box 466
Phone 230974 CUMMING STREET
SUVA, FIJI

13th May, 1964

The Public Trustee,
Government Buildings,
SUVA

Dear Sir,

10

re: C.P. Bidesi : C.T.9397 :
PT 7/244

It has recently come to the knowledge of my client that the land purchased by him under the agreement for Sale and Purchase differs substantially in area from meters and bounds as pointed out by your Mr. Wheatly. Accordingly my client puts forward the following proposals :-

1. That the contract be rescinded and all monies paid refunded. 20
2. That the contract be varied in that the land over which a Caveat has been lodged be transferred to my client as well for the same consideration.
3. That the contract be varied by reducing the consideration proportionately to the total area of the land included in (2) and the land in C.T. 9397.

Yours faithfully,

(Sgd) T.J. McNally

30

T.J. McNALLY

Copy to: Mr. H.A.L. Marquardt-Gray & Co.,
Solicitors,
SUVA.

EXHIBIT 1 No. 59

ExhibitsExhibit 1
No. 59

P.T. 7/244

25th May, 1964

Mr. T.J. McNally,
Barrister and Solicitor,
Box 466, Post Office,
S U V A

Dear Sir,

C.P. Bidesi - C.T. 9397

10

I have to refer to your letter of 13th May, 1964, and to inform you that I have discussed its contents with Mr. Wheatley, who denies strongly the allegations made against him.

I am therefore not prepared to consider the proposals of your client.

Yours faithfully,

(Sgd) Illegible

Public Trustee

20

KSF/HW/HW

c.c. Mr. H.A.L. Marquardt-Gray.

Exhibits
Exhibit 1
No. 60

EXHIBIT 1 No. 60

G.P.O. Box 306,
S U V A

January 31, 1967

The Public Trustee,
S U V A

ESTATE OF BIDESI (f/n CHUMAN)
DECEASED

Dear Sir,

I acknowledge the receipt of your letter of the 20th December, 1966 in which you request a refund of £193/5/- being estate and succession duties paid by the estate on the value of C.T. 8814 transferred to me by way of gift by my late father.

10

I regret, however, that, while this may be just and proper charge against the estate, I do not consider that I am liable for a refund of this sum to the estate.

Yours faithfully,

20

(Sgd) C.P. Bidesi Jnr

C.P. BIDESI Jr.

EXHIBIT 1 No. 61

Exhibits
Exhibit 1
No. 61

2016

P.T. 7/244

29th November, 1957

Mr. Shiu Pal Bidesi,
c/o Bidesi & Sons,
Box 63,
S U V A

Dear Sir,

10 I have to advise that I authorise you to operate the accounts under the name of the firm of Bidesi & Sons which I have opened with Morris Hedstrom Ltd., Burns Philp (SS) Co.Ltd., W.R. Carpenter & Co. (Fiji) Ltd and Millers Ltd. as from the date of your father's death. The new accounts will be entitled in each case "Estate late Bidesi - Account Bidesi & Sons". I have written to all the firms concerned accordingly.

Yours faithfully,

20

B.L.G.

PUBLIC TRUSTEE

BLG/UB

ExhibitsExhibit 1
No. 62

EXHIBIT 1 No. 62

 H.A.L. Marquardt-Gray LL.B. (MELB)
 Barrister & Solicitor

 Commissioner for Oaths

In reply please quote: Central Bldgs,
 F/1802 Suva, Fiji.

Phone 2286

23rd December, 1957

The Public Trustee,
 Government Buildings,
S U V A

10

Dear Sir,

re: Estate of Bidesi (f/n Chuman)

On the 18th April, 1957 I am informed, that Bidesi (f/n Chuman) signed his last Will and Testament. Subsequent to the signing of his said Will his son Shiu Pal Bidesi negotiated the sale of Bidesi's Mead Road land to Road Builders Limited.

In appreciation for the services rendered by his son he signed a document containing the following :-

20

"Re-Land in Princess Road Tamavua
 C.T. 8832 Lot 5"

"To all to whom it may concern".

This day I the undersigned have donated my land C.T.8832 Lot 5 D.P. 2080 containing one rood seven and eight tenth perches to my son Shiu Pal Bidesi.

The transfer will not be effective while I am alive but after my death the said land is to be transferred to my said son.

30

(Sgd) in Hindi
 BIDESI
 3/7/57

It would appear to me, although the authorities which I have consulted are conflicting that a valid gift has been made; however I would suggest that this matter can be raised by you in an Originating Summons.

Exhibits
Exhibit 1
No. 62
continued

It may however be necessary to call evidence as to the execution of the document in question but leave the choice whether the matter should be heard in chambers or in open court to you to decide.

10

Would you please advise me at your earliest convenience which step you propose to adopt as I feel a considerable amount of research will have to be undertaken in this case and I would not like to be caught "on the hop".

Yours faithfully,

(Sgd) H.A.L. Marquardt-Gray

EXHIBIT 1 No. 63

Exhibits
Exhibit 1
No. 63

H.A.L. Marquardt-Gray LL.B.(MELB)
Barrister & Solicitor

Commissioners for Oaths

In reply please quote:
F/1802
Phone 2286

Central Bldgs,
Suva, Fiji.

23rd December, 1957

10 The Public Trustee,
Government Buildings,
S U V A

Dear Sir,

re: Estate of Bidesi (f/n Chuman)

20 I am writing to you on behalf of my
client Shiu Pal Bidesi (father's name Bidesi)
who has instructed me that during his father's
life time he drew certain plans and specifications
for his father at his request which the deceased
undertook to pay for by reducing the mortgage
monies due and owing to him by my client by the
equivalent amount to that owing by him for the
sets of plan and for the architects supervision
fee to be paid for the supervision by my client
on the erection of the late Mr. Bidesi's house
in the Mead Road.

30 Unfortunately Mr. Bidesi died before making
any arrangements in respect of the mortgage
monies and my client therefore is claiming these
monies as against the estate and I enclose
herewith a statement of account and will be
pleased if you would note this as against the
estate.

Yours faithfully,

(Sgd) H.A.L. Marquardt-Gray

Encl.

EXHIBIT 1 No. 64

Exhibits
Exhibit 1
No. 64

P.T. 7/244

12th November, 1959

H.A.L. Marquardt-Gray, Esq.,
Barrister & Solicitor,
Victoria Arcade,
S U V A

Dear Sir,

10

re: S.P. Bidesi - Claims against
Bidesi Estate

I have to refer to your 2 letters,
reference F/1802 of the 23rd December 1957.

2. In the absence of any written evidence
I must reject the claim for £818 for plans
and specifications.

3. I consider your Client's claim to C.T.
8832 should be heard in Open Court. Will you
please inform me if Mr. S.P. Bidesi persists
with this claim?

20

Yours faithfully,

B.L.G.

Public Trustee

HW:RAY

Exhibits
Exhibit 1
No.65

EXHIBIT 1 . No. 65

P.T. 7/244

4th December, 1959

Mr. S.P. Bidesi,
c/o Messrs. Bidesi & Sons,
Waimanu Road,
S U V A

Dear Sir,

Estate of the late Bidesi

I have to refer to your indebtedness of
£2,766.5.9. to the above Estate and to request
you to let me have settlement of this sum on
or before the 31st December, 1959.

10

Yours faithfully,

B.L.G.

HW:RAY

Public Trustee

EXHIBIT 1 No. 66

Exhibits
Exhibit 1
No. 66

GRAHAME & CO. Central Chambers
Barristers & Solicitors Suva, Fiji

14th December, 1959

Ref No. 7672
Mc/jgsThe Public Trustee,
Government Buildings,
SUVA

10

Dear Sir,

Estate of Bidesi (f/n Chuman)

Under instructions from Mr. S.P. Bidesi son of the deceased, we enclose a copy of an Acknowledgement, which we are instructed is signed in Hindi, by the late Mr. Bidesi.

20

We are instructed by our client that you are claiming from him £1600.0.0 but he states that amount was paid to his father in the terms of the acknowledgment. We hold the original, which we can produce to you at your convenience, and the writer is willing to discuss this matter further with you.

Yours faithfully,

GRAHAME & CO.

Encl.

ExhibitsExhibit 1
No. 67

EXHIBIT 1 No. 67

H.A.L. Marquardt-Gray LLB. (MELB)
Barrister & Solicitor

Commissioners for Oaths

In reply please quote:
F/1802Victoria Arcade,
Suva, Fiji

HALMG/taa

The Public Trustee,
Government Buildings,
SUVA

10

Dear Sir,

re: Bidesi Estate - Your reference
P.T. 7/244

I thank you for your letter of the 12th ultimo and beg to inform you that my client can produce all plans and specifications that he drew in respect of the building.

Would you please inform me if you would like to see these plans and specifications before making a final decision in this matter.

20

Yours faithfully,

(Sgd)

for H.A.L. Marquardt-Gray

EXHIBIT 1 No. 68

Exhibits
Exhibit 1
No. 68

SALE NOTE

Certificate of Title No. 8830 being Lot 2 on D.P. No. 2080, Tamavua, containing 1 rood 7.8 perches.

I, SHIU PAL, son of the late Bidesi, Architect, do hereby agree to purchase the abovementioned Certificate of Title on the following terms and conditions :-

10	Purchase price	550. 0. 0
	Deposit paid 23.1.61	<u>450. 0. 0</u>
	Balance to be paid on or before the 30th June, 1961	<u>£100. 0. 0</u>

The purchaser will pay Town Rates as from the date hereof plus the cost of the Transfer. The balance of £100.0.0 is interest free.

DATED at Suva this 24th day of January, 1961

(Sgd)

(S.P. BIDESI)

20

WITNESS (Sgd) H. Wheatley

Executor of the Estate of the late Bidesi HEREBY AGREES to sell the above Certificate of Title No.8830 on the terms and conditions set out herein.

(Sgd) B.L.Gregg

PUBLIC TRUSTEE

Exhibits
Exhibit 1
No.69

EXHIBIT 1 No. 69

P.T. 7/244

13th February, 1962

Mr. S.P. Bidesi,
C/o Bidesi & Sons,
Waimanu Rd.,
SUVA

Dear Sir,

re: Estate of Bidesi (f/n Chuman)

Further to Debit Note for the sum of
£105.10.0 sent to you on 2nd February, 1962,
I wish to bring to your notice the fact that
you have agreed to pay balance of purchase price
of C.T. No.8830 on or before 30th June, 1961.
Later at your request I extended the time of
payment to 31st December, 1961.

10

As the abovementioned amount has not been
paid into my office yet I have to request you
to send your remittance without any further
delay.

20

Yours faithfully,

(Sgd) Illegible

PUBLIC TRUSTEE

CS:PCG

EXHIBIT 1 No. 70

Exhibits
Exhibit 1
No.70

Box 63,
SUVA

The Public Trustees,
Suva

Enclosed please find cheque for £11-18-11
being Rates for the $\frac{1}{2}$ year for the land in
(illegible)? Road Tamavua. Please acknowledge in
due course.

10

Thanks
(Sgd) S.R. Bidesi

EXHIBIT 1 No. 71

Exhibit 1
No. 71

P.T. 7/244

29th May, 1962

Mr. Shiu Pal Bidesi,
c/o Bidesi & Sons,
Waimanu Road,
SUVA

Sir,

20

re: Purchase of C.T.8830 (Lot 2 on
D.P. 2080)

I have to call your attention to the fact
that you still owe to the Estate of Bidesi f/n
Chuman the amount of £105.10.0 being the balance
of purchase price of the above property plus
stamp duty on the sale note. You agreed to pay
this balance on or before the 30th of June, 1961
and later, at your request, we granted you an
extension to 31st December, 1961.

30

The above moneys have not been paid into
my office and I must now request you to let me
have the sum of £105.10.0 by the 31st May, 1962.

Yours faithfully,
(Sgd) Illegible
PUBLIC TRUSTEE

Exhibits
Exhibit 1
No. 72

EXHIBIT 1 No. 72

Box 63 G.P.O.
SUVA

30..5. 62

Public Trustees
Suva

Re - C.T.8830 Lot 2 D.P.2080

Enclosed please find cheque 228500 being payment on above property. Your receipt in due course would be appreciated.

10

Yours faithfully,

(Sgd) S.P. Bidesi

Exhibit 1
No. 73

EXHIBIT 1 No. 73

CROMPTONS

Barristers, Solicitors and
Notaries Public

Suva, Fiji

Our ref: AL/is

1st August, 1962

The Public Trustee,
Government Buildings,
SUVA

20

Dear Sir,

Re: Estate Bidesi - S.P. Bidesi

Yesterday our Mr. Lateef interviewed your Mr. Wheatley in connection with claims made by Mr. S.P. Bidesi against his late father's estate. His claims were as follows :-

(a) £100 for dowry which the deceased declared

he was holding for Mr. S.P. Bidesi as per memorandum in writing dated the 8/11/57.

Exhibits
Exhibit 1
No. 73
continued

In clear and unequivocal terms the Memorandum states, "I also declare that I have £100 belonging to S.P. Bidesi from his marriage dowry". This is a pure statement of fact admitting liability.

10

The words "the balance" in 2nd paragraph of the Memorandum relates to balance owing after receipt of £1,600.0.0 referred to in 1st paragraph. It is not referable to the dowry of £100.0.0 at all.

The Memorandum speaks of three things :-

- (1) A receipt for £1600.0.0
- (2) Release of £941.0.5 debt due by S.P. Bidesi
- (3) A sum of £100 held by the deceased on account of his marriage dowry.

20

It is not for the Releasor or Donor to forgive a debt owing by him.

30

- (b) You have, admitted liability in the sum of £50.0.0 being the balance of bonus due and payable to our client.
- (c) We also demanded an allowance of £150 for the use of our clients vehicle for company work but this you refused to pay.
- (d) Since interviewing you our client informs us that he deposited a sum of £150 with Bidesi & Sons on the 22nd day of December, 1954. This money has not been refunded to him. The Company's ledger clearly shows this. It may be evidenced by a perusal of page 21 of the Company's ledger.

40

Our client hereby claims immediate payment of the sum of £300.0.0. Please let us have your

Exhibits
Exhibit 1
No. 73
continued

decision as our client intends to sue without further negotiations.

We may point out that Mr. Wheatley agreed to recommend immediate payment of the sum of £150.0.0 but afterwards declined to do so after consultation with you. Whilst we appreciate all discussions were without prejudice we nevertheless feel that to maintain amicable relationship a fair settlement should be arrived at.

10

Yours truly,
(Sgd) Cromptons

Exhibit 1
No. 74

EXHIBIT 1 No. 74

P. T. 7/244

21st December, 1962

Messrs. Cromptons,
Solicitors,
S U V A

Dear Sirs,

Estate of Bidesi (f/n Chuman) dec'd
Shiu Pal Bidesi

20

I enclose herein my cheque for the sum of £453 in respect of Supreme Court Action No.163 of 1962.

2. Mr. S.P. Bidesi has agreed to pay to this office the sum of £30.0.0 being balance purchase price owing on C.T. 8830 plus £1. 2. 6 registration fees from the above amount so would you please let me have your cheque for this amount.

3. Will you kindly acknowledge receipt.

Yours faithfully,
(Sgd) Illegible
Public Trustee

30

Encl.
CA:RAB

EXHIBIT 1 No. 75

Exhibits
Exhibit 1
No. 75

26th April, 1963

Mr. Shiu Pal Bidesi,
c/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Estate of Bidesi, deceased

10 I have to request you to pay the sum
of £30 due in respect of the sale of C.T.
8830 made under the Sale Note dated the
24th January, 1961.

2. This amount is now the subject of an
audit query and must be settled on or before
the 7th May, 1963, without further ado.

Yours faithfully,

(Sgd) Illegible

CA:LSM

Public Trustee

Exhibits

Exhibit 1
No. 76

EXHIBIT 1 No. 76

OFFICE OF THE PUBLIC TRUSTEE
GOVERNMENT BUILDINGS,
SUVA, FIJI

26th April, 1963

Mr. Shiu Pal Bidesi,
c/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

10

Estate of Bidesi, deceased
C.T.8832

I refer to the Sale and Purchase Agreement dated the 19th February, 1962, wherein you were required to pay £100 within 12 months from the date thereof.

2. Accordingly will you please let me have this amount on or before the 7th May, 1963, as this matter is now the subject of an audit query and must be paid without further ado.

20

Yours faithfully,

(Sgd) H. Wheatley

Public Trustee

CA:LSM

EXHIBIT 1 No. 77

Exhibits
Exhibit 1
No. 77

26th April, 1963

Mr. Shiu Pal Bidesi,
c/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

Estate of Bidesi, deceased
C.T. 8832

10 I refer to the Sale and Purchase Agreement dated the 19th February, 1962, wherein you were required to pay £100 within 12 months from the date thereof.

2. Accordingly will you please let me have this amount on or before the 7th May, 1963, as this matter is now the subject of an audit query and must be paid without further ado.

Yours faithfully,

(Sgd) Illegible

20

Public Trustee

CA:LSW

EXHIBIT 1 No. 78

Exhibits
Exhibit 1
No. 78

CROMPTONS

BARRISTERS, SOLICITORS
AND NOTARIES PUBLIC

Suva, Fiji

Our ref: AL/is

7th May, 1963

The Public Trustee,
Government Buildings,
SUVA

Dear Sir,

10

S.P. Bidesi re Bidesi Estate

Costs have now been taxed in this matter in the sum of £227:8:4. The Supreme Court case was taxed at £120:18:10 and the appeal to the Court of Appeal at £106:9:6. Would you kindly let us have payment of this sum as soon as possible.

Yours truly,

(Sgd) Cromptons

EXHIBIT 1 No. 79

Exhibits
Exhibit 1
No. 79

NOTICE OF CAVEAT FORBIDDING ANY
DEALING

Registrar of Titles' Office
Suva, 13th June 1961

No. 77087

Sir,

10 I have the honour to notify you, in
terms of Section 129 of the "Land (Transfer
and Registration) Ordinance Cap. 136," that
a Caveat has been lodged by SHIU PAL BIDESI
(Father's name Bidesi) of Suva, Architect
forbidding Registration of any dealing with
reference to the land comprised in Certificate
of Title No. 8832 until this Caveat be withdrawn
by the Caveator or by the order of the Supreme
Court, or unless such dealing be subject to the
20 claim of the Caveator, or until after the lapse
of twenty-one days from the date of the service
of notice by you at the following address:

C/o Messrs. Cromptons, Solicitors, Suva.

Yours faithfully,

(Sgd) Illegible
Deputy Registrar of
Titles

To The Public Trustee,
Suva

Exhibits

EXHIBIT 1 No. 80

Exhibit 1
No. 80G.P.O. Box 63,
Suva, 30.1.1967The Public Trustee,
Government Buildings,
Suva

Dear Sir,

Estate of Bidesi (f/n Chuman)
deceased

I acknowledge the receipt of your letter of 20th Dec., 1966 in which you request refund of £420.11.4 being estate and succession duties paid by the Estate on the value of gift and C.T. 8731 transferred to me by way of gift by my late father.

10

I regret, however, that while this may be just and proper charge against the estate, I do not consider that I am liable for a refund of this sum to the estate.

Yours faithfully,

20

(Sgd) S.P. Bidesi

S.P.Bidesi

EXHIBIT 1 No. 81

Exhibits
Exhibit 1
No. 81

30th May 1967

Mr. S.P. Bidesi,
C/o Messrs. Bidesi & Sons
Waimanu Road,
Suva

Dear Sir,

Estate of Bidesi, deceased

10 I attach hereto a statement of account
in respect of the sale of C.T. 8832, and I
shall be obliged if you will let me have
payment of the sum of £50, being the balance
of instalment which was due on the 19th
February, 1967.

Yours faithfully,

(C.Andrews)

for PUBLIC TRUSTEE

Encl:
CA:llu

Exhibits
Exhibit 2

EXHIBIT 2

APPENDIX I TO BOOK OF
DOCUMENTS OF DEFENDANT

Numbered 82 to 92

<u>Description of Document</u>	<u>Date</u>	<u>Page</u>	
82. Receipt, S.M.Bidesi to Public Trustee	26th November 1959	441	
83. Letter, Public Trustee to S.P. Bidesi	16th February 1960	441	
84. Sale Note, Public Trustee to S.P. Bidesi	24th January 1961	442	10
85. Sale Note, Public Trustee to S.P. Bidesi	21st March 1961	443	
86. Sale and Purchase Agreement, B.L.Gregg to S.P. Bidesi	19th February 1962	444	
87. Letter, Public Trustee to S.M.Bidesi	30th May 1962	446	
88. Letter, Public Trustee to S.M.Bidesi	30th April 1963	447	20
89. Letter, S.M.Bidesi to Public Trustee	13th May 1963	448	
90. Letter, Public Trustee to S.M.Bidesi	14th May 1963	449	
91. Letter, S.M.Bidesi to Public Trustee	21st May 1963	450	
92. Letter, Public Trustee to S.M.Bidesi	22nd May 1963	451	

EXHIBIT 2 No. 82

Exhibits
Exhibit 2
No. 82

Suva, Fiji 26 : 11 : 1959

RECEIVED FROM THE PUBLIC TRUSTEE OF FIJI
the sum of Three thousand pounds -- shillings
-- pence being loan @ 5½%

Dated at Suva this 26th day of November 1959

Signature S.M.Bidesi
Left thumb mark:

Witness (Sgd) C.Andrews

10

EXHIBIT 2 No. 83

Exhibit 2
No. 83

P.T. 7/244

16th February, 1960

Mr. S.P.Bidesi,
c/o Bidesi & Sons Ltd.,
Waimanu Road,
S U V A

Dear Sir,

Re: Gangaram trading as Reliance
Construction Co.

20

I have to refer to cheque No. 851 drawn in
favour of the above-named firm in the sum of
£405.7.0 whilst you managed the Estate's
Construction business.

2. Would you kindly set out in writing the
circumstances under which you authorised this
cheque to be drawn and why it was not set off
against the debt of approximately £700. owed
by Gangaram to the Estate.

30

RW:RAB
Registered Mail

Yours faithfully,
(Sgd) Illegible
Public Trustee

Exhibits
Exhibit 2
No. 84

EXHIBIT 2 No. 84

SALE NOTE

Certificate of Title No. 8830 being Lot 2 on D.P. No. 2080, Tamavua, containing 1 rood 7.8 perches.

I, SHIU PAL, son of the late Bidesi, Architect, do hereby agree to purchase the abovementioned Certificate of Title on the following terms and conditions :-

Purchase price	550. 0. 0	
Deposit paid 23.1.61	<u>450. 0. 0</u>	10
Balance to be paid on or before the 30th June, 1961	<u>£100. 0. 0</u>	

The Purchaser will pay Town Rates as from the date hereof plus the cost of the Transfer. The balance of £100. 0. 0 is interest free.

DATED at Suva this 26th day of January, 1961.

(Sgd) S.P. Bidesi

(S.P. BIDESI)

20

WITNESS: (Sgd) H. Wheatley

Executor of the Estate of the late Bidesi
HEREBY AGREES to sell the above Certificate of Title No. 8830 on the terms and conditions set out herein.

(Sgd) R.L.Gurr
PUBLIC TRUSTEE

EXHIBIT 2 No. 85

Exhibits
Exhibit 2
No. 85

SALE NOTE

Certificate of Title No. 9397 being Lot 1 on D.P. No. 2264 containing 1 acre 2 roods 37.2 perches.

I, SHIU PAL BIDESI, son of the late Bidesi, Landowner, hereby agree to purchase the abovementioned Certificate of Title on the following terms and conditions.

10	Purchase Price	£450. 0. 0
	Less Deposit 21/3/61	150. 0. 0

Balance to be paid on or before the 30th June, 1961 - £300.0.0

The Purchaser will pay interest at the rate of 5% on the balance of £300.0.0 as from the 1st April, 1961 also Town Rates from the date hereof and the costs of the Transfer.

DATED at Suva this 21st day of March, 1961

(Sgd) S.P. Bidesi

20 Witness: (Sgd) H.Wheatley

The Executor of the Estate of the late Bidesi hereby agrees to sell the said Certificate of Title No. 9397 on the terms and conditions set out herein.

(Sgd) B.L.Gregg
PUBLIC TRUSTEE

STAMPS £4.10.-

30 In consideration of the sum of £150.0.0 (one hundred & fifty pounds) this day paid to me I SHIU PAL BIDESI the vendor hereby transfer the whole of my right title and interest in the within Agreement to Chandra Prakash Bidesi (s/o Bidesi) of Suva in the Colony of Fiji Landlord as purchaser.

DATED at Suva this 21st day of March, 1961

Exhibits
Exhibit 2
No. 85
continued

Witness: (Sgd) H.Wheatley (Sgd) S.P.Bidesi Jnr
Purchaser

Witness: (Sgd) H.Wheatley (Sgd) Illegible
Vendor

Exhibit 2
No. 86

EXHIBIT 2 No. 86

THIS SALE AND PURCHASE AGREEMENT made the 19th day of February One thousand nine hundred and sixty two BETWEEN BERTRAND LOVELL GREGG of Suva in the Colony of Fiji the Public Trustee for the time being of the Colony of Fiji as executor of the Estate of Bidesi (son of Chuman) deceased (hereinafter referred to as the Vendor) of the one part AND SHIU PAL BIDESI (son of BIDESI) of Suva in the said colony Architect (hereinafter referred to as the purchaser) of the other part WHEREAS the Vendor is the registered proprietor of all that land comprised in Certificate of Title No. 8832 AND WHEREAS the purchaser is desirous of purchasing the said land AND WHEREAS the vendor has agreed to sell the said land upon the terms and conditions hereinafter contained:-

10

20

1. THAT the vendor will sell and the purchaser will buy the land comprised in Certificate of Title No. 8832 for the sum of £540.0.0 (Five hundred and forty pounds).

2. The said sum of £540.0.0 (Five hundred and forty pounds) shall be paid to the vendor by the purchaser as follows :-

- (a) the sum of £50.0.0 (Fifty pounds) upon the signing hereof; (the receipt of which sum the vendor doth hereby acknowledge)
- (b) the sum of £100.0.0 (One hundred pounds) within 12 calendar months from the date hereof and at the end of each 12 calendar months until the purchase price and interest as hereinafter is liquidated in full.
- (c) the purchaser shall pay interest on the balance outstanding at the rate of £7.0.0 per centum per annum.

30

3. The purchaser will pay all costs and disbursements incidental to this agreement and upon the transfer of the said land hereinafter referred to

4. Upon the purchaser complying with all the terms and conditions the vendor will transfer to the purchaser the unencumbered title in the said certificate of title.

10. 5. The purchaser will pay all rates levied by the Suva City Council in respect of the year 1962 and in respect of all subsequent years.

20. 6. Should the purchaser default in any one payment and should such default continue for a period of 7(seven) years then and in such a case the vendor without any notice to the purchaser shall be deemed to have re-entered possession of the said land and all monies paid by the purchaser shall be forfeited by way of liquidated damages

IN WITNESS WHEREOF the hands of the parties hereto

SIGNED by the said BERTRAND LOVELL)
GREGG the Public Trustee for the) (Sgd) B.L.Gregg
time being of the Colony of Fiji) Public Trustee
as executor of the estate of Bidesi)
(s/o Chuman) Deceased in the)
presence of :

C. Andrews
Civil Servant
Suva

30

SIGNED by the SHIU PAL BIDESI (son)
of BIDESI) after the foregoing)
had been read over and explained) (Sgd) S.P.Bidesi
to him in the English language)
and he appeared fully to under-)
stand the meaning and effect)
thereof in the presence of :

Witness: Illegible

EXHIBIT 2 No. 87

ExhibitsExhibit 2
No. 87

P.T. 7/244

30th May, 1962

Mr. S.M.Bidesi,
Waimanu Road,
S U V A

Dear Sir,

Re: Mortgage No. 72587

10 I regret to have to inform you that the moneys owed by you under the above "On Demand" mortgage are now required for distribution to beneficiaries. Unfortunately, other moneys held by me for investment are subject to a restriction of a $7\frac{1}{2}\%$ Interest rate, and cannot be used in connection with your mortgage, which is at $5\frac{1}{2}\%$ Interest.

20 2. I have, therefore, to give you notice to repay all moneys owing under your mortgage on or before the 30th September, 1963, but, in the meantime I have also to require you to reduce the principal under the said mortgage by quarterly payments of £2,000 each. The first of such payments to be made on the 30th September, 1962.

Yours faithfully,

(Sgd) C.S.

Public Trustee

30 Handed to P.T. today. He will discuss this with S.M.B.

C.S.

EXHIBIT 2 No.88

Exhibits
Exhibit 2
No.88

P.T. 7/334

30th April, 1963

Mr. S.M.Bidesi,
c/o Messrs. Bidesi & Sons,
Waimanu Road,
SUVA

Dear Sir,

10 I have to inform you that the moneys
owing by you under Mortgage No. 72587 "On
Demand" are now required for distribution to
beneficiaries. Unfortunately other moneys
held by me for investment are subject to a
restriction of 7½% interest rate and cannot
be used in connection with your mortgage
which is at 5½% interest.

20 2. You will recall that when finance was
being arranged you stated that it was your
intention to repay the principal within a
period of 3 years.

3. The Audit Department is unhappy about
the low rate of interest and the delay in
winding up the Estate concerned with your loan.

4. Accordingly, I now give you notice that
I require settlement of the following amounts
on the dates set out :-

30th June, 1963	£3,000.0.0
30th September, 1963	£3,000.0.0
31st December, 1963	£4,000.0.0

30

Yours faithfully,
(Sgd) Illegible

Public Trustee

CA:LSM

ExhibitsExhibit 2
No. 89EXHIBIT 2 No. 89

c/o Messrs. Bidesi & Sons
Limited
Waimanu Road, Suva.

13th May, 1963

The Public Trustee,
Government Buildings,
S U V A

Dear Sir :

I have to acknowledge the receipt of your letter dated 30th April 1963, regarding moneys owing by me under mortgage No. 72587 which you are now demanding for complete settlement by 31st December 1963.

10

Referring to your letter - paragraph 2, that when finance was being arranged I mentioned that my intention was to repay the principal within a period of 3 years. The question of repayment only crept in when I raised object to the mortgage ON DEMAND, when you earnestly assured me that you were not going to exercise this On Demand right but it was purely the normal practice of your department to draw all such mortgages ON DEMAND and then I voluntarily stated that I may repay this within 5 years and not 3 years as claimed in your letter.

20

However, nothing was discussed or stressed at the time of arrangement that I have to repay this debt within any specified period and in fact it was agreed and covered in the mortgage that I can have further loans under the same mortgage.

30

Assuming that no sudden pressure of demand for complete settlement be expected from you I have invested all my past income and ready cash I had in my newly acquired property at corner of Selbourne and Hercules streets and under the circumstances I am afraid that I am reluctantly unable to entertain your demand.

Yours faithfully,
(Sgd) S.M. Bidesi Jnr

40

EXHIBIT 2 No. 90

Exhibits
Exhibit 2
No. 90

P.T. 7/334

14th May, 1963

WITHOUT PREJUDICE

Mr. S.M. Bidesi,
c/o Messrs. Bidesi & Sons Ltd.,
Waimanu Road,
S U V A

Dear Sirs,

10 I have to acknowledge receipt of your
letter of 13th May, 1963.

2. The mortgage No. 7258 was given on the
15th November, 1959, and you are reminded
that you gave an assurance that it would be
repaid within a three year period as it was
not your wish to pay interest for an indefinite
period. The fact remains that you have had
the benefit of substantial credit on very
favourable terms for $3\frac{1}{2}$ years.

20 3. Unfortunately for you the time has
come when these moneys are required to
finalise the administration of certain estates
and, whilst I deplore the fact that you must
re-arrange your finances, the valid reason given
at para. 1 of my letter of the 30th April,
1963, still obtains.

4. If you have any counter offer to make
please let me know. In the meantime,
however, the Demand perforce must stand.

30 Yours faithfully,

(Sgd) Ilbgible

for Public Trustee

HW:RAB

EXHIBIT 2 No. 91

Exhibits
Exhibit 2
No. 91

c/o Messrs. Bidesi & Sons
Limited
Waimanu Road, Suva

21st May 1963

The Public Trustee,
Government Buildings,
S U V A

10

"Re - Mortgage No. 72587 -
On Demand"

Dear Sir :

I am in receipt of your letter dated
14th May 1963.

In reply, I beg to inform you that my
present financial commitments are such that
I can not possibly meet your demand. However,
on mature consideration I have decided to
make a counter offer as follows :-

20

To pay you by 30th June 1963	£2500.0.0
31st Dec. 1963	2500.0.0
30th June 1964	2500.0.0
31st Dec. 1964	2500.0.0

Yours faithfully,

(Sgd) S.M. Bidesi Jnr

Smb/arc

EXHIBIT 2 No. 92

Exhibits

Exhibit 2

No. 92

22nd May, 1963

S.M. Bidesi, Esq.,
 c/o Messrs. Bidesi & Sons Ltd.,
 Waimanu Road,
S U V A

Dear Sir,

Re: Mortgage No. 72587

10 Thank you for your letter of the 21st
 May, 1963. Whilst the beneficiaries
 concerned may not see eye to eye with me
 in this matter I accept your counter offer
 for settlement as follows :-

Payment by	30th June, 1963	- £2,500.0.0
	31st December 1963	- £2,500.0.0
	30th June, 1964	- £2,500.0.0
	31st December 1964	- £2,500.0.0

Yours faithfully,

(Sgd) Illegible

Public Trustee

20

Registered Mail
 BW/RAB

Exhibits"A"Memorandum
of terms of
saleEXHIBIT "A"
MEMORANDUM OF TERMS OF SALE

3rd May 1957

Vendor:- Bidesi (f/n Chuman) of Suva
of Suva ContractorPurchaser:- Roadbuilders Limited or its
nomineesLand :- The whole of the lands comprised in
C.'s.T. Nos. 4154, 4155, 4156, 4157,
4159, 4160 and 9399 excepting
thereout :-(i) one of the said Titles,
containing 5 acres on which the
Vendor has a house(ii) reservoir site resumed out of
C.T. No. 4160 by the Crown(iii) an area of not over 1 acre
of a shape and position to be
selected by the Vendor, to be
transferred back to the Vendor
at his expense when the area has
been defined and provided with
legal access.

Price:- £38000/0/0 (Thirty eight thousand pounds)

Payable (a) by a deposit of £4000.0.0 on execution
hereof(b) the balance standing £34,000.0.0
together with interest thereon or
on so much thereof as shall from
time to time remain owing shall be
payable by half-yearly instalments
of £1500.0.0 each on the 30th June
and 31st December in each year the
first instalment falling due on the
31st December 1957, such interest
being at the rate of £2.10.0 per
centum per annumCompletion - the sale shall be completed on the
30th June 1957 when the Vendor will
transfer the said certificate of title
to the Purchaser and the Purchaser will

10

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30

40

give the Vendor a first Mortgage thereof providing for payment of the balance purchase price and interest as herein provided

Exhibits

"A"

Memorandum
of terms of
sale

3rd May 1957
continued

- 10 Possession to be given and taken upon completion of the sale as aforesaid subject to all existing tenants' rights and occupations of which the Vendor will fully inform the Purchaser
- Apportionments - all rent and other income and rates and other outgoings shall be apportioned as at the 30th June 1957
- Costs - the Purchaser shall pay all legal costs and disbursements including Vendor's perusal costs of and incidentals to this Memorandum and transfer of like to the Purchaser and of the said Mortgage
- 20 Re-Sales- The Vendor will from time to time release portions of the said lands to enable the Purchaser to complete sales thereof to persons buying from the Purchaser.
- 30 Default - In the event of the Purchaser making default in completion of the sale as aforesaid and if such default shall continue for fourteen days the Vendor shall thereupon be entitled either to forfeit the deposit as liquidated damages or to enforce specific performance of this agreement.
- Dated: 3rd May 1957

BIDESI IN HINDUSTANI
Vendor

Witness: B. Chandra
Clerk
Suva

40 Witness: D.J. Warren (Sgd) S.G. Tezner
Solicitor, Managing Director
Suva. (Sgd) Jethnalal Naranji
Director

Exhibits

"B"

Probate of
Bidesi, son
of Chuman

21st April
1959

EXHIBIT "B" PROBATE
OF BIDESI, SON OF CHUMAN

IN THE SUPREME COURT OF FIJI

PROBATE JURISDICTION

No. 6486

In the Estate of BIDESI (son
of Chuman) late of Suva in
the Colony of Fiji Building
Contractor Deceased

Sworn at

£101,974:13:6

BE IT KNOWN that on the 21st day of
April, 1959 the last will and testament
(a copy whereof is hereunto annexed) of BIDESI
(son of Chuman) late of Suva in the Colony of
Fiji Building Contractor deceased who died on
the 15th day of November 1957 at Suva aforesaid
was proved and registered in the Probate
Registry of Her Majesty's Supreme Court of Fiji
and that administration of all and singular the
estate which by law devolves to and vests in
the person representative of the said deceased
was granted by the Court aforesaid to THE
PUBLIC TRUSTEE OF THE COLONY OF FIJI a
corporation sole established under the
provisions of the Public Trustee Ordinance
(Cap.44) ~~Harry Wheatley for the time being~~
~~the Public Trustee of the Colony of Fiji~~ the
executor named in the said will he having
been first sworn well and faithfully to
administer the same.

10

20

(Sgd) F.G.Forster

(F.G.Forster)
Acting Registrar

SEAL

30

Extracted by THE PUBLIC TRUSTEE OF THE COLONY
OF FIJI SUVA

THIS IS THE LAST WILL AND TESTAMENT OF ME
 BIDESI (F/N CHUMAN) OF TAMAVUA SUVA IN THE
 COLONY OF FIJI BUILDING CONTRACTOR I REVOKE
 all former Wills and Testamentary dispositions
 heretofore made by me AND DECLARE this to be
 my last Will and Testament I APPOINT the
 Public Trustee for the time being of the
 Colony of Fiji to be the Executor and Trustee
 of this my Will I GIVE DEVISE AND BEQUEATH
 10 the whole of my property both real and personal
 of whatsoever nature and wheresoever situate
 unto my Trustee UPON TRUST to STAND POSSESSED
 of the following of my freehold lands namely
 Certificate of Title No.: 6503 containing
 33.2 perches Certificate of Title No: 6504
 containing 35.7 perches both of which are
 situated at the corners of Waimanu Road and
 Davey Street Suva and Certificate of Title
 No: 8829 containing 1 acre and 31.2 perches
 20 on which is erected my residence at Mead
 Road Tamavua until the date fixed for the
 final distribution of my estate AND TO SELL
 CALL IN AND CONVERT into money the remainder
 of my estate and out of the proceeds thereof
 and out of my ready MONEYS and out of any
 income derived from the said freehold lands
 to pay my just debts and funeral and testa-
 mentary expenses and STAND POSSESSED of the
 residue upon the following trusts (1) TO
 30 PERMIT my wife Kapesri to reside in my
 residence at Mead Road Tamavua as her
 permanent home until her death or re-marriage
 with such of the children of my second marriage
 as shall require a home and I appoint the
 said Kapesri the guardian of my infant
 children (2) I DIRECT my Trustee to pay all (In Hindi) B.
 rates and other outgoings in respect of my
 said residence to the intent that it shall
 be a rent-free home for the family of my
 second marriage (3) TO PAY to my wife C.A.
 40 Kapesri a monthly allowance sufficient to L.B.
 allow her and my infant children to live
 in manner similar to that which she and they
 now enjoy (4) TO PAY for the education of my
 minor children and to pay the expenses of the
 marriages of my daughters in a manner consi-
 tent with their station in life (5) TO DIVIDE
 the remainder of income after payment of all
 monies under paragraphs (2) (3) and (4) hereof
 50 and after the payment of income tax adminis-
 tration expenses and all other outgoings
 properly chargeable against income equally

Exhibits

"B"

Probate of
Bidesi, son
of Chuman21st April
1959

continued

Exhibits

"B"
 Probate of
 Bidesi, son
 of Chuman
 21st April
 1959
 continued

between my wife and the children of my second marriage during their life times and I DIRECT that the shares applicable to a minor shall be set aside and invested until such child attains the age of 21 years and I declare that if any son of my second marriage shall die leaving male issue that the share of such deceased son shall be applied towards the maintenance and preferment in life of such male issue (6) I DECLARE that in the execution of the trusts of this my Will my Trustee shall have and may in his discretion exercise the following powers authorities and discretions namely

B. 10
(In Hindi)
C.A.
L.B.

(a) To sell any part of my real and personal estate save and except the said freehold lands situated at the corners of Waimanu Road and Davey Street Suva and at Mead Road Tamavua by private contract or public auction or in such manner and subject to such terms and conditions as my Trustee shall in his absolute discretion think proper with power to give time for the payment of the purchase money whether secured by Mortgage or under Agreement for sale (b) to subdivide any part or parts of my real property for the purpose of sale or lease thereof or otherwise to facilitate the administration of my estate and for the purpose of sale or lease thereof or otherwise if my Trustee shall consider it to be in the interests of my estate to lay out and dedicate or agree to dedicate any parts of such real property for roads streets square and right of way and to grant rights of way and easements and to expend moneys in the construction of roads improvements drainage and fencing and generally to do all such acts matters and things as my Trustee may consider necessary for the advantageous administration sub-division and sale of any part of my estate (c) to postpone the sale calling in and conversion of my real and personal estate or any part thereof for so long as my Trustee may think fit notwithstanding that it may be of a wasting speculative or reversiary nature and I DIRECT that pending such sale calling in and conversion the whole of the net income of property actually producing income shall be applied as from my death as income and on the other hand on such sale calling in and conversion no part of the proceeds of

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30
40
B.
(In Hindi)
C.A.
L.B.
50

such sale shall be paid or applied as past income (d) to let any real and personal property either from year to year or for any term of years at such rent and subject to such covenants and conditions including at the discretion of my Trustee an optional or compulsory purchasing clause as my trustee shall think fit and also to accept surrenders of Leases and tenancies and generally to manage as my Trustee shall think fit (e) to carry on manage and conduct any business carried on by me or by any company of which I am the principal shareholder and to use and employ in such business all real and personal property used and employed by me in such business and I give my Trustee absolute and uncontrolled power and discretion in the management and conduct of any such business (f) to invest any moneys coming into the hand of my Trustee and requiring to be invested in such investments as are allowed by the Law of Fiji (g) to improve the whole or any part of the freehold property forming part of my estate and the buildings and erection thereon in any year or years to any extent my Trustee may deem expedient (h) For any purpose deemed to be in the interests of my estate including but without limiting the generality of the foregoing the payment of death duties the carrying on of any business or improvement of any property to borrow or raise any money or moneys on mortgage or overdraft with or without security by way of mortgage charges instruments by way of security over land stock or chattels from any person firm or Company or Bank at such rates of interest and for such term and generally on such conditions as my Trustee shall think fit and to sign and execute any mortgage deed agreement or other document in connection therewith (i) At his uncontrolled discretion instead of acting personally to employ and pay any other person or persons to transact any business or do any act of whatsoever nature in relation to the trusts hereof including the receipt and payment of money without being liable for loss incurred thereby (7) I DIRECT that on the 1st day of May in the year One thousand nine hundred and ninety seven the Corpus of my estate shall be distributed in equal shares amongst my sons ATMA PRASAD, UMA PRASAD, MUNI PRASAD

Exhibits

"B"

Probate of
Bidesi, son
of Chuman21st April
1959

continued

B.
(In Hindi)C.A.
L.B.

Exhibits

"B"
 Probate of
 Bidesi, son
 of Chuman
 21st April
 1959
 continued

and JAGDISH PRASAD In the event of any B.
 of my said sons dying before the 1st (In Hindi)
 May One thousand nine hundred and
 ninety seven leaving male issue the
 share of such deceased son shall pass
 to his male issue but otherwise the
 shares which would have passed to such
 deceased son shall fall back into The
 Corpus of my estate and in the further
 event of all four of my said sons ATMA
 PRASAD, UMA PRASAD, MUNI PRASAD and
 JAGDISH PRASAD dying before the 1st day of
 May One thousand nine hundred and ninety
 seven without leaving male issue then
 I DIRECT that the Corpus of my estate shall
 be distributed in equal shares amongst the
 male issue then living of the sons of my
 first marriage AND I DECLARE that during
 my life time I have made adequate provision
 for the children of my first marriage

10

20

DATED at Suva this 18th day of April 1957

Signed by the said testator as)
 his last Will and Testament)
 in the presence of us both)
 being present at the same time) (Sgd) Bidesi
 who at his request and in his) in Hindi
 sight and presence and in the)
 sight and presence of each)
 other have hereunto subscribed)
 our names as attesting witnesses

30

(Sgd) C. Andrews
 Civil Servant
 Suva

(Sgd) L. Behn
 Civil Servant
 Suva

EXHIBIT "D" LETTER
C.P. BIDESI TO GRAHAME
& CO.

Exhibits

"D"

Letter C.P.
Bidesi to
Grahame & Co.

21st January
1971

Suva

21st January, 1971

Messrs. Grahame & Co.,
Solicitors,
SUVA

Attention: Mr. MacFarlane

10 Dear Sirs,

Re: Action No. 7 of 1966 - Munideo
Bidesi & Ors. v. The Public Trustee

This morning when the above action was being heard at the Supreme Court, His Lordship, the trial Judge brought to the attention of the Counsel that the Consent Order was made to grant of the Will of my father, the late Mr. Bidesi deceased, and that you had acted for him in the matter.

20 Kindly let me have the following as soon as possible :-

- (a) Copy of my written instructions authorising you or Mr. MacFarlane to consent to such Order.
- (b) All files relating to the matter comprising all relevant documents in which you acted as my Solicitor or Counsel.

30 I must make it clear that at no time I authorised your firm, Mr. MacFarlane or anyone else to consent that the Probate of the Will of my father should be granted to the Public Trustee. I propose to give evidence on oath in this regard at the trial.

Yours faithfully,

(Sgd) C.P. Bidesi
(C.P. Bidesi)

Exhibits

18

Agreement Bidesi
(f/n Chuman)
and Roadbuilders
Ltd.

EXHIBIT 18 AGREEMENT
BIDESI (f/n Chuman) and
ROADBUILDERS LTD.

Stamp 5/-

1st July 1957

AGREEMENT made the 1st day of July 1957
BETWEEN BIDESI (Father's name Chuman) of
Suva Building Contractor (hereinafter with
his executors administrators and assigns
referred to as "the Vendor") of the one part
AND ROADBUILDERS LIMITED a duly incorporated
Company having its registered office at Suva
(hereinafter with its successors and assigns
referred to as "the Purchaser") of the other part 10

WHEREAS the Vendor has agreed to sell to the
Purchaser for the price of £38,000.0.0 the
lands comprised and described in Certificates
of Title Nos. 4154, 4156, 4157, 9399 and
9470 exclusive however of an area of one acre
more or less being part of the land comprised
and described in the said Certificate of
Title No. 9470 20

AND WHEREAS the Vendor has contemporaneously
with the execution hereof executed a Transfer
to the Purchaser of the whole of the lands
comprised and described in the aforesaid
Certificates of Title (including the aforesaid
area of one acre excluded from the aforesaid
sale) and the Purchaser has executed a First
Mortgage thereof to the Vendor to secure the
unpaid balance of the said purchase price 30

AND WHEREAS the aforesaid area of one acre
excluded from the aforesaid sale (hereinafter
referred to as "the excluded land") has now
been identified by the parties and defined by
survey as appears in the survey plan prepared
by Messrs. Tetzner & Bygrave dated the 29th
day of June 1957

NOW THIS AGREEMENT WITNESSETH that IN
CONSIDERATION of the Vendor now transferring
to the Purchaser the whole of the lands comprised
and described in the said Certificates of Title 40
IT IS HEREBY AGREED by and between the parties
hereto as follows :-

1. THE Purchaser agrees with the Vendor that
the excluded land has not been sold by the Vendor

to the Purchaser but the Purchaser as the registered proprietor of the whole of the land comprised in the said Certificate of Title No. 9470 shall hold the excluded land in trust for the Vendor until the same shall be transferred to the Vendor as hereinafter provided.

Exhibits

18

Agreement
Bidesi (f/n
Chuman) and
Roadbuilders
Ltd.

1st July 1957
continued

10

2. THE Vendor shall bear and pay all the expenses of surveying the excluded land and of transferring the same to the Vendor.

20

3. UPON deposit of the aforesaid survey plan the Purchaser shall transfer to the Vendor the excluded land free from all mortgages charges and encumbrances except any drainage rights which it may be necessary to create in respect of the subdivision of C.T. No. 9470 and except any tenancy in existence at the date of this Agreement and still current at the time of transfer of the excluded land to the Vendor.

4. THE transfer of the excluded land from the Purchaser to the Vendor shall be prepared by the Vendor and tendered to the Purchaser for execution.

5. THE costs of preparing and stamping this Agreement shall be paid by the Purchaser.

IN WITNESS whereof these presents have been executed.

30

SIGNED by the said BIDESI)
as Vendor in the presence) (Sgd) by Vendor
of :) in Hindi

(Sgd) D.J. Warren
Solicitor, Suva

THE COMMON SEAL of ROAD-)
BUILDERS LIMITED was) SEAL
hereto affixed in the)
presence of :-)

40

(Sgd) S.A. Tezner Director
(Sgd) Harsanti Naranji Director
(Sgd) L.A. Jones Secretary

Exhibits

19
Handwritten
Notes
5th June 1958

EXHIBIT 19
HANDWRITTEN NOTES

ILLEGIBLE

20
Handwritten
Notes
10th June 1960

EXHIBIT 20
HANDWRITTEN NOTES

10/5/60

B.L. Gregg H.Wheatley S.M. Bidesi

Initially the P.T. considered that S.P. Bidesi Muni De. Bidesi & Ram Deo were entitled to bonuses of £1200 each in respect of the 3 years prior to Bidesi's death - see reference in I. Tax Return (original) & correspondence. Later the P.T. paid S.P. Bidesi £250 on a/c of his bonus.

10

Today it was explained to S.M. Bidesi why the P.T. would allow bonuses of only £300 each - Heavy penal assessment & poor returns etc. - It was pointed out that an Application to the Courts may fail completely.

It would appear that S.M. Bidesi (acting for his 2 brothers & brother-in-law) will not press this bonus claim further.

20

(Sgd) Illegible

EXHIBIT 21
HANDWRITTEN NOTES

Exhibits

21
Handwritten
Notes
9th December
1958

R.G.'s office present B.L.Gregg, H. Wheatley
& Bidesis S.M., C.P. & S.P.

10

In the event of the Supreme Court not approving the sale of C.T.'s 6503 & 6504 the P.T. will lease these titles to the brothers for a term of 20 years at a rental of £400 p.a. The tenants to pay Municipal & Water rates, fire Insurance & to keep the buildings in good & tenantable repair fair wear & tear excepted. The brothers or S.M. to purchase the plant, stock & works in progress (£15000) or thereabouts. S.P. to ascertain the profit and loss on works in progress. If the building behind the workshop is demolished the proceeds of sale go to the Estate.

EXHIBIT 23

20

LETTER, GRAHAME & CO. TO
THE PUBLIC TRUSTEE

23
Letter,
Grahame & Co.
to The
Public Trustee
10th March
1958

GRAHAME & CO.
Barristers & Solicitors

Central Chambers
Suva, Fiji

Ref.No. 7420
Mc/jgs

10th March, 1958

The Public Trustee,
Government Buildings,
SUVA

Dear Sir,

30

re: Estate of Bidesi (f/n Chuman)
Of Tamavua

After the recent interview with you the writer had a long conference with the widow and Atmar Prasad Bidesi, at which was discussed the matters raised by you, and your views explained. We are now instructed

Exhibits

23
 Letter,
 Grahame & Co.
 to The
 Public Trustee
 10th March
 1958
 continued

to write to you as follows :-

1. Mrs. Bidesi and her sons under the will do not wish to sell the house at the corner of Davies Street and Waimanu Road occupied by Mr. C.P..Bidesi
2. They consider that he has no claim to the house.
3. They ask you to request him to vacate the premises.
4. They then wish you to make arrangements to let the property for the time being. 10
5. They understand the terms of the will which provides that the factory building at the corner of Waimanu Road and Davies Street cannot be sold, nor can the property at present occupied by Mr. C.P. Bidesi. We explained that a Court Order would be necessary before sale, and it would be extremely difficult to obtain an order. Our clients are aware from you that Mr. S.M. Bidesi has offered to purchase the business which will include the stock and the building for £14,000. They understand that the business is on the down grade; that very few contracts are coming in. They recognise that at present it is a buyers market, and perhaps not a good time to sell, but they do not wish necessarily to sell to Mr. S.M. Bidesi, and consider that if a sale is to be made, advertisements should be inserted in newspapers advertising the business for sale as a going concern, together with the building and land, subject to the trustee obtaining approval from the Court. 20
30
6. You will not be able to proceed with an Originating Summons to determine the questions arising out of the Estate, until you obtain probate of the Will, but at present the Caveat lodged by Mr. C.P. Bidesi prevents you from obtaining probate. Our clients consider that there are no grounds for the caveat, and therefore, we are instructed to ask you if you would issue a warning to the Caveat, and proceed 40

in the usual way, so that the Court will have to decide any allegations made by Mr. C.P. Bidesi.

Exhibits

23

Letter,
Grahame & Co.
to The
Public Trustee

10th March
1958

continued

10 7. We understand that the will was prepared in your office and that it was explained in English to the testator who understood English. It was read over by Mr. Wheatley who is an old friend of the family. We are informed that Mr. Bidesi understood English well, and his family state that there is no doubt that he would understand the will read over to him by Mr. Wheatley. Therefore, we do not think Mr. C.P. Bidesi could be successful in his attack on the will.

20 8. We believe that it would be best for you to proceed with the issue without delay, so that the issue raised by the Caveat could be decided as soon as possible. We suggest that a conference might be useful, and to this end, suggest that you might ask Mr. C.P. Bidesi and his Solicitor, if he has any, and the writer, would represent the family, that is, the widow and sons mentioned in the Will. We have in mind putting it to Mr. Bidesi that there is little chance of him succeeding in upsetting the Will, and that it is only a form of blackmail; because it would seem as if the family give way and sell him the property for £2000, he might withdraw the Caveat. If Mr. Bidesi is warned that he will have to prove to the Judge that the Will was not understood by Mr. Bidesi the testator, and that the onus is on him to prove his allegations then he might think twice. Also in our view, as his grounds are so insubstantial, he should be warned that the Trustee would ask for costs against him, and that costs should not be paid out of the Estate.

30

40

We shall be obliged if you could move in this matter as quickly as possible.

9. In regard to the payment of death duties, which you estimate at about £7000, we

Exhibits

23
 Letter,
 Grahame & Co.
 to The
 Public Trustee
 10th March
 1958
 continued

point out that the K.W.March mortgage is for £11,000 and can be called up on demand under the terms thereof; moreover, we are informed that Road Builders are obliged to pay £4000 per year and that the next payment of £4000 falls due in June. This money could be utilized towards payment of death duties. K.W. March Limited could be asked to make arrangements to pay as soon as possible, and if they cannot pay it all, they can start paying by substantial instalments by arrangement, as the mortgage is on demand.

10

If you wish to discuss anything further with us arising out of this letter or dealing with the Estate, the writer will only be too happy to do so.

We refer you to the case of CHAPMAN & OTHERS versus CHAPMAN & OTHERS (H.L.) (1954) - 1 - All England Law Reports, page 798. The House of Lords in this case discussed Re New, and said that, that case constituted the high water mark of the exercise by the Court of its extraordinary jurisdiction in relation to Trusts.

20

Having considered the cases, we should be glad to discuss with you any legal questions involved in the application to the Court.

30

Yours faithfully,

GRAHAME & CO.

(Sgd) Illegible

EXHIBIT 25

LETTER, THE PUBLIC TRUSTEE
TO TETZNER & BYGRAVE

Exhibits

25
Letter,
The Public
Trustee to
Tetzner &
Bygrave

2016

HW/ST
P.T. 7/244

12th May 1959

12th May, 1959

Messrs. Tetzner & Bygrave,
Registered Surveyors,
SUVA

10 Gentlemen,

Re: Estate of Bidesi (f/n Chuman)
deceased

I have to refer to the terms of a certain Agreement for Sale dated the 1st day of July, 1957, executed between the late Mr. Bidesi as Vendor and Roadbuilders Ltd. as Purchasers wherein an area of 1 acre being part of Certificate of Title No. 9470 was specifically excluded.

20 2. The position now is that the Public Trustee of Fiji has been granted Probate in the estate and I have to enquire whether the subdivision of the title has been completed and whether I can now call on Roadbuilders Limited to execute a formal transfer of the land in question.

30 3. Will you please let me have your assessment of a reasonable rental to the Certificates of Title Nos. 6503 & 6504. These properties are in Davey Street. It is appreciated that the cottage behind the workshop has a very limited life and that the land on which it stands will be required for storage and brick-making.

4. The proposed lease will be for a term of 10 years. The tenant will be required :-

- (i) To keep the workshop and the cottage presently occupied by Mr. C.P. Bidesi in a state of good repair;

Exhibits

25
 Letter,
 The Public
 Trustee to
 Tetzner &
 Bygrave
 12th May 1959
 continued

- (ii) To keep the properties covered by fire insurance for their full insurable value and to pay all fire insurance premiums;
- (iii) To pay all town and water rates which now are or may later be levied; and
- (iv) The tenant to give notice when he requires the cottage behind the workshop to be demolished so that the Public Trustee may advertise and arrange the sale thereof.

10

Yours faithfully,

(Sgd) Illegible

PUBLIC TRUSTEE

26
 Letter,
 Wm. Scott
 & Co. to
 Grahame
 & Co.

10th June
 1965

EXHIBIT 26

LETTER, WM. SCOTT & CO
 TO GRAHAME & CO.

WM. SCOTT & CO.
 Barristers & Solicitors
 Notaries Public
 Commissioners for Supreme
 Courts of Fiji and New
 Zealand

Eldon Chambers,
 Suva, Fiji

20

10th June, 1965

Messrs. Grahame & Co.
 Solicitors,
SUVA

Dear Sirs,

The Public Trustee v. S.M. Bidesi
Supreme Court Action No. 110/64

30

We have been instructed by Mr. Bidesi to discontinue this action and will be filing a summons for an order accordingly. Would you give us some idea of what costs should be paid to your client up to the date of the Summons for Discontinuance.

MJCS:amc

Yours faithfully,
 Wm. SCOTT & CO.

EXHIBIT 27

LETTER, CROMPTONS TO KOYA
& CO.

Exhibits

27
Letter,
Cromptons to
Koya & Co.
29th November
1972

CROMPTONS
BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS
NOTARIES PUBLIC

1st & 2nd Floors,
Prouds Building
The Triangle
Suva, Fiji.

10

29th November, 1972

Messrs. Koya & Co.,
Solicitors,
S U V A

Dear Sirs,

re: M.D.Bidesi and Ors. against
The Public Trustee
Probate Action No.7 of 1966
re The Estate of Bidesi

20

We enclose herewith a Book of Documents being certain of the documents which the Defendant intends to produce at the hearing of the above Action. We hereby request that in order to avoid time and expense the Plaintiffs should admit that :

30

1. The respective letters (of which an original or carbon copy is copied in the book) were sent by the person or persons shown as sender and received by the person or persons shown as addressee on or about the date shown on the respective copies in the book;
2. The agreements, sale notes, agreements of sale and purchase, mortgages and leases copied in the book were made between the persons by whom they purport to be made on or about the dates shown on the respective copies in the book;
- 40 3. The caveats, warning to caveator and

Exhibits

27

Letter,
Cromptons to
Koya & Co.

29th November
1972
continued

appearance to caveat copied in the book were lodged, given or entered by the person or persons by whom they purport to have been lodged, given or entered on or about the dates shown in the respective copies in the book.

We further advise that the documents copies in the Book may be inspected by yourselves at our Office during normal office hours or outside these office hours by contacting the writer at 382168. We request you to give these submissions in writing and if all documents are not admitted as above then we request you to state as to which documents are and which are not admitted.

10

We further advise that this letter is an open letter and will, if necessary, be placed before the Court.

Yours truly,
C R O M P T O N S

20

PER:

ENCL

R.W.MITCHELL

EXHIBIT 27 (a)
 LETTER, KOYA & CO. TO
 CROMPTONS

Exhibits
 27(a)
 Letter,
 Koya & Co.
 to Cromptons
 29th November
 1972

KOYA & CO.
 Barristers & Solicitors

Suva: 23 Cumming Street
 G.P.O. Box 772
 Tel: 311466, 311547
 Lautoka: Popular's Building
 Vidilo Street
 P.O. Box 185
 Tel: 60202, 60402

10

29th November 1972

Messrs. Cromptons,
 Solicitors,
S U V A

Ref: RWM/cmlm

Dear Sirs,

re: M.D. Bidesi and Ors
 vrs. The Public Trustee
Probate Action No.7 of 1966

20

We refer to your letter of today's date enclosing a Book of Documents delivered by you to our office this morning at 9.00 a.m.

In view of late service of this Book of Documents, we cannot possibly obtain our clients' instructions in the matter before the commencement of trial.

30

On the hearing of our Motion for an adjournment, we propose to mention to the Court that these documents were only served on us today.

Yours faithfully,
 KOYA & CO.

Exhibits

27(b)
Letter,
Cromptons to
Koya & Co.

30th November
1972

EXHIBIT 27(b)

LETTER, CROMPTONS TO KOYA
& CO.

CROMPTONS

BARRISTERS & SOLICITORS
COMMISSIONERS FOR OATHS
NOTARIES PUBLIC

1st & 2nd Floors
Prouds Building
The Triangle
Suva, Fiji

Our ref: RWM/cmlm

10

30th November, 1972

Messrs. Koya & Co.,
Solicitors,
S U V A

Dear Sirs,

re: M.D.Bidesi and Ors. against
The Public Trustee
Probate Action No.7 of 1966
re The Estate of Bidesi

20

Further to our letter of the 29th instant and your reply, also of the 29th instant, we now enclose herewith an Appendix to the Book of Documents served on you on morning of the 29th instant. We point out that in a case of this magnitude your suggestion, that instructions cannot be obtained in the five days remaining before the trial, is quite surprising. All of the documents, papers, etc., referred to are alleged to have a direct connection with your clients. You will realise that the major purpose of this Book of Documents is in order to save the time of the Court which would otherwise be taken up by proof of documents.

30

We should be pleased if you would reconsider your proposal and contact your clients with a view to perusing the Book of Documents and Appendix.

Yours truly,
C R O M P T O N S
(Sgd) R.W.Mitchell
R.W. MITCHELL

40

ENCL

EXHIBIT 27 (c)
LIST OF ADMITTED DOCUMENTS

Exhibits
27(c)
List of
admitted
documents

IN THE SUPREME COURT OF FIJI
(PROBATE JURISDICTION)

No. 7 of 1966

IN THE ESTATE of BIDESI s/o
Chuman, Deceased

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHIV PAL BIDESI all sons of
Bidesi, deceased of Suva, Fiji

10

Plaintiffs

A N D : THE PUBLIC TRUSTEE OF FIJI

Defendant

DOCUMENTS IN EXHIBITS 1, 2 AND 3 (FOR
IDENTIFICATION) ADMITTED BY MR. KOYA
IN TERMS OF THE LETTER FROM MESSRS.
CROMPTONS TO MESSRS. KOYA & CO. DATED
THE 29TH NOVEMBER, 1972

20

1972

Date

Page

A.	Document No.1	Letter, M.D.Bidesi to Public Trustee	30th December 1957	1
B.	" "	2 Letter, S.M.Bidesi to Public Trustee	17th May 1958	2
C.	" "	11 Letter, S.M.Bidesi to Public Trustee	17th May 1958	15
D.	" "	14 Letter, Public Trustee to S.M. Bidesi	19th November 1959	19
30 E.	" "	17 Agreement, between S.M.Bidesi & Public Trustee	24th November 1959	23
F.	" "	30 Letter, S.M.Bidesi to Public Trustee	9th January 1961	36
G.	" "	39 Letter, Koya & Co. to Grahame & Co.	2nd June 1970	46

<u>Exhibits</u>	<u>1972</u>	<u>Date</u>	<u>Page</u>
27(c) List of admitted documents continued	H. Document No. 40	Letter, Koya & Co. to Public Trustee 17th February 1958	47
I. " "	41	Letter, Koya & Co. to Public Trustee 12th March 1958	48
J. " "	43	Caveat by C.P. Bidesi 21st December 1957	50
K. " "	44	Caveat by C.P. Bidesi 14th May 1958	51
L. " "	45	Caveat by C.P. Bidesi 29th October 1958	52
M. " "	47	Warning to Caveat by the Registrar 13th November 1958	54
N. " "	48	Appearance to Warning by Koya & Co. 19th November 1958	55
O. " "	52	Letter, C.P. Bidesi to Public Trustee 25th January 1962	59
P. " "	60	Letter, C.P. Bidesi to Public Trustee 31st January 1967	68
Q. " "	68	Sale Note, S.P. Bidesi to Public Trustee 24th January 1961	77
R. " "	70	Letter, S.P. Bidesi to Public Trustee 29th March 1962	79
S. " "	72	Letter, S.P. Bidesi to Public Trustee 30th May 1962	81
T. " "	79	Caveat forbidding any Dealing, Registrar of Titles to Public Trustee 13th June 1961	89
U. " "	80	Letter, S.P. Bidesi to Public Trustee 30th January 1967	90
V. " "	82	Receipt, S.M. Bidesi to Public Trustee 26th November 1959	92
W. " "	84	Sale Note, Public Trustee to S.P. Bidesi 24th January 1961	94
X. " "	85	Sale Note, S.P. Bidesi from Public Trustee 21st March 1961	95

10

20

30

40

<u>1972</u>			<u>Date</u>	<u>Page</u>	<u>Exhibits</u>
Y. Document	No. 86	Sale and Purchase Agreement	19th February 1962	96	27(c) List of admitted documents
Z. " "	89	Letter, S.M.Bidesi to Public Trustee	13th May 1963	100	continued
AA. " "	91	Letter, S.M.Bidesi to Public Trustee	21st May 1963	102	
BB. " "	93	Register of Death Death of Deceased	15th November 1957	104	
CC. " "	95	Mortgage, S.M. Bidesi to Public Trustee	26th November 1959	106	
DD. " "	96	Statement, Mortgage advance Public Trustee to S.M. Bidesi	24th November 1959	109	
EE. " "	97	Lease, Public Trustee to S.M. Bidesi	28th November 1959	110	
FF. " "	103	Allocation No.163 of 1961	10th January 1964	117	

Confirmed this 8th day of December, 1972

(Sgd) S.M. Koya

MESSRS. KOYA & CO.
SOLICITORS FOR THE PLAINTIFF

Exhibits

29
 Letter, M.E.
 Warburton
 to The
 Chief
 Registrar
 with trans-
 cript of
 evidence of
 H.Wheatley
 8th January
 1968

EXHIBIT 29

LETTER, M.E. WARBURTON TO
 THE CHIEF REGISTRAR, WITH
 TRANSCRIPT OF EVIDENCE OF
 H. WHEATLEY

Selborne Chambers,
 174 Phillip Street,
 Sydney.

AIR MAIL

8th January, 1968

The Chief Registrar,
 Supreme Court,
FIJI

10

Dear Sir,

In the Estate of BIDESI S/O CHUMAN
 Deceased

I enclose herewith Transcript of the
 evidence of Mr. Harry Wheatley taken at
 Sydney on Friday, 15th December last.

The Transcript was read over by Mr.
 Wheatley and he has signed each page thereof
 as being a correct record of the evidence
 given by him, subject to the following
 amendments:

20

Page 8 line 11 - "Muni Deo" should read
 "Munidlal".

Page 17 line 7 - "Muni Deo" should read
 "Munidlal".

Page 17 last
 line - "Muni Deo" should read
 "Munidlal".

30

Page 18 line 9 - "Muni Deo" should read
 "Munidlal".

Also enclosed with the Transcript is a
 copy of Probate in the Estate of Bidesi,
 which was referred to in the evidence and
 was marked for identification "I", and the
 original Order appointing me Special Examiner

Yours faithfully,

M.E. WARBURTON

IN THE SUPREME COURT OF FIJIExhibits

No. 7 1966

29

Transcript
of evidence
of H. Wheatley

In the Estate of Bidesi, s/o Chuman, deceased

15th December
1967

BETWEEN: MUNI DEO BIDESI, SURYA MUNIDLAL
BIDESI, CHANDRA PRAKASH BIDESI
and SHAR PAL BIDESI all sons of
Bidesi, deceased, of Suva, Fiji

Plaintiffs

AND: THE PUBLIC TRUSTEE OF FIJI

1st Defendant

KAPESRI widow of Bidesi

2nd Defendant

ATMA PRASAD, KUMA PRASAD, MUNI
PRASAD and JAGDISH PRASAD all
sons of Bidesi

3rd Defendants

BRIJMATI, MAYAWATI, BEENA and
MIRA all daughters of Bidesi

4th Defendants

EVIDENCE OF HARRY WHEATLEY

Taken before

M.E. WARBURTON ESQ. SITTING AS A SPECIAL EXAMINERAT SYDNEY IN THE STATE OF NEW SOUTH WALESON FRIDAY, 15TH DECEMBER, 1967, AT 3 P.M.

MR. C. DARVALL, instructed by Allen, Allen &
Hemsley, appeared for the plaintiffs.

MR. M. WILCOX, instructed by Sly & Russell,
appeared for the 1st Defendant

(The oath of a witness was administered
to Mr. Harry Wheatley)

(The shorthandwriter's oath was administered
to Miss Joy Lewis)

Exhibits

29

Transcript
of evidence
of H.Wheatley
15th December
1967
continued

HARRY WHEATLEY, sworn:EXAMINED BY MR. WILCOX

MR. WILCOX: Mr. Wheatley, what is your full name?
--- Harry Wheatley.

Where do you now live? -- 50 High Street, North
Sydney.

What is your present occupation? -- I am a clerk
in the accident section of Police Headquarters.

I think that until 1964 you were resident in
Fiji? -- That is correct.

10

And when did you first go to Fiji? -- 1933

In what capacity did you work in Fiji before
the War in 1939? -- I went as a clerk to
Burns Philp, then I left Burns Philp and
went to W.R.Carpenter & Co.Ltd. as an
accountant. In 1939 I joined the firm of
Messrs. Cromptons, Solicitors, as managing
clerk.

How long did you remain with Cromptons? -- Until
late 1946.

20

In late 1946 did you change your occupation? --
Yes, I joined the Inland Revenue Department
of the Fiji Government.

In what capacity? -- As a surveyor of taxes.

How long did you remain in the Inland Revenue
Department? -- I think until 1958; I can't
be sure of the date.

Then what did you do? -- Then I was transferred
to the Registrar General's Department as
Deputy Registrar General.

30

As Deputy Registrar General did you have any
relationship with the Public Trustee? -- Yes.

What was that? -- Well I had a lot of public
trust work to do.

Is there a separation between the two officials
in Fiji? -- There is very little distinction
between the two posts.

Did you in fact do any work as an officer of the Public Trustee during that time?
-- Oh yes.

Did you know in his lifetime the deceased, Bidesi, son of Chuman? -- Yes.

Can you recall when you first met him? --
I can't recall exactly when I first met him but it would be round about 1936 when I first came in contact with him.

10 In what capacity did you get to know Bidesi?
-- It was not until some years later when I met him as a client of Cromptons.

Bidesi was at that time a client of Cromptons?
-- Yes.

Did you personally have anything to do with any of his affairs? -- Yes.

Do you know what occupation he was following at that time? -- He was a builder, had a contracting firm.

20 Can you tell us anything of the scale of his operations? -- I did not know anything of the scale of his operations until the Public Trustee took over his affairs on his death. I knew it was a large business, possibly the third largest in Suva.

MR. WILCOX: Did you subsequently have some personal contractual relationship with Bidesi? -- Yes.

30 When was that? -- 1946 - he built a house for me.

Did he actively work on the job? -- His firm did, his sons; he came up to supervise.

Can you say whether you formed any impression of his business ability in connection with that transaction? -- I knew he was a very good builder.

In what language did you converse with Bidesi?
-- In English.

Exhibits

29

Transcript
of evidence
of H. Wheatley

15th December
1967

continued

Exhibits

29
 Transcript
 of evidence
 of H.Wheatley
 15th December
 1967
 continued

Always English? -- Yes. I do not understand Hindustani and I know very little Fijian so I have always conversed in English with him.

Did you find any difficulty in communicating in English with Bidesi? -- No.

I am confining your attention at the moment to the period before you left Cromptons: Apart from the dealings you had with him as a client of that firm did you have any personal dealings with him? -- Yes, I used to see him quite frequently. I was a member of a polo team and my pony was stabled at a neighbour of his home and he used to come down to watch the polo very often, so I knew him slightly.

10

Did you have many social conversations with him? -- Yes, I visited his home; on many occasions he has come to mine.

On those occasions how long would you talk together? -- Well, maybe two hours.

20

During those discussions what type of things would you talk about? -- Just general topics - my wife would be present, talking with him too.

Did you ever have any difficulty in understanding what he was saying? -- No.

Did he ever appear to have any difficulty in understanding what you were saying? -- Sometimes he asked questions but very seldom. He was not literate but he did understand English.

30

Spoke English? -- He spoke it and he understood it.

During these conversations at his home or at your home do you ever remember having any discussions about what might be called abstract topics? -- Well he used to discuss the Hindu religion and try to draw comparisons with the Christian religion. In fact he was the first one that said Krishna is the son of Ram, who is God - Ram is God in the Hindu religion; he said

40

"You call God Ram but the sons are the same. In the Hindu religion Krishna is the son of Ram and Christ is the son of God", he said, "They are the same."

MR. WILCOX: He did refer to the Christian religion from time to time? -- Oh yes, he was very interested in the Christian religion.

Exhibits

29

Transcript
of evidence
of H.Wheatley

15th December
1967

continued

10

Were you able to understand what he was saying when he was talking about this type of topic? -- Yes, he used to tell me their Bible stories - parables.

Apart from religion did you discuss other abstract type of matters? -- Yes, conversations just general about work and his jobs normally but sometimes they were on world affairs and what I thought of political situations in Fiji - just normal things like that.

20

Can you express any opinion as to the degree of his intelligence? -- I think he was highly intelligent. For a person who could not read or write he apparently had a fantastic memory.

30

After you left Cromptons and went to the Inland Revenue Department I think you had no direct official relationship with him because you deliberately avoided having anything to do with clients of Cromptons in your new capacity? -- That is correct. I never once saw or had anything to do with raising assessments on his returns; I didn't want that.

But did you see him socially whilst you were so engaged? -- Yes.

40

And the pattern that you have just given us, did that continue or was it different? -- No. It was 1956 he supervised the building of a block of flats for me. He was too busy to take the job. His son designed them. I saw him daily, sometimes twice a day, at that time.

And the social visits, did they continue? -- Yes.

Exhibits

29
 Transcript
 of evidence
 of H.Wheatley
 15th December
 1967
 continued

Do you recall whilst you were with the
 Inland Revenue section some discussion
 with Bidesi on the matter of a will? --
 Yes, he asked me on one occasion what
 I thought he should do with his estate.
 I told him it was for him, and he said,
 "Will you draft me a will?"

Did you do so? -- I did so.

Did you hand him the draft? -- I handed him
 the draft, yes.

10

Did he subsequently discuss it with you? --
 Yes; his son was present.

Do you remember which son? -- Yes, it was --
 they change their names so - it was the
 one that calls himself Surya Munidlal.

That is the second-named plaintiff? -- Yes.

Were there other sons present at this discussion?
 -- No, there was only the father and the
 son I have just mentioned.

When he discussed the draft what did he say
 about the draft? -- He said very little
 about it. He said "I want to go through it
 with my friend". I don't know whether
 he meant his son or who. There was very
 little said about it but I remember what
 was in the draft.

20

Did he subsequently comment on the draft? --
 Yes, he said it was not what he wanted,
 thanks very much, it was good but it was
 a white man's will.

30

MR. WILCOX: Did he at that stage say what he
 did want? -- No, he did not. He just said,
 an Indian feels when he gives the dowry
 and gets his daughters married he is
 finished with them. I had suggested all
 his children share alike, daughters and
 sons, that is what I had in the draft.

Making no distinction between the sons, the
 children of the two marriages? -- No,
 I had also suggested the son Surya Munidlal
 be the executor. He didn't want it, and
 that was the last I heard of it.

40

You know nothing of such a will being executed? -- No, I never heard any more about it except it was not what he wanted.

Exhibits

29

Transcript
of evidence
of H. Wheatley
15th December
1967
continued

Can you tell us approximately the year in which that conversation took place? -- It would be approximate. I don't like to give a year - it could have been 1954, something round about there. I really do not remember because I dismissed it from my mind.

10

After you went to the Public Trustee's office did you continue to see Bidesi from time to time socially? -- Yes, I went to his place for meals and he came to my place for drinks - often called in.

Did you continue to have the sort of discussion you have mentioned? -- Yes, things just went on in a friendly way as they had. He discussed family matters with me too.

20

I think you knew at that stage he had children of a first marriage and also of a second wife and children of the second marriage? -- Oh yes.

Do you recall whilst you were with the Registrar General's Department Bidesi coming in to see you regarding a will? -- Yes.

Did he contact you before he came in? -- Yes, I received a phone call asking if I could see him.

30

When he did come in what did he say to you? -- He said "I have come to have a talk about a will".

Yes? -- He said, "I have been having dizzy turns. My wife is very worried about what would happen to her and the children if I should pass over".

Yes? -- Do you want the rest of the conversation?

Yes? -- I said, "Have you discussed this with your family?" He said, "No, only my wife".

40

MR. DARVALL: Were only two persons present on this occasion? -- That's right.

Exhibits

29

Transcript
of evidence
of H.Wheatley
15th December
1967
continued

I object to the whole of this conversation.

MR. WILCOX: The conversation took place
in English? -- Yes, in English.

Would you continue with the conversation? --
This present conversation which was
objected to?

Yes, the objection has been noted; neverthe-
less it will be put down. I think you
told us that he said he had only
discussed this with his wife? -- Yes.

10

MR. WILCOX: Carry on from there? -- I said
to him, "Why do you come to me?" He
said, "I am coming to Government, I am
not coming to you. I want Government to
look after my estate". He said, "You are
working for the Government and I know
you and I want it all to be private
because I have trouble with my first
family."

What did you say? -- I said, "Well I don't know
whether the Government could do it. First
of all I will have to see the Public Trustee
and see what he thinks about it". Then
he said, "Before you go, tell me what
would happen to the Googoo Becha Trust
because I am the trustee of the will and
the widow is still alive and there is still
the young grandchildren". I told him
that if Government accepted the trust, they
would also automatically accept the Googoo
Becha Trust. At this stage I left him and
went in to the Public Trustee.

20

30

You had a conversation with the Public Trustee? --
That is right, and he agreed to accept
the trusteeship.

Did you then speak again to Bidesi? -- I then
went back to the office and brought Mr.
Bidesi in to the Public Trustee.

And was there some conversation? -- There was a
conversation about the will, not a long
one because he said, "Well, you take Mr.
Bidesi back to your office and take his
instructions".

40

That was said by the Public Trustee? -- Yes.

MR. DARVALL: My objection covers the whole of this as well, right through.

MR. WARBURTON: That will be noted.

MR. WILCOX: Did you in fact take Bidesi back to your office and discuss the matter with him further? -- Yes.

10 What was the conversation you then had? --
We just went through his wishes. He explained about the young children, how he wanted them educated.

I think you will have to give us the conversation; tell us what he said to you were his wishes? -- The wishes were what I wrote down and were - - -

MR. WARBURTON: This is all covered by your objection?

MR. DARVALL: Yes, and on the additional ground that the conversation be given.

20 MR. WILCOX: I wonder could you give us the wishes that he expressed so far as you recall them in the terms that he expressed them? What did he tell you he wanted to do? -- He said he wanted his wife looked after; he just wanted her to be kept as she was in life as the wife of a wealthy Indian. He didn't want her to have more than she was used to but he
30 wanted the Public Trustee to just give her sufficient to keep her self respect and he wanted the Public Trustee to see that the young children were all educated and when the girls were of age they were properly married with suitable weddings, and he wanted the estate managed but he was very anxious that the freehold on which the house stood should not be sold. He wanted that to be a home always for his children. He said he was not happy
40 about any distribution. He wanted to know how long a distribution could be delayed. He asked could it be tied up in effect for ever. I said it was only quite

Exhibits

29

Transcript
of evidence
of H.Wheatley

15th December
1967
continued

Exhibits

29

Transcript
of evidence
of H. Wheatley
15th December
1967
continued

a small estate really and perhaps the date of distribution would be in 20 years' time, and he said no, he thought that was too soon - and then he settled for forty.

MR. WILCOX: What did he say? -- He said, "I will agree to forty but I don't want it before that because I am thinking of the grandchildren".

During this conversation what were you doing?
-- I was making notes.

10

Of what? -- Of his wishes as he expressed them. I was really taking a longhand copy of the conversation.

Was that the end of the conversation? -- When it was finished I said, "Well I will knock this into shape for you. If you will come back, give me three days, and I will have a draft typed out then and we can go through that".

Tell me, was there any discussion at any stage about having an interpreter present? -- Yes, I told him it was customary to have an interpreter at Cromptons and also in the Public Trust Office. He said, "I understand what you are saying and I don't want any Indians to have anything to do with this will because it is secret. I have told my wife and that is all I want. I don't want any possible leakages".

20

At what stage was that conversation regarding the interpreter? -- That was during when I was taking the notes. I said, "You know, you should have an interpreter here", and he said, "I don't want one". He said, "I have had trouble with two sons". He had just had a settlement and one had left the business and there had been some money paid out through a firm of solicitors.

30

After he completed giving you the instructions did you say anything further to him? -- Not until I saw him again when he came in. He rang up and said, "Are you ready to see me?"

40

In the meantime had you done anything? -- Yes, I had prepared a draft will and I had submitted it to the Public Trustee to go through and see that he felt it was correctly drawn.

When Bidesi came in did you speak to him again? -- Yes, I took him through this will. It was ready to be signed.

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10 Can I interpolate to ask you, during the time you had been Deputy Registrar General before that occasion had you drafted wills? -- Yes, I had drafted many wills, and before that in Cromptons.

I am particularly asking you about your duties as a public servant? -- Yes, the Public Trustee used to draw wills provided only that the Public Trustee managed the estate.

20 And was this something that was part of your duties you had done previously? -- Yes.

On many occasions? -- Yes, frequently.

MR. WILCOX: On the occasion when Bidesi came in, was that after the Public Trustee had seen your draft? -- Yes.

When Bidesi came in, what happened? -- We went through it.

30 Will you explain what you mean by that? -- I took him through it slowly, I read it slowly with pauses at each section and said "Do you follow that?" and he said, "I understand that, yes".

You read the draft will? -- No, I read the will that was ready to be signed; I was prepared to make it a draft if he wanted it altered.

But it had been engrossed for signature? -- It had been engrossed already.

And you read it to him in English? -- Yes.

And you referred to pauses; how frequently were

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the pauses made? -- Each time I came to a section of it I stopped and said, "Now you understand what that means?", discussed it and saw that he did understand.

How did you determine that he did understand it? -- Because we spoke in English.

Did he ask you questions about it? -- He asked once again about the Googoo Becha trust. For the rest he said "I understand that, that is right, that is correct."

10

Did he do that with each of the sections? -- Yes, I took it in sections and took it quite slowly.

Had you on previous occasions assisted Indians who were about to execute wills in English? -- Yes. You say assisted?

Had you assisted Indians who were about to sign a will in English? -- Oh yes.

Had you followed a similar procedure on those occasions? -- Yes.

20

Had you satisfied yourself that they appeared to understand? -- Well I always insisted on having an Indian interpreter.

On this occasion with Bidesi was there an Indian interpreter when it was signed? -- He wouldn't have one.

Did you ask him again? -- He was asked by the Public Trustee.

In your presence? -- Yes.

What did he say? -- He said "No, and I want a European lady to type it and I don't want anyone but Europeans' eyes to see it". He said, "And I want the witness to be the other European lady in the office".

30

Do you recall any discussion with Bidesi when you were going through the will with him prior to its execution regarding the children of his first marriage? -- Yes.

10 What was that conversation? -- He said, "I have brought them all up and married and established and given them work in the business and I am giving each one a block of land and I feel that I have looked after them and my duty is to the babies coming on because I haven't a very big estate". I don't know how many children there were, there were about eleven or something, of the second marriage. They were from three months in steps and stairs up to possibly 20.

MR. WILCOX: This is not something he said to you? -- No, I knew that of my knowledge of the family.

Do you remember whether there was any other conversation before the will was signed? -- No, just that I took him through it carefully.

20 Was anything said about his business? -- Yes, I remember he said "I am worried about the business because since the trouble with Muni Deo there does not seem to be so much profit, but I can always end up a landlord and if it has to be closed up I will let the big building and live from the rents".

After this conversation what did you do? -- I then took him in to the Public Trustee.

30 Took Bidesi in to the Public Trustee's office? -- Yes.

Mr. Gregg I think was the Public Trustee at the time? -- Yes.

What happened in Mr. Gregg's office? -- Called the two witnesses.

Do you remember their names? -- Mrs. Andrews and Mrs. Behn. It was Mrs. Andrews who had done all the typing in connection with the will.

40 What happened after they came into the room? -- I sat beside Bidesi facing Mr. Gregg and I can't remember -- I have been trying to

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remember- whether I read the will or Mr. Gregg did, but the normal procedure was for the Public Trustee to read; that has not come to me - I can't say - I believe Mr. Gregg read it, but he could clear up that point.

Can you say whether it was in fact read? --
Oh, it was read, yes, I remember it was read.

In what language? -- English.

10

Was it read straight through or with pauses and explanations? -- It was read straight through.

Did Bidesi say anything after the reading to indicate his comprehension or otherwise? --
Yes, he said it was; "This is what I want". He said "It is bahoot hucha" - "hucha" means satisfactory.

He said "It is bahoot hucha"? -- Yes.

Is that all he said? -- Yes, "This is bahoot hucha".

20

What does that phrase mean as you understand? -- It means all is satisfactory.

Then after saying that what happened? --
The will was executed.

By whom? -- By Bidesi.

Did you see him sign his name? -- I was there sitting beside him. I was not an official witness because I drafted and had drawn the will. I was sitting beside him and I saw him sign it.

30

MR. WILCOX: What about the witnesses? -- The witnesses were there.

Did you see them sign it? -- Yes. And he was in very good spirits and very clear mentally, he was not ill. It was not until some months later he died suddenly of a heart attack.

Before we come to that, I want to show you the copy of the will which is set out in this copy of the probate. Would you tell me whether those are the terms of the will which you drafted and which you saw executed by Bidesi? -- Yes, this seems to be it.

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10 I am not sure how I go about this; normally I would tender this document. Might it be marked for identification and perhaps sent back with the official transcript?

MR. WARBURTON: Yes.

M.F.I.

M.F.I. 1 ... Copy probate
of Bidesi
produced by
Mr. Wilcox

20 MR. WILCOX: Mr. Wheatley, you did mention that some months after that Bidesi died quite suddenly? -- Yes.

Did you see him again between the time that the will was signed and the time of his death? -- Yes.

30 Did you talk to him during that time? -- Oh yes, and I had a meal with him. He invited me over to his home for a meal and he called his wife in during the meal and he spoke to her in Hindi but he told me that he had explained to her the Government was looking after the estate and the will was finished and if anything happened to him she had to come to me at my home or the office.

MR. DARVALL: I object again. My objection covers all these conversations.

MR. WARBURTON: Your objection has been noted.

MR. WILCOX: Were you going to add something?
-- No.

40 That was the conversation on that occasion?
-- Yes.

You have already referred in general terms to

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Bidesi's understanding of English and his intelligence. Up until the last time you saw him before his death, had you noticed any change from that earlier situation? -- No; I was quite shocked when the children came over to my home and said "Father's dead".

How long before that day had you last seen him? -- It may have been a month, it may have been less. I don't remember that. You see, he lived fairly close to my place and he used to often stop in on the way home and have a couple of whiskies and a chat and a laugh and then he would go off. He was quite a frequent visitor, and I was really shocked to hear that he had died because it was so unexpected.

10

As at the last time you saw him before his death how did he appear to be as far as his mental capacity was concerned? -- I didn't see any difference.

20

MR. WILCOX: And as to his comprehension of what you said to him? -- He seemed just the same as usual.

And as to his own ability to express himself in English? -- Oh yes, he wasn't any different.

On the day that he executed the will was he any different? -- No, he was quite clear.

30

CROSS-EXAMINED BY MR. DARVALL:

MR. DARVALL: Mr. Wheatley, I take it that you are not a qualified lawyer? -- No, I am not.

Do you know whether the rule against perpetuities applies in Fiji? -- Yes.

It does apply, does it? -- It does apply.

When you were discussing the postponement for 40 years, did you suggest to Mr. Bidesi that if all the lives in being at the date of his death died prior to 1st May 1976 that the gift to their children born after the death of the testator could possibly

40

infringe the rule? -- Yes, I suggested to him - - -

Did you suggest that? -- No, what I said to him was this, "To my knowledge you cannot tie your estate up for more than 25 years, but that is a matter for the Public Trustee who is a solicitor and the matter was left - - -

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10 You did not make any suggestion that this paragraph 7 of the will might infringe the rule against perpetuities and so be void? -- No, I was a little doubtful of it so I referred that to my superior.

Did you tell him what the effect would be if it were held that that paragraph did infringe the rule? -- No.

So you did not tell him - - - ? -- I wasn't aware of the fact it would infringe the rule.

20 The normal speech of Mr. Bidesi was simply Hindustani or Hindu, was it not? -- He spoke Fijian.

To a very limited extent? -- He spoke Fijian fluently.

You are quite sure of that, are you? -- Oh yes, he was born in Fiji.

You are quite sure that he spoke it fluently? -- Yes, he spoke fluent Fijian.

30 How do you know? -- Because I have heard him speak.

You did not speak Fijian yourself? -- No, but I know the sound of Fijian, I know a certain amount of words.

So you could not judge whether he spoke it fluently or not? -- I could only tell by the way he talked to his labour in his dealings with his labour.

His English vocabulary was limited, was it not? -- It was limited but adequate. He could express himself clearly.

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He would not speak as an Englishman? -- Not as an Englishman but he spoke English.

MR. DARVALL: He would not speak with the fluency of a European? -- Oh no, he wouldn't have the same vocabulary.

And his grammar would not be the normal English grammar, would it? -- Well his grammar very often was quite good. He knew his tenses.

Did he always use a completely formed sentence? -- Oh yes. 10

And this was invariable, was it? -- To my knowledge, yes. I have never had any difficulty in understanding him.

Did you explain to him some of the technical words in the will when you read it through? -- Yes, to the best of my ability I explained everything clearly to him.

The evidence you have given is that you did not explain anything that you merely read it slowly and stopped and he said that he was satisfied? -- But I explained everything when we were doing the draft and the main conversation was when I was taking the draft. 20

But what you say, when you were taking the draft all you did on that occasion was take in longhand a copy of the conversation? -- That is right. 30

And so you were not in fact making a draft on that occasion, were you? -- Yes, I was making a draft.

You were making a record of the conversation, were you, or were you making a draft of the will? -- I was making a record of his wishes to be converted into a draft.

So it would be quite incorrect to say you were making a longhand record of the conversation, is that right? -- I did not write everything that was said because a lot of it was inconsequential. I don't understand what you are getting at. 40

Would you just answer my question, please:
 You gave evidence that you were taking
 a longhand copy of the conversation.
 Is that true or not? -- Yes, I wrote
 down as he spoke, I wrote down what
 he wished.

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Did you take a longhand copy of the conversa-
 tion or not? -- I took a longhand copy
 of the conversation where it applied to
 his wishes in regard to the will.

I see, so it would be incorrect to say that
 you took a longhand copy of the whole
 conversation? -- Not of the whole
 conversation.

And there was no other person present when you
 read the draft through to him on the
 first occasion? -- No.

20

Did you attempt to give him any explanation
 as to how his wife and all his children
 should share the income from his estate
 for their lives and yet the corpus was
 to be distributed in 1997? -- Yes.

You explained how that could come about? --
 Yes.

What did you say? -- I said the Public Trustee
 would look after his wife and children
 from the income of the estate as he
 wished.

30

MR. DARVALL: Yes. Did you give him any
 explanation though as to how the Public
 Trustee was going to be able to obtain
 the income from the estate when there
 was a direction for distribution of
 the corpus at a specific date of 1st May
 1997? -- No, I just told him the Public
 Trustee would see that his children were
 educated and would look after his wife
 and keep her in proper estate from the
 income of the estate.

40

And this is what you told him, was it, at the
 time that you read and explained the will
 to him - - -? -- Until the date of
 distribution.

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You told him that, did you? -- Yes.

Can you tell me where it says that in the will? Just look at the copy that has been produced? -- (2) is a passage.

Paragraph (2)? -- No. (1) is a passage -
 "The wife may reside in the residence" - - -

Until her death or re-marriage? -- That is right.

Well what reference has that got to do with the date of distribution you have referred to? I am asking you to show me the passage in the will which you have just referred to being that the income was payable to them until the date of distribution? -- Could I have that question again? -- (Question read to witness).

10

I am asking you whereabouts in the will is there any reference to the date of distribution which you apparently told him about? -- What I told him was this
 - - -

20

I am asking you whereabouts in the will is there any reference which is referable to this statement which you made to him that the income was to be paid until the date of distribution.

MR. WILCOX: I object to this question on the basis that it is an invitation to the witness to construe the document. I would have thought if you read (3) and (7) together that is the result.

30

MR. DARVALL: If you read (5) though it is rather different.

MR. WILCOX: Well I think it is not for us to construe.

MR. DARVALL: I am testing the witness who said that he explained the will in a certain manner, and it will be clear to the Court that there is no such provision in the will.

MR. WARBURTON: Did you appreciate Mr. Darvall's last question? -- No, I do not quite appreciate it.

40

He asks whereabouts in the will is the provision that you spoke of to Bidesi? -- Where I said the Public Trustee would look after the estate - - -

Until the time of distribution. Now do you see such a provision anywhere in the will that you can direct Mr. Darvall's attention to?

10 MR. DARVALL: "To pay the income until the date of distribution"? -- There were certain obligations - - -

MR. WARBURTON: Do you see anything in the will, is Mr. Darvall's question? -- (5) I construed as meaning what would be the answer to that.

MR. DARVALL: You see there in ordinary plain language it says "during their lifetime" - in my copy it is on the fifth line.

20 MR. WARBURTON: If you just read (5) you will come across it, Mr. Wheatley? -- I can see where it is written here, but what do you want me to answer, please?

MR. DARVALL: The question. You have sworn you advised Mr. Bidesi that his wife and children would be paid the income from his property until the date of distribution? -- What I said to Bidesi is what is written here.

30 That is the evidence you have given? -- Well that is not correct. I said exactly what is written here, I read the will to him.

I see. You just read the will through to him stopping at the paragraph points, did you? -- And said "Do you understand? Are there any questions?"

40 You did not give any specific explanation in respect of any of the phrases in the will, is that correct? -- I told him in plain English what they meant.

You said you read through to the end of the

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passage and said "Do you understand"?
-- I don't want to be taken absolutely
word for word about reading through to
the end of passages. I took it slowly,
not a whole section; I would read
through, "'After the payment of income
tax ... (reads) ... during their lifetimes'.
Now do you understand that?"

I see, and you carried out that sort of
procedure right through. Did you carry
out that form of procedure right through
the will? -- When I was taking him
through the will. 10

And on each occasion he said "I understand
that"; is that what you say? -- Yes.

I take it then that on no occasion did you seek
to depart from the words of the will by
way of explanation? -- Yes, I explained in
plain English.

Well, look, which version is correct? -- If it
said "living male issue" I would say
"Issue are your sons or your children". 20

Which version is correct, that you would read
through pausing at passages and that he on all
occasions said "I understand that", or
that you gave explanations using words
other than the words in the will. Now
which version is correct? -- If he didn't
understand the word 'issue' - - -

Which version is correct? -- They are both
correct, in that if he did not understand
what the word issue meant I told him
"It is your children". 30

Which version is correct, that you read through
and stopped and he said "I understand that",
or that he asked questions? -- He asked
occasional questions. He asked "What is
the meaning of issue?"

MR. DARVALL: The evidence you gave is that
the only question he asked in relation to
this will was about the Googoo Becha trust?
-- That was not the only question he asked at
all. That was one of the questions he asked;
it was one of the paramount questions he
wanted to be satisfied about. 40

You are here on oath? -- Yes, I am.

You have given evidence in chief of one version; you are now giving another version? -- There is no intention to mislead.

10 I am not asking about intention. Do you appreciate that? -- I appreciate that I read through the will carefully in plain English and if he did not understand a word I substituted another which he understood.

Can you remember any occasion where you gave explanation as to the meaning of any word? -- We are going back now ten years.

I am merely asking you have you got any recollection? -- Not at the moment, I can't pinpoint any.

20 Would you go to paragraph 6(d) of the will and you will see there it says "including at the discretion of my trustee an optional or compulsory purchasing clause as my trustee shall think fit". Do you know whether you were asked to give any explanation as to the meaning of that paragraph (d)? -- No, I don't recall specifically.

I take it you do not know whether you were asked or not? -- That is right.

30 Can you recall any specific portion of the will where explanation was asked? -- I do not specifically recall; I know there were points raised, I don't recall what they were.

However, no points were raised when the will was read through in front of the Public Trustee, is that correct? -- That I am not sure of either.

40 So you are hazy about both these portions, is that right? -- I am a little hazy about the actual reading of the will. I can't recall whether Mr. Gregg read it or I read it.

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And you cannot recall whether there was any explanation required at that time?
 -- I don't think that there was but I do not recall.

You say that he was quite a frequent visitor to your house? -- Yes.

This is over the latter period. What do you mean by frequent? -- He might call in once every three weeks.

Would you call in on him as well? -- I sometimes stopped on the way home from work. I would see him outside the workshop and he would hail me and say, "Spare a few minutes".

10

And I take it that your friendship had continued uninterrupted for a number of years? -- Yes.

Of course at one time he was heavily penalised by the Revenue Department, was he not, at a time when you were a member of that Department? -- No.

20

That is incorrect, is it? -- That was when I was working with Cromptons he was heavily penalised for income tax.

MR. DARVALL: And not when you were working in that Department, is that so? -- I never at any time saw his returns.

I am not suggesting for a moment that you did. I am just suggesting that while you were a member of the Inland Revenue Department he himself was heavily penalised? -- He may have been, but my recollection was that it was before I joined the Inland Revenue.

30

You were at Inland Revenue from 1947 to 1956 approximately, were you not? -- Yes.

And the fact that he had been penalised by that Department had no effect upon your personal association and friendship with him? -- I was not in the Inland Revenue Department.

Well the fact that he had been penalised had no effect upon your personal relationship with

40

him? -- No, that was separate - I understand he appealed against the Inland Revenue Department; it was eventually settled out of court.

Back in 1939 he made a gift of some land to you, did he not? -- No, he did not.

Did he ever make a gift of any land to you? -- He sold me some land a little cheaper than the block next door.

10 He gave you a favourable price, is that right? -- Slightly favourable; a difference of £50 in £350. I paid £300.

And £350 was - - - ? -- A block nearby he sold for £350.

And they were two choice sections in the block. were they not? -- No, I bought a block for £600 and then later on I bought a block beside it.

20 You first asked him to give you two sections of land in blocks facing Princes Road? -- I asked if he would reserve when he had a subdivision.

And I am suggesting to you that you asked him to give it to you? -- No.

This was about 1939, was it not? -- It was after the Japanese came into the War.

30 You suggest it was after December 1942, do you? -- Wait a minute - I will take that back - I can't remember. He bought a block of land for the estate and Cromptons handled the deal.

And you were the chief managing clerk at the time? -- I was, and all the offers were submitted to the trustees in Sydney and Bidesi was the one that had the highest offer.

40 And his son, Mr. S.M. Bidesi, spoke to you about the transfer of this land to you from his father, didn't he? -- Oh yes, it must have been discussed.

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He was objecting to the terms upon which
the land was to be transferred to you? --
Never to me.

Never objected to you, didn't he? -- No.

MR. DARVALL: What I suggest is that you
approached the father and asked him to
give you these blocks as a gift? -- No,
I did nothing of the sort.

And that they were the best portion of the land?
-- They were a good portion of the land.

10

And that Mr. S.M. Bidesi saw you and told you
that you were acting wrongly in seeking
to obtain this land from their father? --
That is a lie. I asked the father to
reserve for me when he had a subdivision
and in fact I helped him with the subdivision.

I am suggesting that at about this time you and
Mr. S.M. Bidesi ceased to be on friendly
terms? -- No. I thought I was friendly with
him right up to the father's death, because
I had dealings with him.

20

You say you were helping the father with the
subdivision at this stage? -- Yes.

Were you receiving any monetary reward? -- No
monetary reward whatsoever.

Weren't you expecting that your reward would be
from the transfer to you of this land? --
No, I merely introduced him to a surveyor.

And then in 1953 I think you built the Bel Air
flats, is that so? -- 1953 or - I think it
was later than that.

30

About that time. And you wished to purchase an
adjoining block of land at the rear linking
the block in Mead Road, is that correct? --
Yes, I asked - no, pardon me I am wrong
there - I don't recall that, but I do recall
when the land was sold that I asked the
Director of Road Builders when they had a
subdivision if it would be possible to buy
a strip to an unmade road.

40

What I am putting to you is that you approached

Mr. Bidesi and asked for an area of approximately ten acres adjoining your land at the rear; you asked to buy it? -- No.

I suggest that you asked to buy it at a price of £1000? -- No.

10 And I suggest to you that Mr. S.M. Bidesi and Mr. S.P. Bidesi spoke with you about that saying again that you had acted wrongly in trying to persuade their father to sell the land at such a low price? -- That is not true.

And I suggest that the sons of the first marriage had a strained relationship with you after this event? -- No, as far as I was aware they were very friendly always.

They all continued to be very friendly to you? -- Yes.

20 When you were reading over this will to Mr. Bidesi and making pauses on the way through, this was before you went in to the Public Trustee, you say that you and Mr. Bidesi were the only two persons present? -- Yes, just the two of us.

That Christine Andrews was not present on that occasion and neither was Linnea Behn? -- No.

30 The last clause in the will reads, "And I declare that during my lifetime I have made adequate provision for the children of my first marriage". Was that put in on the express instructions of Mr. Bidesi? -- Yes.

40 MR. DARVALL: What did he say - what did he ask you to do? -- He said, "I have looked after the children of my first marriage, I have employed them, some of them are well-to-do, and it is the children of the second marriage that I am worried about".

When did he tell you that? -- This was at the time I was taking his instructions

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This is the time you took down the conversation in longhand, is that right? -- Yes. I had told him that in my mind all children are the same ----

I have not asked you that question. Might that be struck out?

MR. WARBURTON: Yes. It would be fairer to yourself if you simply wait for the questions and then answer them, Mr. Wheatley.

MR. DARVALL: When had there been trouble with Muni Deo? 10

MR. WARBURTON: You mean between the father and son?

MR. DARVALL: Between the deceased and his sons? -- It was during the period I was working in the Inland Revenue.

And there had been strained relations between them since, had there? -- The old man told me so.

But there was no strained relationship between yourself and any of the other children? -- No. 20

I take it, Mr. Wheatley, that in fact you did not give any explanation to Mr. Bidesi to clarify the situation of the distribution of corpus as against the payment of income? -- No.

I have no further questions.

RE-EXAMINED BY MR. WILCOX:

MR. WILCOX: You were asked about your relationship with two of Bidesi's sons. You described that relationship. Can you tell us up to what period that continued? -- Right to this day as far as I am concerned. I had asked the sons in some cases the Public Trustee had to take - one was against the valuation of the land - I wanted the educated sons to come forward but they refused and made quite clear that they would do nothing to assist the second family. As far as I was concerned I wasn't aware of any strain - always courteous and polite. 30

I am asking about your personal relationship 40

distinct from what you might have had to do officially. What was that relationship? -- Well when I saw them everything was friendly.

Did that apply even after the death of their father and after the terms of the will were known?

MR. DARVALL: I would ask my friend not to lead.

10 THE WITNESS: There was an instance just after the will with Muni Deo which concerned money in the house; there was a little strain there when I demanded that it be handed over to the Public Trustee.

MR. DARVALL: I object to this.

MR. WILCOX: I am asking you about your relationship with them. You refer to a strain -- was that a permanent strain or only a temporary strain? -- It was not a permanent strain.

20 Subsequently to that, prior to your leaving Fiji did you have contact with Muni Deo? -- Yes, occasionally.

On those occasions what was his attitude towards you as far as you can ascertain? -- He showed no animosity, I was not aware of any.

30 You made some reference to a view which you expressed to the deceased at the time that he was discussing his proposed will with you about rights of children in the matter. What was that view? What did you say to him? -- I said "Whether or not you are disappointed or pleased with your children, they are all your children and in my opinion they should share alike in your estate".

And what did Bidesi say to that? -- He then brought up the question but I have - - -

40 MR. DARVALL: This I do not think arises from cross-examination.

Exhibits

29

Transcript
of evidence
of H. Wheatley

15th December
1967

continued

Exhibits

29

Transcript
of evidence
of H.Wheatley
15th December
1967
continued

MR. WILCOX: I think it probably does on
the relationship - - -

MR. WARBURTON: Mr. Darvall objects to these
questions as not arising out of cross-
examination. His objection is noted.

MR. WILCOX: You were giving us the answer
that he made. What did he say, we will
- put it that way; to be perfectly sure,
let us go back a little. (Previous
questions read commencing "You made some
reference....(read to "And what did Bidesi
say to that?")

10

And what did Bidesi say to that? -- He said
"That is the white man's attitude".

Thank you.

(THE WITNESS WITHDREW)

EXAMINATION CONCLUDED

(It was agreed between counsel that
the original transcript of evidence
should be made available to Mr.
Wheatley through Messrs. Sly & Russell
in order that he may read it and sign it
if if he believes it accurately to
represent what he said. In the event
that he disputes the accuracy of the
transcription, the matter is to be
referred to the Commissioner who will
make any necessary amendments after
reference to counsel).

20

EXHIBIT 31 AGREEMENT,
BIDESI AND SURYA MUNIDLAL
BIDESI

Exhibits

31

Agreement,
Bidesi and
Surya
Munidlal
Bidesi

21st December
1956

FIJI FIVE
SHILLINGS

MEMORANDUM OF AGREEMENT made this 21st day
of December 1956 BETWEEN: BIDESI (Father's
name Chuman) of Suva trading as "BIDESI AND
10 SONS" (hereinafter called "Bidesi Senior") of
the one part and SURYA MUNIDLAL BIDESI (Father's
name Bidesi) of Suva his son (hereinafter called
"Bidesi Junior") of the other part WHEREAS
Bidesi Senior has claimed from Bidesi Junior
certain sums totalling £8,857.17.9 (EIGHT
THOUSAND EIGHT HUNDRED AND FIFTYSEVEN POUNDS
SEVENTEEN SHILLINGS AND NINE PENCE) for moneys
lent and advanced AND WHEREAS Bidesi Junior
has disputed the said claim in part and has
20 further claimed from Bidesi Senior a sum still
undetermined by way of service rendered as
manager of the firm of "BIDESI & SONS"
AND WHEREAS the parties have agreed to settle
their respective claims in the manner herein-
after appearing NOW THIS AGREEMENT WITNESSETH
as follows :-

1. Bidesi Junior will upon the execution
hereof transfer to Bidesi Senior that
Mortgage Registered No. 57423 given to
30 Bidesi Junior by K.W.March Limited over
Certificate of Title No. 6167 in Marks
Street, Suva, under which there is now
owing the principal sum of £6,500 (Six
thousand five hundred pounds) as Bidesi
Junior doth hereby warrant.
2. Bidesi Senior will upon the execution
hereof pay to Bidesi Junior the sum of
£2,000 (Two thousand pounds)
3. In consideration of the premises and in
40 consideration of the transfer of the said
Mortgage No. 57423 and of the payment of
the said sum of £2,000 (Two thousand pounds)
each of the parties hereto hereby releases
the other of them from all sums of money
actions proceedings accounts claims and
demands whatsoever which each of them now

Exhibits

31
Agreement,
Bidesi and
Surya
Munidlal
Bidesi
21st December
1956
continued

has or at any time heretofore had
against the other for or on account of
or in relation to any act cause matter
or thing whatsoever down to and inclusive
of the date of this agreement.

IN WITNESS whereof the hands of the parties
hereto the day and year first before written

SIGNED by the said BIDESI }
(F/n Chuman) in the } (Sgd) Bidesi in Hindi
presence of :- }
10

(Sgd) J.N.Falvey
Solicitor
Suva

SIGNED by the said SURYA }
MUNIDLAL BIDESI (F/n } (Sgd) S.M. Bidesi
Bidesi) in the presence }
of :- }

(Sgd) J. N.Falvey
Solicitor
Suva
20

EXHIBIT 32(A)
 LETTER, GRAHAME & CO. TO
 Wm. SCOTT & CO.

Exhibits

32(A)
 Letter,
 Grahame & Co.
 to Wm. Scott
 & Co.

10/152

McF/re Attention: Mr. H.Saunders

12th July 1967

12th July, 1967

Messrs. Wm. Scott & Co.,
 Solicitors,
 SUVA

10 Dear Sirs,

re: Bidesi Estate - Supreme
 Court Action 7/66

20

We refer to the telephone conversation with your Mr. Saunders in reference to the taking of evidence on commission in Australia. As we had informed Mr. Saunders, it has become very necessary that we have the evidence of Mr. Harry Wheatley, formerly of the Registrar General's office, as a witness. We wrote to Mr. Wheatley some time ago and he informed us that he had recently suffered a coronary occlusion and is under specialised medical attention, and could not possibly travel to Fiji.

Mr. Wheatley knew the late Mr. Bidesi very well and we are instructed that he took the instructions for the will knowing Mr. Bidesi's affairs very well, and was present when the Will was executed.

30

We have written to our Sydney agents, Messrs. Sly & Russell in reference to a suitable person who might act as commissioner or special examiner, and they have advised that we could have the services of Mr. Max Egerton Warburton, Barrister, 174 Phillip St, Sydney.

We shall be obliged if you would give your consent to this and then we would make an application supported by Affidavit in the Supreme Court to take evidence on commission in Sydney. This would mean that we would have a supporting

Exhibits

32(A)
 Letter,
 Grahame & Co.
 to Wm. Scott
 & Co.
 12th July 1967
 continued

Affidavit from Mr. Wheatley that he is unable to come to Suva for medical reasons, and also the consent in writing of Mr. Warburton.

If you would signify your consent to this matter by writing us a letter in reply, then we could proceed without delay.

Thanking you,

Yours faithfully,

GRAHAME & CO.

32(B)
 Letter,
 Wm. Scott
 & Co. to
 Grahame & Co.
 24th July 1967

EXHIBIT 32 (B)

10

LETTER, Wm. SCOTT & CO. TO
 GRAHAME & CO.

Wm. SCOTT & CO.
 Barristers & Solicitors
 Notaries Public
 Commissioners for Supreme
 Court of Fiji and England

Eldon Chambers,
 Suva, Fiji

MJCS/SN:21032
 Your ref: 10/152 McF/re

24th July, 1967

20

Messrs. Grahame & Co.,
 Solicitors,
S U V A

Dear Sirs,

re: Estate of Late Bidesi

With reference to your letter of 12th of July we have no objection of the course suggested being taken by you, provided of course, there is the necessary evidence that Mr. Wheatley is unfit to come to Suva.

30

Yours faithfully,

Wm. SCOTT & CO.

(Sgd) Wm. Scott & Co.

EXHIBIT 34
AFFIDAVIT OF S.M. BIDESI

Exhibits
34
Affidavit of
S.M.Bidesi
16th June
1966

IN THE SUPREME COURT OF FIJI
PROBATE JURISDICTION

No. 6486

IN THE ESTATE OF BIDESI
SON OF CHUMAN LATE OF SUVA
IN THE COLONY OF FIJI,
BUILDING CONTRACTOR, DECEASED

- 10 I, SURYA MUNIDLAL BIDESI son of Bidesi of Suva
in the Colony of Fiji, Building Contractor, make
oath and say as follows :-
1. THAT probate of the alleged last Will and
Testament dated the 18th day of April, 1957,
of Bidesi, son of Chuman, deceased, who died
on the 15th day of November, 1957, was on the
21st day of April, 1959, granted to the
Public Trustee, the executor named therein.
 - 20 2. THAT the deceased could not have understood
the contents of the alleged Will because
he could not understand or read the English
language sufficiently well.
 3. THAT the deceased could not sign his name
in English.
 4. THAT the alleged will was not read over,
explained and interpreted to the deceased
in the language he spoke, understood and
wrote, i.e. Hindustani or Hindi.
 - 30 5. THAT I am the lawful son and one of the next
of kin of the deceased and one of the persons
entitled to share in the estate under law
of intestate succession.
 6. THAT I have searched and made wide enquiries
and I verily believe that no other form of
testamentary disposition or will has been
made by the deceased, and that he died
intestate.
 7. THAT the said grant of probate ought to be

Exhibits

revoked.

34
Affidavit of
S.M. Bidesi
16th June
1966
continued

SWORN by the said SURYA)
MUNIDLAL BIDESI at Suva } (Sgd) S.M.Bidesi
this 16th day of June }
1966, before me :

(Sgd) Illegible

A Commissioner for Oaths

O N A P P E A L

FROM THE COURT OF APPEAL OF FIJI

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

- and -

THE PUBLIC TRUSTEE OF
FIJI (Defendant) Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2A 3UL

Solicitors for the Appellants

Solicitors for the Respondent