

~~P.C.~~
~~G.N.S.G.2.~~

Judgment
18, 1965

IN THE PRIVY COUNCIL

No. 20 of 1964.

ON APPEAL

Territory : British Guiana.

FROM THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

BETWEEN

SHEILA PRESCOD

AND

BENJAMIN JACOB JAMES

(*Defendants*) APPELLANTS

AND

ELAINE REECE

(*Plaintiff*) RESPONDENT

RECORD OF PROCEEDINGS

~~P.C.~~
~~GNSGD~~

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
STUDIES
- , FEB 1966
25 RUSSSELL SQUARE
LONDON, W.C.1.

80957

IN THE PRIVY COUNCIL

No. 20 of 1964.

ON APPEAL

FROM THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

Territory: British Guiana

— BETWEEN —

SHEILA PRESCOD,

and

BENJAMIN JACOB JAMES,

(Defendants) APPELLANTS

— and —

ELAINE REECE.

(Plaintiff) RESPONDENT.

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11.	Entry of appearance for Esther James, party cited to see proceedings	23.60

EXHIBITS (included)

Exhibit Mark	Description of Exhibit	Date	By whom and date tendered.
"A"	Will	30. 8. 58	L.P. Kerry 2. 3.60
"B"	Power of Attorney	11. 11. 58	—do.—
"E"	Declaration & Inventory	18. 2. 59	E. Reece 4. 1.61

EXHIBITS (excluded)

"C"	Letter	21. 8. 59	L. P. Kerry 2. 3.60
"D 1—28"	Twenty-eight receipts		T. B. Fraser 23. 3.60
"F 1—2"	Needles		S. Prescod 4. 1.60
"F 3—6"	Four bottles		—do.—

LIST OF DOCUMENTS REQUESTED TO BE INCLUDED IN THE RECORD BY ONE PARTY AND OBJECTED TO BY THE OTHER AND/OR THE REGISTRAR OF THE COURT BELOW:

NIL

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

CIVIL

Territory: BRITISH GUIANA

— BETWEEN —

CLARABEL PICKETT,

BENJAMIN JAMES,

SHEILA PRESCOD,

(Defendants) APPELLANTS

10

— and —

ELAINE REECE,

(Plaintiff) RESPONDENT.

**BEFORE THE HONOURABLE MR. JUSTICE WYLIE, FEDERAL
JUSTICE (IN CHAMBERS)**

DATED THE 2ND DAY OF SEPTEMBER, 1961

ENTERED THE 14TH DAY OF SEPTEMBER, 1961

20 UPON application on behalf of the abovenamed appellants dated the 13th day of July, 1961 AND UPON READING the said application and the affidavit of Mr. Percival Augustus Cummings, Barrister-at-law, sworn to on the 12th day of July, 1961 AND UPON HEARING Mr. M. C. Young of Counsel for the appellants and Mr. J. A. King of Counsel for the respondent IT IS ORDERED that the time for appealing be extended to 16th September, 1961 AND IT IS FURTHER ORDERED that there be costs to the respondent in any event.

BY THE COURT

A. Chung

DEPUTY REGISTRAR,

FEDERAL SUPREME COURT.

IN THE FEDERAL SUPREME COURT
CIVIL APPELLATE JURISDICTION
BRITISH GUIANA No. 36 of 1961

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

In the matter of the Estate of JACOB JAMES, deceased.

— BETWEEN —

SHEILA PRESCOD, and

BENJAMIN JACOB JAMES,

APPELLANTS (Defendants)

— AND —

(British
Guiana Action
No. 704/59)

10

ELAINE REECE,

RESPONDENT (Plaintiff).

NOTICE OF APPEAL MOTION.

TAKE NOTICE that the Appellants (Defendants) being dissatisfied with the whole decision **except the order as to cost** more particularly stated in paragraph two hereof of the Supreme Court contained in the judgment of the Honourable Mr. Justice Gordon, dated the 29th day of May, 1961, doth hereby appeal to the Federal Supreme Court upon grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4. 20

AND the appellants further state that the names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

2. For these reasons the Court pronounces the Will to be of full force and effect and orders that it be admitted to probate.

3. (a) The learned trial Judge erred in law and misdirected himself when

(1) Dealing with the case as if it were an ordinary civil action in which the preponderance of evidence on one side was sufficient to determine the issues raised. 30

(ii) He held that the mere belief by him of the evidence adduced on behalf of the Respondent (Plaintiff) was sufficient to discharge the burden of proof of the issues raised.

(b) That the decision was erroneous and could not be supported having regard to the evidence as a whole because

10

(i) The medical evidence established that the testator was suffering from a debilitating disease, which having regard to the nature of his self administered and indiscriminate doses of insulin was likely to have affected his mind and impaired his judgment at all material times.

(ii) The learned trial Judge did not address his mind to the cumulative effect of all the suspicious circumstances but dealt with each seriatim.

20

(iii) The various reasons given by the trial Judge for his findings of fact were based upon a consideration of irrelevant evidence, a misunderstanding of the medical evidence and the failure to appreciate the need in the circumstances for positive affirmative proof of the testamentary capacity of the deceased at all material times.

(iv) The learned trial Judge dealing with the questions of testamentary capacity and **want of knowledge and approval** at the material times, did not address his mind to the effect of the testimony of the following witnesses:—

30

ESTHER JAMES — That he injected himself thrice daily with the type of insulin which was found in his room after his death and produced in Court, and that he exhibited daily during this period the symptoms which the Doctors described as indicating hypoglycemia as the result of overdoses of insulin. That he administered this treatment and showed these symptoms on the day the Will was executed. He took an injection at 11 a.m. on that day (3 hours before the Will was executed).

40

CLAUDETTE SHEPHERD—aged sixteen and granddaughter of the testator who resided in his home, — that she took hot water in to her late grandfather daily for him to sterilise his hypodermic needle, that she saw him inject himself. She saw him administer an injection on the morning of

the day when the Will was executed. He was sick on that day and he was very weak.

CLINTON WONG — Barrister-at-Law, who was present at the execution and witnessed the Will — that when he saw the testator for a few minutes on the day on which the instructions for the will were given to one Fraser, the testator “was a sick man,” and that on the day of the execution of the Will the deceased looked sick physically so that he volunteered “to accommodate the deceased” by executing the Will in a car at a street corner in the city of Georgetown, to save him climbing the steps of his chambers, and that the whole process of reading over and explaining took not more than ten minutes. **10**

THOMAS BEDFORD FRASER — That at the material times the testator appeared “Unduly anxious to make a Will.”

4. And the Appellants ask that the judgment of the Court be set aside and that the Federal Supreme Court do pronounce against the said Will of Jacob James, deceased, propounded by the Respondent (Plaintiff). **20**

5. Persons directly affected by the appeal:

The beneficiaries under the alleged last Will of Jacob James, deceased, namely:

NAME	ADDRESS
1. CALEB THEOPHILUS JAMES	No. 10 Mahaicony, East Coast Demerara.
2. CHRISTOPHER JAMES	British Guiana Rice Development Company, Mahaicony Abary, East Coast Demerara. 30
3. BENJAMIN JACOB JAMES (Defendant) Appellant	168 Charlotte Street, Bourda, Georgetown.
4. MILLICENT SHEPHERD	Zes Kinderen, Mahaicony, East Coast Demerara.
5. CLARABEL PICKETT	No. 10 Mahaicony, East Coast Demerara.

	NAME	ADDRESS
6.	ESTHER REBECCA JAMES	No. 10 Mahaicony, East Coast Demerara.
7.	ELAINE REECE (Plaintiff) Respondent	No. 10 Mahaicony, East Coast Demerara.
8.	SHEILA PRESCOD (Defendant) Appellant	No. 10 Mahaicony, East Coast Demerara.
10	9. LUCILLE WALDRON	No. 10 Mahaicony, East Coast, Demerara.

Dated this 15th day of September, 1961.

ANDREW GOMES,
SOLICITOR FOR THE APPELLANTS
(Defendants).

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

(PROBATE)

In the matter of the Estate of JACOB JAMES deceased

— BETWEEN —

ELAINE REECE, Plaintiff

— and —

CLARABEL PICKETT

BENJAMIN JACOB JAMES

SHEILA PRESCOD, Defendants.

10

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

To:— (1) CLARABEL PICKETT

the wife of Walter Pickett to whom she was married after 20th August, 1904 of Virginia Village, East Coast, Demerara, whose address for service is at the office of SAWH & VALZ, Lot 217 South Street, Lacytown.

(2) BENJAMIN JACOB JAMES

20

whose address for service is at the office of GOMES & GOMES, 2 Croal Street, Georgetown.

(3) SHEILA PRESCOD

whose address for service is at the office of GOMES & GOMES, 2, Croal Street, Georgetown.

WE COMMAND YOU, that within ten days after the service of this Writ on you inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of ELAINE REECE, and take notice that in default of your so doing, the said ELAINE REECE may proceed therein, and judgment may be given in your absence. 30

Witness the Honourable FRANK WILFRED HOLDER, Q.C. Knight Chief Justice of British Guiana, the 11th day of May in the year of

Our Lord One thousand nine hundred and fifty-nine. The defendants or either of them may appear hereto by entering an appearance either personally or by solicitor at the Registry at Georgetown, Demerara.

INDORSEMENT OF CLAIM

10 The plaintiff claims to be the sole executrix named in the last Will and testament dated the 30th day of August, 1958 of JACOB JAMES, late of Mahaicony, East Coast, Demerara, deceased, who died on the 17th day of December, 1958, and to have the said Will established.

This Writ is issued against you, the said Clarabel Pickett, Benjamin Jacob James, and Sheila Prescod as the children of the deceased and three of the persons entitled to share in the estate of the said deceased, in the event of an intestacy, and because you have entered a caveat.

Dated the 11th day of May, 1959.

H. C. B. HUMPHRYS,
Solicitor for the Plaintiff.

CERTIFICATE

20 A sufficient certificate in verification of the indorsement on this Writ to authorise the sealing thereof has been produced to me this 11th day of May, 1959.

ADITYA T. SINGH,
Deputy Registrar

This Writ was issued by HUGH CECIL BENJAMIN HUMPHRYS, Solicitor, of and whose address for service is at the office of Cameron & Shepherd, Lot 2, High Street, Newtown, Georgetown, Solicitor for the Plaintiff who resides at Plantation No. 10 Mahaicony, East Coast Demerara.

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

(PROBATE)

In the matter of the Estate of JACOB JAMES deceased

Between:—

ELAINE REECE, Plaintiff

— and —

CLARABEL PICKETT
BENJAMIN JACOB JAMES 10
SHEILA PRESCOD Defendants.

AFFIDAVIT OF SCRIPTS

I, ELAINE REECE, of Plantation No. 10, Mahaicony, East Coast, Demerara, the Plaintiff in this action, make oath and say, that no paper or parchment writing being or purporting to be or having the form or effect of a Will or codicil or other testamentary disposition of Jacob James of Mahaicony, East Coast, Demerara, deceased, deceased in this action, or being or purporting to be instructions for, or the draft of, any will, codicil or other testamentary disposition of the said Jacob James has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, or to the hands, possession or knowledge of my solicitors in this action so far as is known to me, this deponent, save and except the true and original last Will of the said deceased now remaining in the principal registry of this court, the said Will bearing date the 30th day of August, 1958. 20

Sworn to at Georgetown, Demerara. Elaine Reece 30
this 11th day of May, 1959.

before me

HUBERT F. EARL,
Commissioner for Oaths to Affidavits.

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

(PROBATE)

In the matter of the Estate of

JACOB JAMES, deceased

BETWEEN:—

ELAINE REECE,

Plaintiff

—and—

CLARABEL PICKETT

BENJAMIN JACOB JAMES

SHEILA PRESCOD

Defendants.

10

STATEMENT OF CLAIM

1. The Plaintiff is the executrix appointed under the last Will and Testament of JACOB JAMES late of Mahaicony, East Coast, Demerara who died on the 17th day of December, 1958, the said Will bearing the date the 30th day of August, 1958.

20

2. The Plaintiff is also a specific legatee and the residuary legatee under the aforesaid Will.

3. The Plaintiff claims:—

(a) That the Court shall decree probate of the said Will in solemn form of law.

(b) Costs.

Dated this 23rd day of May, 1959.

J. A. KING,
Of Counsel

H. C. B. HUMPHRYS,
Solicitor.

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

(PROBATE)

In the matter of the Estate of

JACOB JAMES, deceased

BETWEEN:—

ELAINE REECE,

Plaintiff

— and —

CLARABEL PICKETT

BENJAMIN JACOB JAMES

SHEILA PRESCOD

Defendants.

10

AFFIDAVIT OF SCRIPTS.

WE, BENJAMIN JACOB JAMES of lot 168 Charlotte Street, Bourda, Georgetown, and SHEILA PRESCOD, born James of Plantation No. 10 Mahaicony, East Coast, Demerara, two of the defendants in this action, make oath and say:

1. That no paper or parchment writing being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of Jacob James late of No. 10 Mahaicony, East Coast, Demerara, deceased, the deceased in this action, or being or purporting to be instructions for or the draft of, any will, codicil, or other testamentary disposition of the said Jacob James has at any time either before or since his death come to the hands, possession, or knowledge of us, these deponents, or to the hands, possession, or knowledge of our solicitors in this action so far as is known to us these deponents save and except the will of the said deceased now remaining in the Registry of this Court, the said will bearing date the 30th of August, 1958, and save and except — 20 30

A will of the said deceased, the date of which is unknown, which was drawn by Mr. Charles Shankland, Barrister-at-Law. This will was witnessed by Mr. Shankland and another witness who is unknown to the deponents. The Executors of this will were the deceased's widow, Esther James, and the deceased's son, Christopher James.

Under this will, the deceased gives Esther James a life interest

in all his property and on his death, the deceased's property was to be divided equally amongst ten of his children namely, Millicent, Christopher, Clarabel, Elaine, Harriett, Benjamin, Sheila, Caleb, Lucille and Maureen.

SWORN TO BY THE SAID BENJAMIN
JACOB JAMES and SHEILA PRESCOD
born James at Georgetown, Demerara,
this 27th day of May, 1959.

} Benjamin James
} Sheila Prescod

BEFORE ME,

F. I. DIAS,

A COMMISSIONER FOR OATHS.

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

(PROBATE)

In the matter of the Estate of

JACOB JAMES, deceased

BETWEEN:—

ELAINE REECE,

Plaintiff

— and —

CLARABEL PICKETT

BENJAMIN JACOB JAMES

SHEILA PRESCOD

Defendants.

10

DEFENCE.

1. The execution of the said Will was obtained by the undue influence of the plaintiff and others acting with her.

Substance of the Case

2. The deceased was sixty-six years of age at the date he executed the alleged will of the 30th of August, 1958, and for six years prior to his death had been in failing health. He was suffering from diabetes and high blood pressure and had a lump in his side where he had been butt by a cow and suffered considerable pain in his knees, his stomach and his side, and was for four years under constant medical treatment before he died on the 17th of December, 1958. 20

3. As a result of age and illness he suffered from mental weakness, would speak to himself and would often go into a violent rage and commit acts of violence and intimidation. His mind was easily influenced and affected. The plaintiff on occasions spoke ill of her brothers and sisters to the deceased with a view of poisoning his mind against them and in fact did so. 30

4. The plaintiff was given a message by the deceased whilst in St. Joseph's Mercy Hospital in the month of December, 1958,

that he wanted to see his wife and that she must go and see him at the hospital, which message the plaintiff never gave to her mother.

10 5. The alleged will was drawn by one Thomas Bedford Fraser who at the time of its execution was indebted to the deceased and still is indebted to the estate of the deceased. The said Thomas Bedford Fraser used to be a clerk of Charles Shankland, a Barrister-at-Law and the deceased's legal adviser and who had made a previous will for the deceased, in which the deceased had left a life interest to his wife and on her death, his estate was to be divided equally amongst his children who were then ten in number. The deceased appointed his wife and his son, Christopher James, the executors of that will.

6. The plaintiff and others together unduly influenced the deceased into executing a will in which he left the plaintiff as his sole executrix and about two-thirds of his estate that is \$105,633.21 to her and \$1,985.00 between her seven brothers and sisters and \$61,527.64 to his widow. The deceased's estate being declared to by the plaintiff at a nett value of \$169,145.85.

20 7. The deceased's daughter, Sheila Prescod, one of the defendants herein used to keep the deceased's books and after she got married in 1952, the deceased's daughter Lucille kept the deceased's books but fell ill in January, 1958, and went into hospital. Thereafter the plaintiff kept the books of the deceased until his death on the 17th of December, 1958. The plaintiff also kept the key to the deceased's safe. The deceased was a moneylender, a coconut and rice farmer, a landed proprietor and a cattle rancher and kept large sums of money in his safe. At the death of the deceased there was about \$10,000.00 in cash in the safe, which the plaintiff has not included in the deceased's estate duty inventory. The plaintiff removed after the death of the deceased, all the deceased's cash and documents and papers from the said safe of the deceased's home at No. 10 Mahaicony, East Coast, Demerara, and has handed the key to the empty safe to the deceased's widow.

30

8. In the alternative, the defendants Benjamin Jacob James and Sheila Prescod say that the deceased at the time that the said alleged will purports to have been executed **was not of sound mind, memory and understanding.**

Substance of the Case.

40 9. At the time the deceased executed the said alleged will he was of the age of sixty-six years suffering from diabetes and high blood pressure for the past six years. He was at the time of the execution of the said alleged will in such a condition of mind as to be unable to understand the nature of his acts and its effects, the extent of the property of which he was disposing, or to comprehend and appreciate the claims to which he ought to give effect.

Particulars of Delusions.

10. **The deceased was not normal mentally.** As a result he flew into violent fits of temper and rage and **unless restrained** would have seriously assaulted on several occasions so as to cause actual bodily harm his wife and children. **He often had to be held** and a cutlass or stick taken away from him. On one occasion he bit his daughter Lucille on her arm whilst she was holding on to the cutlass. **As a result** he suffered from the **delusion** that his children disliked and despised him, in which he was encouraged by the plaintiff. The deceased slept in a room by himself and never ate his meals with his family at the dining table. His wife had to take his meals to him wherever he was, sometimes on his daughter **Maureen's tomb**, and when he saw the food and if he did not like what it was, he would throw the plate with its contents at his wife. **10**

11. **The defendants Benjamin Jacob James and Sheila Prescod claim:—**

(a) That the Court will pronounce against the said will propounded by the plaintiff.

(b) Costs. **20**

Delivered this 17th day of June, 1959.

PERCIVAL A. CUMMINGS,
Of Counsel

ANDREW GOMES,
SOLICITOR FOR THE DEFENDANTS
BENJAMIN JACOB JAMES and SHEILA
PRESCOD.

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

(PROBATE)

In the matter of the Estate of

JACOB JAMES, deceased

BETWEEN:—

ELAINE REECE,

Plaintiff,

— and —

10

CLARABEL PICKETT

BENJAMIN JACOB JAMES

SHEILA PRESCOD

Defendants.

DEFENCE OF FIRST-NAMED DEFENDANT.

1. The first-named defendant is a lawful daughter and a person entitled on intestacy to the estate of Jacob James, late of Mahaicony, in the county of Demerara and colony of British Guiana, who died on the 17th day of December, 1958, intestate.

20

2. The said alleged will of the deceased was not duly executed according to the provisions of the Wills Ordinance, Chapter 47.

Substance of case

The defendant puts the plaintiff to the proof that the provisions of the said Ordinance were complied with and that the testator did make or acknowledge his signature to the said alleged will in the presence of the witnesses.

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

30

4. The deceased never gave the instructions for the 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 nature, contents or effect thereof.

5. The first-named defendant therefore counter-claims: that the Court shall pronounce against the said alleged Will propounded by the plaintiff.

Dated this 1st day of March,
1960, at Georgetown, Demerara.

J. O. F. HAYNES,
Of Counsel

A. R. SAWH,
Solicitor for first-named defendant.

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

(PROBATE)

In the matter of the Estate of

JACOB JAMES, deceased

BETWEEN: —

ELAINE REECE

Plaintiff

— and —

10

CLARABEL PICKETT

BENJAMIN JACOB JAMES

SHEILA PRESCOD

Defendants.

CITATION

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

20

To: MRS. ESTHER JAMES of No. 10, Mahaicony, East Coast, Demerara.

WHEREAS it appears by the affidavit of Sheila Prescod sworn to on the 1st day of March, 1960 that there is now depending in our Supreme Court of British Guiana a probate action entitled Elaine Reece against Clarabel Pickett, Benjamin Jacob James and Sheila Prescod, 1959 No. 704 Demerara, wherein the plaintiff is proceeding to prove in solemn form of law the alleged last will and testament dated the 30th day of August, 1958 of Jacob James of No. 10 Mahaicony aforesaid.

30

AND WHEREAS it further appears by the said affidavit that you are the lawful widow of the said deceased, and one of the persons entitled to share in his estate in the event of an intestacy.

Now this is to give notice to you the said Esther James to appear in the said action, either personally or by your solicitor.

should you think it for your interest so to do, at any time during the dependence of the said action and before final judgment shall be given therein.

AND TAKE NOTICE that in default of your so doing, our said Court will proceed to hear the said will proved in solemn form of law and pronounce judgment in the said action, your absence notwithstanding.

Dated at Georgetown, Demerara
this 1st day of March, 1960,
in the ninth year of Our Reign.

10

KENNETH W. BARNWELL,
Sworn Clerk & Notary Public
for Deputy Registrar (Ag.)

NOTES OF EVIDENCE OF TRIAL JUDGE :

ELAINE REECE Plaintiff

vs.

CLARABEL PICKETT

BENJAMIN JACOB JAMES } Defendants

SHEILA PRESCOD }

ESTHER JAMES) Person cited.

Mr. Elliott instructed by Mr. Humphrys for Plaintiff.

10 Mr. Haynes instructed by Mr. Sawh for No. 1 Defendant.

Mr. Cummings instructed by Mr. A. Gomes for Nos. 2 and 3 defendants.

Mr. Young instructed by Mr. J. A. Jorge for Esther James.

Mr. Elliot. Asks to prove will of the late Jacob James in solemn form. He died 17.9.53.

Caveats entered by 3 defendants.

Writ and statement filed.

Defence of Clarabel only put in yesterday.

Will prove**20** **CHILDREN :**

Millicent Shepherd born 20/11/15 married 41. Time of marriage she was given cattle, cash, jewellery and house. She left husband in 1944 for 1 year. Under will she gets \$300 and 10 head of cattle.

Christopher: Born 17/3/17. Married 1941. In 1944 he was put in charge of a rice mill. In 1944 he refused to continue. In 1951 he was given 275 acres of land to manage but gave it up. Later in a row with his father cut him and made a false report to the police. He was therefore not on terms with father. In 1953 went to Burma Rice Scheme. He receives \$25.00.

30

Clarabel: Born 13/1/19. Married Pickett in 1941 left Cane Grove. In 1949 when Cane Grove closed down she and husband went to live with deceased. There she had several quarrels with father and on one occasion got a dagger inciting her husband

to kill her father. In 1955 she begged forgiveness. She was violent and had several convictions. She was given \$25.00 in will.

Elaine Reece: Born 13/11/20. Married 1942. She has always been friendly with deceased. She is executrix and residuary legatee.

Harriet Ross: Born 27/11/23. In 1942 left home when pregnant. Testator brought her back and married her to Ross. She and husband then lived Village 41 Berbice where in 1949 she committed suicide. **10**

Benjamin: April 26. After leaving school refused to work in the rice field. In 1949 testator bought him a tractor. He damaged it. Damages cost \$900: and then he refused to work it. Testator lent him \$1,000. Plaintiff and husband lent \$800.00 with which he bought a lorry. Smashed it. With his money and money from father he got another lorry on hire purchase. He defaulted; lorry seized. Testator gave him another \$1,000 to recover it. He has made no repayments. He was convicted for indecent assault on a daughter of a friend of father. Under will he receives \$300.00. **20**

Sheila Prescod: Born July 1930. Went Barbados in 1951 and married there in 1953. Testator gave her \$1,000 and a cow and calf. In 1955 "Janet" destroyed their house. They came to B.G. Testator refused them a request for \$7,000. As a result she left on bad terms to return to Barbados. She received \$200: and 2 head of cattle under will.

Caleb: Born 1/4/32. Friendly with father till 1951 when he received \$400 for padi sold. Testator asked him to give up \$400: Assault resulted and he was convicted of this assault. He left home; on leaving father gave him an Insurance Policy, **30** \$300: and 18 head of cattle. He left Colony. He returned later but never spoke to each other. Under will he gets \$25.00.

Lucille: Born 1/9/34. Married Waldron. Kept books of her father till 1956 when he discovered she was stealing. Quarrel resulted and she left. On her marriage father gave her money and cattle. Hospitalised with Tuberculosis. Her father paid for her treatment. She gets \$200 and 2 head of cattle under will.

Maureen: Born May 1937. Died in 1957 of brain tumour. **40**

Widow: Esther Rebecca James: Gets under will N- $\frac{1}{2}$ Pln. Mahaicony Creek and buildings thereon. Building except padi bond on S. half. Two Life Insurance policies worth \$11,000.

Evidence re Testator will be that he was a strong, energetic and determined person. Left estate worth \$200,000: Rice farmer, cattle raising, rental of property and money lending.

1937: Ruptured hydrocele.

1954: Blow on foot. Diabetes.

1958: Died.

Refers to circumstances under which will was made.

Refers to the Defences advanced by Nos. 1, 2 and 3 Defendants.

10 (At this stage Mr. Cummings states that Defendants Nos. 2 and 3 will not rely on the defence of undue influence).

LEOPOLD PALIANDY KERRY sworn states:

26, Oronoque Street, Bourda, Acting Deputy Registrar, Supreme Court. Substantive post Conveyancing Officer. I held this latter post for 10 years. I produced original will purported to be made by Jacob James, deceased deposited by Elaine Reece on 9/4/59 — Exhibit "A".

Knew Jacob James for a considerable time. I was familiar with his writing. I say Exhibit "A" looks like his signature.

20 In his acquaintance with me he never made comments to me about his family. He discussed his farming business with me. I regarded him as being alert. He was a strong character.

He died in December, '58. In latter part of '58 he executed a power of attorney. I produced original dated 11/11/58 — Exhibit "B."

Exhibit "B" was signed and executed before me. When executed by James deceased, I explained it and he understood it and he signed. His mental power was not failing.

Not Cross-examined by Mr. Haynes:

Cross-examined by Mr. Cummings:

30 I never saw James write anything other than his signature. Don't know that he could only sign his name.

Looking at signature on Exhibit "A" comparing it with document shown me and dated 21/8/52 I will not venture to make any comment.

Signature on document — Exhibit "C" appears firm and stronger than on Exhibit "A."

Comparing signature, on Exhibit "A" with that of Exhibit "B" it appears that signature on Exhibit "B" is firmer.

Not Cross-examined by Mr. Young holding for Haynes and Cummings.

Not Re-examined:

CLINTON WONG sworn states:

226 New Market Street. Barrister in practice. The late Jacob James was my client now for 4-5 years and he remained my client up till his death. He was a careful methodical and straight man. He spoke to me about making his will in June/July 1958. I instructed him to give his instructions to Mr. Fraser. I later had a discussion with Fraser about the will. I was present at execution of will. **10**

On the 30/8/58 Mr. James saw me sitting on my cycle at corner of Camp and Charlotte Streets. I saw a car travelling west on Charlotte Street. It stopped. In car was Fraser and testator. Car was driven by Benjamin James (identified in court). I was called over to car. I got into car, after Benjamin got out of car and I took his place in the driver's seat. Fraser told me James had come down to execute his will. At the same time James told his son to go to the corner and wait for him. The son Benjamin went off about 20 yards and waited. The will was produced to me. I asked James whether he had read it and he said yes. I then read the will to him, and explained it to him. At the end I asked him if that was what he wished and he said yes. I told him to sign his name which he did. I then signed passed it to Fraser who then signed. **20**

Exhibit "A" is the will. It bears Jacob James' signature, my signature and that of Mr. Fraser.

When I explained the meaning and terms of the will to James he discussed it intelligently with me. Before he signed I was satisfied he understood its contents. At a later date James and Plaintiff came to me about 1-2 months after. James wanted a Power of Attorney drawn up in favour of the lady. Did not know who she was. He said he wanted her to look after his business as he was about to go into hospital about that time and had not been too well. His instructions were lucid. I was hesitant about making the power of attorney and I explained the full significance of what he was doing. He told me she was his daughter. **30**

I was hesitant because I did not know who the lady was at first. I wanted to be sure in my mind that this lady was not exercising an undue influence over him. **40**

Question: Were you satisfied or not that there was no undue influence before you prepared document?

Answer: I prepared the power of attorney when I was so satisfied. I was not present at its execution. I also prepared papers for cancellation of a mortgage by one Sookdeo. He appeared to know what he was doing. I saw him again sometime after about 3 weeks before he died at Mercy Hospital. We conversed and he appeared to be mentally quite alright.

10 At no time did he appear to me to be weak and feeble in his understanding.

Cross-examined by Haynes:

Exhibit "A" (the will) was the first testamentary document which I prepared for James. I had been his legal adviser 4-5 years prior to his death. Prior to July 1958 he had not discussed the question of preparing a will.

20 In July 1958 when he spoke to me about making a will it was at my Chambers and Fraser was not present. When he spoke to me about the will I was in a hurry to leave so I went off telling him to speak to Fraser. After he spoke to me of making will can't say how long he stayed with me I would say about 2 minutes. Can't say how long he was with me before he expressed a desire to make a will. He used to visit my Chambers regularly. When he discussed the will with me he appeared to be a sick man. I regarded him as a client with some means.

30 When he expressed a desire to make a will he had come to me about other business. Can't remember what the other business was. When he visited me I will not swear for sure what the time was but I think it was about 1 p.m. My chambers situate at 15-16 Croal Street where they still are. James did not pay me a retainer. I would work and he would pay me, what he felt.

Fraser was once my neighbour when I lived in D'Urban Street and I knew him as a clerk to Mr. Shankland — Barrister. He was never my clerk. He has done things connected with law for me. Once he gave me a precedent for obtaining prescriptive title.

When I referred James to Fraser I knew that the deceased had great faith in Fraser.

When James spoke to me of making his will I knew that he had a family. Up to that time had not met any members of his family. I did not ever prepare a will for him.

40 Between dates he spoke to me about will and date I executed

will I did not see him. Prior to this date I had done legal work for this man. All transactions were at my office or at Fraser's home.

On the day when I was called upon at corner of Camp and Charlotte Streets I was not expecting to be called upon. On day he spoke of will I knew where Fraser was living and where he was working. When I referred James to Fraser I was under impression he was working with the Credit Corporation.

Cross-examination not complete.

Court rises.

10

Adjourned to 7/3/60.

Monday 7th March 1960

Appearances as before

Mr. Elliott and Mr. Haynes both engaged with the Federal Court.

Matter adjourned to 23/3/60.

Hearing continued from 7th March 1960.

Appearances as before.

Mr. Young for party cited Esther James states that he wishes to adopt the defence as amended of 2nd and 3rd Defendants in accordance with practice laid down in:

20

Tristram & Cootes Probate Practice 19th Edition p. 407:

Mr. Elliott, Mr. Haynes, Mr. Cummings agree to accept this statement of Mr. Young of formal notice.

Clinton Reginald Wong continuing his cross-examination by Mr. Haynes and on oath.

One day in 1958 when I was approached in office by James, he appeared to be a sick man. The impression I got was that he wanted a will made. I did not discuss the terms of the will but merely referred him to Fraser, so that he could give him instructions. I had in mind that Fraser would then have got in touch with me and that between us the will would be made. Fraser was my neighbour and an experienced legal clerk.

30

There was no circumstances which enabled me to form any impression one way or other as to whether the making of will was urgent or not urgent.

I saw Fraser 2 weeks-4 weeks later. I saw notes of Fraser on the instructions as to the making of Will. I did not keep them.

I saw these instructions at Fraser's house. Prior to date of execution I had seen a prepared will at Fraser's house. I think I saw the prepared will on same occasion I saw notes of instructions but am not too sure. I did not keep instructions, they were at all times in Fraser's custody.

10 Since execution of will have not seen those instructions. James (testator) had an abundance of common sense. I did not test him on the extent of his literacy so I cannot give an opinion on his literacy. I have no document in my possession completely written by him.

Before will was executed I asked if he had read it and James said yes.

From time I was called on my cycle to time James actually signed will I estimate to have been 5-10 minutes.

20 I was shopping. I think it was a Saturday afternoon. I was not going back to office, and time was between 2-4 p.m. Fraser told me he had been searching for me when they saw me that they had been to my Chambers looking for me. Fraser told me James had come down to sign the will. I signed there and then out of consideration for him, he being a sick man and I wanted to spare him mounting the stairs to my Chambers. (He looked sick physically but not mentally).

Sometime after the will was executed James came to my Chambers accompanied by Plaintiff Elaine Reece. He said he wanted to make a Power of Attorney in favour of the lady with him. I became doubtful and asked who was the lady and when he said she was his daughter my doubts were allayed. I wanted to be sure he was not being unduly influenced by the lady.

I never advised him on how he was to distribute his property.

30 **Cross-examined by Mr. Cummings:**

When James came to make the Power of Attorney I think I had to ask the name of the lady in whose favour the power of attorney was to be made. Did not keep a list of beneficiaries under will in my head. The name of the lady meant nothing to me.

Called to Bar in 1948. I had been in practice 11 years when will made. Estate is declared at \$169,503.35 gross as declaration for purposes of probate.

40 During my practice this is the largest estate I have had to deal with.

Did not memorise the names of the beneficiaries under the will. I did not have the will.

When James first saw me re the will I knew he had some wealth. I had made several wills before. When James came in I knew it was an important matter which he discussed. He did not ask me to make will right away. He merely talked of his wanting to make a will and I referred him to Fraser to whom he was to give the details.

Anyone could take instructions for a will. It was not necessarily Fraser's experience which made me refer James to Fraser, I also knew he was a friend of James. Can't remember if my clerk was in Chambers at time. **When I sent him to Fraser I regarded him as my clerk.** I have never seen any document completely written by James. Can't say if he was an illiterate man. I say he could sign his name and could understand what he was told. I think he could read and write; I have seen him write his name. I can't say what has become of the instructions which Fraser had. They were never in my possession. **10**

Since filing of caveat I have made no enquiries as to where the instructions are. Those instructions when I saw them were in Fraser's writing.

My clerk typed the mortgage and cancellation for James. **20**
Instructions for these matters were taken by me and/or my clerk.

James it was who asked his son to leave the car. I am definite about this. Fraser never asked the son to leave. Fraser told me James had come about the will.

I read will over to James and asked if they were his wishes and when he said yes I executed the document. There was nothing to indicate that he was anxious or not to have the transaction over. There was no one else around within earshot besides testator, Fraser and myself.

Cross-examined by Mr. Young:

30

When James came to me re power of Attorney, I was anxious that he was not being unduly influenced. When will was made there was no one with him apart from Fraser and so I had no anxiety that no one was unduly influencing him. He came in his son Benjamin's car. Don't know who brought him to my chambers on day he first spoke to me of any will. Can't say what car usually brought him when he came to my Chambers.

When I first saw instructions which Fraser had I realised the estate was going largely between Plaintiff and the widow. I did not experience any anxiety. **40**

My anxiety when he came to make Power of Attorney was largely because the lady was with him. I felt that having only

recently made a will and then to give the woman complete power to deal with his estate was too wide a power to give to someone. As a consequence I drew his attention to this. I fully explained the wide powers. He said she was his daughter. Before I thought she was a woman with whom he was having a private affair.

I would say he was quite normal mentally.

Re-examined:

10 Occasion when testator made power of attorney he was about to go into hospital. Power of attorney was before cancellation of mortgage.

I only saw testator write his name. I had given him documents to read in my office and he said he understood them he said yes and from the discussion I gathered he could read and he could understand.

THOMAS BEDFORD FRASER:

29 D'Urban Street, Werk-en-Rust, Georgetown, I used to be clerk to Chas. Shankland, Barrister 1926-1952. Shankland died early in 1952. I am now a security officer British Guiana Credit Society.

20 I knew Jacob James since 1942. He was a client of Shankland, and as Shankland's clerk I had prepared agreements of sales, transports, mortgages, cancellation of mortgages, Bills of Sales, Income Tax, papers and 2 wills for him. A marriage licence for his daughter Harriette.

After Shankland died I continued to see James he visited me at home regularly. He sometimes discussed his affairs with me there. He was a straightforward man of sound mind and memory, strict businessman, strong character, industrious.

30 Later in July '58 he came to my residence one morning around 8 a.m. where he told me he was going to Mr. Wong to have a new will made. I saw him when I went home for lunch. He then told me Wong asked me to take the particulars of the will for him. I did so taking the particulars in writing. I destroyed these particulars after the execution of the will. He gave me the particulars verbally and voluntarily. He told me what he wanted done and I wrote them down. He gave me his instructions intelligently.

40 I showed Mr. Wong the particulars the same day around the evening hours and he told me how to prepare the will. I prepared it in draft. Wong corrected draft another day. Draft was destroyed. I prepared the final copy from draft before destroying it.

On 30/8/58 a Saturday James came to my home. I met him and his son Benjamin at home when I got home for lunch. James asked if Will was ready and I said yes. He told Benjamin to leave and go and sit in car. I handed will to read while I took lunch. After I had lunch I read it for him at his request and he said it was alright. We did not discuss it. The two of us left in the car driven by Benjamin for Mr. Wong's Chambers Croal Street. Wong was out. Eventually we caught up with Wong in Camp and Charlotte Streets. Car stopped. James beckoned Wong who came to him. James asked Benjamin to leave the car and go and wait at corner. He went. Wong then got into car and occupied seat which Benjamin had. I was in back seat. James gave Wong the will. **10**

Wong read will to James clause by clause and explained it to him asking him if that was what he wanted, James said yes. Wong showed him where to sign and he signed. Wong signed as a witness and I signed as the other witness. All 3 of us being present at one and same time. James appeared to understand contents of will. Wong handed will back to him and left.

James called Benjamin and they drove me back home. **20**

James lived at No. 10 Mahaicony, East Coast, 30 miles from Georgetown.

I was indebted to testator. In 1951 my wife and I borrowed \$4,000 from him on a first mortgage on our property with interest at 8% per annum. At date of his death I owed him \$1,500. At present we owe nothing. I hold receipts for these payments.

Through the years I observed no change in James' mental powers.

Cross-examined by Mr. Haynes:

I worked with Mr. McArthur the Barrister from 1922-26. **30** When I left him he was a King's Counsel and had a wide practise. I then went to Shankland.

During time I was there I handled many probates. 2 wills were challenged during time I was with Shankland. After Shankland died I worked with no other lawyer.

During 4 years I was with McArthur I cannot recall whether he had any will cases.

During my 30 years as lawyer's clerk I knew of many probate actions in the local Courts.

In a will made out such as this will is made out I did not feel **40** from my experience as a lawyer's clerk that the will would have been contested.

I agree that one daughter and the widow would get most of estate. Did not know Plaintiff was getting half again as much as the widow. Did not realise when I received instructions that plaintiff would get more than the wife.

Knew James for a number of years and that he owned much landed property. I had handled transports and mortgages for James. As clerk to Shankland I made a will for him before this one. It was between 1947-51.

10 By the time I made the 1958 will I was not a regular visitor of the home of James. By August 1958 I had visited his home about 3 times.

While I was at Shankland's a good many of James' property transactions went through my office.

Between 1952-53 I prepared Income Tax papers for him after 1953 he brought them to me to look through before passing them to Wong.

20 In August 1958 I had some idea of his worth. When I prepared will I realise that he gave some more than others. Looking back I say that in the circumstances it would not have been wise to keep the instructions of the will. Substance of will same as substance of draft. James did not sign instructions. Instructions were in my writing and bore a date.

At time testator gave instructions he appeared well physically and mentally.

When will was executed James did not appear well physically and mentally.

The draft had corrections in Wong's handwriting. I saw no reason for keeping the draft which I destroyed a few days after the will was executed.

30 Instructions were initialed by James so that I could show Wong, and to indicate that that was what testator wanted.

During the years I knew James I had become acquainted with the members of his family who all visited my home prior to death of deceased. Since his death Benjamin, Sheila Prescod and Plaintiff have all visited my home.

In 1951 I borrowed \$4,000 and I had paid \$2,500 by time of his death in December 1958, and balance in January 1960.

Court adjourned: lunch.

Court Resumes:**THOMAS BEDFORD FRASER CONTINUING ON OATH
TO MR. HAYNES:**

The balance paid since death of James was paid to the executrix. I hold her receipts for same. Between December 1958 and January 1960 I made the 13 payments—the largest of which was \$330.00 on 30.1.59 and the smallest one \$100.67 on 31.1.60.

All my payments were in cash, i.e. before and after James' demise.

; Before James' demise I made 15 payments. Between 1951 and 10
end of 1958 I paid off \$2,500 and current interest and between December 1958 and January 1960 I paid off principal and interest due.

I paid off at a faster rate after testator's death. I had arranged with James in 1957 that I would pay him \$100 per month plus interest. The interest was paid separately. Ever since time when I made this arrangement I kept it up till the money was paid off. I got one receipt for capital and interest.

I have receipts which I received for my payments which I tender Exhibit "D1"—28.

Either the same day or the next day after I received instructions I prepared the draft will. James was a friend of mine, he had confidence in me. 20

Two of his daughters Lucille Waldron and Sheila Prescod used to help the testator with his books. After Lucille got married Plaintiff helped with the books.

James was not a fluent reader but he had good common sense. Sometimes I had to read documents for him. He sometimes brought me income tax notices asking me to explain what they meant, as well as other documents. Do not know that he boasted of having built himself up as he did on limited schooling. 30

Testator used to come to town fairly often. Twice his son Benjamin brought him to me. On 30/8/58 James came to me for the purpose of having his will executed. I did not expect him that day. Will had been ready for execution about 3 weeks before it was actually executed. As far as I know neither Wong nor I had informed him that the will was ready. After he gave the particulars he said to have it ready that he might call at anytime and should he stay long we were not to be afraid for his paddy crop was threatened and he had to pump water to save his crop.

During 3 weeks the will was ready for execution do not know 40
if he came to Georgetown. I did not see him. Did not show him

the draft will. After giving particulars I next saw him on day will was executed 30/8/58.

Looking at Exhibit "A" will, I say Wong made the following corrections:

Sixthly.

Corrections about N $\frac{1}{2}$ to wife and buildings thereon. Some of buildings encroached on Reece's S $\frac{1}{2}$ so Wong said it was to be surveyed.

10 Looking at Exhibit "A" sixthly: I say 1st sentence was not altered by Wong.

2nd sentence was amended to what it now is from "this piece of land must be given to my wife."

3rd sentence is as it was in draft.

In presence of Benjamin his son, James asked me if the will was ready, when I got home for lunch the Saturday I gave him the will to read.

I had prepared documents for him before of income tax.

20 Prior to date of execution of will if anyone had asked me if James could have read and understood the will, which was prepared for him I would have said no that it would have to be explained to him. I say so because he could not read well.

When he was reading while I had my lunch, I could not have seen him. He was in gallery. After I had had lunch I went to him and he asked me to read the documents for him, and I did so.

After Wong came to car by Charlotte Street I remember Wong asked James whether he had read will and James said yes. Wong then read will clause by clause.

Before that day I had received no enquiry from him for will.

30 At that time I was living at 29 D'Urban Street. Wong was not then living next to me. Wong was living at the corner of New Market and Thomas Streets.

After will was executed James and his son drove me back home.

Mr. Cummings:

On day I took instructions from James he came to me in a.m. He said he was going to Wong and left. He came back to me at 11.40 a.m. and told me he had seen Wong.

I did not give him the instructions to read. I read them over to him. James never saw the draft. Wong saw instructions either on the same day or day after.

When James gave me these instructions I put down what he said. In "Firstly" and "Secondly" James used the word unfilial behaviour.

We might have had a discussion while I took instructions. I asked him how much land he had given to the Church. I asked him who was his executor and whether the gifts were free of tax he said no.

He told me what he was giving to Elaine Reece. I asked him what about his cattle and his mortgages and money in bank, and he said he would give it to Elaine Reece. **10**

On day will was executed James did not appear to be in ill health. I knew him well. He did not tell me Dr. Lambert James was attending to him or that he was diabetic. He told me of Dr. James once when a son of his attacked him and Dr. James had to treat him. Did not know he was taking Insulin.

My wife was in the house and took lunch with me. I had a typewriter in the house. I was only person who used the typewriter at home. Did not use it that day. No one besides myself used the machine.

James was at home when I was there for about $\frac{1}{2}$ hour. I got home around 1 p.m. Did not know how long James had been at house before I arrived. **20**

Will was typed by me on that typewriter. Typewriter is a Remington portable. My son who can type was out of colony. My wife cannot type.

I typed will early in August one evening. It took me $\frac{3}{4}$ hour.

On day of execution I suggested we go to Wong's office. I went to see if he was there first. Then went to Kwang's Hing's Grocery and while there saw him turning corner on Street.

He appeared to me to be unduly anxious to have Will executed that day, that is why I endeavoured to find Wong that day. He said he wanted it done that day he had come for that purpose. **30**

Did not know that 2 days prior to execution of that will he had called in Dr. James.

James it was who called Wong who was on his motorcycle. James handed will to Wong and told him he wanted it executed. Before this James had sent his son out of car to wait at corner. Wong occupied driver's seat. Wong read Will clause by clause to James at same time explaining it. Wong asked him if it was correct and if that was what he wanted James said yes. Wong showed **40**

him where to sign. He signed it, then Wong signed as a Witness and then I signed as a Witness

Execution of Will in car took about 15 minutes—20 minutes at most.

During 1958 James' judgment had not become impaired. When I first knew James he was always making jokes. In 1958 did not find that he had become morose or that he was easily ruffled or irritated.

10 On the day I took instructions and day of execution I did not observe his hands were shaking.

For him to have got to my home at 8 a.m. he must have left Mahaisony very early. When he came in to me at home he said good morning that he was going to Wong to have a new will prepared. He returned to me the same day and gave me particulars. He did not seem very anxious to me to have the will made.

Did not find it strange when he came to have will in connection with which he had previously given me instructions.

In looking for Wong did not go to any barber shop.

James said he wanted Wong and I as witnesses of will.

20 **Cross-examined by Mr. Young:**

Testator initialled the instructions I took for Will. I expected testator would have contradicted any part of his instructions so I kept the initialled instructions as a safeguard. This was because of my personal dealings with testator he was a very particular man. Would not say testator changed his mind often. On day of execution of Will James gave no special reason for insisting on Wong and I being witnesses. The inference was that Wong was his lawyer.

Re-examined:

30 **Question:** In what way did the anxiety of testator appear undue?

Mr. Cummings objects.

Object of question is to destroy what witness has previously said.

Court allows question:

Testator said he came to have the will executed and he wanted Wong to execute it hence I said he was unduly anxious.

It was his son Christopher whom James (testator) told me had attacked him when he had to see Dr. Lambert James.

I could not say whether the will would be attacked.

Testator indicated reasons for the disparities. He said Elaine had 10 children who were his grandchildren. Her sons Oville, Vibert Stanrick assist him with cattle and many days do not go to school therefore their education was hampered.

Mr. Cummings objects to this evidence: On ground that it is not competent for this witness to give evidence of instructions which he alleges he received for purpose of making will.

Question allowed by Court:

Testator said Caleb assaulted him and a conviction was recorded against him in 1951. 10

He said Clarabel Pickett gave her husband a dagger to attack him when herself and husband had a quarrel.

He said Lucille had control of safe and took money from it and squandered it.

He said Benjamin had been convicted for assaulting a lady.

He said he gave Lucille her share when she got married and went to Barbados.

Adjourned to 20/6/60.

Monday 20th June 1960 20

Messrs. Cummings and Haynes engaged in the Ritz murder trial. Lawyers called into Chambers to fix date. Cummings not present. Matter to stand down until Cummings' return from a prospective trip to Europe.

13th October, 1960.

In Chambers:

Court engaged with Assizes. Matter refixed in December 1960 when a definite date during January 1961 will be fixed. Notices to be sent to parties.

Tuesday, 3rd January 1961. 30

Hearing resumed from 23/3/60:

Appearances as before:

SIMON CHARLES sworn states:

Mahaicony. Foreman B.G. Rice Development Company from 1944. Knew the late Jacob James for 40 odd years. He was a cousin of mine. In 1918 he employed me at the Mahaicony Cattle Ranch where he was manager. I left there in 1922-23 and went to the Gold Fields on the Mazaruni River. I returned from gold

fields in 1929 and went back to ranch. In 1932 I went to the Mahaicony Rice factory as a foreman. Factory was owned by Isaac McLean deceased and Jacob James deceased was then manager. Around 1942 Jacob James deceased bought the factory from McLean and sold it later to the B.G. Rice Development Company. About this time I became very friendly with Jacob James and visited his home several times. Jacob James in addition to factory bought rice lands and cattle from McLean.

10 Jacob James sold some rice lands to me and to some of his other workers. We did not buy direct from McLean because we did not have the cash. Jacob James who suggested that we buy.

20 I asked Jacob James' advice about the purchase of the lands and discussed my general financial prospects with him. In course of these discussions he said he would have been able to expand his business more but that his children did not want to work and that he would leave his property for Mrs. Elaine Reece his daughter who was dutiful to him, and to his wife. I told him that he should not do that but that he should leave his property to his children proportionately. He said "No Simon you worked with me for several years and know my transactions. The boys did not want to work so he would leave his property to his most dutiful child and his wife." I did not agree with him and told him so. Did not think his children were 100% dutiful or hardworking.

30 In October 1958 he sent for me and told me he was not feeling well and that instead of keeping some of my transports which he had as security for loans which I had from him, he would wish me to give him a promissory note for what I owed him. I gave him a promissory note and he returned my transports. I last saw him alive in November 1958. He was then ailing and sick. I spoke to him and found he was of sound memory and did not appear like a man who could be easily influenced. His way of speaking was usually loud. Never knew him to be of an ungovernable temper.

On one occasion he told me he had diabetes and I told him to take a rest to which he replied no that he had to work as he had no one to help him so he had to work. He had sons but they did not help him. Don't know why they were not helping him.

Not Cross-examined by Mr. Haynes:

Cross-examined by Mr. Cummings:

40 In 1922 I left work at rice factory and went to gold fields. Around 1942 when James owned factory I worked with him for 1 —2 years. After 1944 did not work with him again. After I left I went to work at B.G. Rice Development Company at Burma. I then lived at Zeskendren, Mahaicony. James was my cousin. 1

got the 1st loan from him in 1947. This loan has not yet been repaid. I intend to repay it. I did not have the cash to pay. I now owe him \$475.00 on all loans I had from him. I have not received any letter of demand from executrix of the estate. Have not been called on to pay this money.

Don't know whether this amount has been declared as a debt by the estate.

In 1958 did not see much of James. I saw him about 4 times in 1958. October-November I should have seen him around January-February but can't remember if I saw him in between. **10**

In January-February saw him in Georgetown. In October and November I saw him at home. Did not go to his home between February-October. Can't say how he was getting on with family between February-October or what his state of health in July/August/October. He told me he had diabetes. He did not tell me Dr. Lambert James was treating him. He told me that he was in the Mercy Hospital about the mid part of the year. Don't know when he made his will.

Know his son Benjamin James well. Benjie used to drive him when he came to town and deceased was fond of Benjie and he told me so. As far as I know he always treated Benjie well. Know his daughter Sheila Prescod. Sheila used to keep his books when I borrowed the money. Deceased had a lot of confidence in Sheila who did all his business at the time. I attended the wedding in 1953 and it was a grand affair. She then went off to live in Barbados. Never seen the will of testator. **20**

In my view if I was told the estate was declared at \$169,000.00 and that out of that he only left her \$200 and Benjie \$300 I would be surprised. I cannot say what he would normally do. If he did this I would only be surprised I would not necessarily think something was wrong with him. **30**

Not cross-examined by Mr. Young:

Re-examined:

The testator told me he was leaving practically all he had to Mrs. Reece and his widow. Knowing his worth I thought he would have left something more for them. He had told me he was not leaving to the boys because they did not want to work. He told me this often when I worked under him. He was fond of Benjie and on several occasions he sent me to call Benjie. He had confidence in Sheila before her wedding in 1953. Can't say if anything happened after 1953 to make him less friendly with Sheila. **40**

To Court:

I had many loans before 1947 from deceased. We did business for years. When he gave me back my transports I gave him

promissory note for \$475.00 which represented all that I owed him.

ELAINE REECE sworn states:

Plantation No. 10 Mahaicony. I am daughter of Jacob James deceased and an executrix under his will. He died on 17th December 1958.

10 I recall an occasion when my father was going to hospital that he told me he had made a will and it was in the safe, and that should he die I was to take it out and give it to Mr. Wong. He also told me that I was not to use the Power of Attorney papers. He made the Power of Attorney on 11th November. He went to hospital on 2nd December. By P/A he appointed me his attorney. He came out of hospital on 13/12/58 he was feeling weak. His mental faculties were alright. During his last days, he went to the estate on the morning 15/12/58 after he came out of hospital and ordered my son Vibert and another grandson Wilfred to burn some "Beezi." He sent my daughter to purchase Xmas goods that same day. After his return from estate he went to bed and would get up now and then and sit in a chair and would speak to any one. He spoke to me and spoke sensibly.

20 On Tuesday Vibert came to my home 50 rods from my father's home and told me he had fallen off the bed. I went across and we picked him up and put him on the bed. I sent for Dr. Lambert James who came and gave him an injection. I returned home leaving him resting.

30 He attended Church in July 1958. He was a keen church goer. He shot an alligator in October. He was a strict straightforward man and a loving father. He was a strong character. He was thrifty. He always advised people who were not thrifty to be that way and those who did not like to work he encouraged them to work.

He was interested in Rice planting, cattle rearing, farming etc., lending money on mortgage, coconut planting. He was a good business man. He was not easily influenced. He bought tractors combines and did business with Bookers.

40 Millicent Shepherd was his eldest child. She is 45 years old. She married in 1941 December. At time of wedding my father gave her a house at Pln. Britannia for \$700, gave her 3 head of cattle and used to support her and her children during her marriage. Her husband was not a hard worker and did not get on with my father, not so good friends. The marriage was not a success and in 1947 Millicent left her husband and returned to my father's home with her 9 children. The house was pledged to the Credit Corp. Berbice and they sold the cattle. She remained at home for

a year and then went back to her husband for a short time and then they went to Zeskendren. She will get \$300.00 and 10 head of cattle under the Will.

(2) Christopher James 42 years. He gets \$25.00 under Will in consequence of unfilial behaviour. My father and Christopher did not get on well. He married Hyacinth Blair in 1941 January. My father did not approve. After his marriage, my father gave him a house for about \$1,200. He put him in charge of a rice factory which resulted in a great loss. His wife did not like living in the compound and left the factory in 1942. In 1943 my father sold the factory. My father did not worry with Christopher after this. In 1953 my father told me Christopher had chopped him and I saw my father washed in blood. The incident was reported to the police and my father went to the Dr. who stitched it. 10

After this Christopher went to live at Straith Campbell, and in 1955 he went to him at Burma. As far as I know my father hardly spoke to him after the chopping incident.

(3) Clarabel Picket. 41 years. She gets \$25.00 under Will. When she was younger she was friendly with my father. She got married in 1941 and went to live at Cane Grove, then they came to live on lot 10 in 1949. She did not then get on with my father. She became annoyed with my father when he spoke to her about her not cooking for her husband by way of protest against what my father paid her husband. She and my father had quarrels. Her husband cursed my father and he told him to remove his house. At the time she ran out with a dagger to her husband telling him to bore him. Some one restrained him. After this they returned to Cane Grove. Clarabel was always a quarrelsome woman. My father told me after the quarrel that she was a bad girl. 20 30

(4) I am the 4th child and I am 40 years and married in January 1942. I have 10 children ranging from 17 years. My husband works in Transport & Harbours. Me and my children assisted my father with the cattle. My children and my husband got on well with my father. My son accompanied my father to hospital.

(5) Harriette Ross married in 1942 to Eric Ross of No. 41 Village. My father did not approve of the marriage and never spoke to her again. Harriette died in 1948.

(6) Benjamin James 33 years did not get on well with my father as he never wanted to assist my father. He would say he did not like mud. In 1950 he spoke to me telling me he would like to get a truck. I spoke to my father and he lent him \$1,000. I loaned him \$500 and my husband loaned him \$300 with which he bought a lorry for \$1,800. He worked lorry and in 1955 he damaged the lorry. I again assisted him to get a new lorry along with the insurance money. This lorry was repossessed. My father paid up the instalments and my brother was able to get lorry back. My 40

brother then sold but neither repaid me or my father. My father was annoyed.

In 1955 Benjamin assaulted Thelma Gordon and police proceedings instituted, my father was very angry.

10 (7) Sheila Prescod 30 years. \$200.00 cash and 2 head cattle under will. She married in 1953 to Prescod of Barbados. My father gave her \$1,000, a cow and calf. After marriage she lived in Barbados. In 1955 she returned here to undergo an operation. Her husband asked my father to build a house for him as their house was blown down by Hurricane "Janet". They wanted \$7,000. My father refused and they were angry, and returned to Barbados in 1956. She returned here in December 1958 two weeks after my father died.

20 (8) Caleb James 28 years. At first he got on well with my father up to 1950 when he sold some padi to the Rice Marketing Board for my father but refused to give the money to my father. It was over \$1,000.00. A quarrel ensued and Caleb left the home. He returned and my father told him not to return. He pulled a knife and my husband had to restrain him. My father reported to the police and he was put on bond. He was ordered to repay my father but my father declined to receive it. My father also gave him 18 head of cattle, an insurance policy for \$1,000.00 and a bank book with \$300. Caleb left and went to Brazil. He returned here but never spoke to my father again.

30 (9) Lucille Waldron 26 years; married in 1957. Before marriage she kept my father's books until 1956 when my father discovered she was stealing. As a result a quarrel ensued and she left the home and went to her sister at Cane Grove. After six months there she came to Georgetown. My father sent for her and arranged a marriage in 1957. He gave her a head of cattle and a bank book. Can't say what was in it. She became ill and my father paid for her at Best Hospital for a year. She returned home in October before my father died.

(10) Maureen James — 17 years, died in 1957. She was not married and had no children.

40 I agree that my father was 66 years when he executed his will and that six years prior to his death he was in failing health. He never suffered from mental weakness. He never spoke to himself. Not true that he frequently got into violent fits of temper and committed acts of violence. Not true that he was easily influenced. I know he had diabetes but do not know anything of his having had bad blood pressure.

Lunch — Court rises 11.25 a.m.

Court resumes 1.15 p.m.

ELAINE REECE continuing her evidence on oath:

At the time of the execution of his Will, viz., August, 1958, I used to see him a lot. He reaped his rice crop, paid his workmen himself and managed his business as usual. He knew what property he owned and what he was doing. He was normal mentally. Not true that he used to fly into violent fits and had to be restrained. He told me that Lucille bit him on his hand. No one ever suggested that he bit her. He never told me why she bit him. He did not have the opinion that his children disliked and despised him nor did I encourage that view. When Benjamin and my father disagreed he used to come to my house. All of them used to come to my house and I always tried to restore the peace. I don't know whether he slept in a room by himself. There were 6 bedrooms in his house and 3 persons lived there. Himself his wife and his grandson Wilfred. He always ate at home. When his meals were not ready on time he used to be annoyed but that did not lead to much trouble. Not true that his wife would take his meals to him on Maureen's grave, or that he would throw food and plate at his wife if he did not like it. He told me he worked hard for his money. 10 20

Not cross-examined by Mr. Haynes.

Cross-examined by Mr. Cummings:

I got married in January, 1942. At my marriage my father gave me a cow and a calf. He did not give me a house. My husband already had a house. I got no cash on marriage. I was always on friendly terms with my father. Can give no reason why he did not give me money on my marriage.

When Sheila and husband returned they requested a loan of \$7,000.00 to rebuild their house in Barbados. They were not annoyed. Knew of no quarrel between my father and Sheila. As far as I knew they were on good terms. 30

Caleb and my father had a quarrel which ended at Magistrate's Court. I was not present. My father told me of it and of all I said had happened. House I live in now is same property I always lived in. It is 50 rods from my father. I visited my father's home when he called me or if there was sickness. He kept his safe in his bedroom. Did not go into the bedroom often. I would go when he called me. He never sent me to put in or take out papers. When he went to hospital I kept the key. I never opened the safe when he was in hospital I drew some money from the Rice Marketing Board for him—\$1,000. I kept this money for him and I handed it to him when he came out after having paid some expenses. I collected no other money during his illness. After my father died, I sent the key across to my mother. I had a young baby at the time. Don't know whether anyone slept with my father. 40

After my father fell out with Caleb he (Caleb) was living at Cane Grove. He took his 18 head of cattle to Airy Hall. My father gave him an insurance policy valued \$1,000.00 after the quarrel.

I am not lying when I say Caleb and my father were not on speaking terms when Caleb went to Brazil. He used to return from time to time but never spoke to my father. My father was fond of Benjie. Benjie did not drive my father to town often.

10 First lorry which was purchased by Benjie was not in partnership with me. Not true that I handled all the money and he drove. Up to the time the lorry was paid off not all the cash passed through my hands. Benjie drove the first lorry until the instalments were paid off. When Benjie first had the lorry I hired a driver because I lent him the money. The lorry was not in partnership between us. Benjie assaulted Thelma Gordon in 1955. Benjie and my father were on speaking terms after 1955. After 1955 Benjie drove my father to town. Not true that most times he wanted to come to town that Benjie drove him to town. Benjie drove my father to the public hospital for an X-Ray, Benjie did drive him, but can't say how often. Can't say if my father had forgiven Benjie after 1955. Benjie did not spend any time in house after 1955.

My father did not send for me every day. From my home I could see my father go down to the back lands. After my father caught out Lucille stealing she left and returned. My father arranged the wedding. I was not at the wedding. I had my children to look after but I went late at about 7 p.m. By the time Lucille got married my father forgave her for whatever wrongs she had done. Don't know why he only gave her \$200.00 under will.

30 After Sheila went away Lucille kept his books for a long time. My father got to know that Lucille was giving away his money to a policeman. My father complained to me and others. I don't know if she was in fact giving away his money.

After Lucille went away one Adolphus James a nephew looked after his papers. I kept books for him.

When my father went in to hospital he gave me a Power of Attorney as I was person who was handling his business.

40 Lucille helped my father to prepare Income Tax papers which he took to Fraser. My father told me he was taking the Income Tax papers to Fraser. Have seen Fraser at my father's home at wedding occasions. I recall seeing Fraser go to the house on three occasions in all.

I knew Fraser very well. When I came to Georgetown I did not live with Fraser's, but my children boarded there when the will was

made. I used to visit Fraser's home frequently. My father bought newspapers. He could read well.

I have notes in my father's writing. I produce a note book of my father's—X for identification. He could jot down a few items but could not write well. He could read a little. He relied on me, Sheila and Lucille for most of the reading and writing.

Dr. Lambert James was the family doctor for a number of years. During 1958 while my father was in failing health Dr. James looked after him. Don't know what Dr. James prescribed for him. Don't know if my father used to inject himself. 10

Not true that at one stage my father drank a tin of condensed milk per day. Don't know that Dr. James met him drinking condensed milk and in answer to doctor my father said he found he was getting relief. Don't know if he took injections every day. In July-September doctor did not visit my father. My father never told me he was injecting himself with insulin. He told me he got injections when he went to doctor. He went to doctor twice. He only went to the doctor when he felt unwell. Don't know that Dr. James prescribed a number of units of insulin a day for him.

My father had friends but did not like to laugh. After he began taking treatment from Dr. James I did not notice that my father became irritable. Never heard my father speak angrily to my mother. They had rows now and then, but never heard him speak angrily to her. Never heard him threaten to slap her. When his meals were late he would talk about it. He never said he was taking insulin and so must have his meals regularly. 20

When I was at home my father had his first meal at 7.30 a.m. second meal sometimes 2 p.m. or later and third meal at about 5 p.m.

When he had injections from doctors don't know when he had them. I do not know nor did I ever see any injection needles in his bedroom. Never seen insulin, don't know what it looks like. Never seen any bottles in his room marked Insulin. 30

In July, 1958 his condition was alright as was his condition in August. Don't know whether Dr. James was called in in August. My father did not tell me he was ill in August. He was working alright. He did not look sick to me.

Can't say if doctor examined him on 27th August, 1958. Do not recollect any illness around then. Will dated 30.8.58.

Cross-examined by Mr. Haynes holding for Mr. Young:

40

My father was always a reasonable man and a fair man.

My oldest child is 17 and youngest is 2 years old. When Millicent Shepherd married in 1941 my father supported her and her children. Shepherd was a rice farmer on lands which did not belong to my father. Shepherds have 9 children ranging from 16—4 years. My father liked children and he liked those children of Millicent. Shepherd only did rice planting and he did not make much money from it. My father assisted them right up to time he died. When my father died Millicent and her husband were living at Zeskinderen 2½ miles from my father's home. Millicent still owns house my father gave her. The house has not been improved. It was pledged to the Credit Corporation. My father paid off the loan 3 years before he died. Can't say how much it was. My father always appeared sorry for Millicent.

Re Christopher — when he got married my father built a house for him. Christopher now lives at Burma. He does not still own the house. I now say that my father only allowed Christopher to live in one of his houses, he did not give him a house, when he got married. Before Christopher got married the manager of my father's factory was one Charles. After his marriage my father made him manager. Christopher has 8 children. My father liked his grandchildren and they used to visit him. When my father died he had about 30 odd grandchildren. As manager of the factory Christopher made no money and in 1943 my father sold it. After Christopher got children I can't say if my father helped him. Did not see Christopher wound my father. Did not go with my father to station. In 1955 he went to work at Burma Rice Development Company. Don't know if my father helped him to get that job. He is still working there looking after cattle belonging to the Company. Can't say if he is getting on well in that job. After Christopher wounded my father they spoke but not much. They were not friendly. After wounding incident Christopher never looked after my father's cattle. My father was in hospital with a bad foot before the wounding incident.

When I got married I got a cow and calf. My husband owned a house of his own. I had a bank account of my own of about \$300.00.

I was not earning a salary before I got married. I was the only one who never got cash when we got married. All the others got. Did not find it strange that I did not get cash.

After my wedding I went to live at Fort Village, Mahaicony. I stayed there for 4 years. My first child born in January, 1943. I did not help my father with his outdoor work. My husband worked at Transport and Harbours till my father died. My husband never borrowed money from my father but I have done so and I have paid him back. My father did not pay for the cost of the enlarging of my

house in May, 1953. During my father's life time he gave me permission to plant 2 acres, this was from time I got married. When my father died I had 12 head of cattle.

Sheila Prescod has no children. When she got married she got no house or land. When she returned she sought to get a loan of \$7,000.00 to build a house in Barbados. Can't say if the request was reasonable. I never suggested that in as much as she had no children my father should not lend it. My father said he was not building any house in Barbados. If Sheila was disappointed at not getting anything under will it would not be unreasonable. They lived with my father when they came. Don't know if my father helped them with passage money. I did not go to see them off, nor did my father see them off. I think she was here less than a year on that occasion. She returned a second time during 1956-57, and spent 8—9 months. During this second visit I can't say if she helped my father with his paper work and lived with my father at his home. She was then on friendly terms with father. The third visit was after father died. **10**

Cross-examination not complete.

Court rises 3.30 p.m. **20**

K.L.G.

3.1.61

Wednesday, 4th January, 1961.

Hearing resumed from 3.1.61.

Appearances as before.

On application of Mr. Elliott — with approval of Counsel on the other side leave granted to take the evidence of Dr. Schenolikar at this stage.

BALWANT KASHINATH SCHENOLIKAR sworn states:

Live in Mercy Hospital Compound, M.B., B.S., Calcutta, F.R.C.S. Edin., F.R.C.S. Eng. Surgeon Specialist Mercy Hospital. **30**

On 1.12.58 I examined Jacob James deceased at request of Dr. Bettencourt-Gomes. I examined him in Ward E Mercy Hospital. He was referred to me as whether as a patient he was operable, as there was a history of a tumour in stomach. I spoke to patient. I examined him and found he had an inoperable carcinoma of the stomach. I considered he had this condition for over 6 months because normally if a patient presents himself in less than 6 months the chances are that he may be operated on. In view of the fact that this was an inoperable growth one can conclude that it was in **40**

existence over 6 months. In the course of giving his history which he gave very well he told a very tangible story pointing out his symptoms. I concluded that there was no mental abnormality in patient. He answered all the questions he was expected to answer as normally as one could expect and his memory appeared perfectly alright as far as his disease was concerned. I only spoke to him on the symptoms of the disease. I had no reason at all to believe that his memory would not have been as good on any other subjects.

10 Normal effect of this disease on a patient is that he is mentally alert unless there is a spread of this cancer in the brain i.e. secondary deposits of cancer in the brain. There were no such signs of secondary deposits in the brain in this case. This form of cancer does not as a rule entail suffering. He had no pain in this case but suffered from indigestion — what he called bad stomach. The normal time it would take a person suffering from this disease to die according to statistics would be a maximum of 18 months.

20 Having examined him on 1.12.58 and he having died on 17.12.58 I can't say anything about the cause of death for I did not see him immediately before he died. In addition to being a cancerous patient he was also diabetic and death could have been caused by any one of the two diseases.

The patient was elderly, he was diabetic and cancerous and it is possible that all three of these reasons could contribute to death.

If he went around the estate 2 days before he died that would have been very possible. In the hospital he was an ambulant patient.

Not Cross-examined by Mr. Haynes:

Cross-examined by Mr. Cummings:

30 Have been in practice in British Guiana as from 1.4.58. Prior to that I practiced in the United Kingdom for 4 years. Prior to that I lectured in the school of Medicine Nakur University. I describe my lecturing period as practice. That I considered more satisfactory practice than I now am doing for I had more time and opportunity for research.

I was lecturing on surgical anatomy. I do not consider myself as specialist physician. The person from whom I as a surgeon would get a 2nd opinion on a patient suffering from diabetes would be a specialist physician such as Dr. Bettencourt-Gomes under whose care the patient was.

40 I accept Dr. Frank Williams to be a specialist physician. I am a Bachelor of Medicine. I am aware of the symptoms and the outset of the disease of diabetes. Until very recently 1947 the only treat-

ment for diabetes was insulin. I have not heard of 'Vinculin' it is a trade name.

On the patient's chart was recorded diabetes by Dr. Bettencourt-Gomes. I do not know whether he was being given "Insulin".

Looking at "Treatment in General Practice" by Harry Beekman 5th Ed. 1945. I say I do not know of the author. He is an American and I was taught in an English school.

Up to 1947 Insulin was the only accepted treatment for diabetes. It is still the treatment for some cases.

If a diabetic is given too much Insulin he would suffer from a "hypoglycaemia". The reaction is a burning of the sugar. If too much Insulin is given a condition of less sugar in the blood would result. As a result of the sugar withdrawal the patient's brain suffers first and he becomes comatose. In early stages of hypoglycaemia the symptom is of muscular weakness, if walking—staggering if writing — a tremor, etc. **10**

I accept statement of Beekman at page 486. 'hypoglycaemia' portions marked.

In my practice I do not treat diabetics. Hypoglycaemia lasts for minutes and if patient not treated patient dies. **20**

It is true that a diabetic can suffer from permanent cerebral damage this due to fact that all diabetics suffer from a hardening of arteries and this complaint causes damage to brain which causes change of personality. Thus damage to brain due to hardening of arteries which in turn results from diabetes. This hardening of arteries should be diagnosed by the physician.

High blood pressure may or may not be associated with hardening of the arteries.

Not able to say that one of first symptoms is loss of judgement. **30**

Transient loss of memory can result from hypoglycaemia. If hypoglycaemia not treated promptly patient goes into a coma and dies. After treatment persons recover in a few seconds. Any sugar taken bring this about. From a near dead man patient can become very much alive by merely giving him glucose.

I was consulted about this man, the deceased, once. From my conversation with him I came to conclusion that his memory was alright. I say from my examination that his memory was alright. His answers tallied with what was recorded by him.

Hyperglycaemia is another condition which is found in patients who are not at present under treatment. A reaction of Hyperglycaemia is 'double vision,' 'lethargy,' loss of memory, moroseness. Hyperglycaemia is a permanent condition which results from diabetes. It can be kept under control by treatment.

Most untreated diabetics get along with their jobs very well.

I will not accept loss of keenness, loss of mental alertness as by a regular complement of a diabetic syndrom.

10 There is not as a rule impairment of mental faculties permanent or transient in a person suffering from diabetes.

There could be a comatose condition from hyperglycaemia. Without treatment and just prior to the comatose condition I have not observed a case of loss of memory.

My inferences are based on observation. Coma is a state which comes on suddenly and can be cured suddenly.

Not cross-examined by Mr. Young.

Re-examined:

20 Have done over 100 operations for gastric carsinoma in British Guiana. In early stages of Hypoglycaemia one of first symptoms is muscular weakness. This can be cured by glass of sweet water. If not treated muscular weakness followed by temporary loss of memory results. All this can happen in a matter of minutes. Stage 2 would last at longest a few minutes. If in course of stage 2 treatment given result would be dramatically sudden.

Symptom of gastric carsinoma is loss of appetite.

I saw no sign of permanent cerebral damage in patient when I examined him.

The answers patient gave me corresponded with record which I had before me and the physical signs which I saw in patient.

30 Diabetes frequently occurs in the professional class of patients and that is why loss of keenness, etc. are not a regular complement of the disease.

In case of Jacob James I found him mentally alert and nothing wrong with him mentally on day when I examined him. He did not appear lethargic. He was morose when I told him his cancer was inoperable.

By leave of Court to Mr. Cummings:

I have treated a very large number of diabetics. I did not treat Jacob James for diabetes. I frequently treat diabetic patients post

operating. A diabetic on coming to hospital only reaches me after he has been stabilised. The post operation treatment is not necessarily restricted to keeping the patient stabilised at the old routine.

Not further re-examined by Mr. Elliott.

ELAINE REECE continuing her cross-examination to Mr. Haynes:

Clarabel Pickett has four children. My father hardly knew them for they hardly visited him. I would not say he disliked them.

Harriette Ross died leaving one child — Gloria. She died in 1948. After Harriette died Gloria lived at 41 Village, Berbice with her grandmother. 8 months ago she came to live with me. **10**

Lucille Waldron has one child. I don't know the child's name or her age. The child was born after my father died. She returned home in October, 1958, after being in Best Hospital for 9 months. When Lucille returned home in October her husband was with her too. He was working at Tiger Island but after my father died he came to work on Plantation 10. Don't know what he earned at Tiger Island.

Don't know what work Sheila Prescod's husband was doing. He told me he was a musician. **20**

As a family we the children got on well up till the old man died. My father was not sick in bed, he began complaining of not feeling well during October 1958. During October I had to nurse him when he was sick. Before October I never nursed him through any illness. During October — December he was a patient in hospital for 2 weeks in December.

Before he went to hospital he was in bed for one day — a Sunday — during the period October — December. That day I attended to him.

During that time my house was the nearest house of all the children to him. Lucille was at home but not well herself. **30**

When my mother went to see Lucille when she was at Best Hospital I used to attend to my father's meals for him.

In August, 1958 I owned no property besides the cattle. My husband owned the house in which we lived.

Between my marriage and the time my father died we borrowed no money from my father to repair house. !

My father and mother got on well. My mother did not help him with paper work or outdoor work.

Court rises for lunch.

40

Court resumes.

ELAINE REECE continuing her evidence on oath:

Re-examined by Mr. Elliott:

Christopher has 8 children the youngest of which is about 3 months. Caleb had two children before my father died. Benjie had one child before my father died.

My father was fond of Benjie but he did not like to help my father with his work.

10 Re Christopher — he managed the rice mill up to 1943. Between 1943—53 I don't remember what work he did. My father was not a forgiving sort of man.

My father was laid up in bed for one day in October. When he went to hospital in December one Cecil Bowen drove my father to hospital.

My son took my father out from the Mercy Hospital.

'By consent certified copy of Estate Duty declaration and copy which was filed by the Inland Revenue Department by the executrix named in will—document put in evidence as Exhibit "E."'

JAMES DAVISON sworn states:

20 Third Avenue Subbryanville. Chairman and General Superintendent Methodist Church. I also do pastoral Church work. Knew the late Jacob James. I met him towards end of 1957 when I had some discussion with him. I met him as head of his Church and with regards to acquiring a piece of land for a school site at Plantation 10, Mahaicony. As a result of these discussions Mr. James decided to give us a plot of land for a school site. and he did so passing transport. Land was surveyed and transport passed after Cameron & Shepherd prepared papers in November 1958. A message came to me and in consequence I got in touch with James and we went to Cameron & Shepherd. Before going he said that they were the Church's lawyers he was satisfied. We first went to Cameron & Shepherd in August or September when I swore to an affidavit and he did so too. I attended transport court as did **30** Jacob James and his grandson and after the transport was passed I invited him to lunch but he declined. I then took James and the small boy to the railway station.

40 During August/September I had opportunity to judge of his character—he was a man of strong character and I formed opinion he would not be easily influenced. I considered him quite alert mentally. I found him no less alert in November 1958 than when I first met him in 1957. He did nothing to make me think his memory

was failing. He appeared to be fully aware of what he was doing. He did not discuss anything about his properties with me.

He transported to Methodist Body approximately $1\frac{1}{2}$ acres.

If will dated 30/8/58 it was made before transport passed.

As far as I recollect he decided to give $1\frac{1}{2}$ acres sometime after Easter 1958.

Mr. Young holding for Mr. Haynes declined to cross-examine.

Cross-examined by Mr. Cummings:

I visited Mr. James several times at his home. This was from 1957 up to about 2 weeks before he died. I visited him before and after he went to Mercy Hospital. I knew he was ailing for a few weeks, but could not say how long. Did not know that Dr. Lambert James was treating him. 10

Mr. Young declines cross-examination.

Not re-examined.

CLAUDE HICKS AUGUSTUS DENBOW sworn states:

67—Second Avenue Subryanville. I am a Dental Surgeon and in practice in British Guiana $18\frac{1}{2}$ years. Knew the late Jacob James of Mahaicony very well from boyhood say 1929—30. I used to meet James over the last 5 years of his life. 20

Whenever he came to town he would stop in at my office and chat. This was about once or twice per month. Sometimes more often sometimes less. He sometimes told people to meet him at my surgery. I knew him very well and was friendly with him. He discussed his domestic affairs with me from time to time when I enquired of the family.

In 1958 I knew he was making a will because he told me he was looking for Fraser whom he had missed. He then left my office saying he was going over to Clinton Wong's office. He said Fraser was seeing after his will. He used to speak of his sons and their conduct towards him. I knew Benjie well as I had tried to help Benjie out of some trouble some years before. Jacob James told me that if his sons thought they would waste his money and thought he would leave his money for them to waste when he died they would be mistaken. He said nothing to me about his daughters but I knew he was interested particularly in one of Mrs. Reece's sons. Can't recall his name. James said the boy was smart, he accompanied him to the pasture and knew better than he did how many cattle he had. He asked me to speak to the father of the boy and persuade him to send the boy to 30 40

school in Georgetown. I spoke to the father. I think the boy was sent to school in Georgetown. Deceased told me that the boy's mother was business like.

10 Jacob James was a very keen businessman, whom I don't think was easily influenced. Towards end of his life I noticed nothing to suggest a falling-off of his business keenness or that he was losing his memory. I last saw him alive in October 1958. Then he told me the diabetes was worrying him and that he could not get it off as it was going and coming. I gave him a bottle of a new drug I had got for my family to help him.

James never indicated to me that he knew he had carcinoma of the stomach.

Not cross-examined by Mr. Young holding for Mr. Haynes:

Cross-examined by Mr. Cummings:

I go down to my surgery between 9 — 9.30 a.m. and earlier by special appointment.

In 1958 James told me he missed Fraser and was looking for Wong. This was before lunch but can't say the time specifically. Very often James would go to my surgery before I got there.

20 James never told me how he came to miss Fraser. I formed the impression that he had to meet Fraser somewhere but missed him and he said he was going back to Wong's office.

30 I do not agree that during the last six months of his life James underwent a mental change in that he changed from being jovial to being morose. The last time he came to me in October he came to check on whether I had received some straw I had asked him for. He never lost his loud voice and appeared his usual self. He told me he could not get rid of the diabetes. He worried over it. I knew Dr. Lambert James was treating him. I gave him the bottle of tablets with a note to Dr. Lambert James and deceased told me he showed Dr. James the tablets. As far as I could ascertain he did not say more than the fact that the sugar was going and coming. I told him he should diet, perhaps he was eating too much rice. He never complained of pain or the like.

I visited his home in 1957 but not in 1958.

I know the girls but not by name. James told me he gave Sheila, the one who went to Barbados, a big wedding. He did not tell me she was business like.

40 I spoke to James about Benjie often. He was a funny man who travelled by train although he had a car. I often spoke to

Benjie telling him that his father was always complaining of him. When Benjie was in trouble the old man said he was not putting out a penny that he would lend the mother the money and she could give the boy if she wanted.

Not cross-examined by Mr. Jack:

Re-examined:

The whole trouble with Benjie was over some domestic trouble he had.

CASE FOR THE PLAINTIFF

DEFENCE

10

Mr. Young on behalf of Mr. Haynes states no defence will be led as to Defendant No. 1.

SHEILA PRESCOD (No. 2 Defendant)

I am the 7th child of the late Jacob James. From date of my birth on 9th July, 1930 until I got married in December, 1953 I lived at Pln. 10 Mahaicony with my father. From 1942 till I got married I used to look after my father's papers and I kept the key of the safe. I also handled all money which he received. When I left in 1953 we parted on good terms. He gave me \$900 on my leaving for Barbados, I returned here in April, 1955 and was followed by my husband in November, 1955. As a result of our home having been destroyed by Janet I asked my father for a loan of \$5,000.00 to rebuild my house in Barbados and he said he would give me when I was leaving. When I was leaving in March, 1956 I told my father I was leaving he gave me \$50 and he said he could not lend me the money any more because Mrs. Reece had told him that if I died my husband would inherit the house as I had no children. He told me to make out with the \$50. We parted on good terms and I went to the airport by his car. **20**

I returned to British Guiana in August, 1956 for 11 months while my husband was in Jamaica on a Public Health course. No quarrel or unpleasantness took place between my father and me. When I was home in 1956 I assisted my sister Lucille with the books. In June, 1957 I left for Barbados and parted with my father on good terms. I used to write my father. We had no quarrel by correspondence. **30**

Know of no reason why he only left \$200 and 2 head of cattle. In June before I left for Barbados in 1957 my father told me he was feeling very sick and a bit weak and he wanted to go to the hospital for treatment, but as he had a lot to do he would not go. He said he had to look after the rice field and the cattle. He **40**

had my nephew Wilfred and his cousin Adolphus James to help him. I believed he could have left those duties up to them.

Cross-examined by Mr. Elliott:

Wilfred was 14 in 1957. Adolphus James was in his late 40's. In June 1957 my eldest brother was at Burma. He had left after a little disturbance in 1953. I knew my father got cut. I did not hear from my father that Christopher had made a false report to the police. I was surprised that my father left my brother nothing more than \$25.00.

10 It is a fact that my father built himself up. He was a hard business man and a strong character before I left for Barbados in 1953. In 1957 he used to make a lot of mistakes with money for example he gave me \$20 bill for \$2.00 and I gave the change back to him.

He was a hardworking man and knew the value of \$1.00.

Christopher had a row and had to clear out in 1953.

Benjie was a hard worker. He drove the tractor and did the milking.

20 When my father went to hospital Benjie had his own business. Don't know if my father preferred Benjie to drive a truck instead of managing the estate.

Caleb did not cut my father. I don't think he was convicted.

My father was used to acting on directions of Mrs. Reece. My father told me Mrs. Reece told him not to lend me the money. In 1956 when I was here my husband was on a course in Jamaica. I paid my husband's passage back to Barbados with money which my father gave me. I never borrowed any money from Mrs. Reece.

When I returned to Barbados in 1959 my mother paid my passage.

30 **Not cross-examined by Mr. Young:**

Re-examined:

Before I left in 1953 my father was strong willed but when I returned in 1957 he made a lot of mistakes. He was a bit crochety and if he did not get his food in time he would quarrel and would take his food outside on steps, on dray cart or in yard.

BENJAMIN JAMES sworn states:

I am second son and 6th child of the late Jacob James. I live at 168 Charlotte Street, Georgetown. I knew my father was under Dr. James from 1954—58. My father said he was suffering from diabetes, blood pressure and he had lump on the left side which pained him very much. Before my father complained of the lump on left side my father was butted by a cow.

Usually I took my father to Dr. James. Between January—September 1958 my father went to the doctor 2—3 times per week.

10

Around 1950 my father consulted Dr. Bettencourt-Gomes about the lump on his side. My father told me this.

My father's home is 2½ miles from Dr. James and I used to drive him.

I was present at a conversation between Dr. James and my father about the lump. My father told Dr. James that Dr. Bettencourt-Gomes had told him that he had sugar so that he could not operate as the cut would not heal. This was in 1950.

I owned my lorry and did my own business from 1953. I usually work transporting padi for the Rice Development Company, transporting sand for contractors, transporting materials for my father. I transported all the materials for my father free of charge.

20

My father became annoyed over an incident in which I was involved in 1955 but when I explained he quietened down. After this we were on good terms up to his death. When my father came to town I used to drive him. I would say my father came to town less than twice a month. He did not always go to Denbow's office although he did so on occasions. Up to 1953—54 my father was strong willed, keen and active, from then on I observed that he became fretful. He never listened to me as before but would chase me away. This behaviour was in no way related to the assault in which I was involved. Early in 1958 my father's physical condition was weak and he would tell me he did not know whether he would see the next birthday. He said that Dr. James told him that he could not be cured of the diabetes and it was no use wasting money going from one doctor to the next.

30

Evidence-in-Chief not complete.

Court rises 3.35 p.m.

K.L.G.

4.1.61.

40

Thursday, 5th January, 1961.

Hearing resumed from 4th January, 1961.

Appearances as before.

BENJAMIN JAMES continuing his evidence on oath:

In August 1958 remember Dr. James visiting my father at his request. This visit of the doctor was two or three days before the day will was executed. I was not present when the doctor visited.

10 On the day the will was executed my brother-in-law Shepherd had told me the Friday night before something and as a result I went to my father at 10.00 a.m. on the Saturday. I met my father lying on a couch near to his bedroom with his head backwards, his eyes closed and perspiring. As I went in I said good morning and asked how he felt. He jumped up with a start and asked who was it. I said it was 'me Benjie.' He said he wanted me to drive him to town to Mr. Fraser to do some important business. I said to him, after you are so sick and the doctor saw you, gave you an injection and told you to rest, why go to town today? That my mother had said he should not go to town as he was very sick and could scarcely walk. He insisted on going. My mother assisted him to the car, which was at the front steps. She held him under his arm and helped him to the car. He sat on car seat with his feet outside and I lifted his feet and swung him into the car and closed the car door. I then drove him to town. He sat on the back seat alone and I drove the car. While driving to town I looked at my father and I observed his hands trembling and waving them about. He was muttering to himself and had his head back and was perspiring. I drove to Mr. Fraser's house and both of us went in. I had to assist my father out of the car and up Fraser's step. We got to Fraser's place around 12 to 12.15 p.m. Fraser was not there, but came in afterwards say about 15 minutes later.

20

30

40 On Fraser's arrival he greeted my father. My father then told me he had some important business to do with Fraser and which I was not to hear. I then went downstairs. While downstairs I heard talking. I recognised Mr. Fraser's voice and heard it mostly. A few minutes afterwards I heard the sound of a typewriter. About half hour later Fraser and my father came down-stairs and went into the car. I assisted my father into the car. Fraser told me to drive to Wong's office which I did. Fraser got out of car went upstairs to office and returned saying Wong was not there let us go around in America Street in a barber shop as he believed Wong was playing draughts there. Fraser called out to someone on our arrival opposite to a barber shop, asking if Wong was there. Someone said he was not there, to try Kwang Hing. Fraser then said to my father and I that he had to get Mr. Wong at all costs because only Mr. Wong could sign this thing. Neither my father nor I made any comment. I then drove to Camp and Regent Streets at

Kwang Hing's at request of Fraser. On arrival there did not find Mr. Wong there. Fraser then told me to drive Charlotte Street and I did so. In turning right on to Charlotte from Camp Street Fraser told me hold up we had just passed Wong. I saw Wong leaning on his cycle speaking to a gentleman. I parked the car. Fraser got out went back to Wong spoke to him for 5 minutes and they both came to the car. Fraser sat in the back seat and told me to give them a chance. I got out of the car and Wong took my seat and he turned sideways facing Fraser who was behind. I walked away. I heard nothing that went on. Wong remained in car 5 to 10 minutes then he got out of car. I had gone to the corner 20—25 yards away from car. When Wong left car Fraser clapped me and I went to the car. We then drove off to Fraser's house on his instructions. I dropped Fraser at home and then drove my father home. Between 10.00 a.m. when I first saw my father that day, and the time I drove him back home he had nothing to eat but he had something to drink, a little before the time Fraser asked me to drop him home and before he began to journey to Fraser's home. My father had asked for a sweet drink and I purchased a cream soda for him from a nearby shop. My father was trembling and sweating. I then drove Fraser home and then took my father home to Mahalcony. 10

Cross-examined by Mr. Elliott:

My ambition in life is to do transportation work.

I don't know whether Dr. Bettencourt-Gomes saw my father in 1950. I did not say that Dr. James was treating my father in 1950. I can't remember if Dr. James was treating my father in 1950. When I heard this conversation between Dr. James and my father I did not know whether Dr. James was treating my father. My father told Dr. James what Dr. Bettencourt-Gomes had said at Dr. James' outside of his surgery. There were no patients waiting to go in. Dr. James and my father was on that occasion having a general conversation, I did know when my father died that he had a lump near to his stomach. Can't remember if it was that lump he was telling Dr. James about. The same lump persisted all through from 1950-58. 30

It is true that I transported all materials for my father free of charge.

Ref. the assault my father told me what he heard from someone else viz. that I had held one Thelma and had beaten her up. He did not tell me he heard I beat her up because she had refused to have intercourse with me. He told me of no reason he heard as to why I beat her up. I did not beat her up because she refused me intercourse. 40

The explanation which I gave my father and which quietened him down was that the girl and I were friends that we had certain

arrangements and she dropped the arrangements and as I had a few drinks in my head I beat her as we had gone to a dance that night. The arrangement which she did not keep was a money transaction. She asked me for money which she usually did, I had given her money to make a dress for my wife and she wanted to take the money and I beat her up.

I was prosecuted in magistrate's court for assault. Can't remember if the charge was for indecent assault. The fine was over \$100.00. I did not plead guilty.

10 I was not only person who drove my father. Can't remember seeing Hollingsworth drive my father. Saw Clarence Bowen drive my father. My father came to town by train also. My father never told me he preferred to come to town by train.

I stopped living at Mahaicony 1956/57. I was convicted in January/March 1956. I explained to my father about incident in October 1956. My father never told me he did not believe my story.

I first drove my father to Georgetown in 1954 after the car was 'being bought'. Car was bought at end of 1954 or early 1955.

20 When I spoke of my father's visits to Dr. Denbow I referred to occasions when I brought my father to town from 1955. If he came by train I would know sometimes. I might or might not have seen him.

I was in court when Mrs. Prescod gave evidence. I heard her say that it was not until 1957 that my father made mistakes. I say he was keen in business only up to 1953-54. I say I am right. My father did not despise me, but would quarrel with me when I told him some part of machinery was needed for any particular repair which was necessary.

30 **Question:** In your pleadings you said your father suffered from delusion that his children despised him. What do you say?

Answer: I cannot understand.

When my mother helped my father to car he was incapable. He needed assistance. I gave assistance in swinging his feet into the car. Did not help my father downstairs.

Fraser helped my father down the stairs. I helped my father after he got down the stairs.

40 I am positive we went to America Street to look for Wong. I say that it was Fraser who was pressing my father to have the business settled. My father was anxious to get through the business but when we met Fraser he took things in charge.

Do not know whether Dr. Denbow honest and truthful. Do not know Mr. Davison. Fraser is not truthful nor is Wong truthful. It was Fraser and not my father who called Wong. My father did not beckon Wong. My father did not tell me to leave the car.

Before my father bought McLean's estate he was manager there. When McLean died my father bought factory. Christopher was never manager of the factory. He worked under Mr. Charles.

Sometime 1943—44 my brother left the employ of my father. I was in the army then.

I worked with my father on lands which he had. After leaving school I said I wanted a profession but my father interpreted that as my not liking mud. 10

When I got the lorry my father loaned Mrs. Reece and I \$1,000. I contributed a further \$300: and she contributed a further \$500: That lorry was smashed and I collected about \$2,200.00 from insurance. I bought another lorry on Hire Purchase. I failed in the instalments and it was seized. My father loaned me \$1,000.00 to pay up instalments.

There was no partnership in the new lorry. I sold the new lorry for \$3,000. I never paid Mrs. Reece back. On 1st \$1,000—\$700 still owing. I owe \$900 on account of 2nd loan. When I said I had not paid back these loans earlier I was recollecting. 20

To Court.

Journey from Plantation 10 to Georgetown takes 1½—2 hours, dependent on road conditions.

Not Cross-examined by Mr. Young.

Re-examined:

If a person has bad feelings and is perspiring it is described as 'cold sweat.'

I can't remember if I was charged with indecent assault. I think I was. 30

When I went to my father on the day will was signed both my mother and I tried to dissuade him from coming to town.

I sold 2nd lorry after my father's death.

My sister Mrs. Pickett stopped the will. The person to whom this money is to be paid is being determined by Court.

By leave of Court and an application of Mr. Cummings Sheila Prescod recalled.

SHEILA PRESCOD recalled:

I swore to an affidavit in which I said my father had made a previous will. I saw that will. It was made by Mr. Shankland barrister-at-law. I saw it one day when I opened the safe my father asked me to take the will from bottom drawer for him. This was 1945-46.

This will was destroyed by my father in my presence. I was then keeping his papers.

10 Under that will he left life inheritance to my mother and then she would do the balance in distributing the property.

Christopher James and my mother were named the executors.

This is my recollection of the document.

The document stated that the estate was to be left as it is for the children.

I recognise 4 bottles and 2 hypodermic needles shown me. I saw them in my father's bedroom on a shelf. I produced these articles in evidence.

F — 1, 2 Needles.

F — 3, 4, 5, 6 Bottles.

20 **Cross-Examined:**

I first saw the will in the safe when my father told me of it. My father was in sitting room. No one else was there. This was in 1945—46. I was 15 years then The document bore a date but can't recall the date. It was a new document. I read it to my father at his request. He said it was a will he had made but that he was going to destroy it that he was making my mother sole executrix. He gave no other reason. Did not know then anything that Christopher had done to make my father change his mind. My father then tore up the will into 4 pieces and told me to put it on the fire and I did so.

30

Not cross-examined by Mr. Young:

Not re-examined:

To court:

I saw exhibits "F" in my father's room on my return from Barbados after my father's death. They remained there till 3 days ago when I brought them to town to my lawyer.

LAMBERT HAROLD JAMES sworn states:

I am a M.D. Diploma in Tropical Medicine and Public Health. I am Government Medical Officer, in charge of Mahaicony Medical

District and I reside there. My surgery is under my residence. I treat patients there. I tour my district weekly and I go out answering calls.

Lunch: 11.30 a.m.

Court resumes 1.00 p.m.

I knew the late Jacob James for 9—10 years. I treated him as a physician on some occasions. I knew he had diabetes. I first came to know that he had diabetes when sometime before 1956 I sent him to the Mercy Hospital for a surgical condition of the left leg and he was operated on by Dr. Romitti. After convalescing at home I discovered this diabetic condition. **10**

I treated him for diabetes. I gave him insulin injections. Can't remember for how long, but I only gave him about 3 injections — maybe 3—4 injections but not as many as 6. I stopped giving him injections because he refused to have them. I never gave him tablets for diabetes. He never told me Dr. Denbow had given him some tablets for diabetes. I am familiar with the use of 'Diabenes' tablets for the treatment of diabetes. To my knowledge this type of treatment first came to British Guiana around 1958. It might have been the earlier part of 1958. **20**

Don't know whether Mr. James used to take any of those tablets. I attended him on 27.8.58. Refreshing my memory from an extract from my original notes I say that on that day I examined and treated him for fever. I went to his house in answer to a call from him.

On previous occasions when I treated him was mainly at my surgery.

On 27.8.58 he complained of fever, pains in lower back and right knee. I examined him in his drawing room or parlour or sitting room. He was sitting on a chair. I treated those conditions. On that occasion did not treat him for diabetes. **30**

Do not know anything about his giving himself injections.

After the 3 — 4 injections I gave him I do not know what treatment he had if any for diabetes. The 3 — 4 injections were given in either 1955—1956.

On 27.8.58 I advised rest. I next saw him on 10th September 1958. Another Wednesday I saw him again when I was called to him on 22.10.58. I again saw him on 16.12.58. I gave a death certificate.

The cause of death was due to (i) Cancer (ii) Diabetes as far as I can remember. **40**

On 27.8.58 when I examined James I was about 15 minutes with him.

Cross-examined by Mr. Elliott:

When I said I treated him for diabetes and gave him 3—4 injections I only saw him on occasions which I gave him injections.

Not true from January — September 1958 that Benjie brought his father to see me two or three times per week.

Between January — September 1958 I only saw James on 27.8.58.

10

I first learnt of the carcinoma on 27.8.58 when he called me in I suspected this condition and I sent him to Radiologist. Report 24.10.58 confirmed my suspicion.

First time I treated James as far as I can recall was about 1951.

In 1950 James showed no sign of diabetes. In 1958 I noticed nothing abnormal about his mental condition when I examined him.

Not cross-examined by Mr. Young:

Re-examined:

20

If I am in my surgery and a patient brought there by car I would not necessarily see the person who brought patient or the car.

If I was having a conversation with a patient outside of my surgery by the door and a person who was by the car was listening he might hear my conversation.

I had no discussion with James at my surgery about any operation. I spoke to him of an operation prior to 1956 at his home. When I gave him injections I gave them at my surgery.

CLAUDETTE SHEPHERD sworn states:

I live at No. 10 Mahaicony, with my grandmother Esther James.

30

Jacob James was my grandfather, and I am a daughter of Milicent Shepherd. As far as I can remember I lived no where else up to time my grandfather died.

Looking at Exhibit "F" I say I saw things like this in my grandfather's house in his bedroom. He had them there to inject himself. I used to have to get up at 5—5.30 a.m. to heat some water for him to put the needles in. I saw him use the needles and inject himself on his left hand—upper arm indicated. Around 1958 I had

to do with preparing his meals. I remember when Dr. James visited in 1958 August. Around that time my grandfather used to eat rice and would drink condensed milk. He used to drink 4 tins of condensed milk per day.

My grandfather used to give himself injections because he had diabetes. Everyday I used to have to get up to heat water for him to put the needles in. In August 1958 I did that every day.

A couple days, 2—3 days after the doctor saw him he left to come to Georgetown. The day he came to town I took in hot water as usual to my grandfather. That day he was sick. The doctor had told him he **must take some rest as he was very weak**. My grandmother told me this. **10**

House a two storeyed building. Sitting Room and Dining Room down stairs. Kitchen in an outhouse. I used to help prepare meals and bring them to the dining room. I slept and ate in the house.

I was in house when doctor visited. People in house discussed his illness.

In August 1958 my grandfather was sick. To my knowledge and as far as I could see **he was weak**. He complained about his foot and pain but he did not tell me where. On looking at his face he looked sick. **20**

Cross-examined:

I went to live at my grandfather's house early in 1958. He began drinking condensed milk in August. He told the doctor he got relief from drinking condensed milk. He continued to drink the same quantity of milk per day till he died.

Not Cross-examined by Mr. Young:

To court:

When I was at home my grandmother, my brother Wilfred (17 years), my grandfather and I were the only persons at home. When I got the hot water my grandmother would be awake. **30**

Re-examined:

Either my grandmother or I would give this condensed milk to my grandfather. It came from the shop as I used to buy it. He used to drink the milk from the tin.

Mr. Cummings states he closes the defence for Nos. 2 and 3 subject to the calling of Dr. Williams which he proposes to do after the evidence of the person cited has been led.

Mr. Elliott and Mr. Young do not object to this course. Mr. Haynes not in court.

Leave granted by court.

ESTHER JAMES sworn states:

10 I am widow of the late Jacob James who died on 17.12.58. I live now as then at No. 10 Mahaicony. Prior to his death he complained of pain in his stomach and pain in knees, diabetes and pressure. He was suffering from diabetes since 1956. He saw Dr. James about these ailments. Can't remember from when he first saw Dr. James. Dr. James gave him injections and tablets.

I recognise Exhibit "F", hypodermic syringe, 2 insulin. My husband used to give himself injections with them. Before my husband's illness he had a bad temper. In 1958 the year he died he treated me badly. He always treated me like that. In 1958 he treated me worse.

In 1958 he chased me out of the house with sticks and a cutlass, and he quarrelled often. He would quarrel with everyone at home.

He ate his meals all about in the yard, on the bridge, Claudette used to take his meals to him. He did not eat too well.

20 I worked in the home with my husband.

Not cross-examined by Mr. Elliott:

Cross-examined by Mr. Cummings:

I heard what Claudette said about condensed milk it was true I used to see my husband inject himself, at 6 a.m., 11 a.m. and 6 p.m.

During 1958 he was sick. Apart from the ailments I mentioned he complained of nothing else.

30 He used to get fever and hiccup after he took his injections he would get bad feelings and would perspire and then he would take condensed milk. In August 1958 that happened i.e. bad feelings, when he took the injections and the condensed milk.

A couple of days after the doctor visited him he came to town. He took injections that day. He ate his breakfast at 11 a.m. He took his tea after the injection $\frac{1}{2}$ hour after. When Benjie came in my husband was lying on a couch with his head back. I help him to the car. Before he went down he took some condensed milk and some milk and rice.

He had 2 injections that day 1 at 6 a.m. and 1 before he left.

My husband discussed the children with me. He did not always say bad things of his children. Sometimes he would say bad things and sometimes he would say good things.

Benjie was his favourite son. Sheila and her father never had any quarrel. He was very fond of Sheila. Would not have expected my husband to have left Sheila as little as he did leave her in the Will.

Two grandchildren Claudette and Wilfred lived at home. Claudette took the injection water in the mornings and she helped to prepare the meals. 10

Sometimes when Claudette was at school I would take the water in. My husband loved Claudette.

Some of the children behaved badly from time to time but he forgave them and tried to see them go in the right way.

Not re-examined:

Case for third party

At this stage Mr. Cummings states that Dr. Williams who was in Court has been called away and asks for an adjournment.

Court rises at 3.05 p.m.

Adjourned to Saturday 7.1.61. 20

Saturday, 7th January, 1961.

Hearing from 5.1.61.

Appearances as before.

Mr. Cummings asks leave to recall Dr. James.

Leave granted.

LAMBERS HAROLD JAMES recalled sworn states:

When I visited the late Jacob James on 27.8.58 or shortly before or shortly after, I heard he had been taking condensed milk. I also heard that the patient said he was getting relief from it. I heard so from more than one person. The condensed milk I heard was sweetened. This is contra indicated for a diabetic patient. I would expect the condition of a diabetic to worsen if he took condensed milk. The taking of the condensed milk was not a reason why I gave cause of death as diabetes. 30

Cross-examined by Mr. Elliott:

If condensed milk taken after an overdose of insulin, the re-

sulting hypoglycaemia would be relieved, dependent on quantity of milk taken.

Not re-examined:

FRANK WILLIAMS sworn states:

10 I live at Cove & John, East Coast, Demerara. I am in private practice as a physician my office is in New Market Street Georgetown. I am a M.B. B.S. (London) 1949 M.R.C.P. (Edin.) 1954. Until I resigned I was senior physician, Georgetown Hospital. Have treated patients for diabetes. In 10 years I must have seen a couple of hundred diabetics. Have been in practice in British Guiana for 10 years.

Know of a condition in diabetes called 'Hypoglycaemia.' Have treated between 12—24 patients suffering from such a condition. The condition brought on in many ways.

Commonest way would be in a diabetic being treated with insulin or any other antidiabetic drug and the patient may at any one moment have too much insulin or the anti-diabetic drug used as compared with the amount of sugar at the time.

20 Looking at treatment in General Practice by Beekman 5th Ed. at p. 486 (passages marked) I agree with the paragraph.

Looking at Biochemical Disorders in Human Disease by Thompson and King. I agree that this book is a standard work.

Looking at passage at p. 538 at pp. marked X. I say I agree with portion relative to 'repeated hypoglycaemic insults' because it is a well recognised medical opinion by several authorities but I have no personal experience of such a patient.

30 In my opinion in every case of hypoglycaemia I would say that as soon as sugar is given the symptoms begin to clear up or disappear. The blood sugar would rise and the condition would be relieved dramatically.

Have known of cases where hypoglycaemia lasts for a long time.

It has been recorded that such a condition has lasted for days.

I brought along with me a case history of a patient treated by me in 1959. I haven't got his permission to disclose his identity.

Story of this patient is that I was called to see patient between 8—9 p.m. on 6.8.59. I was told that during that day patient was excited and unlike his normal self was unduly talkative and a little

confused. I was also told he was under treatment for high blood pressure. I knew this patient personally and my observation was that he was unduly excited and a trifle confused. On examination his pressure was very high and I thought his symptoms consistent with his hypertension I therefore gave him a sedative and suggested he should be admitted to hospital first thing next morning.

At 4.30 a.m. on 7.8.59 I was called to the patient. I found him in his garage in his pyjamas shouting abusing his relatives who were trying to restrain him from getting into the car. He was in fact behaving like a violent drunk. I decided to get him to hospital immediately. He was driven to hospital. He attempted to put his foot on clutch put his foot on brakes. **10**

At hospital I gave him sugar in veins after having taken off some blood to be tested next day. He recovered immediately. The test next day showed that he unmistakably had hypoglycaemia. I then got a history from him that he had seen a doctor a week before that sugar had been found in his urine and that he had been given some tablets to take for diabetes. All that week he complained every day of a feeling of butterflies in the stomach, sweating and dimness of vision, symptoms which were relieved by eating. I discharged this patient subsequently as completely recovered and mentally normal. **20**

When I saw the patient that night I do not think that his faculty of judgment was normal. when I saw him in early morning he was not capable of normal behaviour or judgment. If I had any business to discuss with him I would not have discussed it with him then as he was not normal.

If I was told that a man the deceased in this case, suffered from diabetes as far back as 1955-56 and that Dr. James gave him 3-4 injections and stopped because deceased refused to have more. Hypodermic needles and tubes with insulin produced in court and person injected himself during 1958. He used to take injection every morning at 6 a.m. and one witness said he took 3 injections per day 1-6 a.m., 1-11 a.m. and 1-6 p.m. He drank between 1-3 tins condensed milk per day and that he suffered from cold sweat and bad feelings after taking these injections. We are also told he was irritable and quarrelsome. My comments would be :— Assuming that the injections taken were insulin it is reasonable to assume that his bad feelings and cold sweat and his irritability were due to bouts of hypoglycaemia. If his condensed milk was taken when he had symptoms of cold sweat and bad feelings that I would consider as further evidence of his attempting to correct his hypoglycaemic state. **30**
40

In my practice it is not uncommon for diabetics to inject themselves nowadays. One encourages that. The normal practice which I

would adopt if I was putting a patient on insulin which he was to administer himself I would advise him of the possible effects of overdose of drug, its purpose, what to do if he had an overdose and I would teach him to test his urine.

It is dangerous for a patient to inject himself without such advice.

Dr. Denbow told court he gave deceased a bottle of tablets for diabetes, and asked for another bottle.

10 Depending on what he ate I am unable to express an opinion as to the possible effects.

I would consider it dangerous for anyone to take drugs without any proper management. Such drugs should be taken under the guidance of a physician.

20 If deceased was visited by Dr. James in August 1958 who said he complained of pains in knee, sides and back and had fever. He did not treat him for diabetes and his visit lasted for 15 minutes. He treated those conditions and told deceased he should rest. If it is said that on the evening of the 29th he sent for his son to come for him next morning to take him to town; He has the usual injection at 6 a.m.; he has tea, rice and milk and later condensed milk. He leaves for town at 10-11 a.m. but before leaving he has another injection and some more condensed milk. His son says he had cold sweat and complained of bad feelings.

I would say by way of comment that the same possibility of hypoglycaemia attacks existed then as on previous occasions.

The Barrister who explained the will said in his opinion that James was sick physically but not mentally between 2-4 p.m.

30 A person who witnessed will said James said he was unduly anxious to make his will that particular day. Testator's wife and son had endeavoured to dissuade him from coming to town that day. He had pain in his knee and had to be assisted to the car. Barrister said he volunteered to execute will in car because of his physical condition.

My comments on meaning of those factors on the question of a possible hypoglycaemic condition are as I already said from the complaints of cold sweat condensed milk, etc., suggest that a hypoglycaemic attack was on that day. The additional factor of anxiety is an added manifestation of hypoglycaemia.

40 Ref. to Text book of Medicine by Cecil 7th Edition. It is a standard work at p. 712. Relative to subhead Clinical picture Hypo-

glycaemia :— I agree with the 2 passages there marked. Passage from Price's Text Book on Medicine 9th Ed. p. 430 I agree.

Assuming that this patient is getting these bouts of Hypoglycaemia every day for about 30 days before will executed, I would say :—

In dealing with diabetics it is agreed that it is essential to prevent repeated bouts of hypoglycaemia because of the possibility of profound changes in the patient's personality. The determination may result in a change of personality.

Evidence in chief closed.

10

Adjourned to Monday, 9th January.

Resumed from 7/1/61.

Appearances as before.

FRANK WILLIAMS continuing his evidence on oath:

Cross-examined by Mr. Elliott.

With reference to portion read from viz: that hypoglycaemia might result in change of personality :— I say I have no personal experience.

Ref: Schenolika's evidence with respect to loss of keenness etc not regular complement of disease I agree with.

20

I agree that personality changes in cases of one attack of hypoglycaemia would be extremely rare. In cases which I have treated I have dealt with no case of repeated attacks of hypoglycaemia.

With reference to my last answer in examination-in-chief if as evidence shows the deceased started taking milk in August and continued to take it up to time of death in the same quantity it would be extremely difficult to assess position in absence of knowledge of quantity of insulin and milk taken.

Re Schenolika's evidence refers to 1st result of hypoglycaemia in muscular weakness. Do not agree that 2nd stage of loss of memory would necessarily follow, it may. Do not agree that coma would necessarily follow, it may or strangely enough patient may recover without treatment.

30

One of the things which happen in hypoglycaemic stage is that the suprarenal glands under the stimulus of hypoglycaemia pour out adrenalin into blood effect of which is to mobilise the glucose stored in the liver for just such eventualities and in any given case some such supply of glucose may be adequate to correct the hypo-

glycaemia. For this reason one authority states that patients rarely die from hypoglycaemia. This authority has not been put to me. This authority is Davidson on the Principles and Practice of Medicine 1953 p. 349.

I know of no other authority which has written this statement but the principle is accepted by the profession.

This work of Davidson is for under-graduates. I agree that Davidson does not mention that hypoglycaemia may last for 2-3 days.

10 With respect to case history which I gave, I personally have no experience of any other case of hypoglycaemia which lasted as long.

I agree that 75% of new cases of diabetes occur before 60 years. p. 331 I do not agree that the later in life the outset the milder the disease, is as general in the Caribbean as in temperate countries. I would say 50-50.

p. 338. Ref. 'Atheroma' change on inside of arteries — I agree with.

20 If I knew deceased in this case had suffered from 1956 and had a diagnosed inoperable carcinoma of stomach and that he was discharged from hospital on 13th December and on 15th visited his estate I would say heart failure could have been one of many probable causes of death.

Not cross-examined by Mr. Young:

Re-examined:

By leave of Court to Mr. Cummings.

Ref. Coniberts Text Book of Medicine 9th Ed. p. 239. Hypoglycaemic reactions. I agree with marked portion.

If we were told that deceased was apprehensive of his death I would say that apprehension is one of the symptoms of hypoglycaemia.

30 **Re-examined :**

It would be extremely rare to find a change of personality in one attack of hypoglycaemia but from repeated bouts change of personality may definitely result.

In the case of extended hypoglycaemia which I treated was only one which I had experience of. It is generally accepted that such cases of extended hypoglycaemia occur from time to time.

Cross-examined by Mr. Elliott.

If a patient was suffering from gastric carcinoma and he was informed that it was inoperable I agree that it would be reasonable for him to have an apprehension of death.

To Court :

I at no time saw the late Jacob James professionally or otherwise.

Case for the defence.

Mr. Haynes asks leave to recall Elaine Reece.

Mr. Elliott opposes.

10

Leave granted.

ELAINE REECE recalled further states :—

My children who were boarding at Fraser's when will made were Waveney and Orville. Orville began boarding there in September 1958.

Will having been made 3/8/58. They were not boarding there at the time will was made. They went to board there after the August holidays. They went to school in Georgetown before the August. Orville was going to school in Georgetown in January 1958. He is my first son. My second son never attended school in Georgetown. **20**

Cross-examined by Elliott :

My second boy is 13 years and goes to school at Mahaicony. His name is Vibert.

Case.

Mr. Haynes asks leave to address at a later stage as he has a commitment in another court which is going on. Will be available later in day. Mr. Cummings, Mr. Young and Mr. Elliott do not oppose application.

Leave granted.

Mr. Cummings for Nos. 2 and 3 addresses :—

30

Jacob James died 17/12/58.

Doctor who issued the certificate of death gave his opinion as to cause of death.

Not disputed deceased suffered from diabetes for two years before death.

Medical evidence discloses that if diabetes not treated it is debilitating and may cause death.

Submit it cannot be but common ground that deceased suffered as he was from diabetes exhibited an apprehension, an undue anxiety around time he is alleged to have given instructions for will and at time will executed.

Ref. Wong's evidence in cross-examination by Mr. Haynes he appeared sick. At time of execution of will Wong said he was sick physically.

10 Lambert James' evidence—on 27th he complained of pains in back knee and side and fever.

Wong accommodated him by executing will in car. Why? because he was a sick man.

20 On 27th and 30th August deceased was a sick man. Onus of proving testamentary capacity is affirmatively placed on person propounding the will. Where competent witnesses testify to proper execution; presumption is that testator was of testamentary capacity. However, the surrounding circumstances court should wish to know whether the testator was not in any way affected by his disease.

Submit Solicitor did not take necessary steps to see that testator properly understood contents. Wong read will over to him in 10 minutes.

Battansingh et al — v — Amer Chan et al 1948 1 All E.R. 152 at pp H. p. 154 pp D.p. 155.

Regard Fraser's conduct as suspect. He is indebted to Estate and Mrs. Reece a regular visitor. On pleadings.

Mortimer on Probate 2nd Edition p. 70-79. 'Burden of Proof' p. 75.

30 Wong said deceased was sick. Fraser says otherwise, he was not sick.

Submit: that on the medical evidence taking of insulin is dangerous if not under proper supervision and or direction. Common sense to infer in the circumstances that testator was weakened by his regular taking of insulin and the likelihood of regular bouts of hypoglycaemia. His judgment must be affected.

Ask Court to be suspicious about the will because of the family of deceased who have been left out.

Benjie was set up in the truck business after the assault incident in 1955. He had not failed in business. He was not indolent even though he did not like mud.

Gift to Benjamin, his favourite son of \$300.00 unreasonable. His judgment must have been impaired.

What of Sheila? She had a wedding like her other sisters, from her father but what wrong had she done?

What of Harriette his daughter. Nothing left to her — Could his judgment be rational?

If Court accepts Denbow's evidence clear that testator's mind **10** was wondering. His judgment was faulty.

Court rises: 11.25

Court resumes 1.00 p.m.

Mr. Cummings continues his address.

Circumstances should excite suspicions of court. Why should testator leave to Elaine Reece such considerable property and exclude other children. — Evidence of inability of testator to judge properly.

Plaintiff has given conflicting testimony as to forgiving nature of her father. **20**

Ref. Dr. Denbow's evidence. He obviously came to bolster plaintiff's case. His evidence rash. Unsolicited he asks court to infer that money given to plaintiff because of her son whom the testator expressed a liking for.

Inference from Denbow's evidence **Re** testator having come down in **Re** will that it was same day he gave instructions for will. Strong suggestion that deceased was suffering from mental aberration for he seemed to have forgotten that he had seen Fraser earlier — vide Fraser's evidence.

Evidence of Denbow and Davison do not take plaintiff's case **30** any further.

Inference from Dr. Williams' evidence that testator was suffering from bouts of hypoglycaemia.

Ref. Dr. Schenolikar's evidence in re memory. His basis for saying patient's memory good — faulty.

Accept evidence of Dr. Williams in preference to that of Shenolikar relative to the duration of bouts of Shenolikar's evidence.

If Court in doubt as to testamentary capacity of testator then plaintiffs have not discharged onus cast on them.

Mortimer on Probate 2nd Edition PP. 53, 54, 55—Burden of Proof.

Boughton vs. Knight 3 Pro. Div. 76.

Barrie vs. Butlin 1838 2 Moore P.C. cases 484.

Tyrrell vs. Painton 42 W.R. 343.

10 Wills Ordinance Cap. 47.

Sound disposing mind — **Banks vs. Goodfellow** 1870 L.R. 5 Q.B. 565. Cowburn.

Mortimer on Probate p. 41.

Harwood vs. Baker 3 Moore P.C. cases 290 13 ER 117 at 120.

Coombes case 1606 Moore P.C. cases 759.

Parker vs. Felgate 1883 8 Pro. Div. 171.

Perera vs. Perera 1901 A.C. 354 at p. 359.

Battan Singh vs. Amirchand 1948 1 All E.R. 152.

Suspicious circumstances due to feebleness.

20 Defaue vs. Croft 3 Moore's P.C. at p. 136.

Marsh vs. Tyrrell 1828 2 Hagg 87.

Durling vs. Loveland 1830 2 Curt.

Hampson vs. Grey 1891 64 L.T. 778.

Wingrove vs. Wingrove 1886 11 Pro. Div. p. 82.

Fraser's evidence on these instructions unsatisfactory. Instructions given to a lay intermediary. Instructions destroyed.

Submit that 10 minutes spent on a will of this nature by solicitor inadequate. Submit that the execution of will was unsatisfactory.

Neither Fraser nor Wong knew the nature of the disease.

30 Asking Court to say it is doubtful whether testator had testamentary capacity.

This only concludes on a proper assessment of the circumstances.

Court rises 3.30 p.m.

Adjourned to a date due to notice of which will be given.

Boughton vs. Knight 3 Pro. Div. 76.

Monday, 20th February, 1961.

Resumed from 9th January, 1961.

Appearances as before.

Mr. Haynes addresses :—

Possession re No. 1 Plaintiff clearly set out in his defence, and will confirm.

(1) will not properly executed.

(11) testator did not know or approve of contents. According to evidence of Wong if it is accepted (1) cannot stand. Will restricting argument to suspicious circumstances surrounding the preparation of the will which have not been satisfactorily removed. **10**

Suspicious circumstances :—

All we have to show is that there are suspicious circumstances which have not been removed.

According to evidence of Wong and Fraser instructions given. Will prepared. Will executed. Referring to contents of will (1) failure to make reasonable provision against whom no allegation of unfilial behaviour was mentioned in will itself and failure by proponent of will to lead evidence showing such unfilial behaviour.

Millicent Shepherd

20

Lucille Waldron

Sheila Prescod.

(2) Failure to provide for grandchildren.

(3) Small provision made for Benjamin James although no allegation of unfilial behaviour mentioned in will, but evidence led as to this.

(4) Evidence in re state of health of testator on date of execution of will.

(5) In particular the conflicting evidence of Wong and Fraser in Re the state of health of deceased on date of execution of will. **30**

(6) Failure to observe and produce to court written instructions of draft.

(7) Subordinate part played by Solicitor in the preparation of the will.

(8) The fact that in a previous will according to evidence of Sheila Prescod a fair distribution of the Estate was made.

Although we have not pleaded state of health submit entitled to use evidence before court. Evidence of existence of instructions suspicious.

Look at evidence of Wong :

In June 1958 when asked to have a will prepared Wong said he appeared to be a sick man. Although he was a good client he took no instructions but referred him to Fraser.

10 Wong's behaviour casual and disinterested. Will ask court later to consider whether Wong did read and fully explain will or whether he left that duty to Fraser.

Wong said he saw instructions at Fraser's home. Instructions not left at office but at Fraser's. No instructions to preserve draft. Instructions nor Draft preserved. No communication with James in interval. Fraser said he had asked James to initial the instructions:

Why did he not continue to be thus careful ?

20 What was the state of health of testator on date Will was executed? Evidence of Benjamin James and Esther James to some extent supported by Wong, when he said he felt it would be unwise having regard to his health to make him go up steps to office. Hence Will signed in car. In course of Fraser's evidence man appeared quite well. Why is Fraser denying the state of health of testator? Evidence of Dr. Williams points to the suspicion that testator was fully able to understand what he was doing. These circumstances sufficient to establish a serious possibility of suspicious circumstances which is all court has to be satisfied on.

Consider evidence which removes this evidence.

Nothing in evidence of defence witnesses.

Wong's evidence of 'mentally alert' does not remove this suspicion.

30 James on evidence could not read very well. Referring to evidence of Fraser. Conflicting, at one time he could read well other time not a fluent reader. If court satisfied he could not read well as evidence indicates court must be more vigilant as to whether he understood what he had read and what he had signed.

Wong said he read and explained in 5 minutes — 10 minutes.
Fraser — 20 minutes.

Submit that Wong was so casual that had he read the instructions he should have realised that Elaine Reece was James' daughter when James came in with her to make the Power of Attorney.

40 Evidence of a previous will important.

Ref. Witness Simon Charles — ask court to watch his evidence with caution. He was indebted to estate.

Approach which Court takes in such cases.

Tyrrel vs. Painton 1894 Pro Div. 151.

Davis vs. Mayhew 1927 Pro Div. 286.

Rampersaud Singh vs. Ramlogan 1924 B.G.L.R. 179.

Walsh vs. Severin 1939 B.G.L.R. 240.

Straker vs. Luke 1947 B.G.L.R. 187.

Walker vs. Richards 1955 B.G.L.R. 8.

Goddard vs. Jack 1959 W.I. Repts. Vol 1 1958-59 part 169.

10

Ask Court to pronounce against the will.

Mr. Young :

In view of the peculiar position of my client. If will pronounced against my client she stands to lose some \$7,000.00 nevertheless she adopts the defence of No. 1.

Her evidence by itself not enough to upset will.

Considered, however, with the other circumstances I agree that would be enough to excite suspicion of court in this matter.

Referring to evidence of Wong and Fraser :

Significant that Fraser so dogmatic as to testator's state of health. He disagrees with Wong's evidence that testator looked a sick man. Wong said that testator looked ill when he gave instructions and when Will was executed. In cross-examination Wong went further in his anxiety over Power of Attorney. In his anxiety he had at back of his mind fact that testator had only made a Will recently. 20

Wong in circumstances could not be expected to testify as to his doubts on his health and testamentary capacity.

Fraser's position in this matter :— He is central figure. By his own admission is closely connected to Elaine Reece. 30

Settled Law: If a will made by a principal beneficiary then that itself would excite suspicion.

Goddard vs. Jack W.I.R. Vol 1 part 2 at p. 173.

Citing from **Barry vs. Buttin**. By an extension of this principle — Fraser is a close friend of Elaine Reece and therefore suspicion of court should be excited.

Ask to pronounce against Will.

Elliott :

Remarkable thing of this case is the amount of evidence to indicate the testamentary capacity of the testator. Only reason why Will being challenged is because the goods not evenly distributed. Strongest claim to upset Will 'The testator looked a sick man', Wong. Will executed in car.

1st: Defendant has raised 2 defences. Puts plaintiff to proof of due execution.

10 2nd: Testator did not know contents of Will. Tristram & Coote 21st Ed. p. 658. Fact that will regularly executed. Clear knowledge at time of giving instructions. Both Wong and Fraser read Will to him.

Ref: to Defendant Nos. 2 and 3. In spite of a statement that they had abandoned defence of undue influence went ahead to make reckless allegations of the kind.

Ref: pp. 10 of defence — what evidence of serious assaults on wife and children. No evidence in biting Lucille.

20 At this stage Mr. Young states that he has abandoned the defence of Nos. 2 and 3 defendants and relies on defence of No 1.

Elliott:

Nos. 2 and 3 obviously rely on delusion that he despised his children. None of the reckless allegations in 10 proved.

No application to amend pleadings as attempted to be proved. Tristram and Coote p. 654. Four classes of persons incapacitated from making Will.

Persons mentally unsound from sickness, accident or old age.

Here rely on sickness and old age.

30 **Attack on insanity of testator proceeded on (1) Opinion of witnesses. (2) Internal evidence of Will. (3) Medical evidence.**

Until 1958 testator was strong, energetic, sharp and keen. In 1958 illness took its toll loss of memory during 6 weeks between time he gave instructions and time he executed his Will. Re (1) above, all independent and reliable witnesses agree testator appeared of sound mentality.

Dr. Shenolikar sound up to December 1955.

Mr. Davison sound up to November 1958.

Dr. Denbow sound up to October 1958.

Fraser sound up to November.

Wong sound up to November, '58.

Kerry sound up to November, '58.

Dr. James 27/8/58, 10/8/58, 16/12/58 did not notice anything abnormal about his mental condition.

No line of attack under this head.

2nd line of attack. Internal evidence of Will misconceived and based on false premises. Had James been weak and forgiving he might have reacted as the defendants required. **10**

3 categories of beneficiaries under Will.

- (1) Those whom he disliked they got \$25.00.
- (2) Those whom he liked but believed they would fritter what he gave them, they got \$200.
- (3) Those whom he trusted: Mrs. Reece and his widow.

1st, 2nd, 5th bequests	....	....	....	....	first category.
....	....	....	....	....	second category.
Elaine Reece and widow	....	....	....	....	third category.

Submitted Will sound and logical. All children dealt with. All his property dealt with. **20**

Vide pp. 6 and 7 of Will for detail which shows his mind quite lucid.

Lunch — Adjourned.

Resumes:

1st and 4th Defendants :— Will not properly executed.

2nd and 3rd Defendants :— Insanity.

Medical evidence attack ground (3). Two medical witnesses conflicting. Facts have to be established in order that court can act on the medical evidence.

Those who took instructions and those who witnessed the execution of the Will found he was able to look after himself. **30**

It would seem that doses of insulin regular doses of milk regular — no evidence that only on day Will executed he was worse for wear.

Battan Singh vs. Amirchand 1948 1 All E.R. 152.

Banks vs. Goodfellow.

In R. v. Bohrman 1938 1 All E.R. p. 271 Langdon L.J. at p. 278, 279.
Costs vide **Tristram and Cootes** at p. 745 et seq. Asks court to pronounce in favour of Will. Mr. Cummings asks leave to address on question of costs.

Court points out that arguments on costs will be better heard after Judgment delivered.

.C.A.V.

10

Parties to be informed in due course of date of judgment.

K.L.G.

20/2/61.

1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

In the matter of the Estate of JACOB JAMES, deceased.

— Between —

ELAINE REECE,

Plaintiff.

— and —

CLARABEL PICKETT

BENJAMIN JACOB JAMES

SHEILA PRESCOD

ESTHER JAMES,

10

Defendants.

BEFORE: GORDON J. \

1960: March 2, 23.

1961: January 3, 4, 5, 7, 9.

February 20.

May 29.

J. H. S. Elliott, Q.C. for the plaintiff.

J. O. F. Haynes, Q.C. for the first named defendant.

P. A. Cummings for Nos. 2 and 3 defendants.

20

M. C. Young for No. 4 defendant.

JUDGMENT:

The deceased Jacob James a farmer and moneylender of No. 10, Mahaicony, East Coast, Demerara, died on the 17th December, 1958, leaving a Will which was executed on the 30th August, 1958, and under which he appointed his daughter Elaine Reece his Executrix.

Consequent on caveats having been lodged by the first three defendants, children of the deceased, the plaintiff, as Executor of the Will, has brought these proceedings in which she asks the Court to decree probate of the said Will in solemn form of Law.

30

Esther James, who was cited by the defendant Sheila Prescod, is the widow of the testator, the mother of the plaintiff and the defendants, and a specific legatee under the Will. At the trial she indicated through her Counsel that she was joining with the defendants in disputing the Will, despite the fact that her interests would be adversely affected in the event of the Will being rejected by the Court.

10 In contesting the validity of the Will the defendants have urged on the Court different reasons for its rejection. The first defendant bases her case on the following contentions:—

- (a) the Will was not executed in accordance with the Wills Ordinance Chapter 47 of the Laws of British Guiana;
- (b) there were suspicious circumstances surrounding the preparation of the Will; and
- (c) that the testator did not know or approve of the contents of the instrument.

20 During the hearing, Counsel for the second and third defendants abandoned the allegation of undue influence which they had pleaded and relied on the defence that the testator was not of sound mind, memory and understanding, when the Will was executed. This defence was adopted by counsel for Esther James — the person cited.

The following facts are not in dispute:—

30 The testator who was a successful planter and money lender (among other callings), died at the age of 66 years on the 17th December, 1958, leaving an estate of considerable value, (declared at \$169,503.35 for Estate Duty). During his lifetime he had the reputation of being a strong and forceful character, but from 1955 suffered from diabetes. On the 1st December, 1958, he was admitted as a patient to the Mercy Hospital, Georgetown, where Mr. Schenolikar, the Surgeon, diagnosed that in addition to his diabetic condition he was suffering from an inoperable carcinoma of the stomach. He left the hospital on the 13th December and died on the 17th December, 1958.

40 On the 30th August, 1958, his Will, which was prepared by Thomas Bedford Fraser, an experienced law clerk now employed by the British Guiana Credit Corporation, was executed before Clinton Wong, a Barrister, and signed by both Wong and Fraser as witnesses. This Will which was executed in a motor car at the corner of Charlotte and Camp Streets, replaced an earlier Will which Fraser had made for the testator some years before and which he destroyed some time between 1945 and 1946.

The Will which is the subject matter of the litigation is set out herewith for convenience:—

“This is the last Will and testament of me Jacob James at present residing at No. 10, Left Bank, Mahaicony Creek, East Coast, Demerara.

“I hereby revoke all former Wills and codicils and other documents of a testamentary nature heretofore made by me.

“I direct my executrix to pay as soon as practicable after my death all my just debts and funeral and testimony expenses out of my estate. 10

“**FIRSTLY:** I give and bequeath to my son CALEB THEOPHILUS JAMES the sum of \$25.00 (Twenty-five dollars) this is in consequence of his unfilial behaviour towards me.

“**SECONDLY:** I give and bequeath to my son CHRISTOPHER JAMES the sum of \$25.00 (Twenty-five dollars) this is in consequence of his unfilial behaviour towards me.

“**THIRDLY:** I give and bequeath to my son BENJAMIN JACOB JAMES the sum of \$300.00 (three hundred dollars).

“**FOURTHLY:** I give and bequeath to my daughter MILLICENT SHEPHERD, born James — 20

- (a) \$300.00 (three hundred dollars) cash
- (b) 10 (ten) head of cattle.

“**FIFTHLY:** I give and bequeath to my daughter CLARABEL PICKETT, born James, the sum of \$25.00 (twenty-five dollars) this is in consequence of her behaviour towards me.

“**SIXTHLY:** I give and bequeath to my wife ESTHER REBECCA JAMES the North half of Plantation No. 10, Mahaicony Creek, East Coast, Demerara, with the buildings and erections thereon and my buildings situate on the South half of Plantation 10, Mahaicony Creek, East Coast, Demerara, save and except my padi bond, also the piece of land part of the said south half of Plantation 10 aforesaid on which my buildings stand. My executrix is to survey this said piece of land and transport same to my wife. I also give and bequeath to my said wife Esther Rebecca James the amount due under my 2 old Crown Life Insurance Policies. 30

“**SEVENTHLY:** I give and bequeath to my daughter ELAINE REECE the south half of Plantation No. 10, Mahaicony Creek, East Coast, Demerara, save and except (a) my buildings thereon and the piece of land bequeathed to my wife and the 1½ acres of land given by me to the Methodist Body. 40

"EIGHTHLY: I give and bequeath to my daughter SHEILA PRESCOD, born James, the sum of \$200.00 (two hundred dollars) cash and 2 head of cattle.

"NINTHLY: I give and bequeath to my daughter LUCILLE WALDRON, born James, the sum of \$200.00 (two hundred dollars) and 2 head of cattle.

10

"TENTHLY: The rest residue and remainder of my property both moveable and immovable I give and bequeath to my daughter, ELAINE REECE, born James, absolutely. All my bequests are not free of Estate Duty.

"I nominate, constitute and appoint the said Elaine Reece, born James as executrix with powers of appointment assumption and surrogation.

"In witness whereof I have hereunto set my hand at Georgetown, Demerara, this 30th day of August, 1958.

Jacob James.

20

Signed by the said Jacob James as and for his last Will and Testament in the presence of us both being present at the same time who at his request and in the presence of each other have hereunto subscribed our names as witnesses.

Witnesses :

- | | |
|------------|--|
| 1. Name | Clinton Wong, |
| Address | 266, New Market Street, |
| Occupation | Barrister-at-Law. |
| 2. Name | Thomas Bedford Fraser, |
| Address | 29, D'Urban Street, Werk-en-Rust,
Georgetown. |
| Occupation | Clerk, B.G. Corporation. |

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In opposing the Will it has been urged that the testator who as a diabetic, and who injected himself daily with insulin, and daily drank a considerable quantity of sweetened condensed milk, was given to violent outbursts of temper and loss of control as a result of faulty administration of the insulin injections coupled with the excessive intake of sugar. A consequence of this condition it was further urged, was the development in the mind of the testator of the peculiar psychological complex of dislike for his children. This peculiar change in the testator's mental outlook, it was suggested, was due to hyperglycaemia or hypoglycaemia, conditions which according to Dr. Frank Williams could have been

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brought on by too little or too much sugar in the system, as a result of improper use of insulin by the testator.

On the 30th August, 1958, the day the Will was executed, witnesses from the household of the testator testified that the testator, as was his daily custom, injected himself with a needle, drank a tin of sweetened condensed milk and although not feeling very well insisted on travelling to Georgetown. His son Benjamin James who drove him from his house at Mahaicony to Georgetown (a journey of 1½-2 hours), stated that when he went to take his father to town he was not well and **did not recognise him at first.** 10
 Despite the fact that he could hardly walk, he insisted on making the journey, during which he sat with his head back, perspiring profusely, **his hands trembling as he waved them about and muttered to himself.** On arrival at Fraser's house the son had to assist his father from the car and up the steps. After spending about half an hour with Fraser in private, his father came downstairs and he drove Fraser and his father in the car in search of Wong. Wong was not in office and after a search around the town he was eventually seen and stopped on his motor cycle at the corner of Camp and Charlotte streets. **As Benjamin James was asked by his father** 20
to leave the car on Wong's arrival, he could not say what actually happened in the car. On a call from Fraser 5-10 minutes later, Benjamin James returned to the car, by which time Wong had already left it. He found his father to be still trembling and perspiring.

The defence invites the Court to infer from the story of Benjamin James that the testator must have been suffering from a bout of hypoglycaemia when he signed the document. They further urge that their contention is supported by the fact that the testator for no apparent reason, excluded most of his children from his bounty favouring one child — the plaintiff, and his widow. This combination of circumstances was such as to indicate that he was not of sound mind, memory and understanding when the Will was executed. 30

In view of the allegation by the defendants as to the mental state of the testator when he signed the document, it is necessary to examine in some detail the evidence on this aspect of the case.

Clinton Wong a Barrister-at-Law, and the legal adviser of the testator for some 4-5 years, told the Court that in June-July, 1958, when the testator first discussed with him the question of making his Will, he referred him to Thomas Fraser, an experienced law clerk. In due course the Will was prepared by Fraser after he (Wong) had seen a draft. On Saturday the 30th August, 1958, while sitting on his motor cycle at the corner of Charlotte and Camp streets, he was hailed. He went across to a car which was driven by Benjamin James and in which were Fraser and the testator. Benjamin James was asked by his father to leave and on his leaving the car Wong took his place behind the driving seat. Fraser told 40

him that the testator had come down to execute the Will and on Fraser producing the Will he asked the testator whether he had read it and he replied in the affirmative. He said he then read the Will to him and explained it to him and on being asked whether that was what he wished, the testator replied that it was. At Wong's request he then signed the document. Wong then signed and passed it on to Fraser who also signed.

10 On this aspect of the case Fraser stated that in July, 1958, the testator, who was an old friend who visited his home regularly and discussed his business affairs with him came to his home and told him he was going to Mr. Wong to have a new Will made. On his return home at lunch time, he met the testator who reported that Mr. Wong had asked that he record the particulars of the Will for him. In accordance with that request he took the particulars in writing from the testator, who gave them verbally, voluntarily and intelligently. He prepared a draft which he showed to Wong and which Wong corrected, and from which he prepared the document.

20 Fraser said that on the 30th August, when he got home for lunch, he found the testator and his son Benjamin at home. The testator enquired whether the Will was ready and on his being told that it was, he asked his son to withdraw. The document was handed to the testator who read it while Fraser had his lunch. Fraser said that after lunch at the request of the testator, he read the document over to the latter who approved of it. Benjamin was then called and requested to drive them to the office of Mr. Wong who was out, but who was located after a time at the corner of Camp and Charlotte streets. The testator asked his son to withdraw as Wong came to the car, entered it and sat in the driver's seat where he was given the document by the testator. Mr. Wong then
30 read to the testator the document and explained each clause as he went along, asking whether it conveyed his wish. After the testator had expressed his approval he signed the document as directed by Mr. Wong and with him (Fraser) they then signed as witnesses.

The Court in accepting the evidence of Wong and Fraser, finds as a fact that the deceased could read and that the document was executed in accordance with the Wills Ordinance Chapter 37.

40 Both Wong and Fraser testified that the testator was in a normal mental state in July when the instructions for the Will were given, and on the day it was executed. Mr. Wong said that although the testator appeared to be a sick man in July, he was as mentally alert as ever. In August when he executed the Will in the car, he did so out of consideration for the testator's physical state of health and in order to spare him mounting the stairs to his chambers. Mentally he was quite alert. Fraser on the other hand said that on the day he received the instructions, the testator appeared well

physically and mentally and on the day the Will was executed the testator did not appear in ill health, although he appeared unduly anxious to have the Will executed.

Despite the conflict as to their respective opinions of the testator's health on those two occasions, the Court accepts their evidence that the testator was mentally normal when he discussed the making of the Will with Mr. Wong, when he gave the instructions for the preparation of the Will to Fraser, and when it was executed.

The Court is of this opinion because Benjamin James' description of his father's health after he left Mahaicony on the 30th August, stands alone, and in direct conflict with that of Wong and Fraser, quite apart from the fact that as a witness he was so often found to be unreliable, evasive and untruthful. 10

Dr. Denbow an old friend of the testator, who had discussions with him at the time he was giving active consideration to the making of a new Will, stated that the testator appeared to him to be rational, and that he observed nothing in him which suggested that his faculties had suffered any deterioration.

On the 27th August, 1958, two days before the execution of the Will, Dr. Lambert James, who spent 15 minutes with the testator when he saw him as a patient, and who saw him on the 10th September and on 22nd October stated in his evidence that he observed nothing abnormal about the patient's mental condition in 1958. 20

Mr. Schenollikar, the Surgeon specialist at the Mercy Hospital, who examined the testator as a patient on the 1st December, 1958, stated that he concluded there was no mental abnormality in him. His memory appeared to be alright as far as his disease was concerned and he had no reason to believe that his memory would not have been as good on any other subject. Mr. Davidson, the Superintendent Minister of the Methodist Church in British Guiana, stated in evidence that he knew the defendant from 1957 and that he had transacted business with him in November, 1958. He considered the testator mentally alert and found him no less alert mentally in November, 1958 than he was in 1957. 30

Mr. L. P. Kerry the acting Deputy Registrar of the Supreme Court stated that he had known the testator for a considerable time and that on the 11th November, 1958, when he executed a Power of Attorney before him, his mental power was not failing. In the face of evidence of this kind from independent and reliable witnesses describing the mental state of the testator before and after the execution of the Will, the Court cannot and does not accept the evidence of Sheila Prescod, Esther James and Benjamin James that the testator's mind had not been functioning properly for the past 4 years or so or that it had deteriorated as a result of illness. Surely 40

had this been the case this deterioration would have been observed by others who had business transactions with the testator, and who were closely associated with him over the years and who enjoyed his confidence.

10 To give consideration to the theory of the defence that the testator was suffering from 'hypoglycaemia' when the Will was executed and that as a result he was not of testamentary capacity, the Court would have to accept the fact that the particular bout of hypoglycaemia lasted from before 10 a.m. until after 2 p.m. on the 30th August — over 5 hours. Quite apart from the consensus of medical opinion that such bouts only last a matter of minutes and are fatal if unattended, to accept this theory the Court would also have to conclude that on the particular day the will was executed the symptoms of the testator as described by a witness whom the Court has found to be unreliable, corresponded with an exceptional case, the only one of its kind, which Dr. Frank Williams had experienced in the course of his busy practice as a physician of 12 years standing. The Court cannot draw the conclusion it is asked to draw in the circumstances and finally dismisses the theory.

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The next question to be considered is the allegation by the defence that the circumstances under which the will was made were suspicious. They base their argument for this contention on the following circumstances:—

- (a) When Fraser prepared the will he was a debtor of the testator and a friend of the plaintiff, the principal beneficiary under the Will;
 - (b) The subordinate part played by the solicitor, Mr. Wong, in the preparation of the Will together with the failure by Fraser to keep and produce the written instructions for the Will;
 - (c) The failure of the testator to make reasonable provisions for his children particularly those against whom no allegation of unfilial behaviour was mentioned;
 - (d) That in a previous Will the deceased had purported to make a fair distribution of his estate.
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Because these circumstances pose a possibility of suspicious circumstances they demand the careful scrutiny of the Court for such suspicion must be removed by the person propounding the Will.

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In Tyrell vs. Painton 1894 at p. 159

Davey L. J., stated the law on this point thus:

“It must not be supposed that the principle in *Barry vs. Buttin* is confined to cases where the person who prepares

the Will is the person who takes under it — that is one state of things which raises suspicion, but the principle is, that wherever 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.”

It is indisputable that the testator and Fraser were friends of long standing and that the former frequently sought the advice and assistance of the latter in connection with his business. In 1951 Fraser borrowed from the testator \$4,000 on a first mortgage on his property at 8% interest per annum. At the time of the testator's death \$2,500.00 along with interest was repaid, and the balance paid off by January, 1960. The receipts of Fraser for the repayments of this loan Exs: D1 — 28 appear to the Court to be regular and the fact that the rate of repayment was quicker after the death of the testator does not strike the Court as being of any particular moment, nor does the fact that the plaintiff's son and daughter, two school children who attend schools in Georgetown, and who have boarded with the Fraser family since sometime after the execution of the Will, impress the Court as a circumstance from which it can conclude improper motives on the part of Fraser. His failure to keep a copy of the instructions for the Will may have been unfortunate but the omission cannot be regarded as having been done in bad faith, nor can the Court see in Wong's method of dealing with the question of the instructions, any more than a casual attitude which was consistent with complete impartiality.

In his Will, the testator stated why he did not extend his bounty to some of his children and indeed there is the evidence of the plaintiff that those children had incurred his displeasure. Having found that the testator was of testamentary capacity, the Court cannot attempt to assess the view he took of the differences which he had with some of his children, for any action on these differences must have been based on his personal assessment of them, nor can the Court supply a reason for the fact that he did not extend his bounty to others. The plaintiff suggested that it was because he had already given them gifts in his lifetime; that is as good a reason as any and a practice which is not unusual. It does not necessarily postulate unsoundness of mind. It was Dr. Denbow who in his evidence said that when Benjamin was in some trouble the testator refused to lend him direct assistance, but indicated that he would lend his wife the money and if she wanted she could help Benjamin. Could not this intention be read into the Will, a gift to the widow out of which she could make a distribution to those children whom she cared to help. While it is not for the Court to surmise, such an explanation is as reasonable an inference as any which may be drawn from the circumstances. What the Court concludes from the circumstances as a whole is that the

testator at the time he made his Will, was not through any infirmity or disease oblivious to the claims of his relations; what he did, he did by design, fully understanding and appreciating the significance of his act, and that any circumstances which were likely to excite the suspicion of the Court have been dispelled.

In Banks vs. Goodfellow 1870 L.R. 5 Q.B. 549:

Cockburn C.J. in delivering the judgement of the Court said:—

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“It is essential to the exercise of such a power (scilicet, testamentary power) that a testator shall understand the nature of the act and its effects; shall understand the nature of the property of which he is disposing shall be able to comprehend and appreciate the claims to which he ought to give effect; and with a view to the latter object that no disorder of the mind shall poison his affections, pervert his sense of right, and prevent the exercise of his natural faculties — that no insane delusion shall influence his Will in disposing of his property and bring about a disposal of it which if the mind had been sound would not have been made.”

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In Harwood vs. Baker 3 Moo. P.C.C. 282:

This principle was extended to a testator suffering from a debilitating disease who had excluded some near relations from his bounty.

In Siverwright vs. Siverwright Trustees — 1920 S.C.H.L. 62:

Lord Haldane said:—

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“The question whether there is such unsoundness of mind as renders it impossible in law to make a testamentary disposition is one of degree. A testator must be able to exercise a rational appreciation of what he is doing. He must understand the nature of his act . . . if his act is the outcome of a delusion so irrational that it is not to be taken as that of one having appreciated what he was doing sufficient to make his action in the particular case that of a mind sane upon the question the Will cannot stand. But in that case, if the testator is not generally insane, the Will must be shown to be the outcome of the special delusion.”

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In this case, apart from the fact that the particulars of delusions pleaded by the defence have not been proved to the satisfaction of the Court, the Court is satisfied that the Will was not the outcome of any delusion.

Having regard to the document itself and the property therein detailed, and the findings which the Court has so far made, it cannot seriously be contended that the testator did not appreciate the extent of his property.

The circumstances of this case viewed as a whole do not in any way conflict with the law as set out, and the Court is satisfied from the plaintiff's case that the testator knew and approved of the contents of the Will, that he was of sound mind, memory and understanding when he executed it, and that such suspicions as may have arisen have been dispelled.

For these reasons the Court pronounces the Will to be of full force and effect and orders that it be admitted to probate. The Executors costs shall be payable out of the Estate.

As the circumstances of the case disclosed a measure of justification for putting the plaintiff to proof of the Will the costs of the three defendants shall be paid out of the estate. In so far as the person cited is concerned, this justification is less. She may have one half of her costs out of the estate. 10

K. L. GORDON,
Puisne Judge.

Dated this 29th day of May, 1961.

Solicitors:

H. C. B. Humphrys for the plaintiff,

A. R. Sawh for No. 1 defendant,

Andrew Gomes for Nos. 2 and 3 defendants,

J. A. Jorge for No. 4 defendant.

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1959 No. 704 DEMERARA

IN THE SUPREME COURT OF BRITISH GUIANA

PROBATE

In the matter of the Estate of JACOB JAMES,

deceased,

— BETWEEN —

ELAINE REECE,

Plaintiff,

— and —

10 CLARABEL PICKETT,

BENJAMIN JACOB JAMES,

SHEILA PRESCOD,

Defendants.

BEFORE THE HONOURABLE MR. JUSTICE GORDON

MONDAY THE 29TH DAY OF MAY, 1961

ENTERED THE 29TH DAY OF JUNE, 1961

20 This action having come on for hearing on the 2nd and 23rd days of March, 1960, and on the 3rd, 4th, 5th, 7th, and 9th days of January and 20th day of February, 1961, and on this day and the Judge, having taken the oral evidence of the witnesses produced on behalf of the Plaintiff and the Defendants and having heard Counsel thereon and on their behalf and having ordered that judgment be entered for the Plaintiff THIS COURT DOTH PRO-
 NOUNCE for the force and validity of the Last Will and Testament of Jacob James, the deceased, in this action, being script bearing date the 30th day of August, 1958, now remaining in the Probate Registry of this Court referred to in the affidavit of scripts of the Plaintiff dated the 11th day of May, 1959, and pronounced in this
 30 action on behalf of the Plaintiff the executor named in the said Will AND DOTH ADJUDGE that the cost of the Plaintiff the first, second and third Defendants and one half of the costs of Esther Rebecca James to be taxed, be paid out of the estate.

BY THE COURT,

H. Bacchus,

DEPUTY REGISTRAR (AG.).

EXHIBIT "A" in re Action**No. 704/59.****E. B.****A.S.C.****2/3/ 1960.**

This is the last Will and Testament of me JACOB JAMES at present residing at No. 10, left Bank, Mahaicony Creek, East Coast, Demerara.

I hereby revoke all former Wills and Codicils and other documents of a testamentary nature heretofore made by me. **10**

I direct my executrix to pay as soon as practicable after my death all my just debts and funeral and testamentary expenses out of my estate.

FIRSTLY: I give and bequeath to my son CALEB THEOPHILUS JAMES the sum of \$25.00 (twenty-five dollars) this is in consequence of his unfilial behaviour towards me.

SECONDLY: I give and bequeath to my son CHRISTOPHER JAMES the sum of \$25.00 (twenty-five dollars) this is in consequence of his unfilial behaviour towards me.

THIRDLY: I give and bequeath to my son BENJAMIN JACOB JAMES the sum of \$300.00 (three hundred dollars). **20**

FOURTHLY : I give and bequeath to my daughter MILLICENT SHEPHERD, born James —

(a) \$300.00 (three hundred dollars) cash.

(b) 10 (ten) head of cattle.

FIFTHLY: I give and bequeath to my daughter CLARABEL PICKETT, born James, the sum of \$25.00 (twenty-five dollars) this is in consequence of her behaviour towards me.

SIXTHLY: I give and bequeath to my wife ESTHER REBECCA JAMES, the North half of Plantation No. 10, Mahaicony Creek, East Coast, Demerara, with the buildings and erections thereon and my buildings situate on the South half of Plantation No. 10, Mahaicony Creek, East Coast, Demerara, save and except my padi bond; also the piece of land part of the said south half of Plantation No. 10 aforesaid on which my buildings stand. My executrix is to survey this said piece of land and transport same to my wife. I also give and bequeath to my said wife Esther Rebecca James the amount due under my 2 old Crown Life Insurance Policies. **30**

SEVENTHLY: I give and bequeath to my daughter ELAINE REECE the south half of Plantation No. 10, Mahaicony Creek, East Coast, Demerara, save and except (a) my buildings thereon and the piece of land bequeathed to my wife and the 1½ acres of land given by me to the Methodist Body.

EIGHTHLY: I give and bequeath to my daughter SHEILA PRESCOD, born James, the sum of \$200.00 (two hundred dollars) cash and 2 head of cattle.

10 **NINTHLY:** I give and bequeath to my daughter LUCILLE WALDRON, born James, the sum of \$200.00 (two hundred dollars) cash and 2 head of cattle.

TENTHLY: The rest residue and remainder of my property both movable and immovable I give and bequeath to my daughter ELAINE REECE, born James, absolutely. All my bequests are not free of Estate Duty.

I nominate, constitute and appoint the said Elaine Reece, born James, as executrix with powers of appointment, assumption and surrogation.

20 In witness whereof I have hereunto set my hand at Georgetown, Demerara, this 30th day of August, 1958.

JACOB JAMES,

Signed by the said Jacob James as and for his last Will and Testament in the presence of us both being present at the same time who at his request and in the presence of each other have hereunto subscribed our names as witnesses.

This is the original Last Will and Testament referred to in this oath of Executor sworn to by me this 9th day of April, 1959.

30

ELAINE REECE,

Executrix.

L. O. ROCKCLIFFE,

Commissioner.

Witnesses:

1. Name — Clinton Wong,
Address — 266 New Market Street,
Occupation — Barrister-at-Law.
2. Name — Thomas Bedford Fraser,
Address — 29 D'Urban Street,
40 Werk-en-Rust, Georgetown,
Occupation — Clerk, B.G. Corporation.

EXHIBIT "B"

2/3/59

No. 190/1958

BRITISH GUIANA,

COUNTY OF DEMERARA.

Sch. A 1958	Sch. B. 1958		
No. 1566	No. 25145		
	Fee Attg.	\$2.00	
	Reg.	\$1.00	
	Copy	.80	10
		<u>\$3.80</u>	

POWER OF ATTORNEY

BE IT KNOWN that on this day the 11th day of November, 1958 before me LEOPOLD PALIANDY KERRY, — Sworn Clerk and Notary Public of the Deeds Registry of British Guiana, personally came and appeared **JACOB JAMES** of No. 10, Mahaicony, East Coast, in the county of Demerara, and colony of British Guiana, which Appearer stated and declared that for divers good causes and consideration his thereunto moving he had nominated constituted and appointed as by these presents he doth make nominate, constitute and appoint and in his place and stead put and depute **ELAINE GLENDORA REECE**, also of No. 10, Mahai- 20
 cony, East Coast, Demerara, and colony aforesaid, a married woman, married after the 20th day of August 1904, my daughter, to be my true and lawful attorney of him the Appearer during his absence and future absences therefrom and in all circumstances matters and things and on all occasions to carry on, manage, and conduct all the affairs and business of him the Appearer. To purchase sell and mortgage moveable and immovable property in this Colony and to pass and accept transports and mortgages thereon and also to cancel and transfer mortgages. To enter into, sign, 30
 execute, deliver and receive contracts, agreements, bonds and other documents of a like nature. To apply for, to obtain, take out, renew, transfer and surrender all licences of whatever nature or kind and also the power to transfer to any person or persons any licence or licences for the sale of spirits or otherwise, also to oppose the granting of any licence or licences to any person or persons whomsoever when such a course may seem expedient. To make, draw, accept, sign, endorse, negotiate, issue, discount, pledge, renew, retire, transfer, pay, satisfy, or otherwise deal with cheques, promissory notes, bills of exchange, drafts, endorsements of payments, 40
 orders for payment, or delivery of any money, bonds, debentures,

10 shares, and any kind of security, whether negotiable or not, and to receive and dispose of the proceeds thereof; to open and/or operate a bank account with any bank or other company, and from time to time to draw on the account of the Appearer with the said bank and to overdraw the same, and also to borrow money from the said bank or any company, and generally for and in the name of the Appearer to transact with the said bank any business, matter, or thing, the said Attorney may think fit, including the right to receive all paid cheques and vouchers, and to sign the bank's form of settlement of balances, releases, and verification. To purchase or sell stocks, scrip or shares in any company or corporation or any bonds issued by any such body or by any Government or Municipal Corporation, also to transfer and to accept transfers of such stock, scrip, shares, or bonds, and to attend on behalf of him the Appearer at all meetings of the members or shareholders of any such company or corporation and therat on his behalf to represent him the Appearer in all proceedings in Insolvency, and to attend and vote on his behalf at all meetings of creditors.

20 To accept extraordinary proceedings or remedies such as Interdicts and the like, also for him the Appearer in his name and on his behalf to collect, and to ask, demand, sue, levy, recover and receive, of and from all and every person or persons whomsoever, all and every sum or sums of money, principal and interest, costs, charges and expenses, rent, and arrears of rent, goods, wares, merchandise, effects, estate and things whatsoever which any person or persons may now or at any time hereafter have in his, her, or their hands, custody, or possession, due owing and payable, or belonging unto him the Appearer upon or by virtue of any Bill of Exchanges, Bond, Note, Mortgage, Book-Debt, Account Current, Invoice, Consignment, Trade-dealings, or otherwise. howsoever nothing excepted or reserved, and for the purpose aforesaid, to account, and to call to account and reckoning and to view and examine, settle and adjust all accounts and the balance or balances thereof, to receive and on receipt of the same and of any part thereof and of any and every sum of money to be received by the said Attorney to give and grant good and sufficient receipts, releases, acquittances, and discharges for the same, in due form of Law, and in case of refusal or delay by and/or the part of all or any person or persons whomsoever to make and render just and true account

30 payment and satisfaction in the premises thereunto to compel them and him; to institute and prosecute effectually one or more suit or suits, action or actions in Law or at Equity, and to appear in all Courts and before all Judges, Justices, Magistrates, and other Ministers of the Law, and then and there to claim demand answer reply and to consent in and to all suits, actions, matters and causes and to defend any action or actions, suit or suits that may be brought or taken against him the Appearer by any person or persons whomsoever and to take all necessary legal proceedings; and to do say, impede, seize, sequester, arrest, attach, imprison, and to

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condemn, and out of prison, and to release and deliver; also if need to be compound, compromise, conclude and agree by arbitration and generally in and about the premises to do, perform, transact, and accomplish all and whatever shall and may be requisite and necessary and whatever further the Appearer may from time to time direct by letter or letters, cable or cables, or other written instructions as fully and effectually as he the Appearer could himself do and perform the same if personally present and acting therein all with powers of assumption, substitution and surrogation, the Appearer hereby ratifying and confirming all and whatever the said Attorney or the Attorney or Attorneys who may be assumed substituted surrogated to act therein shall or may lawfully do or cause to be done in and about the premises under and by virtue of these premises. **10**

THUS DONE AND SIGNED at the city of Georgetown, in the county of Demerara and colony aforesaid, the day and year first above written in the presence of the subscribing witnesses:—

WITNESSES:—

JACOB JAMES.

1. Jas. A. Joseph, Jnr.
2. I. Wilkinson.

20

QUOD ATTESTOR,

L. P. Kerry,

SWORN CLERK AND
NOTARY PUBLIC.

Stamp cancelled
\$5.00

A TRUE COPY of the original which was executed and registered in the Deeds Registry of British Guiana at Georgetown, on the 11th day of November, 1958. **30**

H. V. Hart,
Assistant Sworn Clerk,
12th November, 1958.

EXHIBIT "E"

E. Bhola

No. 166/59

4/1/60.

ESTATE DUTY

DECLARATION AND INVENTORY FOR THE REGISTRAR
IN the matter of the property subject to Estate Duty on the death
of . . . JACOB JAMES . . . deceased.

10 (1) I, ELAINE REECE, of No. 10, Mahaicony, East Coast, Demerara, Executor or Executrix under the last Will and Testament of the said . . . JACOB JAMES . . . deceased, bearing date, 30th August, 1958, do solemnly and sincerely declare as follows:—

1. (2) I desire to pay Estate Duty in respect of the property of the abovementioned . . . JACOB JAMES . . . deceased.

2. The said . . . JACOB JAMES . . . deceased, died at No. 10, Mahaicony, East Coast, Demerara, testate or intestate on the 17th day of December, one thousand, nine hundred and fifty-eight.

3. The said . . . JACOB JAMES . . . was at the time of his death domiciled in this Colony.

20 4. The deceased left a Widow and (8) eight lawful issue surviving.

5. The Inventory "A" hereto annexed, is a true statement of the particulars and present value so far as I have been able to ascertain, of all the property of the deceased at the time of his death.

6. The statement "B" hereto annexed contains a true and particular list of the debts and encumbrances of the deceased at the time of his death.

30 7. The said debts and encumbrances were incurred and created by the deceased for full consideration in money or money's worth wholly for his own use and benefit and are payable by law out of the Estate and effects comprised in the Inventory hereto annexed and are not nor are any of them debts in respect whereof reimbursements are capable of being claimed from any other Estate or person whatever.

8. That the said deceased was only once married and then to Esther Rebecca Bacchus on the 27th April, 1930, and she is alive.

I make this declaration conscientiously believing the same to be true, and according to the Statutory Declarations Ordinance, Cap. 255.

Declared by the said ELAINE REECE at Georgetown, in the county of Dem- erara, this 18th day of February, 1959.	}	ELAINE REECE Declarant
--	---	-------------------------------

Before me

H. R. P. DENNISON.

36¢ stamp cancelled.

The Proper Officer under section 2
of the Estate Duty Ordinance, Cap. 44.

Note:..If the gross value of the Estate does not exceed \$500, then
paragraphs 6 and 7 should be deleted.

A TRUE COPY

10

H. R. P. DENNISON,

for Commissioner of Inland
Revenue. Proper Officer under
section 2 of the Estate Duty
Ordinance, Chapter 301.

"A"

INVENTORY OF PROPERTY SUBJECT TO ESTATE DUTY
ON THE DEATH OF JACOB JAMES DECEASED

(1) MOVABLE PROPERTY	GROSS VALUE
Proprietary shares of debentures of Public Companies (a)	
NIL	
<hr/>	
10	Dividends and Interests declared, received and accrued due, in respect of the above Investments to date of Declaration . . .
NIL	
<hr/>	
Cash in the House NIL	
Cash at the Bankers (b)	
	(1) on drawing account Post Office as per certificate
	\$ 6,593.11
	(2) on deposit Royal Bank of Canada
	1.14
20	Money out on Mortgage with interest to date as per statement
	3,466.98
	Money out on Bonds, Bills, Promis- sory Notes and other Securities with interest to date as per statement
	3,920.50
	Book Debts, Other Debts (as per list annexed) including rent of deceased's immovable and leasehold property due prior to the death of, but not received by the deceased Money Due for Work Done
	274.00
30	Unpaid Purchase money of Immovable and Leasehold Property contracted in lifetime of the deceased to be sold ...
	Nil
	Deceased's interest in proceeds of sale of immovable property directed to be Carried Forward
	\$14,255.73

Brought Forward	....	....	....		\$14,255.73
sold by settlement or by will of some other person whether actually sold or not, estimated at	....	....	....		Nil
Movable estate over which the deceased had at the time of his death an absolute power of appointment	.....				Nil
Policies of Insurance on the life of the deceased or on that of any other person viz: CROWN LIFE INSURANCE COMPANY AS PER CERTIFICATE	....	....	....		12,217.62
Bonus thereon Surrender value of Policies of Insurance and Bonuses (if any) on the life of any person other than the deceased as certified by the annexed letters from the Secretaries					Nil
Household Goods, Pictures, China, Linen, Apparel, Books, Plates, Jewels, Carriages	....	....	....		Nil
if sold, realised gross	.....	....	....		\$ Nil
(c) If unsold, estimated at	....	....	....	\$ 5,330.00	5,330.00
(c) Stock-in-trade, live and dead Farming Stock, Implements of husbandry					
If sold, realised gross	....	....	....		\$ Nil
If unsold, estimated at	....	....	....	8,950.00	8,950.00
Good-will of Business, if taken over at a price	....	....	....		Nil
Profits of business made but not drawn from date of last balance sheet to date of declaration	....	....	....		Nil
(d) Ships and shares of ships estimated at	....	....	....		Nil
Profit of same made but not drawn, from date of last balance sheet or division to date of Declaration estimated at	....	....	....		Nil
Deceased's share in Property as a partner in the Firm of	....	....	....		Nil
Carried Forward	....	....	....		\$40,753.35

	Brought Forward	....	....	....	\$40,753.35
	as per balance sheet annexed signed by the surviving partners	....	....		Nil
	If none, estimated at	....	.....	....	Nil
	Leasehold property as per detailed description subjoined or annexed	....	27,750.00	27,750.00	
	RICE, PADI, ETC.,	....	....	....	8,000.00
	AS PER AFFIDAVIT OF VALUA- TION HERETO ATTACHED	....	....		16,000.00
10	TOTAL MOVABLE PROPERTY, &c				92,503.35
	Immovable property situate in the Colony of British Guiana.				
	AS PER AFFIDAVIT OF VALUATION HERETO ATTACHED				
	Total immovable property	....	....	....	77,000.00
	Gross total of all property	....	....	....	<u>\$169,503.35</u>

To be signed by the person making declaration.

Elaine Reece.

"B"

20

S T A T E M E N T

AN ACCOUNT OF THE DEBTS DUE AND OWING FROM
THE DECEASED.

An account of the Funeral expenses of the deceased	....	....	....	....	....	\$357.50
Total Deductions	....	....	....	....	....	\$357.50

MEMORANDUM OF LEGACIES AND BEQUESTS.

Name of Heir or Legatee	Relationship to Deceased	Description of Legacy or Bequest	Value of Legacy, etc.
1. C. T. James	Son	\$25.00	\$ 25.00
2. C. James	Son	\$25.00	25.00
3. B. J. James	Son	\$300.00	300.00
4. M. Shepherd	Daughter	\$300.00 and 10 head of cattle	950.00
5. C. Pickett	Daughter	\$25.00	25.00
6. E. R. James	Widow	\$61,527.64	61,527.64 10
7. S. Prescod	Daughter	\$200.00 and 2 head of cattle	330.00
8. L. Waldron	Daughter	\$200.00 and 2 head of cattle	330.00
9. Elaine Reece	Daughter	\$105,633.21	\$105,633.21
			\$169,145.85

To be signed by person making declaration.

Elaine Reece.

A true copy

H. R. P. DENNISON,

20

for Commissioner of Inland
Revenue. Proper officer under
Section 2 of the Estate Duty
Ordinance, Chapter 301.

1959

BRITISH GUIANA

Receipt No. 87916

COUNTY OF DEMERARA

Oath fee — .50¢

In the matter of the estate of

JACOB JAMES, deceased.

AFFIDAVIT OF VALUATION.

10 I, RAMHENDAR, of Felicity, Mahaicony, East Coast, Demerara, being duly sworn make oath and say as follows:—

1. That I am the owner of Tractors and other rice farming machineries for the past 15 (fifteen) years and I am well acquainted with the value of them and also the value of cattle in the Mahaicony District.

2. That at the request of ELAINE REECE, the Executrix named under the last Will and Testament of the abovementioned deceased, I visited and inspected the undermentioned tractors, rice farming machineries and cattle to wit:—

	1.	One TD6 Tractor	....	....	....	....	....	\$2,000.00
20	2.	One WDR9 Tractor	....	.....	....	....	....	5,000.00
	3.	One No. 70 N Chipper	....	....	....	....	....	350.00
	4.	One No. 8 Plough	....	....	....	....	....	200.00
	5.	One Case Tractor Drawn Combine	....	....	....	....	....	900.00
	6.	One water pump (8 inches)	....	....	....	....	....	500.00
	7.	22 head of calves at \$10.00 each	....	....	....	....	....	220.00
	8.	44 head of cow at \$65.00 each	....	.....	....	....	....	2,860.00
	9.	4 head of bulls at \$70.00 each	....	....	....	....	....	280.00
	10.	2 oxen at \$100.00 each	....	....	....	....	....	200.00
	11.	8 steers at \$60.00 each	....	....	....	....	....	480.00
30	12.	17 heifers at \$55.00 each	....	....	....	....	....	935.00
	13.	4 mare horses at \$70.00 each	....	....	....	....	....	280.00
	14.	1 stallion horse at \$75.00 each	....	....	....	....	....	75.00
								<u>\$14,280.00</u>

and I assessed the above valuation to the best of my knowledge, information and belief at the sum of \$14,280.00 (fourteen thousand two hundred and eighty dollars) and no more according to the present market value.

Ramhendar.

A true copy

H. R. P. Dennison,
for Commissioner of Inland Revenue.

Proper Officer under section 2 of the Estate
Ordinance, Chapter 301.

10

3. That the above valuation is a reasonable one.
4. This affidavit was drawn by Clinton Reginald Wong, Barrister-at-Law.

Ramhendar.

Sworn to at Georgetown, Demerara,
This 21st day of February, 1959.

BEFORE ME,

H. R. P. Dennison,
A Commissioner of Oaths to Affidavits.

A true copy

20

36¢ Stamp cancelled.

H. R. P. Dennison,
for Commissioner of Inland Revenue.

Proper Officer under section 2 of the Estate
Ordinance, Chapter 301.

BRITISH GUIANA.

COUNTY OF DEMERARA

In the matter of the Estate of

JACOB JAMES, deceased.

AFFIDAVIT OF VALUATION

I, JOHN PATRICK BARLOW, of Lot 228 South Road, Bourda, Georgetown, Demerara, being duly sworn make oath and say as follows:—

10 1. That I am a landed proprietor at Mahaicony, East Coast, Demerara, for the past seventeen years and I am well acquainted with the value of properties at Mahaicony and in that vicinity.

2. That at the request of ELAINE REECE, the Executrix named under the last Will and Testament of the abovenamed deceased, I visited and inspected during the month of January, 1959, the undermentioned properties, to wit:—

(a) The south half of the abandoned plantation number 10 (ten) cum annexis, situate in District number 1, west bank of the Mahaicony Creek, held under Transport No. 2 of 1935, no building thereon consisting of:—

	41 (forty-one) acres of bearing coconuts viz:		
20	50 trees per acre at \$7.50 each	....	\$375.00
	Land valued at \$100.00		
	per acre	....	\$100.00
	Value of land & coconuts		
	per acre	....	\$475.00
	41 (forty-one) acres at		
	\$475.00 per acre	....	\$19,475.00
	9 (nine) acres of young coconuts viz:—		
	50 trees per acre at		
	\$5.00 each tree	....	\$250.00
30	Land valued at \$100.00		
	per acre	....	\$100.00
	Value of land & coconuts		
	per acre	....	\$350.00

9 (nine) acres at \$350.00	
per acre	3,150.00
75 (seventy-five) acres of land	
at \$150.00 per acre	11,250.00
	<u>\$33,875.00</u>

(b) A piece of land part of a tract of land situate, lying and being on the left bank of the Mahaicony Creek, containing 106.5 acres held under Transport No. 630 of 1942	5,300.00	
(c) Lots numbers 93 and 94, Zes Kendren, in the Central Mahaicony Country District, held under Transport No. 117/1952, with buildings and erections thereon	1,500.00	10
(d) Sub-lots numbers 10 and 11 being parts of a piece of land part of a tract of land situate, lying and being on the left bank of the Mahaicony Creek, held under Transport No. 1383/1941 valued at \$400.00 per lot	800.00	
(e) Lot number 8 in B and C parts of the abandoned plantation Strath Campbell held under Transport No. 542/1947	200.00	20
(f) Lot number 4 part of the abandoned plantation Strath Campbell held under Transport No. 644 of 1930	200.00	
(g) Lot number 24, Farm in the Central Mahaicony Country District, situate on the west bank of the Mahaicony Creek, held under Transport No. 2382/1956	750.00	
(h) The tract of Crown Land situate on the left bank of the Mahaicony Creek, containing 264.01 acres, held under Lease No. A 3245	26,400.00	30
(i) A piece of Crown Land containing 27.1 acres held under Lease No. A 3621, sold to Richard James during the life time of JACOB JAMES for \$1,355.00		
(j) A piece or parcel of Crown Land containing 12.86 acres held under Lease No. A 1153	675.00	
(k) A piece of Crown Land containing 12.867 acres	675.00	

(1) A piece of land containing 106.01 acres held under Transport No. 553/1925 sold to Richard James during the life time of JACOB JAMES for \$1,355.00 (one thousand, three hundred and fifty-five dollars).

\$70,375.00

and I assessed the above valuation to the best of my knowledge, information and belief at the sum of \$70,375.00 (seventy thousand three hundred and seventy-five dollars) and no more according to present market value.

10 3. That the above valuation is a reasonable one.

4. That this affidavit was drawn by Clinton Reginald Wong, Barrister-at-Law, acting as Solicitor herein.

J. P. Barlow.

Sworn to at Georgetown, Demerara,

This day 9th day of March, 1959,

36¢ Stamp Cancelled

BEFORE ME

H. R. P. Dennison,

20 A COMMISSIONER OF OATHS TO AFFIDAVITS.

A true copy

H. R. P. DENNISON,

for Commissioner of Inland Revenue, Proper Officer under section 2 of the Estate Duty Ordinance, Chapter 301.

BRITISH GUIANA

COUNTY OF DEMERARA

In the matter of the Estate of

JACOB JAMES, deceased.**AFFIDAVIT OF VALUATION**

I, **JOHN PATRICK BARLOW**, of lot 228, South Road, Bourda, Georgetown, Demerara, being duly sworn make oath and say as follows:—

1. That I am a landed proprietor at Mahaicony, East Coast, Demerara, for the past seventeen years, and I am well acquainted **10** with the value of properties at Mahaicony and in that vicinity.

2. That at the request of **ELAINE REECE**, the Executrix named under the last Will and Testament of the abovenamed deceased, I visited and inspected during the month of January 1959 the undermentioned properties, to wit:—

(a) The north half of the abandoned plantation number 10 (ten) cum annexis, situate in District number 1, west bank of the Mahaicony Creek, held under Transport No. 2 of 1935, with the buildings and erections thereon consisting of: **20**

41 (forty-one) acres of bearing coconuts
viz:—

50 trees (per acre at \$7.50 each	....	....	....	\$375.00
Land valued at \$100.00 per acre	....	....	....	\$100.00
Value of land & coconuts per acre	....	....	....	<u>\$475.00</u>

41 (forty-one) acres at
\$475.00 per acre \$19,475.00 **30**

9 (nine) acres of young coconuts, viz:

50 trees (per acre) at \$5.00 each	....	....	....	\$250.00
Land valued at \$100.00 per acre	....	....	....	\$100.00
Value of land & coconuts per acre	....	....	....	<u>\$350.00</u>

	9 (nine) acres at \$350.00					
	per acre	....	....	....	....	3,150.00
	75 (seventy-five) acres of					
	land at \$150.00 per acre					11,250.00
						<u>\$33,875.00</u>
	(b) One two-storey building					
	valued at	....	....	....	....	6,000.00
	One cottage valued at	....	....	....	....	3,000.00
	One cottage valued at	....	....	....	....	4,000.00
	One cottage valued at	....	....	....	....	3,000.00
10	(c) A piece of land part of the					
	south half of No. 10 Mahaicony					
	valued at	....	....	....	....	500.00
						<u>\$50,375.00</u>

and I assessed the above valuation to the best of my knowledge, information, and belief at the sum of \$50,375.00 (fifty thousand, three hundred and seventy-five dollars) and no more according to the present market value.

3. That the above valuation is a reasonable one.

20 4. That this affidavit was drawn by Clinton Reginald Wong, Barrister-at-Law, acting as Solicitor herein.

J. P. Barlow.

Sworn to at Georgetown, Demerara,
This 9th day of March, 1959

36¢ Stamp cancelled.

BEFORE ME

H. R. P. Dennison.

A COMMISSIONER OF OATHS TO AFFIDAVITS.

A true copy

H. R. P. Dennison,

30 for Commissioner of Inland Revenue Proper Officer under
Section 2 of the Estate Duty Ordinance, chapter 301.

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION

CIVIL

Territory: BRITISH GUIANA

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

CIVIL APPEAL No. 36 OF 1961

Between:

SHEILA PRESCOD AND BENJAMIN JACOB JAMES,

Appellants,

— and —

10

ELAINE REECE,

Respondent,

Before:

THE HONOURABLE MR. JUSTICE LEWIS,

„ „ **MR. JUSTICE MARNAN,**

„ „ **SIR. DONALD JACKSON.**

13th, 14th, 15th, 16th March, 1962.

P. A. Cummings with C. A. F. Hughes for appellants.

J. H. S. Elliott, Q.C., Mrs. A. Ali Khan with him for respondent.

J U D G M E N T

20

Mr. Justice Marnan:

This is an appeal from a judgement of Mr. Justice Gordon in a probate case. The appellants are two of the children of the testator, who are evidently disappointed by the provisions made for them in the will sought, at trial, to be propounded by the respondent, who is their sister and the sole executrix. Their attack on the will was supported, at trial, by one of their sisters and by their mother, [but neither of those parties to the suit have appealed.] On the hearing of the appeal

much preliminary argument was directed to the question whether the appellants were entitled, or should be permitted, to rely on points pleaded in the action, not by them but by the other parties ranged in opposition to the will. One of the appellants' practical difficulties in that respect was that the case against the will, as developed in evidence, bore little relation to any of the defence, particularly that of the appellants, and Counsel for the appellants did not venture to formulate any amendments of his clients' defence, although he referred to the possibility that some such amendment might be necessary. He expressed
10 a desire to adopt the defence of the first defendant, but such an ambition is not, and could not, be an amendment of his own pleading. In the upshot, this Court ruled that he might argue his case upon the basis of his notice of appeal and on the evidence, reserving a decision on his tentative, and still unformulated, application for leave to amend his defence.

I refer to those matters briefly and for two reasons. The brevity is due to my opinion that they do not affect the fate of this appeal. The reasons for referring to them are, firstly, to record that Counsel for the appellants was not restricted in the scope of his arguments for any
20 technical reason; and secondly, to emphasize that the latitude allowed to him in this case, for reasons based on the particular facts of this case, must not be taken to afford a precedent affecting the exercise of the judicial discretion of an appellate or any other Court when asked to permit a party to argue matters not raised by his pleadings.

I now turn to the substantive appeal. If this were a case which involved the decision of any legal principle it would doubtless be convenient to set out first the precise facts giving rise to the question of principle, and then to consider the relevant authorities. But Counsel for the appellants presented their case in a manner which made it quite
30 clear (as he himself agreed at an early stage, in answer to a question from the Bench) that their true case was that the Judge's findings were against the weight of the evidence. His only point of law was that the Judge had failed to appreciate the particularly heavy burden of proof placed on the plaintiff in a case where the testator was suffering from a debilitating disease, whatever that may mean.

In those circumstances the relevant facts can be positively stated only so far as undisputed, and where disputed must be related, so far as necessary, to Counsel's arguments attacking the findings of the learned Judge, from whose decision this appeal lies.

40 The testator, who lived in Mahaicony, was a rich man, with an apparently devoted wife, ten or eleven children, and numerous grandchildren. There was some evidence, and I am prepared to assume, that he made a will leaving all his property to his wife for life; and thereafter to his children in equal shares. Some years before the 30th August, 1958, the date of the disputed will, he revoked that earlier will, and it is conceded that he did so *animo revocandi*. He was a man of strong

character, and his relationship with his children varied from time to time, according possibly to their behaviour, or to his disposition. He suffered from diabetes, and was accustomed to injecting himself with insulin, as is the normal practice with diabetics who do not require the constant attendance of their doctor.

In July, 1958, he desired to make a new will, and visited Mr. Wong, a member of the Bar, in Georgetown, seeking legal advice. Mr. Wong referred the testator to a Mr. Fraser who had drawn up the testator's earlier will. Mr. Fraser had been a solicitor's clerk upon that earlier occasion, but was, in 1958, employed in another capacity. Nevertheless, it appears that Fraser was assumed not to have forgotten his legal technique, because the testator gave instructions to Fraser; Fraser drafted the disputed will and took it to Mr. Wong; Wong made certain corrections in the draft, and the will propounded in this case was the outcome of their joint efforts. It was duly executed by the testator. 10

After the execution of the will the testator went home, and continued to take an active part in his business affairs. There was no evidence that he ever had second thoughts about his will or that he came to think it did not truly express his intentions. He died of cancer, with diabetes as a contributory cause, in December, 1958. There was no evidence from anyone with whom he had a medical or business relationship that the testator's mental capacity appeared to be impaired at any time. On the contrary, there was an abundance of evidence, which was not impugned on appeal, that upon occasions both before and after the 30th August, 1958, and in that same year, the testator was mentally alert and effectively in control of his personal and business affairs. 20

Counsel for the appellants submitted that the evidence just referred to was irrelevant to his case — a submission which tends sharply to define what the appellants' case on appeal was. It was that, however mentally normal the testator may usually have been during the latter half of 1958, the trial Judge was wrong in finding that he was similarly normal on the occasion when he executed the disputed will. Counsel submitted that the proper inference from the evidence as a whole was that the testator was deprived of testamentary capacity on that particular occasion owing to an attack of hypoglycemia. "This," he said, "is the case of a man, not insane, but suffering from a temporary loss of judgement." When reminded that instructions for the will were given about a month before the date of execution, Counsel was constrained to admit that his case involved the proposition that the testator must have been suffering from a similar attack on that occasion also. It is true that Fraser had most unfortunately and improperly destroyed the notes he took of the testator's original instructions, but Counsel did not suggest that the will as drawn departed in any material respect from those instructions. Indeed, had it done so, whether by accident or design, and the testator had been in some form of temporary diabetic coma on either occasion, it seems 30 40

inevitable that a man of his businesslike character would have taken steps to rectify the matter as soon as he recovered.

In support of his submissions that the trial Judge erred in his findings, Counsel first submitted that the Judge had failed to appreciate the weight of the burden of proof which lies on the plaintiff in a probate case when the testator is proved to have been suffering from a debilitating disease. He cited the cases of **Harwood v. Baker** 3 Moore's P.C. 282 and **Amirchan v. Batan Singh** (1948) 1 A.E.R. 152. If, which I doubt, any principle of law germane to this case can be derived from either of those decisions, it is to my mind only to the effect that the most strict proof of testamentary capacity is required when it can be shown by evidence that a testator's mental powers had become impaired prior to or at the time of the execution of a will. The test is not what was the type of disease from which a testator may have suffered, or whether it can be described as debilitating, but whether the malady, whatever its nature, had in fact debilitated the testator's mental powers. Both of the cases referred to where the testators were in a state of mental feebleness and at death's door, are clearly distinguishable on the facts, from the present case. I do not think that they are relevant, nor do I think that the present case raises the question of any mistake in law on the part of the learned Judge.

The rest of Mr. Cummings' arguments, though presented with much complexity, can be summarised under two headings: direct evidence as to the testator's condition on the 30th August, 1958, and evidence of so-called suspicious circumstances. Mr. Cummings conceded that there was no evidence as to the testator's physical or mental condition on the occasion in July when he gave his instructions for the will, but as to the 30th August he pointed to the evidence of the male appellant, of the testator's wife and grand-daughter, and of Mr. Wong, which indicated that the testator was in a bad physical condition, on that day. As to the testator's mental condition, however, he could only rely on the evidence of Dr. Williams, who has never seen the testator, to the effect that the circumstances described to him by Counsel suggested that the testator might well have been suffering from an attack of hypoglycemia on the occasion in question. Having regard to the direct evidence of Mr. Fraser and Mr. Wong to the effect that the testator was in a clear and normal state of mind when the will was read and explained to him, and he signed it, it is my opinion impossible to say that the trial Judge was wrong in coming to a corresponding conclusion.

I have not forgotten that Mr. Cummings submitted that the Judge, before coming to that conclusion, should have taken into account the evidence of suspicious circumstances, and I would agree with that submission could I find any cause for genuine suspicion in this case. But I have been unable to do so, nor could I gather from the argument what evil or mischief it is that the Judge or this Court should have suspected. Mr. Cummings first referred to the previous will making equitable distribution of his property. The admitted fact that that will was destroyed

by the testator, **animo revocandi**, a long time before the execution of the disputed will, seems to me to indicate that the testator had made up his mind to make quite different dispositions. Mr. Fraser's destruction of his notes and draft will be highly suspicious if it were suggested that he had deliberately drawn up a will conflicting with the testator's instructions, but that is not suggested. Counsel eventually did not persist in his submission that Fraser's indebtedness to the testator was a suspicious circumstance, and he was unable to advance any reason why the testator's semiliteracy should be regarded in that light. He argued that the apparent conflict of evidence as to the times and sequence of the testator's visits to Fraser and Wong was suspicious, but at most that seems to me to reflect only on the reliability of memory of one or the other witness. I can see nothing suggestive of malpractice in the fact that the will was executed in a motor car, nor in the suggestion that neither the testator nor Fraser appreciated the value of the residuary bequest. The only matter which, to my mind, can be properly described as suspicious in this case is the disparity of the provisions made for the various children which, prima facie, might give cause to suspect that the will was at variance with the testator's natural desires and responsibilities and therefore with his true and lucidly formal intentions. But when one comes to examine the will, with all its detailed provisions and distinctions, and to take into account the evidence as to the testator's attitude towards the various members of his family, it seems plain that he intended to dispose of his property as he did.

I find it quite impossible to hold that the learned Judge's findings were against the weight of the evidence in this case. On the contrary, I think that they were entirely justified.

There remains the question of his order as to costs which is raised by the respondent's cross-notice. Mr. Cummings submitted that since, by virtue of Section 9 (2) (a) (111) of the Federal Supreme Court (Appeals) Ordinance, 1958, there is no right of appeal on a question of costs, a respondent has no right to raise such a question by cross-notice in a case where the notice of appeal does not challenge the order as to costs. It appears that there is no reported decision of this Court on the point, and although I am unable to accept Mr. Cummings's submission, I consider it fortunate that he should have afforded the Court an opportunity of dealing with it. In my opinion the provisions of section 10 of the Ordinance empower this Court to deal with an order for costs made in any case, the subject of an appeal which can otherwise be entertained, whether or not either party has raised the question of that order by notice of appeal or cross-notice. Section 10 so far as is relevant, reads as follows:—

"10. (1) On the hearing of an appeal from any order of the Supreme Court in any civil cause or matter, the Federal Supreme Court shall have power to —

(a) confirm, vary, amend, or set aside the order or make any such order as the court from whose order the appeal is

brought might have made, or to make any order which ought to have been made, and to make such further or other order as the case may require;

(2) The power of the Federal Supreme Court under the foregoing provisions of this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Federal Supreme
10 Court may make any order, on such terms as the court thinks just, to ensure the determination on the merits of the real question in controversy between the parties."

Those wide powers, in my view give the Court the jurisdiction challenged by Mr. Cummings in this case. The provisions of Order 11 r. 5 of the Federal Supreme Court (Appeals from British Guiana) Rules, 1959, as amended, are entirely consistent with, and indeed support that view.

I need not refer in detail to Mr. Elliott's arguments in support of this contention since those arguments are admirably summarised in the
20 cross-notice itself. He is undoubtedly right in his submission that the appellant's case, as it belatedly developed at trial, was totally different from the case pleaded in their defence. In those circumstances he contends that the appellant-defendants case should have been left to pay their own costs, whereas the trial Judge ordered all the costs in question to be paid out of the estate.

Nevertheless, in exercising his discretion as to costs, the trial Judge was entitled to take all the facts of the case into account. One such fact may well have been the remarkable disparity between the benefits provided for the plaintiff and other children of the testator
30 against whom no unfillial conduct was suggested. I therefore do not think that this Court has sufficient grounds for interfering with the exercise of the Judge's discretion as to costs, in the circumstances of this case.

I would therefore make no other order than that this appeal be dismissed with costs: No order as to the costs of the cross-appeal.

J. F. MARNAN,

Federal Justice.

Mr. Justice Lewis:

I agree. I merely wish to add that I confirm the view that I expressed during the course of the argument with respect to the Court's
40 jurisdiction to deal with the question of costs and which agrees entirely with the view which Mr. Justice Marnan has just expressed.

A. M. LEWIS,

Federal Justice.

Sir Donald Jackson:

I agree with the judgment which has been delivered and which has been acquiesced in by the learned President.

DONALD JACKSON.

Federal Justice.

Mr. Cummings submitted that the appellant should have the costs of the cross-notice.

Mr. Justice Lewis:

The Court orders that the costs of the appeal be paid by the appellants, and that there be no order as to the costs of the cross-notice. **10**

A. M. LEWIS,

Federal Justice.

Dated this 16th day
of March, 1962.

**IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION
CIVIL**

TERRITORY: BRITISH GUIANA

**ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA
CIVIL APPEAL No. 36 of 1961**

**In the matter of the Estate of
JACOB JAMES, deceased.**

BETWEEN:

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**SHEILA PRESCOD,
BENJAMIN JACOB JAMES,**

**(Defendants)
APPELLANTS**

—and—

ELAINE REECE,

**(Plaintiff)
RESPONDENT.**

BEFORE:

**20 THE HONOURABLE MR. JUSTICE LEWIS
THE HONOURABLE MR. JUSTICE MARNAN
THE HONOURABLE SIR DONALD JACKSON
DATED THE 16TH DAY OF MARCH, 1962.**

**30 UPON READING the Notice of Motion on behalf of the abovenamed
defendants dated the 15th of September, 1961 AND UPON READING
the Judge's notes herein AND UPON HEARING Mr. P. A. Cummings of
Counsel for the defendants and Mr. J. H. S. Elliott, Q.C., of Counsel for
the plaintiff IT IS ORDERED that the judgment of the Honourable Mr.
Justice Gordon, Puisne Judge dated the 29th day of May, 1961, be affirmed
and that this appeal be dismissed with costs to be taxed and paid by the
defendants to the plaintiff AND IT IS FURTHER ORDERED that there
be no order as to costs on the cross-notice.**

**BY THE COURT,
A. CHUNG,
DEPUTY REGISTRAR.**

BRITISH CARIBBEAN COURT OF APPEAL

TERRITORY: BRITISH GUIANA

CIVIL APPEAL No. 36 of 1961

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA
IN THE MATTER of the Estate of**JACOB JAMES, deceased.**

BETWEEN:

**SHEILA PRESCOD and
BENJAMIN JACOB JAMES,**Appellants 10
(Defendants)

—and—

ELAINE REECE,Respondent
(Plaintiff)**BEFORE:****THE HONOURABLE MR. JUSTICE JACKSON (IN CHAMBERS)****DATED THE 27TH DAY OF JUNE, 1962.****ENTERED THE 10TH DAY OF JULY, 1962.**

UPON THE PETITION of the abovenamed appellants Sheila Prescod and Benjamin Jacob James dated the 5th day of April, 1962, preferred unto this Court on the 19th day of May, 1962, for leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of the Court comprising the Honourable Mr. Justice Lewis, the Honourable Mr. Justice Marnan and the Honourable Mr. Justice Jackson delivered herein on the 16th day of March, 1962; 20

AND UPON READING the said petition and the affidavit of Henry Britton Fraser sworn to on the 5th day of April, 1962, and filed herein;

AND UPON HEARING counsel for the appellants and for the respondent and upon solicitor for the respondent undertaking that the respondent will not administer the said estate save in so far as is necessary for the purpose of: 30

- (1) paying estate duty and obtaining Probate;
- (2) paying the costs ordered and incurred in the Supreme Court of British Guiana, and incurred in this Court;
- (3) paying the expenses incurred in or about the preservation of the assets of the estate, and in or about maintaining and cultivating the land, operating the machinery and caring for the livestock;
- (4) collecting and paying the debts of the estate; and 40

- (5) paying such other expenses or outgoings as may be approved by the Solicitor for the appellants or permitted by leave of this Court.

THE COURT DOTH ORDER:

That subject to the performance by the said appellants of the conditions hereinafter mentioned and subject also to the final order of this Honourable Court upon due compliance with such conditions leave to appeal to Her Majesty in Her Majesty's Privy Council against the said judgment of their Lordships of the Federal Supreme Court (Appellate
10 Jurisdiction) be and the same is hereby granted to the appellants.

AND THIS COURT DOTH FURTHER ORDER:

That the appellants do enter within three months into good and sufficient security to the satisfaction of the Deputy Registrar of this Court in the sum of \$2,400: with one or more sureties or deposit into Court the said sum of \$2,400: for the due prosecution of the said appeal or of the appeal being dismissed for non-prosecution and for the payment of such costs as may become payable to the respondent in the event of the appellants not obtaining an order granting them final leave or for the payment of such costs as may be awarded by the Judicial Committee of the Privy Council to the respondent on such appeal;
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AND THIS COURT DOTH FURTHER ORDER:

That the appellants do within four months (exclusive of the months of July and August) from the date of this order in due course take out all appointments that may be necessary for settling the transcript record in such appeal to enable the Deputy Registrar of this Court to certify that the said transcript record has been settled and that the provisions of this order on the part of the appellants have been complied with;

AND THIS COURT DOTH FURTHER ORDER:

30 That the appellants be at liberty to apply at any time within five months (exclusive of the months of July and August) from the date of this order for final leave to appeal as aforesaid on the production of a certificate under the hand of the Deputy Registrar of this Court of due compliance and on their part with the conditions of this Order:

AND THIS COURT DOTH FURTHER ORDER:

That the costs of and incidental to this application be the costs in the cause.

Liberty to the parties to apply as they may be advised.

BY ORDER OF THE COURT

ADITYA T. SINGH,

DEPUTY REGISTRAR, (Ag.),
 FEDERAL SUPREME COURT.

IN THE BRITISH CARIBBEAN COURT OF APPEAL

TERRITORY: BRITISH GUIANA

ON APPEAL FROM THE SUPREME COURT OF BRITISH GUIANA

CIVIL APPEAL No. 36 of 1961

**In the matter of the Estate of
JACOB JAMES, deceased.**

BETWEEN:

**SHEILA PRESCOD and
BENJAMIN JACOB JAMES,**

**Appellants 10
(Defendants)**

—and—

ELAINE REECE,

**Respondent
(Plaintiff)**

BEFORE:

THE HONOURABLE MR. JUSTICE JACKSON (IN CHAMBERS)

DATED THE 4TH DAY OF JANUARY, 1963

ENTERED THE 9TH DAY OF JANUARY, 1963.

UPON the petition of the above-named Sheila Prescod and Benjamin Jacob James dated the 24th day of December, 1962, for final leave to appeal to Her Majesty in Her Majesty's Privy Council against the judgment of the Federal Supreme Court dated the 16th day of March, 1962, AND UPON READING the said petition and the order of this Court dated the 27th day of June, 1962, AND UPON HEARING counsel for the petitioners and for the respondent and being satisfied that the terms and conditions imposed by the said order dated the 27th day of June, 1962, have been complied with IT IS ORDERED that final leave be and is hereby granted to the said petitioners to appeal to Her Majesty's Privy Council. **20**

**BY THE COURT,
G. A. S. VAN SERTIMA,
DEPUTY REGISTRAR (Ag.)**

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