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77, 1947

No. 24 of 1946.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF FIJI.

BETWEEN

BATTAN SINGH and Others (Plaintiffs) - - - *Appellants*

AND

AMIRCHAND and Others (Defendants) - - - *Respondents.*

RECORD OF PROCEEDINGS.

HY. S. L. POLAK & CO.,
DANES INN HOUSE,
265 STRAND, W.C.2,
*Solicitors for the Appellants
and for Respondents Nos. 3-6.*

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
VICTORIA STREET, S.W.1,
Solicitors for the Respondents Nos. 1 & 2.

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

In the Privy Council.UNIVERSITY OF LONDON
W.C. 1.

-9 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES**ON APPEAL**
*FROM THE SUPREME COURT OF FIJI.***44430**

BETWEEN

1. BATTAN SINGH,
2. WALAITI RAM and
3. KHAZAN SINGH (Plaintiffs)

Appellants

AND

1. AMIRCHAND,
2. MEHAR,
3. WARYAMA,
4. BANTA,
5. SONDHI and
6. MUNSHI (Defendants)

*Respondents.***RECORD OF PROCEEDINGS.****INDEX OF REFERENCE.**

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF FIJI.

BETWEEN

- 1. BATTAN SINGH,
- 2. WALAITI RAM and
- 3. KHAZAN SINGH (Plaintiffs) - - - - *Appellants*

AND

- 10 1. AMIRCHAND,
- 2. MEHAR,
- 3. WARYAMA,
- 4. BANTA,
- 5. SONDHI and
- 6. MUNSHI (Defendants) - - - - *Respondents.*

RECORD OF PROCEEDINGS.

*In the
Supreme
Court of
Fiji.*

No. 1.

WRIT OF SUMMONS.

No. 3 of 1944.

No. 1.
Writ of
Summons,
9th
August
1944.

20 IN THE SUPREME COURT OF FIJI.
Probate Jurisdiction.

IN THE MATTER of the Will of Jaimal deceased.

Between BATTAN SINGH, WALAITI RAM and
KHAZAN SINGH being the President,
Secretary and Treasurer of the Sikh Gurud-
wara Committee at Samabula as executors
of the will of Jaimal deceased - - - - Plaintiffs

and

30 AMIRCHAND (Father's name Utham) and
MEHAR (Father's name Saudi) both of
Yala Levu, Ba Farmers - - - - Defendants

and

WARYAMA, BANTA, SONDHI and MUNSHI
(all sons of Nagina) all of the village of Barhwal
Post Office Banga in the district of Jullundur,
Punjab, India - - - - Defendants.

*In the
Supreme
Court of
Fiji.*

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India

No. 1.
Writ of
Summons,
9th
August
1944,
continued.

To AMIRCHAND (Father's name Utham) and MEHAR (Father's name Saudi) both of Yala Levu, Ba in the Colony of Fiji Farmers

WE COMMAND you, that within fourteen 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 BATTAN SINGH of Nausori in the Colony of Fiji Merchant, WALAITI RAM of Samabula, Suva in the said Colony Storekeeper and KHAZAN SINGH 10 of Suva in the said Colony a member of the Fiji Constabulary as executors of the will of Jaimal (Father's name Nihalla) deceased and take notice that in default of your so doing the Plaintiffs may proceed therein and judgment may be given in your absence.

Witness the Honourable Sir OWEN CECIL KIRKPATRICK CORRIE, M.C., Chief Justice of our Supreme Court, at Suva this 9th day of August 1944.

(Sgd.) GRAHAME & Co.,
Solicitors for the Plaintiffs.

L.S.

N.B. This writ is to be served within twelve calendar months from 20 the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date and not afterwards.

The Defendants may appear hereto by entering appearance either personally or by solicitor at the Registrar's office at Suva. If the Defendants enter appearance they must also deliver a Defence within fourteen days after the last day of the time limited for appearance unless such time is extended by the Court, otherwise judgment may be entered against the Defendants without notice, unless he has in the meantime been served with a summons for judgment.

No. 2.
Statement
of Claim,
9th
August
1944.

No. 2.

30

STATEMENT OF CLAIM.

SPECIAL ENDORSEMENT OF CLAIM.

STATEMENT OF CLAIM.

1. (A) The Plaintiffs are the executors appointed under the will dated the 25th day of February, 1944 of Jaimal (Father's name Nihalla) late of Samabula, Suva in the Colony of Fiji Moneylender deceased.

(B) At the time of the death of the said Jaimal the Plaintiffs were the President, the Secretary and the Treasurer respectively holding office in the Sikh Gurudwara Committee at Samabula, Suva aforesaid, and they sue as such office holders as aforesaid. 40

2. The said Jaimal died on the 4th day of April, 1944 and was at all material times domiciled in Fiji.

3. The said Jaimal was a British subject.

4. The Defendants Amirchand (Father's name Utham) and Mehar (Father's name Saudi) are the executors appointed by and the sole legatees as tenants in common under an alleged will dated the 3rd day of April, 1944 of the said Jaimal.

*In the
Supreme
Court of
Fiji.*

5. The Defendants Waryama, Banta, Sondhi and Munshi (all sons of Nagina) are the sole next of kin of the said Jaimal entitled to share in the estate of the said Jaimal in the event of an intestacy.

No. 2.
Statement
of Claim,
9th
August
1944,
continued.

6. The said alleged will of the said Jaimal dated the 3rd day of April, 1944 was not duly executed according to the provisions of the Statute 7
10 Will. IV and 1 Vict. c. 26.

SUBSTANCE OF CASE.

The signature and/or mark of the testator was/were not made by the testator himself nor by anyone for him, nor in his presence nor by his direction.

7. The said Jaimal at the time the said will of the 3rd day of April, 1944 purports to have been executed was not of sound mind memory or understanding.

SUBSTANCE OF CASE.

20 At the time the said Jaimal is said to have executed the said will of the 3rd day of April, 1944 he was in such a condition of mind and memory as to be unable to understand the nature of the document and its effects, the extent of the property of which he was disposing or to comprehend the claims to which he ought to give effect or to recollect who were his nephews or whether he had any nephews, or to recognise his friends and visitors, his mind was wandering and he was unable to converse with any one.

8. The execution of the said alleged will was obtained by the undue influence of the Defendants Amirchand and Mehar.

SUBSTANCE OF CASE.

30 The Defendants Amirchand and Mehar took advantage of the extreme weakness and of the mental and physical condition of the said Jaimal, and knowing that his memory and understanding were greatly impaired, induced him to make the said will. The influence of the said Defendants over the said Jaimal was so complete that he was not a free agent and the said alleged will was not the offspring of his own volition but was obtained by the influence of the said Amirchand and Mehar.

40 9. The execution of the said alleged will was obtained by the fraud of the said Defendants Amirchand and Mehar, such fraud so far as is within Plaintiffs' knowledge being that they knowing well that the testator was unable to converse or to express his wishes procured the said Jaimal to execute a purported will in which he bequeathed his whole estate to the said Defendants who, as they the said Defendants well knew, were heavily indebted to the said Jaimal, and to exclude wholly from his bounty his own nephews whose existence he was then unable to recollect.

*In the
Supreme
Court of
Fiji.*

No. 2.
Statement
of Claim,
9th
August
1944,
continued.

SUBSTANCE OF CASE.

The Plaintiffs refer to and repeat the facts set out in the substance of case under paragraph 8 above.

10. The said Jaimal at the time the said alleged will purported to have been executed did not know or approve of the contents thereof.

SUBSTANCE OF CASE.

The said Jaimal never gave and was totally unable to give any instructions for the alleged will, the said alleged will could not be nor was it in fact by reason of the illness of the said Jaimal read over or explained to him, or be understood by him, nor did nor could he read it himself before it was executed and he was not aware of its nature and effect. 10

11. The Plaintiffs deny that the Defendants Amirchand and Mehar have any interest in the will or estate of the said Jaimal.

THE PLAINTIFFS CLAIM :—

(A) The Court shall pronounce against the said alleged will dated the 3rd day of April, 1944.

(B) The Court shall decree probate of the will dated the 25th day of February, 1944 in solemn form of law.

The Plaintiffs desire this endorsement to stand as the Statement of 20 Claim and require pleadings.

(Sgd.) G. F. GRAHAME.

Delivered on the 9th day of August, 1944 by Messrs. GRAHAME & Co., of Central Chambers, Victoria Parade, Suva, Solicitors for the Plaintiffs.

A sufficient affidavit in verification of the endorsement on this writ to authorize the sealing thereof has been produced to me this 9th day of August 1944.

(Sgd.) J. BENNETT,

Registrar. 30

This writ is not for service out of the jurisdiction without leave.

No. 3.
AFFIDAVIT of Battan Singh, Executor.

No. 3 of 1944.

IN THE SUPREME COURT OF FIJI.
Probate Jurisdiction.

IN THE MATTER of the Will of JAIMAL deceased.

*In the
Supreme
Court of
Fiji.*

No. 3.
Affidavit
of Battan
Singh,
Executor,
9th
August
1944.

Between BATTAN SINGH, WALAITI RAM and
KHAZAN SINGH being the President,
Secretary and Treasurer of the Sikh
Gurudwara Committee at Samabula as
10 executors of the will of JAIMAL deceased - Plaintiffs

and

AMIRCHAND and MEHAR - - Defendants

and

WARYAMA, BANTA, SONDHI and MUNSHI Defendants.

I, BATTAN SINGH (Father's name Wazir Singh) of Nausori, Rewa in
the Colony of Fiji Merchant make oath and say as follows :—

1. I am one of the executors appointed by the will dated the 25th day
of February, 1944 of the above Jaimal deceased.

20 2. I have read the endorsement on the writ of summons intended
to be issued in this action and tendered with this my affidavit to the
Registrar of this Honourable Court for issue of the said writ. It truly and
correctly sets forth the claim of the said plaintiffs as such executors as
aforesaid.

3. The defendants Amirchand and Mehar are not interested in any
way under the said will but claim to be executors and sole legatees under
an alleged will dated the 3rd day of April, 1944 purported to be made by
the deceased Jaimal on the day before his death.

30 4. The defendants Waryama, Banta, Sondhi and Munshi are the
sole legatees under the said will dated the 25th day of February 1944, are
not interested under the said alleged will dated the 3rd day of April, 1944
but in the event of both the said wills being declared invalid would be
entitled to the whole of the said Jaimal's estate under an earlier will
of the said Jaimal dated the 20th day of November, 1941.

*In the
Supreme
Court of
Fiji.*

5. The said defendants Waryama, Banta, Sondhi and Munshi are to the best of my knowledge, information and belief the sole next of kin of the said Jaimal deceased.

No. 3.
Affidavit
of Battan
Singh,
Executor,
9th
August
1944,
continued.

SWORN at Suva in the Colony of Fiji this 9th day of August 1944 through the sworn Hindustani interpretation of Rambhir Parmeshwar and I certify that this affidavit was read over in my presence in the Hindustani language to the deponent who seemed perfectly to understand the same and made his signature in my presence

(Sgd.) BATTAN SINGH.

10

Before me,

2/- (Sgd.) B. RAGHAVANAND,

Stamp

A Commissioner etc.

Filed on behalf of the Plaintiffs this 9th day of August 1944 by Messrs. GRAHAME & Co., of Central Chambers, Suva, Solicitors for the Plaintiffs.

No. 4.
Affidavit
of Scripts
by Battan
Singh,
9th
August
1944.

No. 4.

20

AFFIDAVIT OF SCRIPTS by Battan Singh, with annexures.

No. 3 of 1944.

**IN THE SUPREME COURT OF FIJI.
Probate Jurisdiction.**

IN THE MATTER of the Will of JAIMAL deceased.

Between BATTAN SINGH, WALAITI RAM and
KHAZAN SINGH being the President,
Secretary and Treasurer of the Sikh Gurudwara
Committee at Samabula as executors of
the will of JAIMAL deceased - - -

Plaintiffs

30

and

AMIRCHAND and MEHAR

- Defendants

and

WARYAMA, BANTA, SONDHI and MUNSHI Defendants.

I, BATTAN SINGH (Father's name Wazir Singh) of Nausori, Rewa in the Colony of Fiji Merchant make oath and say as follows :—

1. I am one of the plaintiffs in this action.

2. 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 Jaimal (Father's name Nihalla) late of Samabula, Suva in the said Colony Moneylender 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 Jaimal 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 hereto annexed the said will bearing date the 25th day of February, 1944 and also save and except :—

(i) A copy of the will of the said Jaimal bearing date the 26th day of November 1941 together with a copy of a codicil thereto bearing date the 1st day of July 1942 the originals of which said will and codicil are to the best of my knowledge information and belief in the possession or under the control of Messrs. Ellis, Munro, Warren & Leys, Solicitors of Suva aforesaid.

(ii) Request dated the 24th day of February 1944 by Walaiti Ram one of the executors named in the said will of Jaimal dated the 25th day of February 1944 to Mr. Rambhir Parmeshwar to visit the said Jaimal and take his instructions for his will.

(iii) Typed instructions (undated) for the will of the said Jaimal taken pursuant to the request aforesaid.

SWORN before me at Suva in the Colony of Fiji this 9th day of August 1944 through the sworn interpretation of Rambhir Parmeshwar and I certify that this affidavit was read over in my presence in the Hindustani language to the deponent who seemed perfectly to understand the same and made his signature in my presence :—

(Sgd.) BATTAN SINGH.

(Sgd.) B. RAGHAVANAND,

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

2/-
stamp.

FILED this 8th day of September 1944 by Messrs. Grahame & Co., of Central Chambers, Victoria Parade, Suva, Solicitors for the plaintiffs.

This affidavit is filed on behalf of the plaintiffs.

*In the
Supreme
Court of
Fiji.*

THIS IS THE LAST WILL AND TESTAMENT of me **JAIMAL** (Father's name **Nihalla**) of **Samabula, Suva** in the Colony of **Fiji Moneylender.**

Affidavit
of Scripts
by **Battan
Singh,**
9th
August
1944,
continued.
Will of
25th
February
1944.

I **REVOKE** all previous wills and testamentary dispositions heretofore made by me and I **APPOINT** the President and the Secretary and the Treasurer holding office in the Sikh Gurudwara Committee at **Samabula, Suva** aforesaid at the date of my death to be executors of this my will and trustees of my Estate.

1. I **GIVE DEVISE AND BEQUEATH** all my real and personal estate whatsoever and wheresoever to my trustees **UPON TRUST** to sell 10
call in and convert into money such parts of my estate as shall not consist of money (with power in their absolute discretion to postpone such sale calling in or conversion without being responsible for any loss occasioned thereby) and out of the clear moneys to arise from such sale calling in and conversion and the ready money of which I shall be possessed at my death pay my debts funeral and testamentary expenses and death duties, and to stand possessed of the residue of such clear moneys and my investments and all parts of my estate for the time being unsold **UPON TRUST** as to capital and income to **GIVE AND DIVIDE** all my said estate equally 20
between my nephews **WARYAMA, BANTA, SONDHI** and **MUNSHI** (Sons of **Nagina**) all of the village of **Barhwal Post Office Banga** in the district of **Jullundur, Punjab, India.**

2. I **GIVE** to my trustees the following powers which are in addition to and not in substitution for any powers which they may have by law :

(A) To carry on any business carried on by me at the time of my death in the Colony of **Fiji** so long as they shall think fit and to discontinue the same or any part thereof at any time and to wind up the affairs thereof with liberty for my trustees if and so long as they shall continue my business to employ therein the whole or any part of the capital which shall be employed therein at my death and 30
with liberty to employ managers agents labourers clerks and servants and generally to act in the conduct of the said business as they shall in their absolute discretion think fit without being answerable for any loss arising therefrom.

(B) To retain any part of my estate in the same investments as it may be in at the time of my death without being responsible for loss although the investments may be of a wasting or speculative nature.

(c) To let or demise any lands of mine or part thereof either from year to year or for any term of years at such rent and subject 40
to such covenants and conditions as they shall think fit and to accept surrenders of leases and tenancies.

3. I **DESIRE** my trustees to wind up my moneylending business and to sell any lands belonging to me and generally to sell all assets of mine as soon as reasonably possible after my death leaving it to my trustees' discretion to deal with all my said estate at the most opportune time.

IN WITNESS whereof I have hereunto set my hand this twenty-fifth day of February One thousand nine hundred and forty-four.

(Sgd.) JAIMAL.

*In the
Supreme
Court of
Fiji.*

10 SIGNED by the said Jaimal the Testator as and for his last will and testament in the presence of us both being present at the same time who at his request in his sight and presence and in the sight and presence of each other hereunto subscribed our names as witnesses the same having been first read over and interpreted to him in the Hindustani language when he appeared perfectly to understand the same and made his signature in our presence as aforesaid.

Affidavit
of Scripts
by Battan
Singh, 9th
August
1944,
continued.

(Sgd.) NOEL McFARLANE (Sgd.) C. M. GOPALAN
Solicitor, Medical Practitioner.
Suva

Mr. R. Parmeshwar
Namasti

Jaimal is sick he wish to make his last will. Will you come Sikh Gurudwara Samabula & oblige. If you please consult your solicitor.

Yours sincerely,

WALAITI RAM

Request of
24th
February
1944,
Walaiti to
Parmesh-
war.

20

24/2/44.

Instructions for will of Jaimal

Jaimal (F/N Nihalla) of Samabula Suva Moneylender

Revoke all previous wills

Appoint President Secretary and Treasurer for the time being of the Sikh Gurudwara Committee at Samabula Suva executors and trustees of my will

All real and personal property whatsoever and wheresoever to my four nephews: Waryama (F/N Nagina)

Banta

Sondhi

30

Munshi all sons of Nagina

of village of Barhwal P.O. Banga

District of Jullundur, Punjab India

in equal shares of share and share alike
power to the trustees to realise when it deems expedient.

Typed
Instructions
(undated)
for Will of
25th
February
1944.

LIST OF SCRIPTS.

*In the
Supreme
Court of
Fiji.*

Filed with the affidavit of BATTAN SINGH sworn the 9th day of August, 1944 and filed herein on behalf of the Plaintiffs.

Affidavit
of Scripts
by Battan
Singh, 9th
August
1944,
continued.

(I) The true and original last will of the said Jaimal deceased bearing date the 25th day of February, 1944.

(II) Original request dated 24th February 1944 by Walaiti Ram to Rambhir Parmeshwar to visit Jaimal and take his instructions for his said will.

List of
Scripts.

(III) Original typed instructions (undated) for the will of the said Jaimal pursuant to the request above-mentioned.

10

No. 5.
Statement
of Defence
and
Counter-
claim,
4th
September
1944.

No. 5.

STATEMENT OF DEFENCE AND COUNTER-CLAIM.

No. 3 of 1944.

IN THE SUPREME COURT OF FIJI.
Probate Jurisdiction.

IN THE MATTER of the Will of JAIMAL deceased.

Between BATTAN SINGH, WALAITI RAM and
KHAZAN SINGH being the President,
Secretary and Treasurer of the Sikh
Gurudwara Committee at Samabula as
executors of the will of JAIMAL deceased - Plaintiffs

20

and

AMIRCHAND (Father's name Utham) and
MEHAR (Father's name Saudi) both of Yala
Levu, Ba - - - - Defendants

and

WARYAMA, BANTA, SONDHI and MUNSHI
(all sons of Nagina) all of the village of Barhwal
Post Office Banga in the district of Jullundur,
Punjab, India - - - - Defendants.

30

STATEMENT OF DEFENCE AND COUNTER-CLAIM.

The Defendants AMIRCHAND and MEHAR for themselves say :

1. (A) As to paragraph 1 (A) of the Statement of Claim herein the said defendants do not admit (i) that the plaintiffs are the executors appointed under the alleged will dated the 25th day of February 1944 of Jaimal (Father's name Nihalla) late of Samabula, Suva, in the Colony of Fiji Moneylender deceased or (ii) that the said document is a valid will, and the said defendants deny that the said document is a subsisting will.

(B) As to paragraph 1 (B) of the said Statement of Claim the said defendants do not admit that at the time of the death of the said Jaimal the Plaintiffs were the President, the Secretary and the Treasurer respectively holding office in the Sikh Gurudwara Committee at Samabula, Suva, aforesaid or that they sue as such office holders as aforesaid.

2. As to paragraph 2 of the said Statement of Claim the said defendants admit that the said Jaimal died on the 4th day of April 1944, and that the said Jaimal was at all material times domiciled in Fiji.

3. As to Paragraph 3 of the said Statement of Claim the said
10 defendants admit that the said Jaimal is a British subject.

4. As to paragraph 4 of the said Statement of Claim the said defendants admit that they are the executors appointed by and the sole legatees as tenants in common in equal shares under the will dated the 3rd day of April 1944 of the said Jaimal, and say further that the said will was the last will and testament of the said deceased, that at the time of his death it was and that it still is a valid and subsisting will and that it should be admitted to Probate in solemn form of law.

5. As to paragraph 5 of the said Statement of Claim the said
20 defendants admit that the other named defendants Waryama, Banta, Sondhi and Munshi (said to be the sons of one Nagina) are the sole next-of-kin of the said Jaimal and are so entitled to share in the estate of the said Jaimal in the event of an intestacy.

6. As to paragraph 6 of the said Statement of Claim the said defendants deny that the said will of the said Jaimal dated the 3rd day of April 1944 was not duly executed according to the provisions of the Statute 7 Will. IV and 1 Vict. c. 26 and say that it was well executed in accordance with the said Statute.

SUBSTANCE OF CASE.

30 On the said 3rd day of April 1944 the said will was first carefully read over and fully explained to the deceased by Mr. Leslie Davidson of Ba Solicitor in the Hindustani language and then read over to the said Jaimal by the said Mr. Davidson in the English language and interpreted to the said Jaimal in the Hindustani language by one Mohammed Rasul (Father's name Babulai) also of Ba aforesaid, Clerk and Hindi interpreter employed by the said Mr. Davidson, in the presence of one Khurshid Khan (Father's name Ahmed Ali Khan) of Nailaga Ba aforesaid Cultivator and of several other persons and in the presence of the said defendants all present together at the same time when the said Jaimal appeared
40 fully to understand and did in fact fully understand the meaning and effect thereof. The said Jaimal was asked by the said Mr. Davidson likewise in the joint presence of the said witnesses if he knew how to sign his name in English whereupon the said Jaimal answered in the affirmative, and was thereupon handed a pen by the said Mr. Davidson for the purpose of signing the said will. The said Jaimal tried to write his signature but his hand was too unsteady and he was unable to do so whereupon the said Mr. Davidson in the presence of the said witnesses asked the said Jaimal to affix his left thumb mark to the will which the said
50 Jaimal then did, unassisted, and in the sight and presence of the

*In the
Supreme
Court of
Fiji.*

No. 5.
Statement
of Defence
and
Counter-
claim,
4th
September
1944,
continued.

*In the
Supreme
Court of
Fiji.*

No. 5.
Statement
of Defence
and
Counter-
claim,
4th
September
1944,
continued.

said Mr. Davidson and the said Mohammed Rasul, Khurshaid Khan and the said other persons and the said defendants. The said Mr. Davidson then examined the mark and said in the presence of the said Jamail and of the said witnesses that the said left thumb mark was unsatisfactory whereupon the said Jaimal in the sight and joint presence of the said witnesses offered his left thumb to be held and said to the said Mr. Davidson in Hindi "affix it where you find sufficient space", or words to that effect, whereupon the said Mr. Davidson in the sight and joint presence of the said witnesses i.e. Mohammed Rasul, Khurshaid Khan and the said other persons and the two defendants, took the said left thumb and affixed the said Jaimal's left thumb mark to the said will; thereupon the said Mr. Davidson and the said Mohammed Rasul, in the sight and joint presence of each other and in the sight and joint presence at the same time of the said Jamail, Khurshaid Khan and the said other persons and each of the said defendants, affixed their respective signatures to the said will as attesting witnesses with their respective addresses and occupations. The terms of the attestation clause in the said will appearing were carried out in detail. The words and signs appearing at the foot of the said will, 20
viz. :—

“ ()
(hieroglyphic)
Jaimal
left thumb
mark
()

Both the above thumb marks are of the Testator as the 'hieroglyphic' purporting to be his signature."

were written thereon by the said Mr. Davidson, in the joint presence of the said Jaimal and the said witness and in their sight, after the said Jaimal had so executed his said will. 30

7. As to paragraph 7 of the said Statement of Claim the said defendants deny that the said Jaimal at the time the said will of the 3rd day of April 1944 was executed was not of sound mind memory or understanding and say that at the time the said Jaimal gave his instructions for the said will, that is, on the 31st day of March 1944 and at all material times then before and thereafter the said Jaimal was of sound mind memory and understanding.

SUBSTANCE OF CASE.

40

At least a week prior to the 3rd day of April 1944 the said Jaimal had voluntarily expressed to the said defendants a wish to leave all his property to them in gratitude for their care and attention during his illness and when the defendant the said Amirchand mentioned the claims of his nephews the said Jaimal stated that he had already made sufficient provision for them and that being in India they were unable to serve and help him during his last days as the said defendants were doing. On the 31st day of March 1944 the said Jaimal stated that he felt he had not long to live and insisted that he should make a will under which he would 50

10 leave his estate to the said defendants. The said Jaimal personally gave instructions to one Haricharan (Father's name Mahadeo) of Valevutu near Ba to have such a will prepared and brought to the said Jaimal for his execution. The said Jaimal well knew the nature of the document and its effects and the extent of the property of which he was disposing. He was well aware of the fact that he had already made good provision for his closest relatives namely the said other named defendants and that he had no wife or children and that his parents and brother had all predeceased him. He was well able to and did recognise his friends and acquaintances. His mind was not wandering and he was well able to and did converse coherently with his visitors.

*In the
Supreme
Court of
Fiji.*

No. 5.
Statement
of Defence
and
Counter-
claim,
4th
September
1944,
continued.

20 8. As to paragraph 8 of the said Statement of Claim the said defendants deny that the execution by the said Jaimal of his said will on the 3rd day of April 1944 was obtained by the undue influence of the said defendants or either of them and say that the said will was freely willingly and voluntarily executed by the said Jaimal with his full understanding of the contents thereof before two independent witnesses who were satisfied that the said deceased prior to his execution thereof fully understood the said contents, that he fully approved the same and that he executed the said will without coercion.

SUBSTANCE OF CASE.

30 The said Jaimal freely and voluntarily and without any suggestion, inducement, influence or coercion by the said defendants or anyone for them expressed a wish to leave all his property to the said defendants and on the said 3rd day of April 1944 he accordingly made the said will dated the 3rd day of April 1944. The said Jaimal was physically weak as a result of the illness which eventually brought about his death but was not suffering any abnormal mental condition nor were his memory or understanding impaired. The said Jaimal of his own free will lived at Yalalevu for three to four weeks prior to his death and was lodged and cared for by the said defendants and received medical treatment provided by them. He was at all times a free agent and the said will was the offspring of his own volition and was not obtained by any influence of the said defendants or either of them or by anyone for them. The said defendant Mehar was a close friend of the said Jaimal for about the past 37 years and the said defendant Amirchand was a close friend of the said Jaimal for about the past 16 years. 40 The said Jaimal was well acquainted with the said defendant Amirchand's parents who were his neighbours in India.

9. As to paragraph 9 of the said Statement of Claim :—

(A) the said defendants deny that the execution of the said will on the 3rd day of April 1944 by the said Jaimal was obtained by the fraud of the said defendants Amirchand and Mehar or that the said defendants knew well that the testator was unable to converse or to express his wishes or that the said defendants procured the said Jaimal to execute a purported will in which he bequeathed his whole estate to the said defendants or that the said Jaimal at

*In the
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No. 5.
Statement
of Defence
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4th
September
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continued.

the time he executed his said will was unable to recollect the existence of his nephews the other named defendants.

SUBSTANCE OF CASE.

The said defendants refer to and repeat the facts set out in the substance of case under paragraph 6 above. Both the said Mr. Leslie Davidson and his clerk and interpreter the said Mohammed Rasul were independent and disinterested persons. Neither of the said defendants nor any person or persons on their behalf procured the execution of the said will dated the 3rd day of April 1944. Before the said will was executed the said Mr. Davidson fully satisfied himself that the said Jaimal could converse and express his wishes and that the will as prepared was fully in accord with such wishes. 10

(B) The said defendants admit that at the time the said will was so executed they were each separately indebted to the said Jaimal but deny that they were heavily indebted to the said Jaimal and they say that the said Jaimal had adequate security for their said respective debts and that the said Jaimal was satisfied with such security.

SUBSTANCE OF CASE.

20

The said defendant Amirchand was on the 4th day of April 1944 indebted to the said Jaimal in the sum of £396 : 19 : 0 which was secured by first mortgage of freehold land estimated to be worth £650 : 0 : 0, and the said defendant Amirchand was then and still is well able to repay the said debt. The said defendant Mehar was on the said 4th day of April 1944 indebted to the said Jaimal in the sum of £6,623 : 9 : 7 which was secured by first mortgage of freehold land estimated to be worth £9,000 : 0 : 0 and the said defendant Mehar was then and still is well able to repay the said debt. 30

(c) The said defendants say further that the said Jaimal up to the time of his decease had not pressed either of the said defendants to repay their respective debts or to reduce the amount thereof.

(D) In recent years the said Jaimal had made substantial gifts to his said nephews the other said named defendants.

SUBSTANCE OF CASE.

The said defendants were informed by the said Jaimal that while he was in India about six years ago he expended a considerable sum of money for the benefit and advantage of the nephews of the said Jaimal namely the other named defendants. The said Jaimal also informed the said defendant Amirchand that about two years ago the said Jaimal made available to his said nephews in India a sum of about £1,700 : 0 : 0 cash. 40

10. As to paragraph 10 of the said Statement of Claim the said defendants deny that the said Jaimal at the time he executed his said will

dated the said 3rd day of April 1944 did not know or approve of the contents thereof and say further that on the contrary the contents and effect of the said will had been first carefully explained to the said deceased by the said Mr. Davidson and were well known to and understood and approved of by the said Jaimal prior to his execution of the said will.

*In the
Supreme
Court of
Fiji.*

No. 5.
Statement
of Defence
and
Counter-
claim,
4th
September
1944,
continued.

SUBSTANCE OF CASE.

10 The said defendants refer to and repeat the facts set out in the substance of case under paragraphs 6 and 7 above. The said Jaimal being illiterate in the English language, in which language the said will was typewritten, was unable to read it himself. The said Jaimal was well aware of its nature and effect.

11. As to paragraph 11 of the said Statement of Claim the said defendants deny the claim of the plaintiffs that the said defendants have no interest in the will or estate of the said Jaimal and say and claim that they have such interest by virtue of the said will dated the said 3rd day of April 1944.

12. If the said alleged will of the said 25th February 1944 was a valid will prior to the said 3rd April 1944 it was revoked by the said will of the said Jaimal deceased dated the said 3rd April 1944.

20 THE said DEFENDANTS COUNTER-CLAIM :—

(A) That the Court shall pronounce against the said will dated the 25th day of February 1944.

(B) That the Court shall decree Probate of the said will dated the said 3rd day of April 1944 in solemn form of law.

(Sgd.) ELLIS MUNRO WARREN & LEYS.

Delivered on the 4th day of September 1944, by Messrs. ELLIS, MUNRO, WARREN and LEYS of Central Chambers, Suva, Solicitors for the said Defendants AMIRCHAND and MEHAR.

AFFIDAVIT of Dr. Gopalan.

*In the
Supreme
Court of
Fiji.*

No. 3 of 1944.

No. 6.
Affidavit of
Dr. Gopalan
4th
November
1944.

**IN THE SUPREME COURT OF FIJI.
Probate Jurisdiction.**

IN THE MATTER of the will of JAIMAL deceased.

Between **BATTAN SINGH, WALAITI RAM and
KHAZAN SINGH** as executors of the will
of **JAIMAL** decd. - - Plaintiffs

and 10

AMIRCHAND and MEHAR - - Defendants

and

WARYAMA, BANTA, SONDHI and MUNSHI Defendants.

I, **CHAMBADAN MANAKADAN GOPALAN** of Suva in the Colony of
Fiji Medical Practitioner make oath and say :—

1. I am a duly qualified medical practitioner practising in Suva
in the Colony of Fiji.

2. I was present at the Sikh Gurudwara Temple, Samabula on the
25th day of February, 1944 when Jaimal (Father's name Nihalla) the
above-named deceased executed his will after the contents had been read 20
over and explained to him in English by Donald Malcolm Noel McFarlane
and interpreted into Hindustani by Rambhir Parmeshwar.

3. At that time the said Jaimal was in failing health and physically
in a weak condition, but was of sound mind memory and understanding
and appeared perfectly to understand the nature and contents of the said
will and the effect thereof.

SWORN at Suva in the Colony of Fiji this } (Sgd.) **DR. C. GOPALAN.**
4th day of November, 1944

Before me,

(Sgd.) **A. I. N. DEOKI,**

30

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

AFFIDAVIT OF SCRIPTS by Mehar, with annexures.

No. 3 of 1944.

*In the
Supreme
Court of
Fiji.*

IN THE SUPREME COURT OF FIJI.
Probate Jurisdiction.

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945.

IN THE MATTER of the Will of JAIMAL deceased.

Between **BATTAN SINGH, WALAITI RAM** and
KHAZAN SINGH being the President,
Secretary and Treasurer of the Sikh Gurudwara
Committee at Samabula as Executors of the
will of Jaimal deceased -

10

Plaintiffs

and

AMIRCHAND (Father's name Utham) and
MEHAR (Father's name Saudi) both of Yala
Levu, Ba - - -

Defendants

and

WARYAMA, BANTA, SONDHI and **MUNSHI**
(all sons of Nagina) all of the village of Barhwal
Post Office Banga in the district of Jullundur,
Punjab, India -

20

Defendants.

I, **MEHAR** (Father's name Saudi) of Yala Levu, Ba in the Colony of Fiji
Farmer make oath and say at Suva as follows :

1. I am the latter of the first-named defendants in this action.

2. 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 Jaimal (Father's name Nihalla) late of Samabula, Suva in the said
Colony Moneylender 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 Jaimal has at any time either before
30 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 already filed herein thesaid will bearing
date the 3rd day of April 1944 a copy whereof is hereunto attached and
marked " A " and also save and except :

30

(1) The annexed original unexecuted will document now
marked " B " prepared for the said Jaimal by Mr. S. H. Ellis,
Solicitor, Suva, and subsequently used, as I verily believe, as a
draft by the said Mr. Ellis for the will hereinafter mentioned dated
40 the 21st day of January 1938.

40

(2) The written instructions for the said will document so
marked " B " such instructions bearing the date " 31.12.36," and
being now annexed and marked " C."

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

(3) The annexed original said will of the said Jaimal deceased bearing date the 21st day of January 1938 and now marked " D."

(4) The annexed original will of the said Jaimal deceased bearing date the 26th day of November 1941, and now marked " F " and, attached thereto, a first codicil to the said will, bearing date the 1st day of July 1942, and now marked " G."

(5) The annexed instructions for the said will of the 26th November 1941 and the said Codicil, and now marked " H."

(6) Certain notes which I understand Mr. L. Davidson, Solicitor, Ba, may have made for his own use in connection with his preparation of the said will of the said 3rd day of April 1944. 10

SWORN by the said MEHAR before me at Suva aforesaid this 5th day of January 1945 through the interpretation of Bipin Chandra of Suva Clerk and Interpreter who had himself first been sworn by me and through whom the contents of the said Affidavit were read over to the deponent and explained to him by me :

MEHAR
his left thumb mark.

20

(Sgd.) HENRY M. SCOTT

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

2/-
stamp

Filed this day of January 1945 by Messrs. ELLIS, MUNRO, WARREN and LEYS of Central Chambers, Suva, Solicitors for the Defendants AMIRCHAND and MEHAR.

This Affidavit is filed on behalf of the said Defendants AMIRCHAND and MEHAR.

30

“ A ”

THIS is the copy Will dated the 3rd day of April 1944 marked H.M.S. “ A ” referred to in the annexed Affidavit of AMIRCHAND MEHAR (Father’s name Utham Saudi) SWORN this 5th day of January 1945 Before me : (Sgd.) HENRY M. SCOTT
A Commissioner etc.

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

“ A ”
Will of 3rd
April 1944.

10 THIS IS THE LAST WILL AND TESTAMENT of me JAIMAL (Father’s name Nehala) formerly of Suva but now of Yala Levu in the District of Ba in the Colony of Fiji “ Financier ” I REVOKE all former Wills and Testamentary Dispositions made by me and declare this to be my Last and Only will AFTER payment of all my just debts funeral testamentary and medical expenses I GIVE DEVISE AND BEQUEATH unto my dear friends AMIRCHAND (Father’s name Utham) and MEHAR (Father’s name Saudi) both of Yala Levu aforesaid Farmers as Tenants in Common in equal shares ABSOLUTELY ALL my estate and property whatsoever and wheresoever situate and whether in possession reversion or remainder AND I appoint them the said AMIRCHAND and MEHAR to be the Trustees and Executors of this my said Will. I declare that I have no next of kin nor blood relations in Fiji or elsewhere who are known to me
20 I desire to express by this my said Will my deep gratitude to the said AMIRCHAND and MEHAR for their devotion to me during my present illness. IN WITNESS WHEREOF I have hereunto set my hand to this my Last Will and Testament by my “ Left ” thumb mark on the Third day of April One thousand nine hundred and forty-four.

30 SIGNED PUBLISHED AND ACKNOWLEDGED by the testator the said JAIMAL by his left thumb mark as and for his Last Will and Testament in the presence of us both present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as Witnesses after the contents of this said Will had been carefully read over and explained to him in the Hindi language and he fully understood the same AND said that this Will as drawn was and is in full accord with his last wish.

(
(Hieroglyphic)
JAIMAL
left thumb mark

40 LESLIE DAVIDSON Both the above thumb marks are of Solicitor &c. Ba. the Testator as well as the “ Hieroglyphic ” purporting to be his signature.
MOHOMED RASUL Clerk and Hindi Interpreter.

BACKING :

Dated 3rd April A.D. 1944.
THE WILL
OF
JAIMAL (F. N. Mehala)

50 LESLIE DAVIDSON
Solicitor &c. Ba.

*In the
Supreme
Court of
Fiji.*

“ B ”

H.M.S. THIS is the original unexecuted Will marked “ B ” referred to in the annexed Affidavit of ~~AMIRCHAND~~ MEHAR (Father’s name ~~Utham~~ Saudi) SWORN this 5th day of January 1945 Before me :

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

(Sgd.) HENRY M. SCOTT

A Commissioner of the Supreme
Court of Fiji for taking Affidavits
(Not signed.)

on demise
1 orig./ and carbon.
R.

10

21/1.

“ B ”
Unexecuted
Will
document.

THIS is the LAST WILL AND TESTAMENT of me JAIMAL (Father’s name Nihalla) of Suva in the Colony of Fiji Moneylender I REVOKE all wills and testamentary dispositions at any time heretofore made by me I APPOINT SAMUEL HOWARD ELLIS of Suva aforesaid Solicitor to be the Executor and Trustee of this my Will I GIVE DEVISE AND BEQUEATH all my property both real and personal of whatsoever nature and kind and wheresoever situate unto my Trustee UPON TRUST to sell call in and convert into money such part of my estate as does not consist of ready money and to stand possessed of all my ready money and the proceeds of such sale calling in and conversion UPON TRUST thereout to pay my just debts funeral and testamentary expenses and to divide the residue then remaining equally between my brother NAGINA (Father’s name Nihalla) and his four sons BARIAM, BANTA, SAUNDHI and MUNSHI all of Bahadwak in the District of Jullandar in Punjab in India or the survivors or survivor of them AND I DIRECT that my Trustee shall have power in his absolute discretion to postpone for such period as he shall think fit the sale calling in or conversion into money of any part of my estate notwithstanding that the same may be of a reversionary hazardous wasting or terminable nature AND I DIRECT that my Trustee shall notwithstanding his acceptance of such trusteeship be entitled to charge and be paid all such professional and other charges for his services time and trouble as being solicitor to my estate and not being himself a trustee he would be entitled to make

IN WITNESS whereof I have hereunto subscribed my name this day of 1937-1938.

SIGNED by the Testator the said JAIMAL as and for his last will and testament in the presence of us both being present at the same time who at his request in his sight and presence and in the sight and presence of each other have hereunto subscribed our names as attesting witnesses and we certify that before his execution of the foregoing Will the same was read over and explained to the said Jaimal in the Hindustani language and he appeared fully to understand the meaning and effect thereof.

40

50

BACKING :

DATED 1937-8 .

JAIMAL

LAST WILL & TESTAMENT.

21/1/38 Attending Jaimal explaining necessity for Indian exors. of Indian estate but he not willing to provide for their appointment now.

R.

S. H. ELLIS,
Solicitors,
Suva.

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

“ B ”
Unexecuted
Will
document,
continued.

10

“ C ”

31.12.36.

“ C ”
Written
Instructions
31st
December
1936.

Last will of Jaimal.

Bequeaths To :

- | | | |
|--|---|-----------------|
| <p>1. Nagina (F/n Nihalla) brother.
2. Bariam
3. Banta
4. Saudi (Saundhi)
5. Munshi</p> | } | Sons of Nagina. |
|--|---|-----------------|

20

All of Bahadwar, Dist. Jullandhar, Punjab India.
Or to the then survivors or survivor in equal shares.

Executor : S. H. Ellis.

Exec. to get in and sell all assets and divide proceeds.

Charge up costs.

These are the written instructions marked “ C ” referred to in the H.M.S. annexed Affidavit of ~~AMIRCHAND~~ MEHAR (Father's name ~~Utham~~ Saudi).

30

SWORN this 5th day of January 1945 Before me :

(Sgd.) HENRY M. SCOTT,
A Commissioner etc.

“ D ”

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

“ D ”
Will of 21st
January
1938.

THIS is the original will dated the 21st day of January 1938 marked “ D ” and referred to in the annexed Affidavit of MEHAR H.M.S. ~~AMIRCHAND~~ (Father’s name ~~Utham~~ Saudi) SWORN this 5th day of January 1945 Before me :—

(Sgd.) HENRY M. SCOTT,
A Commissioner etc.

THIS is the LAST WILL AND TESTAMENT of me JAIMAL (Father’s name Nihalla) of Suva in the Colony of Fiji Moneylender I REVOKE all wills and testamentary dispositions at any time heretofore made by me I APPOINT SAMUEL HOWARD ELLIS of Suva aforesaid Solicitor to be the Executor and Trustee of this my Will. I GIVE DEVISE AND BEQUEATH all my property both real and personal of whatsoever nature and kind and wheresoever situate unto my Trustee UPON TRUST to sell call in and convert into money such part of my estate as does not consist of ready money and to stand possessed of all my ready money and the proceeds of such sale calling in and conversion UPON TRUST thereout to pay my just debts funeral and testamentary expenses and to divide the residue then remaining equally between my brother NAGINA (Father’s name Nihalla) and his four sons BARIAM, BANTA, SAUNDHI and MUNSHI all of Bahadwal in the District of Jullandar in Punjab in India or the survivors or survivor of them AND I DIRECT that my Trustee shall have power in his absolute discretion to postpone for such period as he shall think fit the sale calling in or conversion into money of any part of my estate notwithstanding that the same may be of a reversionary hazardous wasting or terminable nature AND I DIRECT that my Trustee shall notwithstanding his acceptance of such trusteeship be entitled to charge and be paid all such professional and other charges for his services times and trouble as being solicitor to my estate and not being himself a trustee he would be entitled to make.

IN WITNESS whereof I have hereunto subscribed my name this 21st day of January 1938.

JAIMAL.

SIGNED by the testator the said JAIMAL as and for his last will and testament in the presence of us both being present at the same time who at his request in his sight and presence and in the sight and presence of each other have hereunto subscribed our names as attesting witnesses and we certify that before his execution of the foregoing Will the same was read over and explained to the said Jaimal in the Hindustani language and he appeared fully to understand the meaning and effect thereof

F. G. FORSTER,
Clerk, Suva.

ROBERT MUNRO,
Solicitor,
Suva.

10

20

30

40

50

BACKING:

DATED 21st January 1938.

 JAIMAL

 LAST WILL AND TESTAMENT

REVOKED.

S. H. ELLIS,
Solicitor,
Suva.

“ F ”

10 H.M.S. This is the original will dated the 26th day of November 1941 marked “ F ” referred to in the annexed Affidavit of ~~AMIRCHAND~~ MEHAR (Father’s name ~~Utham~~ Saudi) SWORN this 5th day of January 1945 Before me :

(Sgd.) HENRY M. SCOTT,

A Commissioner etc.

THIS IS THE LAST WILL AND TESTAMENT of me JAIMAL (Father’s name Nihalla) of Suva in the Colony of Fiji Moneylender :—

1. I HEREBY REVOKE all wills and other testamentary dispositions at any time heretofore by me made.

20 2. I APPOINT SAMUEL HOWARD ELLIS, ROBERT LINDSAY MUNRO, DONALD JOHN WARREN and ARTHUR DIGNAN LEYS of Suva in the said Colony Solicitors or the survivors of them to be the executors and trustees of this my will and I DECLARE that the expression my “ trustees ” where used herein shall except where the context requires a different construction mean and include the executors and trustees for the time being acting hereunder AND I FURTHER DECLARE that except for the purpose of appointing a new trustee and except in case of other emergency there shall never be less than two trustees acting in the trusts of this my will.

30 3. I GIVE DEVISE AND BEQUEATH all my property both real and personal of whatsoever kind or nature and wheresoever situate unto my trustees to sell call in and/or convert into money such part or parts thereof as shall not consist of money and to stand possessed of the proceeds of such sale calling in and/or conversion together with such parts of my said estate as shall consist of money UPON TRUST :

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

“ D ”
Will of 21st
January
1938,
continued.

“ F ”
Will of
26th
November
1941.

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

“ F ”
Will of
26th
November
1941,
continued.

(A) TO PAY thereout all my just debts funeral and testamentary expenses including all estate succession legacy and other duties payable in respect of my estate.

(B) TO PAY and transfer the balance then remaining in equal shares absolutely unto such of my nephews BARYAMA, BANTA, SAUNDHI and MUNSHI being sons of my brother Nagina as shall survive me.

4. (A) I DECLARE that if any of my said nephews shall die in my lifetime leaving issue me surviving then such issue shall take and if more than one in equal shares per stirpes and not per capita the share which his 10
her or their parent would have taken under this my will had such parent survived me AND

(B) I FURTHER DECLARE that if any of my said nephews shall die in my lifetime leaving a widow me surviving but no issue then my trustees shall set aside out of the share which such nephew would have taken under this my will had he survived me a fund which in the absolute discretion of my trustees shall be sufficient to provide a net income of 180 Rupees (Indian) per annum and to pay to such widow out of the income arising from such fund as from the date of my death the sum of 15 Rupees per month during her lifetime and so long as she shall remain the widow 20
of such deceased nephew and not remarry AND I DIRECT that the balance of such deceased nephew's share in my said estate remaining after the setting aside of the said fund and upon the death or remarriage (as the case may be) of such nephew's widow the said fund itself and all accumulated income therefrom shall fall into the residue of my estate and be distributed accordingly.

5. I EMPOWER my trustees in the execution of the trusts of this my will to do all or any of the following acts and things :

(A) TO POSTPONE the sale calling in and/or conversion into money of any part or parts of my real and personal estate that 30
shall not consist of money for so long as my trustees shall think fit notwithstanding that the same may be of a wasting speculative or reversionary nature.

(B) TO LET or lease any hereditaments for the time being remaining unsold either from year to year or for any term of years or otherwise at such rent and subject to such covenants and conditions as my trustees shall think fit also to accept surrenders of leases and tenancies and generally to manage the same as they shall think fit.

(c) NOTWITHSTANDING the trust for sale and conversion 40
hereinbefore contained TO CARRY ON any business as a money-lender or otherwise carried on by me at my death for so long as my trustees in their absolute discretion shall think it necessary for the purpose of realising and/or protecting any investments made by me in the course of such business and without limiting the generality of this provision to make further loans to persons who

shall at my death be indebted to me upon such terms and such security (even though such security be not of the nature required by law for the investment of trust funds) as my trustees in their like discretion shall think fit and to use and employ any part of the capital of my said estate which may in trustees' opinion be necessary for such purposes.

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

10

(D) IN ADDITION to the powers of investment conferred on trustees by statute ordinance or otherwise TO INVEST any moneys forming part of any fund established under this my will or any other part of my estate for the time being remaining undistributed in legal or equitable mortgages or other charges of Leases subleases Native Leases or Crown Leases of lands in the said Colony and/or crop liens affecting sugar cane or other crops in the said Colony and/or bills of sale affecting buildings livestock machinery implements chattels or things in the said Colony and upon such terms and conditions as my trustees shall think fit.

“ F ”
Will of
26th
November
1941,
continued.

20

(E) IN THE EVENT of the income arising from any fund established under Clause 4 (B) of this my will not being sufficient in any year to provide the payments provided for under the said clause TO MAKE up the deficiency by having recourse to the capital of such fund.

30

(F) TO RAISE any part or parts not exceeding together one moiety of the vested expectant or presumptive share of any infant beneficiary under this my will and to apply the same for the maintenance education preferment advancement or other benefit of such infant beneficiary as my trustees with such consent or at such discretion may think fit AND I DECLARE that any such application by my trustees shall not be questioned nor shall my trustees be chargeable therewith by reason of the subsequent failure of any infant beneficiary to become possessed of such share.

(G) FROM TIME TO TIME to vary any investment representing the whole or any part of the corpus of my estate or of any fund established under this my will in such manner as my trustees in their absolute discretion shall think fit.

40

6. I DECLARE that my trustees in exercising the powers authorities and discretions vested in them by this my will or by statute ordinance or otherwise shall have power to act in relation to my estate as if they were absolute owners thereof without being liable or responsible for any loss arising thereby and in case any loss shall be incurred in the exercise by my trustees of any of such powers authorities or discretions my trustees shall be reimbursed all such loss out of my said estate.

7. LASTLY I DECLARE that my trustees shall be entitled to charge my estate for any business or act (whether strictly professional or not) done by them or their firm in connection with the trusts of this my will in the same manner as they would be entitled to do had they not been named herein as executors and trustees hereof.

*In the
Supreme
Court of
Fiji.*

IN WITNESS whereof I have hereunto set my hand this 26th day of
November One thousand nine hundred and forty-one.

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

“F”
Will of
26th
November
1941,
continued.

SIGNED AND ACKNOWLEDGED by
the Testator the said JAIMAL as and for
his last will and testament in the
presence of us both being present at
the same time who at his request in
his sight and presence and in the sight
and presence of each other have here-
unto subscribed our names as attesting
witnesses the said Will having first
been read over and explained to the
Testator in the Hindustani language
in our presence when the Testator
appeared thoroughly to understand
the same and to approve the contents
thereof.

JAIMAL.

10

F. G. FORSTER,
Managing Clerk,
Suva.

20

A. R. SAHU KHAN,
Clerk and Interpreter,
Suva.

BACKING :

DATED 26th day of November 1941.

WILL
OF
JAIMAL

EXECUTORS :

SAMUEL HOWARD ELLIS
ROBERT LINDSAY MUNRO
DONALD JOHN WARREN
and ARTHUR DIGNAN LEYS

30

DATED 1st day of July 1942.

FIRST CODICIL

Ellis, Munro, Warren & Leys,
Suva.

ELLIS, MUNRO, WARREN & LEYS,
Solicitors,
Suva.

40

“ G ”

THIS is the First Codicil dated the 1st day of July 1942 and marked “ G ” referred to in the annexed Affidavit of MEHAR H.M.S. AMIRCHAND (Father’s name Utham Saudi) SWORN this 5th day of January 1945 Before me :

(Sgd.) HENRY M. SCOTT
A Commissioner etc.

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

I, JAIMAL (Father’s name Nihalla) of Suva in the Colony of Fiji Money-lender declare this to be a FIRST CODICIL to my WILL which bears
10 date the 26th day of November 1941 :

“ G ”
First
Codicil
1st July
1942.

WHEREAS I desire to make an addition to my said will NOW I DECLARE that the following clause shall be added to and read as part of my said will :

8. I DIRECT my trustees that they shall at all reasonable times furnish and supply to the SIKH GURUDWARA COMMITTEE of Suva upon the written request of the said Committee details of the assets and liabilities of my estate and accounts of the income arising therefrom and the expenditure incurred in respect thereof.

AND in all other respects I confirm my said will.

20 IN WITNESS whereof I have hereunto set my hand this First day of July 1942.

SIGNED AND ACKNOWLEDGED by the Testator the said Jaimal as a Codicil to his will which bears date the 26th day of November 1941 in the presence of us both being present at the same time who at his request in his sight and presence and in the sight and presence of each other have here-
30 unto subscribed our names as attesting witnesses the said Codicil having first been read over and explained to the Testator in the Hindustani language in our presence when the Testator appeared thoroughly to understand the same and to approve the contents thereof.

JAIMAL.

A. R. SAHU KHAN,
Clerk and Interpreter, Suva.

40 R. CHARITRA,
Clerk, Suva.

" H "

*In the
Supreme
Court of
Fiji.*

No. 7.
Affidavit
of Scripts
by Mehar,
5th
January
1945,
continued.

H.M.S. THIS and the succeeding sheets are the instructions marked " H " so referred to in the annexed Affidavit of MEHAR ~~AMIRCHAND~~ (Father's name ~~Utham~~ Saudi) SWORN this 5th day of January 1945 Before me :

(Sgd.) HENRY M. SCOTT,

A Commissioner etc.

12th June, 1942.

" H "

JAIMAL :

Instruc-
tions for
Will of
26th
November
1941.

I wish to give power to the SIKH GURUDWARA COMMITTEE of 10 Suva, to enquire from my Trustees and obtain full account and information, regarding my estate. This power may be exercised by the Committee from time to time.

*(Deleted in
pencil.)*

So long as she remains his widow receive the sum of 15 Rupees per month out of the income arising out of the share her husband would have received. Upon re-marriage ~~(or living with any other person as a mistress)~~ or death, the whole of share of capital and income to be divided equally between the other nephews or their respective children (in equal shares per stirpes).

Jaimal says Clause (c) should not be in the will.

20

It may be altered that trustees may mortgage any property in Fiji but no property in India.

27th June 1941.

WILL.

JAIMAL (Father's name Nihalla) formerly of the village of Baharwal, in the Tahsil of Namashahar, District of Jullundhur, Punjab, India, but at present of Suva in the Colony of Fiji, Licensed Moneylender.

E.M.W. & L.

Out

as in India

*(Deleted in
pencil.)*

~~APPOINTS BANTA and SAUNDHI (sons of Nagina) of Baharwal, aforesaid to be Executors and Trustees. J. domiciled in Fiji.~~

30

Trustees to have power to carry on his business, postpone sale and realisation of securities and property, both in India and Fiji.

Such assets as comprise of ready money or realisation on sale, after payment of all debts, funeral and testamentary expenses, including death, estate and succession duties, shall be divided equally between BARYAMA, the said Banta and the said Saundhi and MUNSHI (all sons of Jaimal's brother Nagina) of Baharwal aforesaid, in equal shares.

If any of them shall die in Jaimal's lifetime, leaving issue, or be married and without issue, the share of such deceased shall pass to the issue (if more than one in equal shares) and if no issue then to the widow. But if such deceased has no widow or issue the share shall be divided equally between the remaining brothers.

In the Supreme Court of Fiji.

No. 7.
Affidavit of Scripts by Mehar, 5th January 1945, continued.

In the event of any of the four immediate beneficiaries dying leaving issue who are minors, the Trustees to advance such moneys for their maintenance and education suitable to their station in life and also for the maintenance of the widow until the youngest shall attain proper age ~~accordingly 21 years to the laws of India for inheritance.~~

(Deleted in 10 pencil.)

"H"
Instructions for Will of 26th November 1941, continued.

The share coming to the issue shall be invested by the Trustees and the income thereof is to be applied first towards maintenance but if it should prove insufficient then part of the capital may be utilised.

BACKING :

20719

WILL

JAIMAL

|

re Will

JAIMAL

Costed



EVIDENCE of Hari Charan.

*In the
Supreme
Court of
Fiji.*

10th January, 1945.

*Defendants'
Evidence.*

HARI CHARAN (f/n Mahadeo), of Ba,—*sworn.*

No. 8.

Hari
Charan,
10th and
11th
January
1945.
Examina-
tion.

RICE MILLER.

Mr. RICE : Did you know Jaimal, deceased, whose will is the subject matter of this case ?—Yes, I knew him.

It is common ground between everybody here that he died on the 4th April last. Can you tell us for how long you had known him before the 4th April when he died ?—I knew him five or six years previous to the 10 date of his death. I was at school in Suva at the time.

You mean you got to know him when you were in Suva at school ?—That is correct.

In March of last year, that is 1944, did you see him at all in the Ba district ?—Yes, I did.

Whereabouts exactly in the Ba district ?—At Yalalevu.

Which, I think I am correct in saying, is about 2 miles from the Ba township ?—Something like that.

Did you visit him when he was at Ba ?—Yes, I did.

At what particular place in Yalalevu did you visit him ?—I saw him 20 in Indar Singh's house.

Is that anywhere near the main road ?—Yes.

Which road are you referring to ?—The main road going to Lautoka from Ba.

The King's Road ?—That's right.

Was Indar Singh living there ?—The house belongs to Indar Singh.

And was Jaimal staying there ?—Yes.

You have told us you visited him in that house more than once—or just once ?—More than once.

How many times, as near as you can tell the Court ?—Two or three 30 times.

Did you visit him on the 31st March last, 1944 ?—Yes.

Do you know Mehar and Amarchand, two of the defendants in this case ?—Yes, I know them.

On that day, 31st March, did Jaimal say anything about the question of a will ?—Yes, he did.

What did he say ?—At the time when I visited him he said to me, " Hari Charn, I wish to make my will in favour of Mehar and Amirchand."

Anything else ?—Yes. " Because of the fact that ever since they have brought me here from Suva they have looked after me very well." 40

He told you he wanted to make a will, and did he ask you to do anything about it for him ?—Yes, he did. He said " Will you procure a lawyer for me to draw up the will."

And what was your answer to that ?—I said, " You need not worry about that just now. You need not be anxious. You are quite well." He said further, " Remember everything that I am telling you," and I said in reply, " Yes, I will not forget and I will do my best for you."

Now did you ask him whether he had ever made a will already, or anything like that ?—Yes, I did.

What did he say?—He said “ Yes, I have made two wills already, but I am not worrying about them. I wish to make my last will in favour of these men.”

He told you he had made two wills already. Did he say in whose favour he had made them?—No, he did not.

Did he tell you whether or not he had any relations?—

MORLEY : I suggest the witness should be asked what he did say. That is a leading question.

10 The COURT : I don't think you can object to that. After all, there are a very great number of things that are quite immaterial to this case.

MORLEY : I think all the circumstances surrounding this case are most important, apart from any suspicion. This man who is now dead was, according to this witness, in a perfectly good state of mind. I suggest my friend should exhaust the witness's memory and then ask him a leading question. I suggest he should say “ Did he tell you anything else ? ”

The COURT : I don't think you can object to a question as to whether any relations were mentioned.

RICE : Did he say anything about any relations of his?—Yes, he did. He did mention that he had relations in India.

20 Did he tell you what was the degree of relationship?—No.

He didn't tell you that?—I asked him, “ Have you any children, or is it your wife ? ” He said “ No, I have no children ; I have no wife. They are my relatives. They are related to me.” That is all he said.

Did he say whether he had ever done anything in the way of assistance to them, or anything like that?—Yes, he did.

What did he say about that?—He said, “ I have given sufficient property in the way of money and assets to these people in India.”

And he asked you to get a lawyer for him, and you promised to do so?—That's right.

30 And is there anything else of moment that you can remember that transpired at that interview?—No.

Well, you have told us that that was on the 31st March. Do you happen to remember what day of the week it was?—Friday.

What steps did you take, if any, to try and carry out this man's request to get him a lawyer? Tell us what you did?—The same day myself and Amirchand—

You mean the defendant Amirchand?—Yes.

Did what?—We went down to the town.

40 Which town?—Ba town. Amirchand said to me, “ Get a lawyer for Jaimal.”

McFARLANE : I submit that that has nothing to do with the case. I do not object if Your Honour would like to hear it.

RICE : I agree.

The WITNESS : I went and saw Mr. Rice.

Did you actually see me?—No, I went there and enquired from your clerk, and he informed me that you were not in. You were out at the time.

Out of town?—Yes.

Did he tell you where I was?—

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 8.

Hari
Charan,
10th and
11th

January
1945,
Examina-
tion,
continued.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 8.

Hari
Charan,
10th and
11th
January
1945,
Examina-
tion,
continued.

McFARLANE : Is this relevant ?

RICE : It lies on us to show that there was not a sudden haste to get any lawyer at all, and that had I just been a few yards up the street there is no reason why he should not have waited. It is relevant as showing why he went to some other office.

The COURT : Excuses that are given for a principal's absence are very various, though, Mr. Rice.

RICE : Very well, Your Honour, I won't press it.

What then ?—Then I proceeded to Mr. Davidson's office.

Did you see Mr. Davidson ?—Yes.

10

Did you communicate Jaimal's instructions to Mr. Davidson ?—
Yes, I did.

Very well, tell us what instructions you gave to Mr. Davidson ?—
I told Mr. Davidson that there was a sick man who wanted his will to be drawn.

Did you tell him the testator's name ?—Yes, I did. Mr. Davidson asked me who the man was and I told him.

And his father's name ?—Yes.

And also where the man was at the time ?—Yes.

Did you tell him who the beneficiaries were ?—Yes.

20

Who did you say were the proposed beneficiaries ?—Amirchand and Mehar.

You mean the two defendants ?—Yes.

Now did you just communicate those details to Mr. Davidson by word of mouth or in any other way ?—No. Mr. Davidson gave me a small piece of paper on which I wrote these names.

In your instructions to Mr. Davidson was there any talk about the question of family, or anything like that ?—I mean the testator's family, of course ?—Mr. Davidson asked me if he had a family, and I said no he did not have a wife and he did not have any children.

30

Was that the end of your interview with Mr. Davidson ?—Yes.

And you left the office, did you ?—Yes.

What was the next you heard about this question of the proposed will of Jamail ?—On Monday Amirchand came to me at A. J. C. Patel's store in Ba.

What happened as a result of your meeting Amirchand in A. J. C. Patel's store ?—Amirchand said "The will is not ready yet." I said "All right, let us go and find out and see the solicitor."

Did you see the solicitor ?—Yes, we did see Mr. Davidson.

And what was the result ?—Immediately then he went to see Jaimal. 40

Did you see Jaimal before Mr. Davidson did ?—I did not.

Tell me this now. That was Monday—that is to say the Monday after the Friday when Jaimal asked you to get him a lawyer ?—Yes.

Did you see Jaimal again after that Monday before he died ?—No.

Just to go back to the Friday, which you have told us was the 31st March. You have told us about the conversation you had with Jaimal when he asked you to arrange the will ?—Yes.

Was there anybody else present at that conversation except you and Jaimal ?—Yes, there were some others present.

Who were they ?—Mehar and Amirchand.

50

The two defendants ?—Yes, both defendants.

And anybody else outside those two?—No others besides the two defendants. Myself, the two defendants and Jaimal.

*In the
Supreme
Court of
Fiji.*

CROSS-EXAMINED.

*Defendants'
Evidence.*

Mr. CHALMERS: You say you had known Jaimal for five or six years?—Yes.

You knew him intimately—well?—I knew him ever since I started schooling in Suva.

I want to know, did you just see him or did you know him as a friend?—As a friend.

10 When he was in Suva?—Yes, at Samabula.

Ever visit him at his house?—No, I have not been to his house.

When you met Jaimal what did you meet him for?—My grandfather knew him very well. I always met him here in Suva whenever he used to come to town, and my grandfather had informed me that if I was in trouble at any time while I was in Suva to see Jaimal because he and Jaimal were very close friends.

And at the same time you didn't even know whether he was married or had children?—No, I didn't know.

You never thought of asking your father that?—No.

20 And that is why, I suppose, when you saw him in Ba, you asked him if he had any wife or children?—That is so.

You were sufficiently interested to ask him whether he had a wife or children were you?—At the time he was at Yalalevu?

Yes?—Yes.

Why did you ask him that?—For this reason. He may have had a wife and children, and I wanted to know if there were any other beneficiaries included in that will.

When he said he had no wife and children, then he told you he had other relatives, didn't he?—Yes, he did.

30 Did you ask him who those relatives were?—He said there were some relatives regarded as brothers in his own village back in India.

So you were not sufficiently interested to find out who those relatives were in India?—No, I wasn't.

And yet you were to take instructions about a will?—I was really interested in his close relations. If he had any blood relations.

Wouldn't you call nephews blood relations?—I would look upon blood relations as his own sons, daughters, any of his own children, and his parents. Not nephews.

40 When you went to Mr. Davidson, didn't you tell him that he had told you that he had other relations—other relations as you have mentioned here? Did you tell Mr. Davidson that the deceased said he had relatives regarded as brothers in India? Did you or did you not?—No, I didn't.

You didn't tell him that?—No.

Why not?—It was not necessary.

When Mr. Davidson, according to you, asked you whether the defendant had any relatives?—He was asking about blood relations. Close relations.

Mr. Davidson asked you about blood relations?—Yes.

No. 8.
Hari
Charan,
10th and
11th
January
1945,
continued.
Cross-
examina-
tion.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 8.
Hari
Charan,
10th and
11th
January
1945,
Cross-
examina-
tion,
continued.

What language were you talking in?—I was talking to Mr. Davidson in English.

Can you tell us in English what you told Mr. Davidson in regard to this question of relations?—"He has no wife and no children."

That is all you told Mr. Davidson?—Yes that is what I told him.

And Mr. Davidson asked you nothing further after that?—No, he didn't.

Did you tell Mr. Davidson that the deceased had said he had relatives in India?—No, I didn't.

Now these instructions had been given to you by Jaimal. You have 10
said they were given to you in the presence of Mehar and Amirchand?—
Yes.

Were they there before you arrived?—They were there before I arrived.

They were there before you arrived?—Before I arrived they were there.

Was anybody else there besides those two men?—No one else.

Then you arrived, and as soon as you arrived I take it Jaimal started talking to you about his will?—A little while later.

What did you do when you arrived?—I rode there on horseback. 20
I tied my horse outside and went inside and sat down.

I am asking you about the time you went and sat down. What did you do in there?—I was looking at him and his condition.

What was his condition?—He was sick.

I put it to you he was very sick?—No.

He could talk quite well?—Speaking slowly—very clearly.

Well I just want to check up again. From the time you arrived—
what conversation did you have first of all with Jaimal?—After arriving
there I asked him, "Babuji, how are you and how do you feel?" He
replied, "I am not feeling quite well I am not well. I am feeling weak."
Then I assured him that he would be better. Then he said to me "I want 30
to draw up a will in favour of these two."

And these two were sitting there all the time, of course, while you were there?—Yes. These two were sitting there all the time.

They didn't go out of the room and leave you to have a talk on your own with Jaimal?—No they did not.

When Jaimal suggested that he would give his property to Mehar and Amirchand, I suppose Mehar and Amirchand didn't say "Well, what about your relatives in India"?—No, they didn't ask.

They didn't make any suggestion about making provision for his nephews in India?—No, they didn't say anything to that effect. 40

Did they enter into conversation with regard to the will at all?—
No, they didn't come in between us: that is, we two were talking and they
didn't join in the conversation.

Now I take it you arrived there just by accident?—No, I had gone up to see Jaimal.

These two people who were to be beneficiaries under the will happened to be there by accident and you met them there at the same time, is that what it is?—I can't say whether they were there by accident or what. They were there already before I arrived.

It wasn't prearranged when you should be there?—No, there was no 50
such previous arrangement.

1 p.m. ADJOURNED.

2.30 p.m. RESUMED.

You told us that you went to visit the deceased on 31st March and the only two persons present besides the deceased and yourself were Mehar and Amirchand?—Yes, that's right.

Did anybody else arrive before you left?—No one else came while I was there or before I left.

What time was it when you arrived there?—2.30.

That is the daytime?—Yes, afternoon.

Had you gone especially to see him?—Yes.

10 How many miles do you live away from Indar Singh's house?—
Approximately 12 miles away.

So on that day you had come 12 miles to pay him this visit?—Yes.

Why did you go and see him on this particular occasion?—Well, it was not only once I went to see him.

I am asking you why on this particular occasion you went 12 miles to see him?—Because he was sick.

And who had told you that he was sick?—I knew he was ill from the time he left Suva, when Amirchand went with him from here.

20 Was it Amirchand then who came and told you that he was sick?
—Yes.

So that in fact I put it to you you really went there on the 31st March at the request of Amirchand?—No, it was not on that day he asked me to go and see him. He told me of the man's illness before that day.

I am not asking you for any days. Try if you can and think of the 31st March. I am talking now of that one day, the 31st March. You have told us that you went there because he was sick and I ask you who told you he was sick, that warranted your going on that day?—I am trying to tell you that Amirchand did not tell me on the 31st he was sick. He told me before then that the man was sick, and I went on that day to see

30 him.

I want to know why you went on that particular day miles to see him. You already knew he was sick. I want to know why you went on that particular day?—I came to town on that day. Having come to town I wanted to see the man because I knew he was sick. Whenever I came to town I visited him.

I think I am correct in saying that a few minutes ago you said you had come to town especially to see him?—Yes, that is correct. When I came to town I wanted to see Jaimal and that is why I went to see him.

40 When was the previous occasion you went to see Jaimal other than
the 31st March?—I think a week before that occasion.

Can't you be more certain than that?—I can't be quite certain, but it was a week, I think. That is the previous week.

Had you come especially on that occasion, or just on your way to town?—When I leave home I make up my mind that I shall see Jaimal. On coming to see him I come to town and do my business at the same time.

And this is on every occasion?—Yes.

50 So that on every occasion you came to town you made up your mind
to go and see him. And did you carry out your intentions on each occasion?
—I make up my mind at home that I shall see Jaimal when I am in town,
and when I go to town I go and see him.

This week previous to the 31st March: who was present then when you saw Jaimal?—Mehar was usually there when I visited him, and other persons whom I do not know, except by sight.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 8.

Hari
Charan,
10th and
11th
January
1945,
Cross-
examina-
tion,
continued.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 8.
Hari
Charan,
10th and
11th
January
1945,
Cross-
examina-
tion,
continued.

Can't you be a little bit more explicit? You say Mehar: can't you give us the names of others on that occasion. This is only a week previously?—No I don't know them. I can't tell you their names.

So the only person you can identify as being there on the previous week is Mehar?—That is so, except Mehar I can't name any other person.

I think you mentioned three occasions. When was the previous time you visited him then?—Well, a week in between my visit.

That would be another week, that would be two weeks?—Something like that.

Is that the last time you saw him?—You mean the 31st? 10

I am talking about this occasion the 31st March. Two weeks from the 31st March?—That is right.

Did you see him on any other occasion excepting those in Ba? I am talking about?—No.

Only on the three occasions. Now you said you knew Jaimal well. When was the occasion between your seeing him in Ba and your seeing him in Suva. I am wanting to know the time that passed between the time he saw you in Suva and the time you saw him in Ba. The last time you saw him in Suva previous to the first time you saw him in Ba?—I do not recollect very well. I was at school at the time. It may have been 20 12 years. But I am just guessing.

It was some considerable time?—That is so.

What is your present age?—26 years.

How long ago is it since you left school?—1935 or 1936 I believe when I left school.

You said you saw him when you left school?—That's right.

And is that the last time you saw him?—I didn't meet him in between. I didn't know where he was. I didn't enquire about him when I came to Suva in between that occasion and the time I came to Ba.

During those years you had no contact at all?—That is correct. 30 Didn't have any dealings of any kind.

You didn't have any conversation with him?—No.

No contact at all. So we have analysed the position down to this. That the only contact you had with him from 1935 or 1936 until you came to Ba was three visits you paid to him at Yalalevu?—That's right.

And yet you suggest he should confide in you his desires about a will: how he wished to dispose of his property?—Yes.

Are you a Punjabi?—No.

Was Jaimal a Punjabi?—Yes, he was.

On the occasions of your visits were all the people you saw around 40 about him Punjabis?—Not only Punjabis but all kinds of people were there amongst the people who went to see him.

Give us the names of some of those people?—At the time when I had gone—the second occasion you are asking me about, Mehar was the only person I recognized. The others were strangers to me.

How long have you resided in Ba?—I was born there.

And you suggest the people who were there were Ba people?—I don't know all the people that live in Ba.

You couldn't identify any of the people other than Mehar?—As I said before, I knew then by sight, I can point them out but I do not know 50 their names.

Do you know Dalel?—No, I have never heard that name.

Do you know a man called Dewar ?—No.

I have asked you about a second occasion when you said Mehar was present. Now on the third occasion who was present when you went there ?—I had never seen these people before.

Never seen them in Ba ?—May have been just a passing glance, but I have never seen them.

You didn't on any occasion see this man when you went to see Jaimal ?—No.

10 Can you tell us who were there on the third occasion when you visited Jaimal ? On the 31st March you saw Mehar and Amirchand ?—Yes.

The week before you saw Mehar ?—Yes.

The week before that who did you see ?—Nobody excepting Mehar who was round about the place. To my recollection Jaimal was lying down in bed.

Now on the occasion of the 31st March you say it was 2 o'clock in the afternoon when you left there. What became of Mehar ?—It was 2.30. I left Mehar.

And you went off with Amirchand ?—Yes, that's right.

You went off to get a lawyer ?—Yes.

20 And then you went to Mr. Rice's office ?—Yes.

You didn't come to my office by any chance ?—No.

It didn't occur to you then to come to my office ?—The reason why I went to Mr. Rice is that all my work is done there.

And when you found you couldn't get Mr. Rice it didn't occur to you to come and see me ?—If Mr. Rice is not there Mr. Davidson usually does for me, so I went and saw him.

Did you go along to Mr. Davidson's office ?—Yes.

30 And when you gave those instructions to Mr. Davidson was Amirchand present ?—I did not take notice of Amirchand at the time, whether he was on the verandah or whether he was inside, when I was discussing this affair with Mr. Davidson.

Did he suggest going with you ?—We both came down together.

What discussion did you have with him about the drawing up of the will, with Amirchand ?—Nothing whatsoever. There was no discussion between me and him about drawing up the will.

40 You were just telling us a little conversation that took place between yourself and Amirchand when you were going to see a lawyer, and you were stopped. Can you give us a little more information about that conversation ?—Amirchand was asking me "Let us go to some lawyer," and I said "Yes, I am going to see Mr. Rice."

That was all ?—That is the only conversation.

Did you both ride on the same horse ?—No, we walked.

What did you do with your horse ?—Leading it along with me.

You can't tell us, then, where Amirchand was when you gave those instructions to Mr. Davidson ?—He may have been on the verandah or he may have been inside: I didn't take any particular notice as to where he was.

Did Mr. Davidson ask Amirchand any questions ?—No.

50 Was Mr. Davidson in his office when you arrived there, or did Rasul have to go and get him ?—He was in the office when we arrived there.

But wouldn't it be the natural thing, with Mr. Davidson in the office, that you would both go together into the office ?—I am not suggesting

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that the man Amirchand did not go in with me. I am not saying that Amirchand did not go into the office with me.

Before I ask you what you told Mr. Davidson, I want to get it from you—it is very important—I would like the full details of the conversation you had with Jaimal in regard to the making of the will—the whole conversation?—Yes.

Now tell us the whole conversation?—As soon as I entered the house where Jaimal was at Yalalevu, I went inside the house—tied my horse outside. Saw Jaimal on his bed, went and sat down, asked him as to his condition—“Babuji, how are you?” He replied very slightly, “I am not quite well yet; I am weak.” Then there was a pause and he waited for some time. Then he spoke again, saying, “Hari Charan, you get a will drawn up for me in favour of Amirchand and Mehar.” Then I interrupted him, saying, “Don’t be over-anxious or worried you are quite well. You will get over this.” He said, “Remember this one thing very well. These two have looked after me very well during my illness.” Then I asked him, “Have you made any other will?” He said, “Yes, two.” I said “In whose favour did you make that will?” He said, “I have given them sufficient property for them. Now that I have provided for the others whatever I have now present in my last will I want to make over to Amirchand and Mehar.” I then asked him, “Have you anybody else?” Then he replied, saying “Neither have I a wife nor any children.” I said “Don’t be upset or worried: I will help you.” That is all the conversation.

How long did you remain after that?—Roughly five or six minutes after that.

Then you left?—That is so.

You said you gave certain instructions to Mr. Davidson and Mr. Davidson handed you a piece of paper and you wrote down those instructions?—That is right.

Where is that paper?—I handed it to Mr. Davidson. I have not got it now. I don’t know whether he has it with him.

You say Mr. Davidson gave you this piece of paper, and when giving you this piece of paper what did he tell you to do?—He asked me to write on it the father’s name of Jaimal and the name and father’s name of the beneficiaries. He asked me further if there were any other beneficiaries to be made in the will. I said “No, he has no wife and children.”

Can you tell us what you put down?—“Jaimal” and Jaimal’s father’s name “Nihala”.

Yes?—I wrote Mehar’s name.

Is that all—only their names?—And their fathers’ names.

And what is Mehar’s father’s name?—I have forgotten just now—I wrote it down.

Amirchand’s father’s name?—That also I forget.

You remembered at the time but you have forgotten now?—Well at the time I asked them.

When did you ask them?—I asked him I believe on the verandah of the office on that same day. I asked Amirchand “What is your father’s name, and what is Mehar’s father’s name?” and he told me both.

At Mr. Davidson’s office?—Yes, that is so.

And did you write those on the piece of paper?—Yes.

What else did you write on that piece of paper ?—As far as I can think, there is nothing else.

You only wrote three names on the paper, that is all ?—Nothing else excepting the three names.

Did Mr. Davidson write down anything ?—He was taking something down in writing on that paper while I was giving him the instructions. And then he handed the paper to me and said, “ Put down the father’s name of Jaimal and the other two beneficiaries. Then I put down Jaimal’s father’s name and the father’s name of the other two beneficiaries : that is
10 what happened.

So Mr. Davidson saw you asking Amirchand his particulars ?—He must have seen me.

Is there any reason why Mr. Davidson should not have asked Amirchand himself ?—I don’t know why he didn’t. There is another thing too ; where Mr. Davidson sits he doesn’t have a clear view of his verandah owing to the table and the desk that he has in front of him.

Did you leave the room to go and get this information : did you leave the room and go and see Amirchand ?—Yes, I had to go out of the office. Go out of the office and see him on the verandah ?—That is right.

20 Are you sure of that ?—I wouldn’t swear it because it is a long time now.

Did you or did you not go out on to the verandah and see this man : let us have something concrete please ?—To my recollection now, as far as I can think, I went outside—that is, I went out of the office.

Why couldn’t you have just said “ Mr. Davidson, here is Amirchand, he will give you all the particulars ” ?—That didn’t happen. He handed me this little piece of paper : I stood up and went outside and got the information for him.

30 Was it, I suggest to you, that Amirchand didn’t want to be seen in Mr. Davidson’s office ? Would that be correct ?—I wouldn’t say that.

However, you don’t remember seeing him in Mr. Davidson’s office ?—He may have come in. He may have been in the office but I didn’t know. I don’t remember.

What colour was this piece of paper ?—White.

What size ?—Just a small piece of paper about that long (indicates about 5 inches).

Was there any writing on it before he gave it to you ?—Yes, there was writing on it when he handed it to me.

40 What was the writing on it ?—When he handed it to me he pointed out—put his finger on the paper—and said “ Write Jaimal’s father’s name on top and the other two down below.”

Do you know Mr. Davidson’s writing ?—I can recognise my own writing, but I can’t say about Mr. Davidson’s. I can make out his writing.

Was that paper Mr. Davidson’s writing ?—Yes, those were things that he had written in my presence.

50 MUNRO : Mr. Davidson told me on Monday when he came over here that he had that paper in an envelope, and he mentioned my learned friend Mr. Patel’s name, from which I gathered that he may have given it to Mr. Patel. Mr. Patel has just seen Mr. Davidson and Mr. Davidson says that the note should be amongst his papers back at his hotel. Certainly, from a strictly technical point of view, the paper should be on

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the table here now. I can only regret that and say it was an oversight on my part. If it can be produced, sir, it will be produced to-morrow morning.

CHALMERS: Perhaps you will tell us now what you told Mr. Davidson that day?—I told him to make a will.

Did you leave it to him to put what he wanted into the will?—I told him the will had to be drawn, and when he asked the questions I replied—answered the questions.

To Court: That was the first thing, was it—I told Mr. Davidson to make a will.—He said for my own information please let me know who the person is and what are all the particulars. 10

And what were the particulars?—I said “A certain man who is ill, by the name of Jaimal, wishes to make a will in favour of two persons whose names are Amirchand and Mehar.” Then he said “I want Jaimal’s father’s name and the fathers’ names of Amirchand and Mehar.” I told him Jaimal’s father’s name and he took a piece of paper and putting his finger on it he said “Write here Jaimal’s father’s name.” Then, as I have told you already, I went out and got the names of Amirchand’s and Mehar’s fathers. Then Mr. Davidson said “All right, I will draw up the will to-morrow. It is 4 o’clock now and time for closing the office.” 20

CHALMERS: And that is all the conversation?—That is all.

And those were the only instructions you gave?—That’s right.

Did he also point out the places on that paper where you would write in the father’s name of Mehar and Amirchand?—There were two places on the paper—one place he pointed out saying “Write Jaimal’s father’s name here,” and then another place on the paper where he said to write the other names.

And there was writing all round that, was there?—No, only writing on one side.

Where you put these fathers’ names, Jaimal’s and the other two, were they on plain paper?—There was writing on it. He had written on it. Then I wrote these names. 30

Was there a good deal of writing on it?—No, about two words.

What were those two words?—I don’t mean two words—there were two lines written there—several words.

Was it in pencil or ink?—I wouldn’t say. It was a complete sentence but it was written in two rows.

Was it in pencil or ink?—Pencil. As far as I can remember now.

Mr. Davidson handed the document to you with two lines of writing on it?—Yes. 40

Were those two lines the only writing he did in your presence?—That’s right.

Did you read those two lines of writing?—I saw it then, I did read it, but I can’t remember now what it was.

You are an educated man aren’t you?—Not very much.

You read and write English, don’t you?—Ordinarily, yes.

You can’t tell us what Mr. Davidson wrote or recorded?—I can’t remember now.

Well, now, you say it was 4 o’clock and Mr. Davidson said he couldn’t draw the will up then because it was shutting up time?—Yes, that’s right. 50

Was it four o’clock?—Yes.

Now you had left Indar Singh's house at 2.30, had you not?—No, I arrived there at 2.30.

How long were you there altogether, at Indar Singh's?—Roughly, almost an hour—just a little bit less. More than half an hour.

Now this man was sick, was he not, Hari Charan? Jaimal. Did you tell Mr. Davidson that this man was sick and ask Mr. Davidson to go?—Yes, I told Mr. Davidson he was sick.

And in spite of that Mr. Davidson did not go?—No.

10 What time would it be when you found out that Mr. Davidson would not go? You suggested Mr. Davidson should go: what time was it when he said he would not make the will then?—I didn't have any time on me then, but as far as I can say, approximately 4 o'clock.

Did you make any attempt then to get any other lawyer?—No, it was raining on that day and I had to go back 12 miles.

You didn't think of going along then and seeing whether you could get me?—After four, sir, you wouldn't be in the office.

You went away, I take it?—Yes, I went away home.

I think you told us that on the Monday you met Amirchand again?—Yes.

20 You came into Ba on the Monday?—Yes.

Did you call to see Jaimal that day?—No. I couldn't that day. I had to go somewhere: I had to go to Nandi.

That is why you couldn't see Jaimal?—Not Nandi—Lautoka.

To Court: Which day is this?—Monday, the following Monday.

CHALMERS: How did you go to Lautoka?—On the service bus.

And what time did you go to Lautoka?—Ten o'clock, I think, or round about.

Round about 10 o'clock. You couldn't see him before 10 o'clock?—It was just about that time. I had come from home when I met

30 Amirchand. He told me that the will was not ready yet so I went to see Mr. Davidson and then Mr. Davidson went on to Jaimal's and I went to Lautoka.

Where did you meet Amirchand?—At A. J. C. Patel Brothers, Ba.

Did he tell you anything about Jaimal's condition?—I did ask him how Jaimal was, and he said he is not quite well yet—he is still ill.

And he also told you that Mr. Davidson had not drawn the will?—No, he did not say he had not drawn up the will: he said Mr. Davidson has not done his part of the work yet, that is he has not come to see Jaimal.

There was no talk of the will?—That is what he was telling me.

40 Let us have exactly what he told you?—When Amirchand met me he said, "The work that we had entrusted to Mr. Davidson on Friday is not completed yet."

"The work that we entrusted" ?—No, he didn't say "we," he said "you."

Let us have it again, then. What did he say?—"The will that you had told him to make on Friday is not made yet."

Did you ask him how he knew Mr. Davidson had not done this?—I didn't question him or ask anything of Amirchand.

50 Did he tell you he had gone to see Mr. Davidson and found out the will had not been drawn up?—No, he didn't say anything like that.

Now from where A. J. C. Patel's store is and Mr. Davidson's office would be a matter of say 3 or 4 chains distance?—Yes, that's right.

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You didn't think of walking across there and finding out why the will had not been drawn up?—Immediately he told me I went.

What did Mr. Davidson say?—He said "I am ready now to go and see Jaimal."

Did he tell you he had the will all drawn up?—Yes, he said "It is all ready."

Did you see him leave in the motorcar to go to Jaimal's?—No, it was getting late for me to catch the bus and I had to leave for Lautoka. I didn't see him go to Jaimal's.

But when you went across to Mr. Davidson's office you went across 10 with Amirchand, did you?—Yes.

You left Amirchand there with Mr. Davidson?—Leaving Amirchand with Mr. Davidson, I caught the service bus to Lautoka. The bus had come right up to the office at that time and I caught the bus there.

Did Amirchand have any conversation with Mr. Davidson in your presence about why the will had not been drawn up?—No.

When you first went to see Mr. Davidson about this, on the Friday, the 31st March, was Mr. Davidson's clerk and interpreter, Rasul, there?—He may have been sitting outside on the verandah.

He was not apparently with Mr. Davidson?—I can't say whether he 20 heard my conversation with Mr. Davidson or whether he didn't.

Was he there on the Monday, then, when you saw Mr. Davidson to ask him about the will?—Yes, Rasul was there then.

How long have you known Mehar and Amirchand?—I have known Amirchand for five or six years, the last five or six years, and Mehar for about four years.

Four or five years?—No, three or four years.

It is a fact, is it not, that Amirchand is a frequent visitor to your place, or your father's place?—No.

You wouldn't say you were a friend of Amirchand's?—Just an 30 acquaintance.

Only an acquaintance?—We don't visit each other or anything like that. Just an acquaintance of mine.

You are not interested in his affairs at all?—No.

But you did come to Suva with him and go through the documents: you were present when Amirchand went through all Jaimal's documents in his safe? After the death?—Yes, that's right.

So you were sufficiently interested to do that for him.

The COURT: In Suva, was this?

CHALMERS: Yes.

40

WITNESS: Well he asked me to accompany him, so I came with him.

So you left your rice mill and business to come to Suva and do that for him?—Well, if a person requests you to go with him I don't see why one shouldn't go.

And who paid your expenses?—For that day Amirchand paid my expenses.

Aren't the law clerks in Mr. Ellis's office quite capable of going through those documents without your being present?—That I can't answer: it is for Amirchand to say.

50

CHALMERS : That about concludes the examination of this witness as far as I am concerned, but Mr. Davidson has not yet apparently found that document. Perhaps that point could be reserved until the morning. It is four o'clock now, Your Honour.

4 p.m.—Adjourned.

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SECOND DAY.

MUNRO : If Your Honour pleases, at 4 o'clock yesterday afternoon at the adjournment Mr. Chalmers had finished his cross-examination except for what might arise out of the production of the slip of paper referred to by this witness in his evidence and which no doubt Your Honour clearly remembers. Mr. Davidson instructs me this morning that he is unable to find that slip of paper. He will be a witness this morning and no doubt he will then explain to the Court just what has happened to it. I am sorry, Sir, that I have not got it.

CHALMERS : Presumably that paper contained the instructions. There are no further questions that I wish to ask this witness and I close my cross-examination at that.

RICE : I understand from my learned friend Mr. Morley that he does not wish to cross-examine.

RE-EXAMINED.

Mr. RICE : You were questioned yesterday by Mr. Chalmers regarding your visits from your home to Ba ?—Yes.

Do you frequently go into Ba town from your home ?—Yes, being a business man, I have to.

How often would you say ?—Before I used to ride into town on horseback I would do it two or three times a week, but ever since I started driving to town in a lorry I come in daily.

The time I am particularly interested in is March and April of last year. How often would you say you went to Ba town then ?—At that time I was riding a horse.

And going in how often ?—Once or twice a week.

And on this day you have spoken of in your evidence-in-chief—Friday, 31st March : did you come into town especially to see Jaimal ? Was that the only purpose you went in for or not ?—In a way I had something to do in town, and having come into town, I of course had decided that I would see Jaimal and that is why I went to see him.

You were also cross-examined yesterday as to why you didn't go to see some other lawyer when you found me out. I think my learned friend put it " Why didn't you come and see me " ?—Yes.

Having got Jaimal's instructions on the Friday, that is the 31st March, was there any special need for haste on your part to get a lawyer out to see him ?—No haste at all.

And if there had been any need for haste would it have been possible for you to get a lawyer out to see him late on Friday, the 31st March, say even in the evening ?—Yes, if there were any haste in the matter I could have seen the solicitors at their homes, because I have seen several of their houses, and I know where they live. I could have taken them at night.

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A final matter I want to ask you about is this. Mr. Chalmers cross-examined you as to the conversation you had with Jaimal on Friday, relating to other matters outside of his will. Do you remember those questions?—Yes, I do.

Can you tell us anything about that conversation? What was it?—That was a conversation in relation to his condition and how he was feeling, where he was getting his meals, the food that he preferred, and all that.

The sort of thing you would discuss on a visit to a sick man?—That is so.

To the Court: Why did you decide to go and see Jaimal on the 31st March?—There was no particular reason.

Had he been kind to you?—Since I have known him when I was at school in Suva and at times here he has helped me with a few shillings when I was short of cash. I thought I should see him when he was sick.

Is that why you went to see him?—Yes.

You thought he might do it again—that you might find a few more shillings?—No, because the man was ill and sick I wanted to see him.

Did you think he was dangerously ill?—Not dangerously ill.

I can't understand why you went. You had seen him the week before, and you told us you had seen him the week before that: and before that you say you had not seen him for about eight years?—There was no particular reason for me to go on that day except that when I heard he was in Ba I paid him a visit on the first occasion, two weeks prior to the 31st March, and the next week I was in town, and on the 31st March I happened to be in town and decided to go and see him.

You rode the horse an extra two miles—two miles there and two miles back?—That is so.

Having already a 10-mile journey each way to do?—That is so.

10

20

No. 9.

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tion.

No. 9.

EVIDENCE of Leslie Davidson.

LESLIE DAVIDSON,—*sworn.*

Mr. MUNRO: Mr. Davidson, you reside at Ba and you carry on your practice at Ba?—Yes, for the past 39 years.

And you have practised in the Colony as a barrister and solicitor in the Colony for the past—?—39 years this year.

And you are still carrying on a practice as a barrister and solicitor?—Yes.

Do you recognise that document Mr. Davidson?—I do.

And that is the will of Jaimal, father's name Mihala, moneylender, deceased, dated 3rd April, 1944. Was that will prepared by you Mr. Davidson?—Typed by myself.

And on whose instructions did you draw it?—On instructions from an Indian by the name of Hari Charan.

Is he in Court now?—That is the man (*indicates*). I know him very well.

And on what day and date Mr. Davidson did you receive those instructions?—On Friday, 31st March, of last year.

30

40

Exhibit D.

And at about what time, roughly, of the day?—I should say between 3.30 and 4 o'clock in the afternoon.

Was it a fine afternoon or wet?—A wet afternoon. It had been very wet for a considerable time at that period.

Would you please tell the Court the circumstances under which you received those instructions?—I was in my chambers and the man Hari Charan came in. There was another man who accompanied him but he didn't come into the office.

10 Could you identify that man if you saw him now?—I have seen him since. It is a man I know by his appearance. I have since learned what his name is. Amirchand is the man's name.

Hari Charan came to your chambers with that man Amirchand?—I won't say he came with him, but while Hari Charan was in my office—there is a big open glass window there—I could see this other man whom I subsequently recognised as Amirchand.

Did you have any conversation with Hari Charan?—Hari Charan is a man I know who speaks English quite well, so there was no necessity for me to speak to him in Hindi. I said "Well, Hari Charan, what do you want?" He said "I have been sent to you to get a will made."

20 He also was speaking in English?—Yes. I said "Whose will?" He replied, "A man named Jaimal." I asked him where Jaimal lived, and he told me Yalalevu. I first of all thought he said Dalavutu because that is where he lives. I said "Why doesn't he come in himself to have the will made?" He said he wasn't able to come in, he was bed-ridden—he was in bed; he didn't say bed-ridden. I said "Is he very ill?" He said "I don't think so, not very ill." I said, "Can you give me some particulars so that I can draw up a will." He told me the man's name was Jaimal: I said "What is his father's name?" He said "Nihala." I said, "Who does he want for
30 his executors and to whom does he want to leave his property?" He mentioned two names, Mehar and Amirchand. I said "Do you know their fathers' names?" He said he did not. I said, "Are they related to Jaimal?" He said, "I don't know." I said, "Has Jaimal any blood relations in the Ba district?" He said, "He hasn't got a wife or family." So I said "Well I must have the names of the executors and the beneficiaries and their fathers' names." And I got a small slip of waste paper; a small piece of writing paper. I should say about 3½ to 4 inches square. I wrote on this in my own hand-writing in pencil on the left-hand margin, "Testator's name", and underneath that I wrote "Father's name".
40 Beneath that I wrote "Executors"—I am not sure whether I put "Executors" or "Beneficiaries" first, I haven't got the paper with me—"Executors," "Father's name," and left it blank in both instances. Then underneath that I put "Beneficiaries," and thinking perhaps that Hari Charan didn't know the meaning of the word "beneficiaries" I explained to him it was the people to whom Jaimal wished to leave his property. I said, "You take that away and get those particulars filled in." Before he left the office he wrote Jaimal's name and father's name "Nihala" in my presence.

50 In ink or pencil?—In pencil. I said "Well now you must take this away and get those other men's names correctly, and their fathers' names whoever they are."

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Did you see Amirchand still there?—I didn't take any notice of Amirchand because I didn't connect him with the matter at all. I thought he might have been somebody who accompanied Hari Charan.

So Amirchand didn't come into your office and didn't speak to you? —Not at all. Hari Charan left the office with this slip of paper and returned in about half an hour's time with the names opposite where I had written "Testator" "Beneficiaries." He filled in "Meher father's name Saudi," and under that he wrote "Amirchand father's name Utham".

And then you received that slip of paper?—He added a little bit more than that, and opposite either "Beneficiaries" or "Executors" 10 he wrote "same," which I took, of course, to mean same names.

That is, the beneficiaries were the same as the executors?—Yes.

You received the slip from him. Did you have any conversation with him then?—I said "Well, it is getting pretty late now: I will have the will ready for execution to-morrow." Saturday, the 1st April. He said, "All right, I will call to-morrow." He then left. As I hadn't very much to occupy myself at the time before closing I thought I might still type the will out, and I typed the will as it appears now.

And did you have any further conversation at all with Mr. Davidson? —I think I mentioned, didn't I, that I asked him if there were any blood 20 relations.

Just try and remember everything he told you?—I think I have told you pretty well everything up until the time he left. There is nothing else that I can recall.

He left, and what was the next development?—The next development happened on Monday morning as far as I was concerned. I typed out the will.

Where did you type the will?—I typed the will either on the same afternoon or when I first came down on Saturday morning.

Now the slip of paper, can you produce that now?—No, I can't 30 because I suppose it went into the wastepaper basket.

That is the only way now you can account for the whereabouts of that slip of paper?—That is the only way I can; because, having typed the will and a copy for my file, the particulars were of no further use to me.

Now the next development, Mr. Davidson?—The next development was about 11 o'clock on Monday morning.

And what took place then?—A taxi, No. E-20, driven by a man named Shankar, drove up to the office; he came in and said "We want 40 to drive you to Yalalevu for Jaimal to sign his will."

Who said this?—Shankar.

Was there anyone with him?—Yes, Amirchand was sitting in the back seat. I got into the taxi alongside the driver.

To Court: Shankar said—"I have been sent to drive you to Yalalevu to get Jaimal to sign."

MUNRO: This was about 11 o'clock, and he had Amirchand in the back seat?—Yes.

You got into the front seat, and did anyone accompany you?—My Indian interpreter, Mahommed Rasul. There may have been somebody 50 else in the back, but I didn't notice.

Did Hari Charan see you that morning?—Not to my recollection. We drove about 100 yards from the office and then Amirchand got out of the car and we proceeded on to Yalalevu along the main Government road about 1½ miles from my office, and we pulled up in front of a cottage about a chain and a half back from the main road.

Do you know whose cottage that was?—I did not know at the time but I do know now. I have since learned that it was a cottage belonging to a man named Indar Singh. The weather was very capricious, so it was a bit of a dash in.

10 Who went into the house with you?—When the taxi pulled up and I was getting out, a charabanc stopped almost immediately behind us, and out of the charabanc Amirchand came and he conducted me into the cottage.

And who went with you and Amirchand into the cottage?—My interpreter. And following was the taxi driver, Shankar.

About what time was this?—It wouldn't be five minutes drive from my office.

Shortly after 11?—Thereabouts.

20 You arrived in the cottage, and who did you see there?—The first thing that struck my attention was the extraordinary cleanliness of the cottage I was going into. I saw a man propped up with pillows in what is called a lazyboy chair. He had a white shirt on, open at the neck, and was wrapped in a white calico sheet. My attention was particularly drawn to this man's attire on account of its perfect cleanliness. It was an exceptional thing to see in an Indian's house.

Yes?—I had a look at the man before I spoke to him and I could tell that he was in a pretty emaciated condition, very thin, and he coughed once or twice a slight cough; and then the conversation which, with Your Honour's permission, I will repeat in Hindi.

30 You then spoke to this person in a white sheet in a lazyboy chair?—Yes.

To Court: You spoke in Hindi?—Yes, and said "Salaamji, babu. Jaimal hai?"

MUNRO: In other words you asked him if he were Jaimal?—If Your Honour will allow me to translate as I go on, or Mr. John can?

The COURT: We will accept your translation?—I can put it both in Hindi and in English. He said (Hindi)—"Yes, Sir." I said (Hindi)—"You are very sick."

40 MUNRO: Is that a question or a statement?—Well, it was a statement. Anyhow, he replied (Hindi)—"Yes, Sir." (Hindi)—"Yes, I am sick." Before I went any further with him I took his arm and felt his pulse.

At that stage will you tell the Court who else was in the room. This was in the room, was it?—Yes, right up against his chair.

And who were present?—At that time Mehar came and squatted on the floor immediately on the right hand of the man Jaimal. Amirchand sat in a similar position on the left hand side. There was an open doorway just at the back of Jaimal's chair.

50 Just how far from the chair?—I should say the back of Jaimal's head was 2 ft. from the door. And leaning through the doorway was a

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man whom I have known for a long time in the Ba district—Khursaid Khan. He had his arms on either side of the door and was leaning forward.

And was there anyone else you could see?—There was my interpreter, who had taken a chair alongside a little table which was I should say four or five feet from the end of Jaimal's feet. The room we were in I didn't measure, but it appeared to me to be a room about 16 feet by 12 ft. I never noticed the windows but there was a door at the back and there was a room behind the room I was in, in which I could hear conversation but could not pick up any of the conversation, and I could hear movements. 10

How many people would you think there were then in that room?—I couldn't say at all, Mr. Munro, but from the movements and the conversation I should say there might possibly have been four people there, but who they were I never saw.

So, apart from those people you never saw—there were yourself, your interpreter, the deceased, Mehar and Amirchand, Khursaid Khan. Did you see anyone else?—Yes, in the doorway there was the taxi driver, Shankar, who was really waiting to take me back after finishing the job.

Could there have been anyone else in that room or very close to it within your sight whom you may not clearly recollect?—Not possible. 20 I have the most perfect recollection of the people who were in my view in that room.

You had had that conversation with Jaimal : and now will you proceed with the conversation. We have established who were there?—I had a good look at the man and felt his pulse. I said, "Well, Jaimal, a man named Hari Charan has come to me. He told me you want to make a new will. I am Davidson, the lawyer." (English translation from Hindi.) He replied, "Salaam ji."

Yes?—I said, "Have you made any previous will?" He said "Yes, I have made another will." I said to him, "The other will : what do you 30 want to do with it?" He replied, "I want it torn up or destroyed. I knew what he meant. Then I said, "Yes, I have made a will." I said, "As Hari Charan has told me, so have I made a will." I took the will out of an envelope I had it in and I said, "You listen carefully. This is the will I have made. You listen carefully and I will tell you what I have written in the will." He said, "Begin. This paper is my last will."

And that is the will you translated?—Yes.

And you yourself translated it to the deceased in Hindi?—Yes.

And did you have any conversation with him on the terms of the will?—As I said to him, "I have put it in here—I have written—that any will 40 you have made before is cancelled."

You explained that to him?—Yes.

The COURT : Does anything stand on the exact Hindi words used ?

MUNRO : Would you be good enough to tell us the conversations, if any, you had with the deceased on the will you were reading out to him in Hindi. We don't want the translation?—I said to him, "Who are these people Amirchand and Mehar whom you want in your will? Who are they?" He put his hand on Mehar's head—his right hand—and he said, "This man," and he put his left hand on Amirchand's head, "Amirchand, he is like my own child. If I get well I want to take him to 50

India." I said, "Do you wish to give all your property to these men, one share each, each half?"

And what was his reply?—"Yes."

And then?—I then said, "They would be your heirs." He said, "Yes." There was a little interruption then because he had a short spasm of coughing. I then continued, "What person do you want called executor?" He touched these same two men, "Mehtar and Amirchand." Then I said to him, "Have you any blood relations in Fiji?" He said, "No, sir." I said then, "Have you any relations anywhere else?"

10 His reply to that was, "I don't know." That confirmed what I had of my own responsibility put in his will. My first information, of course, from Hari Charan was that he had no relations in Fiji, and it was on that I put in the will that he had no next of kin in Fiji.

And it was on that you put in the will that he had no next of kin in Fiji?—Yes.

Did you have any further conversation with the deceased?—Yes, I then said to him, "Well, why are you giving all your property to these people: they are not your relations." And his reply was, "These are the only people who helped me in my sickness." I said, "That is all there is
20 in the will."

And during that time were all those people in the room or was there any movement about the room?—The only movement of any people was in a room at the back. People I couldn't see. I then said to Jaimal, "I will now read it in English and my babu will translate it in Hindi," which I promptly did and my babu interpreted it in Hindustani.

And while the will was being read to him in Hindi by your interpreter, did Jaimal say anything?—No, he listened. He listened very carefully.

Yes?—When my interpreter had finished, I said to Jaimal, "If there is anything wrong tell me. If you want any other thing written tell me."
30 I said, "You thoroughly understand?" He said, "Yes, sir." I said to him then, "If there is anything you want altered tell me. You have heard the will read both by myself and by the babu. Tell me and I will have it altered"; and his reply to that was, "Not one word do I wish changed." Then I said to him, "Can you write your name in English?" He replied in the affirmative, "Yes, sir."

And then what took place?—I had brought pen and ink with me, also a thumb print pad, and I handed Jaimal the pen. I held the bottle of ink myself in which he dipped the pen. I placed the will on an old diary that I had taken out with me and I said, "Write your name here." He
40 put the pen on to the paper and attempted to write something. His hand was very shaky, and when he finished what he thought was his signature he handed me back the pen which I passed to my clerk. I looked at it and I said to him, "Jaimal, nobody can read your name on that will. I want your left thumb mark." My clerk had the thumb print pad and I passed it to Jaimal who pressed on the pad. He said, "Where shall I place it?" Before he did that I wrote with the same pen, "Jaimal—left thumb mark." He put his thumb mark on. I had a look at it, and to me it was not a legible thumb print, and I said, "That thumb print is not right. Press." He said, "You help me." So I took his left thumb and
50 rubbed it well into the pad and placed it partly over where he had attempted to make his signature. I said, "That is all you have got to do. All the work is finished now." He said, "Yes, sir, much thanks."

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And when did you sign as a witness?—There was a little table 2 or 3 feet from where they were sitting—where the man was. I sat down, my clerk beside me, in the immediate view of Jaimal, straight in front of him, and with my own fountain pen I signed my name.

And that is your name written there, and your occupation and address?—Yes. And I added these words: “Both the above thumb marks are of the testator, as well as the hieroglyphic purporting to be his signature.”

Which was the final thumb mark—the top one or the bottom one?—The top one.

You had signed. Was there any other signature affixed to the will? 10
—As soon as I added those words there I handed my pen to my babu and he signed his name where it appears.

And the words “Mohammed Rasul, Clerk and Hindi interpreter,” are they the words your clerk wrote himself?—No, he only wrote his signature.

And when did you write the words “Clerk and Interpreter”?—Immediately prior to his putting his name on it.

And did he write his signature in the presence of Jaimal and yourself?—Yes.

And who took the will then—or what happened to the will then?— 20
It went back into the envelope I had and back into my office.

I see. You took it away with you. What took place, Mr. Davidson, after you took possession of the will yourself? What took place in the room?—I said to Amirchand, “This man is very sick, and I don’t think he is getting proper treatment.”

And now at that stage and during the signing of the will, were the original parties still present in that room?—Yes, the same parties. I asked Amirchand if a doctor was attending him. He said the doctor had not seen him for some time. I said, “I will give you a letter to Dr. Clunie,” which I wrote. It was merely a letter to Dr. Clunie asking if he would be 30
good enough to come and see this man and see that he was getting proper treatment.

Did you have any further conversation?—No, I don’t think so. I just said to him, “Well, salaam.”

Prior to your meeting Jaimal on this 3rd April last, did you know him?—The only Jaimal whose name I have heard in Fiji was in connection with a Jaimal who was on trial for perjury one time in Court.

Was this man known to you—this man you saw in that house that morning?—I had never seen him, to my knowledge.

Mehar: had you known him before you met him that day?—I 40
didn’t know him as Mehar, but I had seen him in the street. Perhaps in the store or something. But I didn’t know him as Mehar.

Was he a client of yours?—No. He has never been a client of mine prior to this.

Had you any conversation with him immediately prior to the signing of the will?—No.

And Amirchand: was he a client of yours?—He was not.

Would you say you knew him as a business acquaintance or friend?—I only knew him by sight, but I didn’t know his name was Amirchand, until later, of course.

Did you feel that there was anything unusual in the way you received your instructions for this will?—There was nothing in any way that has ever suggested itself to me that there was anything unusual. 50

Was there anything about the matter, or was there anything in the manner in which you received your instructions, about which you were entitled to feel suspicious?—Nothing at all.

What was the atmosphere in the room when you arrived and when you read the will and when it was signed? Was it quite ordinary, or was it unusual?—Well, I may say it was unusual because of the cleanliness and the personal attention which Jaimal seemed to be getting.

10 But did you, as an officer of the Court, feel that there was something suspicious about the proceedings when you got out to the house?—No thought of suspicion or otherwise ever entered my mind. There was no cause for such thought.

To be more precise, it has been alleged in the statement of claim, Mr. Davidson, that the execution of the will—the will of the 3rd April, was obtained by the undue influence of the defendants Amirchand and Mehar. Was there any suggestion of undue influence apparent to you at any time?—Never at any time.

Did the deceased appear to be under any duress?—The only duress was the cough that he suffered from occasionally, otherwise he was just a normal sick man.

20 Was he able to converse with you freely?—Sufficiently able to converse with me in the manner which I have described in my evidence. His voice was not strong.

Did you form any opinion as to the state of his mind and understanding?—His mind seemed to be perfectly logical.

And what is your answer to this. It has been alleged that he could not understand the nature of that document?—I say that that is an absolute fabrication.

30 Likewise, it has been alleged that he was unable to understand the extent of the property that he was disposing?—I couldn't say, because I didn't know whether the man had 3d. or £1,000. I knew nothing about the property.

Did you gain from your conversation with him that he was a normal individual who knew what he was doing when he signed that document?—Perfectly; otherwise I never would have put my signature to it.

40 Now the plaintiffs also allege that he was unable to recognize his friends and visitors. Were you able to form any idea as to his ability to recognize his friends and visitors when you saw him?—The only people who appeared to me to be his friends were those who were in the house, and my clerk and I were strangers to him. But apparently Mehar and Amirchand—he was quite capable of recognizing them.

And you say he identified them?—He identified them.

Furthermore, it is alleged that his mind was wandering: would you say his mind was wandering?—His mind was, for a man in his condition, perfectly rational.

For a man in his condition: why do you qualify that? Did you notice any signs of his mind wandering?—None whatever.

50 Mr. Davidson, did you see any evidence of the two defendants, Amirchand and Mehar, taking advantage of his weakness?—No, on the other hand, it appeared to me that they were taking particular care of him.

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Mr. McFARLANE : Your age please, Mr. Davidson ?—I am 75 years of age, on the 22nd November last.

Now you have described the circumstances under which you had this will executed. Was that the usual way to get wills executed ?—Not at all. The usual way of a will being executed is for the testator to come into my office and I prepare the will there.

So you say that it would be the normal and usual thing for a solicitor of experience, such as you say you are, to see the testator before preparing the will itself ?—Not at all necessary. 10

That is your opinion ?—That is my opinion.

Do you keep a diary, Mr. Davidson ?—Yes. Just a diary of appointments.

You have no diary of attendances of clients ?—I have a diary of appointments. You mean an office diary ?

You know what a solicitor's diary is ?—As a matter of fact, I had not got a proper diary at that time : there was not one procurable.

I am interested in whether you do keep the diary ?—At that time I only had a small diary—an appointment diary. I was unable to get a proper diary. 20

I am not asking you whether you were able to get a proper solicitor's diary. Do you keep any sort of diary in book form of attendances on you of clients ?—As a rule I do.

Have you one for 1944 ?—Not an ordinary office diary before June 1944.

So you have none for April 1944 ?—Only my appointment diary.

Have you any other papers in connection with this will besides the original will that was in Court and your copy of it ?—Yes, I have a telegram signed " MacFarlane."

I mean before the preparation ?—I have a telegram signed 30 " MacFarlane," asking me if I knew anything about a will dated 3rd April. That was on the 6th April. I replied. I also wrote a letter confirming the telegram and sent Grahame & MacFarlane a copy of the will, an acknowledgment of which I have never had the courtesy to receive yet.

So you have a copy of the will and a copy of the letter which you sent to me ?—Well, I have letters between Mr. Warren and myself.

Have you any documents about the preparation of the will ?—None whatever.

This bit of paper on which you took instructions : do you remember where you obtained that bit of paper from ?—It was a piece of stray paper 40 that was on my table.

Now is it usual for you to take instructions on stray bits of paper ?—Of course it is. Owing to the shortage of paper we have to economise.

I agree. But when you say stray bits of paper, you had no drafting pad on which you take instructions on long sheets of paper ?—No. There was no necessity for it on this occasion because the will itself contained the particulars that were on this small piece of paper.

The will itself contained the particulars. Are you sure of that, Mr. Davidson ?—Yes. That is to say, the testator's name and father's name, beneficiaries and executors. 50

Just confine yourself to answering single questions. You say everything that was in the will was on this bit of paper?—I didn't say anything of the kind. Everything that was on this bit of paper was in the will.

Now reversing it. Was there anything in the will that was not on the bit of paper?—There was. The question of next of kin or blood relations. That was not on the paper.

Then why did you put it in the will?—What?

10 The statement: "I have no blood relations or next of kin in Fiji or elsewhere"?—It has been my invariable custom where a testator is passing his estate to others than his next of kin I invariably ask the reason why, or have they any next of kin or blood relations.

You ask them the double-barrelled question: "next of kin or blood relations"? Is that your usual question—"next of kin or blood relations"?—I use the word—(Hindi) with Indians: that is the word for "blood relations."

That means blood relations?—Yes.

Did Hari Charan mention blood relations to you in the course of his instructions?—He merely mentioned "no wife or children."

20 Hari Charan told you that Jaimal had no wife or children?—In Fiji. Is that all he mentioned about relations?—As far as I recollect.

Did you ask Hari Charan whether Jaimal's instructions were that he had relations in India?—I didn't.

Talking of this piece of paper, Mr. Davidson, on which these instructions were, do you think you have destroyed that paper?—Well, the chances are that it went into the waste-paper basket.

When you have instructions for any work, do you open a folder or any cover?—No.

30 And is it your practice to destroy written instructions purposely?—Well, if I may be frank with you, for many years past I have made a practice of going through my old papers and things and discarding those that were no longer likely ever to be of any use.

And in regard to this instruction for a will, which was only 12 months ago or less—10 months ago—when do you think you destroyed that piece of paper? Have you any idea?—No, I haven't any idea. The only thing is that once I had made the will and the instruction was established in the will the paper became of no further use to me.

40 And do you honestly say, Mr. Davidson, that in your opinion as a solicitor the instructions that are given to you are of no further use once the will is typed?—Certainly; the instructions are in the will itself.

And all your instructions were in the will itself?—Well there were no instructions outside the will.

And did you put into the will anything that you were not instructed to put?—There was nothing in the will in which I was not instructed.

Now, Mr. Davidson, how long was Hari Charan in your office giving these instructions—about how long?—I should say he couldn't have been very much longer than 10 minutes.

50 Was your clerk present at all during that interview?—He may have been, but seeing that the interview was between Hari Charan and myself in English there was no occasion for him to be in the office.

He occupies another room, does he?—No, he does not.

He occupies the same room?—Yes.

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Could you cast your mind back with that clarity which you have already displayed and perhaps try to recollect whether he was in the room at any stage?—Quite possibly.

You say Hari Charan was about half an hour away getting the fathers' names?—It couldn't have been much more, because I close my office before five o'clock.

But he was away at least half an hour?—At least half an hour.

And what time did he arrive at your office, approximately?—Between 3.30 and 4.

And was it nearer 4 than 3.30?—I couldn't tell you. 10

Do you happen to know where Hari Charan went with this bit of paper after you gave it to him?—I haven't the remotest idea.

You saw him come in with a man who you know now as Amirchand?—He didn't come in with a man. The man remained on the verandah. Hari Charan came into my office.

Did you see them arrive together?—Yes, I think I did.

Did you see them leave together?—No.

You said that you could see through the glass door or glass window, Mr. Davidson?—Yes.

Did you see a man through this glass on the verandah?—Yes, I did. 20

You know now that it was Amirchand?—The same man.

How long did he remain there, to your knowledge?—I couldn't say.

In time perhaps you couldn't remember; but was he there when Hari Charan left your office?—I didn't notice.

Approximately what time was it when Hari Charan returned?—I should say about 4.30—between 4.30 and 4.45.

Did he return alone?—Yes.

Now he had filled in the particulars on the paper before he arrived at your office?—He had filled in the first particular, Jaimal's father's name, before he left. 30

I mean the particulars of the fathers' names of the two beneficiaries?—They were filled in when he came back.

And about how long did he remain the second time?—Not more than five minutes.

During that five minutes, what conversation did you have?—I just said, "That is all I want, and now I can make the will."

And did you arrange the time?—I said "I will have the will ready on Saturday morning."

Did you fix the time in your appointment book?—No, I didn't.

Is that all the conversation that took place on the second occasion 40 between you and Hari Charan?—As far as my recollection goes.

You mean your recollection may mislead you at times?—No, not at all.

You have very clear recollections of all these incidents?—This particular incident.

And there is no room for doubt about what you have said about your second interview with Hari Charan?—No.

Or the first one?—No.

So Hari Charan would be quite mistaken if he said he went out on to the verandah, got the names put on to the piece of paper and came 50 back immediately?—Absolutely wrong; that is to say, if he said he came back immediately. I told you I don't know where he went after he left my office, but I am quite sure he didn't come back immediately.

He said he went out and spoke to Amirchand on the verandah, got the names, and returned almost immediately?—Not as quickly as that.

You did ask Hari Charan whether the beneficiaries, Amirchand and Mehar, were related to Jaimal?—Possibly I did.

Well, do I understand from that, Mr. Davidson, that you may have or you may not have—you are not sure?—I am not quite sure. The odds are that I didn't ask him.

10 We are not dealing with odds in this court, Mr. Davidson; we are dealing with facts, and we are endeavouring to get at those facts and the truth; and you have given us a very clear statement about what you have said and done, so we are not concerned with odds. You didn't know these men before at all—they are absolute strangers to you?—They are not strangers to me; I knew them by sight.

You knew them by sight. Had they ever been in your office?—Neither of them.

Have they ever sought your advice?—Never in their lives.

Had you any dealings personally, socially or financially, with them?—None whatever, up until that period.

20 —Up until the 31st March, the afternoon you took the instructions?—Yes.

Had you ever engaged in conversation in the street?—Never at any time.

So they were not even mere acquaintances?—One doesn't have acquaintances among that class of people.

Why not?—Because I do not term a client or an Indian or anybody like that as an acquaintance.

Can you have a friend amongst the Indians?—I should say most of the Indians in that district would say I am the best friend they have got.

30 You say neither of these people were friends or acquaintances?—Neither of them. They may have looked upon me as a friend.

Why?—They know my name. They know me.

Did you ask Hari Charan anything about Amirchand and Mehar?—I just asked him where they lived.

You didn't even know where they lived? Is that the only thing you asked Hari Charan about them?—I asked him their fathers' names and where they lived.

Anything else?—What their occupation was.

40 Did he give their occupations immediately on the first occasion he was there?—When he brought the slip of paper with their names and their fathers' names, I just asked what their occupations were.

You wrote it in on the second occasion?—Yes.

You had forgotten to ask him that on the first occasion?—I wasn't sufficiently instructed in the particulars that I required to justify me in asking. I didn't know their fathers' names.

Therefore you didn't know whether they were cultivators or not, do you mean to say that?—Not until I ascertained the fact that they were cultivators.

50 When you first took instructions you told us that the only thing you did not have was the father's name, respectively, of each beneficiary, but that he had written on it "Nihala," the father's name of Jaimal?—Yes.

Didn't you say then and there "What do these men do?" or "What are their occupations?"—I expect I couldn't have done otherwise.

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What did you do actually ?—When I got particulars of their fathers I said to him “ What do these chaps do ? ” He said, “ They are farmers.” So that was on the first occasion ?—That was on the occasion when he brought the paper back with their names and fathers’ names.

How many lines were written on that paper, Mr. Davidson ?—If you pass me a bit of paper I think I can give you the facts.

I want to ask you how many lines : I don’t want you to illustrate ? —Do you mean how many lines did I write or how many ruled lines ?

How many lines did you write ? How many words ? What was the space occupied by the written words when you handed the paper to Hari Charan ?—I should say I wrote on the left-hand side “ Testator’s name ” : underneath it “ Father’s name.” “ Beneficiaries ” (or Executors, I am not sure which came next). “ Father’s name ” “ Executors ” (or beneficiaries) “ Father’s name.”

They were written down this way (*demonstrates*)—one under the other ?—Yes. And beside, continuing the lines, was the other writing in Hari Charan’s hand.

So that there was “ Jaimal ” in English ?—Yes.

And the words “ father’s name ” ?—Yes.

Then ?—Executor.

Written in English ?—Yes.

Yes, then ?—“ Father’s name ” and below that “ Beneficiary,” “ father’s name.”

But you didn’t write beside the word “ Executor ” the two names of the two persons, did you ? You left Amirchand and Mehar’s names right out of it ?—Yes.

So that when you had it you wrote the words “ Jaimal,” “ Father’s name,” “ Executor,” “ Father’s name,” “ Beneficiary,” “ Father’s name : one under the other ?—Yes.

And besides the name of Jaimal there was no name of any other person on it ?—That was the only name.

And that was written in pencil ?—Yes.

And Hari Charan said there were two lines in writing on it in pencil : what do you think of that ?—I should say it was quite right, because “ testator ” was written in pencil, and below that “ father’s name.”

Two lines : I didn’t say two words. Did you write anything else on it ?—Nothing at all.

And when you got it back what names were on it then ?—When I got it back : “ Jaimal father’s name Mihala. Mehar father’s name Saudi. Amirchand father’s name Utham.”

Were those the only words ?—Yes.

Any other words or any other instructions ?—No.

I just want to make it perfectly clear, because it is important I think, so important that I would ask Your Honour’s permission for Mr. Davidson to write that down, because I have certain questions to ask. I have a piece of paper here which may be about the right size. Would you write on it exactly what was on the piece of paper ?—(*Writes.*) That is what I wrote. I wrote the words Testator, father’s name, executor, father’s name, beneficiary, father’s name.

The rest was written by Hari Charan ?—Well, I know he can write. Did you do anything to it after Hari Charan left ?—Nothing at all.

Exhibit E.

When did you type the will, Mr. Davidson?—I have an idea that I typed it on the same afternoon, because I had a little time to spare. I am not sure. Anyhow, it wasn't quite ready until the following morning.

Now you have told your learned counsel that you said to Hari Charan, "Has Jaimal any blood relations in the Ba district?" Do you remember telling that to Mr. Munro? And he, Hari Charan, said, "He (meaning Jaimal) has not got a wife or family." Now that is what I took as part of your examination-in-chief, Mr. Davidson. Do you wish to add to that, or correct it?—I am under the impression that I wasn't concerned with the Ba district. I merely asked him if he had any blood relations in Fiji. That is my impression now. I asked him whether he had any blood relations in Fiji.

You now correct that by saying you believe you said "No blood relations in Fiji"?—Yes.

What was his answer to that? The same as you said before?—Yes.

"He has not got a wife or family"?—Yes.

What did you take that statement to mean—He has not got a wife or family in Fiji?—In Fiji.

But it could have meant that he had a wife and family in India, could it not?—No, I think he replied to me "He has not got a wife or family." I asked him if he had a wife and family or any blood relations in Fiji, and he said, "He has not got a wife or family."

The specific question was "any blood relations in Fiji," and the answer was "Hari Charan said that Jaimal had not got a wife or family." Did Hari Charan say "in Fiji" or "Fiji," or did he just leave it at that?—My impression is that he left it at that, because I was satisfied he understood I only referred to Fiji.

You were satisfied that he thought you were referring only to Fiji?—Yes.

Did you satisfy yourself that he had no wife or family in India?—No, not until I asked him the question.

I am dealing with the date you took the instructions—your interview with Hari Charan. Did you satisfy yourself there as far as possible that he had no relations in India; in other words, did you say to Hari Charan definitely, "Has he any relations of any sort in India?—I never mentioned India at all to Hari Charan.

Now is there anything else that Hari Charan told you at the interview that you have not recollected in this Court, as far as you can recollect now?—No, I am quite satisfied that when he brought me back the particulars of the testator and the fathers' names of the beneficiaries and the executors that was sufficient for me to make the will, knowing that the contents of the will would have to be confirmed by the testator.

Why didn't you put on Hari Charan's instructions to you that Jaimal had no wife or family?—There was absolutely no necessity whatsoever for me to put a thing like that on the paper. If I heard it anywhere it would be sufficient for my purposes.

Do you think it is necessary Mr. Davidson, when taking instructions for wills generally, to take only the names of the parties concerned and not the intended provisions of the will?—Well, of course, it is a difficult thing for me to say. If a man wants a simple will leaving his property to an individual, and names the individual, and says he is leaving the property to the individual, it is quite sufficient to get the individual's name; but

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if it is a question of trusts, or anything like that, then naturally one would take that down. This was about as simple a will as anybody could draw.

You call it a simple will, Mr. Davidson?—Yes, I call it a simple will.

So that it is your usual practice not to put down any provisions or intended provisions by way of instruction, except the names of the parties, that is, the testator, executor, beneficiaries?—I have made hundreds of wills where there has been no necessity for me to take down any particulars at all except the words from the mouth of the testator as I am making the will.

You say it is not necessary to take down from the testator the intended 10 provisions to be put in the will?—The provisions of the will I made were amply provided for in the testator's name, executors, beneficiaries: that is all the will has in it.

You don't think it necessary to put on the instruction sheet the shares in which these two men were to hold the property?—No.

There was nothing to indicate on the paper that they would hold equal shares—there was nothing on the sheet to indicate that?—Nothing at all.

Is there anything else that Hari Charan told you that you didn't put on the instruction sheet? You didn't put that he had no wife and family, 20 you didn't put in what shares they were to hold the property?—Only their occupation.

And you typed the will yourself?—Yes.

Without reference to your clerk?—Without any reference to him.

Please tell me why you called Jaimal a financier in the will?—I asked originally who Jaimal was. I just asked Hari Charan in the first instance when he came in. I asked him "What is this Jaimal?" and he said "____" (Hindi) which means "moneylender."

He told you that when he first came in?—When he told me the man Jaimal wanted to make a will, I said "What Jaimal?" 30

You have just recalled that to mind: because I asked you were there any other instructions?—I don't call that instructions at all.

Information as to the testator's occupation is not an instruction?—No.

You say Hari Charan told you at your request the occupation of Jaimal?—I wouldn't have known it unless he had told me.

Because you didn't know whether he had £1,000 or 3d., did you?—I didn't know anything about him. I just said "What does he do?" and he said, "He is a moneylender." That is all.

Hari Charan told you he was a moneylender?—He actually told me 40 "____" (Hindi).

What is your translation?—"Moneylender."

In Hindi he used a word which means moneylender?—To me it means moneylender.

He didn't speak in English to you?—Well we varied our conversation. Nearly all our conversation was in English. I may have used a Hindustani word.

Did you ask Hari Charan whether Jaimal was a registered money- lender?—I asked him nothing beyond "What is his job?" "What does he do?" 50

To Court: You asked him what Jaimal's occupation was?—Yes, and he told me "moneylender."

In English ?—I am not sure. If he had told me in Hindi or in English it would have conveyed exactly the same meaning.

MACFARLANE: Why didn't you use the word "moneylender" ?
—I wouldn't have taken the risk of putting in "moneylender" unless I knew he was a registered moneylender.

I take it you didn't ask Jaimal whether he was a moneylender or not ?
—I asked him if he was a "——" (Hindi), that is all.

Meaning moneylender ?—Yes.

10 And he said he was a moneylender ? You told the Court what you wouldn't take the risk of putting the word "moneylender" in the will unless he was a registered moneylender, and you didn't ask Jaimal whether he was a registered moneylender ?—I told Jaimal I was going to read what I had written in the will. I think I have made that perfectly clear in my evidence-in-chief, and as I went along I named his father's name and described him as a "——" (Hindi) and to each paragraph as I read he signified in the affirmative.

What word did you use in Hindi for "financier" ?—"——" (Hindi).

Which means the same thing as moneylender. An Indian financier, in my opinion, and a moneylender are exactly the same people.

20 1 p.m.—Adjourned.

2.30 p.m.—Resumed.

We were dealing with the word "financier" ?—Yes.

You gave us a word you used ?—"——" (Hindi), meaning "the man who gives and takes," the man who deals in money. That is the colloquial expression among the Indians.

Can you tell us what word or phrase your Indian clerk used when he translated into Hindustani in the presence of Jaimal ?—The same word.

When Hari Charan went to you did he say he had instructions to prepare a will, or a new will, for Jaimal ?—He said a new will.

30 Did you ask Hari Charan anything about the old will ?—Nothing at all.

Now you have described what was on the paper, Mr. Davidson, all the words that were on that paper ; you have told us what instructions you got from Hari Charan on the two occasions when you saw him on the 31st March and he said Jaimal had no family and no wife and you only asked him about relations in Fiji. Is there any other information or are there any other facts that Hari Charan gave you on that day, 31st March ? Are there any other facts or information or instructions ?—There was nothing else necessary for the preparation of the will that I made.

40 Was there anything else said about the will or about the people mentioned in the will ?—Nothing at all. You mean the first will ?

I am talking about the afternoon of Friday, 31st March, on either occasion when Hari Charan was in your office giving you these instructions and particulars ; apart from what you have already told the court, are there any other facts, or is there any other information, any other conversation, about Jaimal, Amirchand or Mehar that you have omitted to tell us ?
—Nothing at all, as far as my recollection goes.

And your recollection is good, is it not, Mr. Davidson ?—Yes.

He said Jaimal lived at Yalalevu ?—Yes.

Did he tell you he lived in Indar Singh's house ?—He did not.

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Did you enquire whether he was living in a house or bure or any particular place?—I made no enquiries, intending to come and see him the following day or whenever I was called.

To get the will signed?—Yes.

Did they arrange to call for you the next day? Was there a definite arrangement to call on the Saturday morning?—Well, Hari Charan said he would come in on Saturday morning; he didn't come in on Saturday morning, and there was nothing further done about it until the following Monday.

By the way, who paid you for the will, if I may enquire?—Ellis 10 and Munro. Mr. Warren paid me for the will and I handed it over to him on the 13th April.

You didn't ask either Amirchand or Mehar or Hari Charan, between the Monday and the day you handed it to Mr. Warren, for the costs; between the date of execution and the day you gave it to Mr. Warren?—No.

To whom were you looking for your costs?—To Hari Charan.

You didn't ask Jaimal who was going to pay you the costs?—I did not.

Being the testator and the person who had got you to go out there, 20 you didn't think it worth while to ask him, "Who is going to pay for this?"?—No. I knew Hari Charan very well indeed and I knew him to be a man of means.

And you didn't think it proper to ask the testator himself whether he was going to pay for it?—Didn't enter my head. I didn't even think about it.

And you didn't ask Hari Charan about Amirchand or Mehar, beyond their fathers' names?—That's all.

And their occupation. You didn't know whether they were men of means or not, did you?—Hadn't the remotest idea. 30

But you knew they were Punjabis?—Yes, I think I can pick a Punjabi out of any of the Indians, pretty nearly.

Before you saw them?—I knew their names, and they were Punjabi names.

You knew they were Punjabis by their names, but beyond that you knew nothing else?—When I saw them, of course.

On the 31st March you knew they were Punjabis, you knew their names and their occupations. Did you know where they were living?—At Yalalevu, as far as I knew.

Did you know whose house they were living in?—No. 40

Is that the sum total of your information about the testator and the two beneficiaries—all that you have told us to-day?—It is.

It is, definitely?—Definitely.

And you typed out the will, Mr. Davidson. Do you believe in redundant phraseology, as a draftsman?—

MORLEY: Mr. Joshua Williams, in a textbook on real property, said, "Lawyers dilute ideas to the proper monetary strength."

MACFARLANE: Do you "dilute ideas," in the words of Mr. Joshua Williams?—I don't think Mr. Joshua Williams even occurred to me.

I am coming now to the will. You say "This is the last will and 50 testament . . . and declare this to be my last and only will." You repeat

“last and only will” again; is that your usual form of draftsmanship?
—Yes.

Is it your usual form of draftsmanship to say: “I give devise . . . my dear friends . . .” Is “my dear friends” your usual form of draftsmanship?—Well, I could say nothing else, seeing they were not related. I concluded they were friends.

That was purely a conclusion in your own mind, not based on fact or information given to you?—It was.

10 This was also a conclusion of your own: “I desire to express in this my will my deep gratitude to the said Amirchand and Mehar for their devotion to me during my present illness.” That was put in of your own accord; that wasn’t based on any information given to you prior to the typing of the will? That was put in by you yourself?—Entirely.

To Court: Without instruction?—Without instruction.

MACFARLANE: Why did you put it in?—For the reason that, seeing they were not in any way related, I could see no other reason whatsoever for making this sort of people beneficiaries.

20 Now Mr. Davidson you have had considerable experience, you have told learned counsel in the Court—39 years; do you think that it is right and proper to put such a carefully drawn phrase and such a statement of fact in a will without instructions and without seeing the testator beforehand?—Certainly, under the circumstances.

Under the circumstances? Now that is to say that there are circumstances under which it is proper to put such words in but there are times when it is not proper to put such words in a will, is that what you mean?—If it were wife or children or next of kin, I wouldn’t put it in. Because they were not, to my knowledge, in any way related to him, the one conclusion I came to was that they were his very dear friends, and accordingly I inserted that particular phrase into the will.

30 That was a guess on your part?—It was not a guess. I put it in deliberately for the reason that I could see nothing else but that they were his friends and they were to receive the benefit of his dispositions.

So you assumed that they were his dear friends?—Yes—an assumption confirmed by the testator himself before he signed the will.

At that stage you assumed it. On what facts did you assume it on the 31st March?—That as far as I knew they were not in any way related.

That, ipso facto, they were his friends?—Yes.

40 On what facts did you base the statement that they were devoted during his present illness?—I heard casually somewhere that Jaimal [was being nursed and subsequently it was confirmed by Hari Charan that these people were looking after him, when he gave me the instructions and told me who they were.

To Court: On Friday, the 31st?—On the first occasion of his visit on Friday 31st, when he told me where the testator was.

MACFARLANE: Now Mr. Davidson are you attempting now to say that on Friday 31st Hari Charan told you that these people had been nursing Jaimal?—He told me that Jaimal was being looked after at Yalalevu.

50 And did he tell you by whom?—No, he didn’t tell me by whom. On his subsequent visit he told me. When he brought the names of the beneficiaries.

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To Court : You mean his second visit on Friday ?—Yes.

MACFARLANE : He brought you the names of the beneficiaries ?
Yes, and I naturally, of course, assumed that they were the ones he was
being nursed by.

Did he say so ?—Oh, no.

Did Hari Charan tell you that they were nursing him ?—He said they
were looking after him. He was being looked after at Yalalevu.

Did he name the two people ?—Not at that particular time. He
named the two people who were to be the beneficiaries, and I naturally
assumed they were the people who were looking after him. 10

So Hari Charan didn't tell you that they were his dear friends or that
they were devoting themselves to looking after him during his present
illness ?—Not in those words.

Or in similar words ?—He merely led me to believe that Jaimal was
being looked after at Yalalevu, and then when I asked for particulars to
make the will he brought those two names along to me, and that is the
reason I used that expression in the will.

Did you think it was necessary to ask him who was looking after
Jaimal ?—No, I didn't.

But you knew he was a sick man from the information that Hari 20
Charan gave you ?—Yes.

He told you he was a sick man ?—Yes.

And you asked how sick ?—I asked was he very sick.

Now where did you get your information from to type in the will the
following words : " I declare I have no next of kin or blood relations in
Fiji or elsewhere who are known to me." When you typed that, either on
the Friday afternoon or the Saturday morning, from whom did you get
that information ?—The latter part of that sentence was not conveyed to
me ; that was of my own volition.

Which is the latter part ?—" Or elsewhere who are known to me." 30
I had previous information that he had no blood relations in Fiji.

Well, what was the previous information you had ?—The information
which Hari Charan had conveyed to me about Jaimal having no wife or
family in Fiji.

You said Ba, the first time, and then you corrected it to Fiji ?—Well,
Fiji is correct.

So you took it to mean no next of kin or blood relations : Hari
Charan said he had no wife or family ?—Yes, that was in answer to my
question as to blood relations.

You took " wife or family " to mean he had no next of kin ?—Yes. 40

Were you talking in English or Hindi then ?—In English.

So do the words " wife or family " mean or include next of kin, or
exclude them ?—I should say the nearest of kin.

Does the fact of the absence of wife or family mean that one has no
next of kin ?—Not necessarily.

Well then Hari Charan's instructions to you were not that he had no
next of kin in Fiji, Mr. Davidson : his instructions to you were that he had
no wife or family ?—In answer to my question whether there were any blood
relations in Fiji he said " I know he has no wife or family."

So on the basis of that instruction you used the words " I declare I 50
have no next of kin or blood relations in Fiji " ?—Yes.

Now on your own responsibility you admit adding the following words "nor elsewhere who are known to me." You added those words without any reason at all?—No, I added those words because I had reason to believe that he had, as was conveyed to me, no next of kin in this Colony, and probably that he had no next of kin anywhere, not knowing the man.

Not knowing the man, and not having seen the testator, you believe that was a good reason for assuming he had no relations anywhere else?—Anywhere else.

That is your considered statement?—My considered statement. And 10 if there had been any error in the statement the man himself, when the will was read to him, would have—

The COURT: I can't hear—I knew that the words would be interpreted to the testator, and when I interpreted to him and asked him if there were any mistake, or was there anything wrong with the will—did he want it changed—and the sentence remained in the will.

MACFARLANE: We are coming to that. The only reason was that you assumed he had no other relations?—Yes.

Did you ask Hari Charan how Jaimal would sign the will or execute the will?—No.

20 Why then did you put in the will that you typed before you left the office: "Jaimal by his left thumb mark"?—Because 90 per cent. of the people I make wills for put their left thumb mark, and I put that in because in the ordinary attestation it would have been necessary had he signed by his thumb mark instead of his signature. It would have saved re-typing. It could easily have been eliminated; if he had been able to sign his name properly in English then the words "thumb mark" could have been cut out.

You asked him to sign?—I asked him if he could sign his name in English and he said "Yes."

30 Did you strike out the words "left thumb mark"?—No, not then: I would have struck out the words "left thumb mark" if he had been able to give a legible signature.

You would have struck it out after, not before?—I would have struck it out after, yes, and then initialled it.

Now, Mr. Davidson, that is on Friday. The last clause in the will, "and this last will as drawn is in full accord with his last wish"—you said that—"this last will as drawn is in full accord with his last wish"?—Yes, and he said "Sub tikh hai."

40 I am afraid you are getting ahead of me. Were those words in the will when you took it out to Jaimal?—Invariably.

You put that in before?—I put it in every will I draw.

Well now on the Monday morning after you had got instructions and typed the will, did you see Amirchand?—Yes, I told you I did see Amirchand. He and a taxi E-20 drove up to the office. Amirchand was in it.

Did you see him before 10 o'clock?—I never saw him until he came up with the taxi.

"I didn't see him until he came up with the taxi and the taxi driver Shankar at about 11 o'clock": is that your answer?—Yes.

50 Was that the first time you had actually seen him at your office?—I recognized him as the same man who was there in the afternoon of the 31st.

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Did he see you at any time on the Monday morning—see you or speak to you at any time on the Monday morning prior to this time you mention—11 o'clock?—No.

Did you see Hari Charan on Monday morning before 11 o'clock?—I can't say for certain whether I saw Hari Charan: all I know is that there was a taxi, one or two men were sitting in the back and I sat in the front seat. We went straight away to Yalalevu.

It is possible that you saw Hari Charan before 10 o'clock?—It is possible that I passed him in the street.

It is possible that you saw him in the office, or round the office, on the verandah or in your room?—No, I don't think it is possible. I don't think it is at all likely that he was in the office.

Well now the will was actually typed then?—Oh, yes.

On the Saturday at the latest?—At the very latest it was typed before 9.30 on Saturday.

Well, then, can you explain why Hari Charan should say that he saw you about the will before 10 o'clock on Monday morning?—My only recollection about that day was when the taxi came up.

Did Hari Charan come to your office and speak to you about the will on the Monday morning, before 10 o'clock?—I think Hari Charan came and asked me if the will was ready. I believe so—I am not quite sure of that. It is very likely that he did. I see him every day.

You see him every day?—He passes my door in a charabanc. As he passes he waves to me or salutes me.

And Hari Charan asked you as far as you can recollect, if the will was ready?—Yes.

Are you sure that Amirchand didn't come over before then to find out if the will was ready?—No, Amirchand didn't ask me if the will was ready.

You are definite about that?—I am definitely quite sure.

Did anyone else mention the will to you on that morning, apart from Hari Charan?—The taxi driver. I said, "What have you come for?" and he said, "Oh, about the will. I have come to take you to Yalalevu."

You are a bit confused about that Monday morning, aren't you, Mr. Davidson, because in examination-in-chief you did say "Hari Charan didn't see me, to my recollection." (*Reads*) "I got in behind the driver: he said he had come to get Jaimal's will signed. My Indian interpreter went with me. Hari Charan didn't see me, to my recollection"—I know that Hari Charan came to me and asked me if the will was ready.

Well, we will take it that he did?—I wouldn't venture to say whether I saw him again on that day.

Well, you went out and went into the house with Amirchand?—Yes, he led me into the house, but he didn't come to Yalalevu in the same taxi.

He changed cars?—Yes, he came out in a charabanc. Now that I am pressed, it is more than reasonable for me to say that I did see Hari Charan.

Well, you went into the house with Amirchand. Where was Mehar when you went into the house?—He was sitting on the floor beside the testator, on his right hand.

And when did Amirchand take up his position on the other side?—Almost immediately I got in the door.

And how close were they to the chair ?—Easily within touching distance of his hand, on either side.

Going along with Amirchand in the back seat and you in the front, did you have any conversation with Amirchand ?—I never spoke to anybody but the driver.

Did you discuss the will with the driver ?—I didn't.

He knew you were going out to make a will ?—Yes.

Did you know who sent the taxi driver ?—No.

10 Now in this room Amirchand almost immediately sat down. Who else was in the room at the very moment you entered ?—There was no one else in the room but the man Khursaid Khan who was leaning through the door.

That is the back door, opposite to the door which you entered ?—Immediately opposite.

Now you know him very well ?—Khursaid Khan, yes ; I have known him many years. He has been a very good client of mine. Whenever he gets into trouble about anything he generally comes to me.

Criminal trouble, Mr. Davidson ?—Just domestic trouble.

20 So we have in the room immediately upon your entrance yourself, Amirchand, Mehar, Khursaid Khan and Jaimal ?—And my clerk.

And do you know when Shankar entered the room or the porch ?—I knew that when I got out of the taxi and went along the causeway to the house Shankar was following me.

And he stood in the porchway all the time ?—I wouldn't go so far as to say that, because my only knowledge of him is that he was in the porchway.

At what stage did you become aware of his being in the porch ?—I happened to turn round to my clerk who was behind me, and I saw the taxi man Shankar in the porchway.

30 Would that be early in the proceedings or later ?—I think that would be about the time when I got my interpreter to start the interpretation of the will into Hindi. He may have been there almost immediately after me.

How far away was the porch ?—I should say from where he was to where Jaimal was would be about 16 or 18 feet. That was the only occasion I have ever been in that house.

Well, approximately. Was he actually inside the door, or was he outside on the porch ?—The only place I saw him was actually in the porch, not inside the door.

40 Now there were no other people other than those already mentioned who were within the sight and presence of the testator ?—No, because the testator was facing the entrance. The only other person he could have seen would be the taxi driver who was immediately in his view ; but I said there were other people in the room at the back, moving about and talking but I didn't see them.

You couldn't see them ?—No.

And they couldn't see you ?—I didn't say they couldn't see me, because any of them might have come to the door and had a look through.

You didn't notice them look through ?—No, I didn't notice them because I was interested in the man whose will I was making.

50 Were there any windows to this house ?—I couldn't say.

You didn't take any notice of that ?—No.

You knew it was approximately 1½ chains from the road. You said the room was about 16 feet long ; I thought you would have noticed

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whether there were any windows in the place?—No, I didn't notice whether there were any windows. I traversed through the mud and slush from the road to the house, so I had a pretty good idea as to how far it was.

Did you come to any conclusion as a layman as to the state of Jaimal's health?—I immediately came to the conclusion that he was in the last stages of pulmonary T.B. I use the words "pulmonary T.B." because I have seen that in his death certificate; but I should have said phthisis. I could tell by his condition and appearance.

You could tell by his condition when you saw him that he was suffering from phthisis?—On account of his coughing and his general appearance. 10

You used the word "emaciated"?—Yes.

Did he have difficulty in breathing?—No, his breathing seemed to be fairly free. After speaking a few words he generally coughed.

Did he cough frequently?—Yes, several times.

What do you call several times?—If he went further than just making a nod and "Ha, sahib" his articulation caused him to cough. If he tried to speak any lengthy sentence he started coughing.

Did he try to speak a lengthy sentence to you?—When he said he had no blood relations in Fiji, in answer to my question, he started to cough. 20

Was that the longest sentence he used?—No; I wouldn't go so far as to say it was, because he did answer one or two questions.

Do you recollect any other long sentences, or longer than that, that Jaimal used?—Yes, I remember one sentence he used: "——"(Hindi). He put out his hand and said "This one is like my child."

Which hand was that?—His left hand.

Whereabouts did he put it on Amirchand?—On his shoulder or head, or somewhere.

You have a perfectly good memory to give in detail question and answer of the conversation with Jaimal that morning, and I am now 30 asking you in manifestation of that very fair memory to cast your mind back and explain where he put his hand?—He could not possibly touch him with his right hand. He touched Amirchand, whether on the shoulder or on the head I couldn't say, but he certainly touched him.

And said "This one is like my child"?—"Like my child."

Why couldn't he have used his right hand?—Because he would have had to turn over to use his right hand. He was lying in this position in a lazyboy chair (*demonstrates, leaning back*). His right hand was the one he touched Mehar with and his left hand he put on Amirchand who was sitting alongside him. 40

They were sitting in a position as if awaiting benediction?—No, it didn't strike me that way.

You took a bottle of ink out with you, Mr. Davidson?—Yes.

What sort of bottle was it?—A little 3d. bottle of ink, and just an ordinary pen.

Where did you put the bottle when you wanted to use it?—I had it in my hand. My clerk gave me the bottle

Did you dip the pen in the ink?—I gave Jaimal the pen and I held the bottle for Jaimal to dip. As a matter of fact I pushed the bottle into the pen.

You pushed the bottle to the pen because you could see that he 50 couldn't possibly put the pen into the bottle?—I knew by the way his hand was shaking that he would probably upset the bottle before getting the pen in.

Did you read straightforwardly, without stopping, or did you pause at any stage?—I paused at every paragraph.

There are no paragraphs in it?—You might not find any.

There are sentences with full stops at the end?—Sentences, yes.

How did you translate “executors”?—What word did you use in Hindi?—Mukhtiar.

Your translation of that please?—Executor.

You state that definitely, do you, Mr. Davidson?—Yes.

10 Did you get that from a recognized dictionary or through customary practice?—Just a customary word I have used.

Does that mean anything else beyond “executor”?—Not to my knowledge.

“I give devise and bequeath unto my dear friends Amirchand father’s name Utham and Mehar father’s name Saudi both of Yalalevu aforesaid, farmers, as tenants in common in equal shares absolutely all my estate and property whatsoever and wheresoever situate and whether in possession, reversion or remainder, and I appoint them the said Amirchand and Mehar to be trustees and executors of this my said will.” Did you read that sentence out to the testator in Hindi—“all my estate and property
20 whatsoever and wheresoever situate”?—I said “——” (Hindi) “Whatever property I have in any place.” That is my interpretation of it.

Well, after you read that in Hindi, did you pause?—Yes, I couldn’t translate in Hindi “whether in possession, reversion or remainder.”

Could your clerk?—No, he doesn’t know the meaning of them.

Now just explain what you did after you read “all my estate and property whatsoever and wheresoever situate and whether in possession reversion or remainder.” You read that in Hindi, or so much thereof as you could?—Yes.

Then what did you do?—I asked him if that was all right.

30 I want the exact words?—“——” (Hindi) meaning “Is that all right?” He answered “Ha, sahib.”

Was there any other conversation between you and Jaimal about that sentence of the will?—No.

There was no other conversation between you and Jaimal?—No.

Did you ask him what property he had?—I didn’t.

Did you ask him where his assets were?—I didn’t.

Knowing that he was a man who lent money or dealt in money, did you say to him “Are you well off?” or “Are you a poor man?”?—I didn’t.

40 So the answer is, “I didn’t ask concerning his wealth”?—I didn’t mention the subject of his wealth.

Did he bring up the subject with you?—No.

Not in any form?—Not in any form.

Did you ask him if he had any property in India?—I didn’t.

Did you ask him if he had any real estate?—I didn’t ask him for particulars about his estate at all. I told him the will covered all his property, whatever kind and wherever it was.

Did you ask him whether Amirchand or Mehar owed him money?—I did not.

50 Did you ask Jaimal whether either of the beneficiaries were related to him?—No, I asked him if he had any blood relations in Fiji or elsewhere.

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Are you sure of that, Mr. Davidson?—Yes. I used the words, “ — ” (Hindi)—“ In any other place.”

Did you ask him that or did you merely translate the words in the will?—I was telling him what I had written in the will. It was for him to say whether it was correct or not.

That is your opinion. You translated “ I declare I have no next of kin or blood relations in Fiji or elsewhere who are known to me ” ? You put that into Hindi?—Yes.

And his answer was “ No ” ?—His answer was first of all in regard to Fiji. I stopped and he said “ No.” And then I said “ — ” (Hindi) 10 meaning “ or elsewhere,” and he said “ I don’t know.”

Now Mr. Davidson, you were actually translating. It wasn’t a question, it was a statement of what you were reading out in the will?—I told him I had made a will and if there was anything wrong to tell me.

You wouldn’t put a direct question?—No.

You read in Hindi “ I declare I have no next of kin or blood relations in Fiji ” and then stopped?—Yes.

And he in Hindi said “ No ” ?—Yes.

Then you went on, I take it, still in Hindi, “ nor elsewhere who are known to me.” Just those six or seven words?—Of course in Hindi it 20 would be considerably longer.

It was in Hindi?—Yes.

And he said “ I don’t know ” ?—“ I don’t know.”

Well then you said in examination-in-chief to your learned counsel : “ That confirmed what I had done on my own responsibility ” ?—That confirmed what I had put in from the information I had previously received in regard to blood relations.

But Mr. Davidson, you had no previous knowledge of whether he had relations outside Fiji: your instructions were only confined to blood relations within the Colony of Fiji. You have already admitted that?— 30 No, not my instructions. The information that was given to me.

What was your information?—As far as he knew he had no blood relations in Fiji—no wife or children. No wife or children, in answer to my question concerning blood relations.

But Mr. Davidson, you have already told us that the words were put in of your own volition—you had no reason for putting them in?—It was purely an assumption.

So the statement by Jaimal when you asked him if he had relations outside of Fiji—when he answered “ I don’t know,” that was good enough to show that he had none?—I beg your pardon. Good enough for me to 40 say “ who are known to me.”

But it is a very curious thing, Mr. Davidson, is it not, when you drafted the will, not knowing whether he had relations outside of Fiji or not, that you should significantly use the words “ who are known to me.” You didn’t stop at the words “ or elsewhere ” : you assumed what the testator later told you?—Yes.

A remarkable fact, because you had no information. When Hari Charan told you that he had no relations in Fiji you didn’t know whether he had any in India or not : you didn’t know whether Jaimal had some and had forgotten them, or anything about them. Yet you put in the will 50 the additional words, after the word “ elsewhere,” “ who are known to me.” Why did you put those extra words in?—To complete the sentence in regard to relations.

But wouldn't it have been complete at "Fiji or elsewhere," without the additional words "who are known to me" ?—No.

Why ?—Because he may have had relations elsewhere and forgotten them.

So he may have had relations and forgotten them. In other words, his memory may have been bad ?—It may possibly have been so.

You put the words there, and is that the only explanation you can give ?—Yes.

10 Then when he said to you "I don't know" in answer to your translation, what did you say ?—I said nothing.

When you went to see him first you told your learned counsel you said to Jaimal "I have come to make a new will for you" ?—Yes.

And he said "Yes." Then you asked him "What about the other will ?" or "Have you made another will ?"—I asked him if he had made another will.

And his answer was "Yes" ?—Yes.

Did you ask him whether he had made one, two or more ?—No, I merely asked whether he had made another will.

And he answered "Yes" ?—Yes.

20 And ?—And I said "What do you want done with that," and he said "Cancelled—" (Hindi) meaning to me "Destroyed."

Did you ask him where it was ?—I didn't.

Why not ?—Because this will was revoking a former will he had made.

But you didn't think it advisable to ask about the other will's whereabouts ?—No.

Did you ask him for the general contents of the other will ?—I didn't.

Why ?—Because it was no concern of mine.

30 It was no concern of yours what was in the previous will ?—None whatsoever.

Mr. Davidson, don't you think that you should have asked him about the previous will when he told you he had one—more especially when he said "I don't know if I have any relations elsewhere" ?—Had I known what I know now about the estate, I would have made a lot of enquiries and we probably wouldn't be here to-day, and this will would have been filed and approved.

You think so ?—In my opinion.

40 When he said to you as a solicitor—when he actually cast a doubt about the knowledge of his relations, and you knew there was a previous will, didn't you say "Who did you put into the previous will" ?—I have already told you that I never questioned him at all about his previous will except merely to ask if he had made one.

Did the word "nephews" come up at all at any time during the conversation with Jaimal in the house ?—Never. The word "nephews" was never mentioned.

You used the word "elsewhere": you didn't use the words "in India" ?—No, I never mentioned the word "India" to the testator or anybody else. The testator mentioned the word "—" (Hindi) which 50 I knew to mean India, when he referred to Amirchand.

What did he say ?—"This is like my child. If I get well I am going to take him to India."

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And you didn't ask the testator then why he was going to India or whether he had property there or anything like that?—No, nothing at all.

Now Amirchand was in sight and hearing all the time during the reading of the will?—Well, he couldn't have been during the whole period more than 2 feet or 2 feet 6 inches from me. I was at the foot of the chair in which the sick man was, Amirchand was about the middle under that hand, and there was a space.

You were all in a close huddle, were you?—All close together.

And Amirchand heard your translation and your clerk's translation?
—Yes. 10

And Amirchand didn't make any protest to you when you or your client read out in Hindi that Jaimal had no relations—blood relations— or next of kin in Fiji or elsewhere?—He didn't. As a matter of fact, during the whole time I was there neither Amirchand nor Mehar spoke until I gave them a letter to Dr. Clunie and had a talk with Amirchand.

During the reading over the execution of the will neither Amirchand nor Mehar spoke at all?—Not at all.

Did Amirchand speak to you at a later stage when you gave him this letter to Dr. Clunie? Did he speak to you then about the will?—No. Amirchand said that the taxi I was going back in had something wrong 20 with it but the charabanc would take me home.

Did you have any conversation with Amirchand at any stage about the will on that day in the room?—Never.

Had you any conversation with Mehar about the will on that day?— No.

Well then, at the time you read over this will was Jaimal aware of the extent of his property?—I don't know the extent of his property even now.

But do you know if he was aware of it?—I haven't the remotest idea whether he was aware of the extent of his property. 30

Have you any idea whether he knew of the persons he was excluding from the will?—I have no idea whatever.

Now you asked Jaimal why he was leaving it to these people?—I did.

To Court: When you say that, did you ask him, or did you simply read the sentence and ask him to say yes or no?—I just read the sentence out and he confirmed it.

MACFARLANE: Now you said, "Why are you leaving all this property to them: they are not relations"?—After I read it out to him I did.

And after that you asked him why he was doing it?—Yes, and his reply was because they were the only people who had helped him and been good to him during his illness. 40

What words did you use in Hindi to express "I desire to express by this my said will my deep gratitude to the said Amirchand and Mehar for their devotion to me"—what words did you use for "deep gratitude" and "devotion"?—" — — — " (Hindi).

So that you were almost clairvoyant in your assumption of that kindness when you drafted the will?—I put it in the will because it was my duty to tell the testator what I had written.

Your prognostication and assumption were remarkably accurate— 50 based on no facts but remarkably accurate?—Very accurate.

And I suggest very remarkable?—I don't think so at all. Seeing the testator confirmed it, it doesn't seem to be remarkable at all.

I suggest it is remarkable, Mr. Davidson, because you had put it in without any instructions, without any knowledge of the facts to warrant it?—It was a conclusion I drew from the information which I had.

4 p.m. Adjourned.

Friday, 12th January 1945.

Yesterday at four, we had arrived at the stage where we were discussing the phrases in the will. You put in the words "during my present illness."

10 That was typed before you went to see Jaimal?—The whole will was typed.

Did you ask Jaimal about his present illness?—No, it was quite obvious to me he was a sick man.

Now, coming to the actual execution of it: while your clerk read it did Jaimal say anything or interrupt your clerk?—My clerk never read it at all. I read it in English and my clerk interpreted it.

You held the document and read it in English?—Yes.

And he stood by?—He was standing beside me, and as I read he interpreted it.

20 Was he reading the document with you as you read it?—No, he was standing beside me as I was reading the document.

And Jaimal's hand was very shaky—so shaky that you had to put the bottle to the pen?—Not very shaky. I would say he was shaky but not very shaky.

Now it was so shaky that he made the first thumb print unassisted but it was useless?—My impression at the time was that he had not exerted sufficient pressure on the pad to give a clear impression.

I put it to you that he couldn't exert sufficient pressure?—I don't know how hard he pressed. The pad was in his other hand.

30 He held the pad like this and did this himself (*demonstrates*)?—Yes.

Did he sit up?—He was in the same position.

Half prone?—Yes, leaning back.

Will you illustrate how he held the pad? (*Witness demonstrates.*)

The second time you assisted him to put his thumb on?—Yes.

You actually took hold of his thumb and—?—And pressed the thumb on fairly hard.

That is the top thumb print?—That is the top thumb print.

Above the attempted signature?—Yes. It partly covers it.

40 Now then, you wrote your name did you? After Jaimal put his left thumb print the second time you examined it to see if it were good: you were satisfied, and then you wrote your name, did you?—I went to a small table close by and I used my own fountain pen to write my name.

What then?—My occupation.

You wrote "Leslie Davidson, Solicitor." etc., Ba, did you?—Yes.

You are sure of that?—To the best of my recollection.

What did your clerk do then?—Beneath my name I wrote Clerk and Interpreter.

Then what happened?—Then my clerk wrote his name above what I had written, and then I added those other words.

50 And was the will clearly typed before you left the office?—Everything that was in type was typed before I left the office.

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Did you type anything at Indar's house?—Oh, no. I had no typewriter.

And the will was typed by you on Friday evening or Monday morning?—I am satisfied it was Saturday morning.

You actually typed it on the Saturday morning. And you took no typewriter out to Indar Singh's house?—No.

And you typed it on Saturday morning?—Yes.

Did you do anything to this document in typing or handwriting after you got back to your office?—I couldn't say from memory.

Oh, Mr. Davidson. Did you do anything to this document in typing 10 or handwriting after you got back to your office?—Not to my knowledge.

I mean, surely you would remember if you added anything to a will after it was executed and after you had got back to your office out of sight and presence of the testator?—It is most improbable.

Well, those are your answers, Mr. Davidson. Between your typing on Saturday morning and before you took it to Jaimal did you do anything else to it or did you just type it out as a whole?—When I took it to Jaimal's I am of the opinion that it was in the same condition as it appears on the paper. I may possibly have put an endorsement on the back of it later.

Did you type anything on it on the Monday morning before you went 20 out to Jaimal's house?—Not that I remember.

Now Mr. Davidson, can you explain this. You have already said, yesterday, and again this morning, that after the will was signed by Jaimal you added in your own handwriting the words "Clerk and Interpreter": but they are typewritten on the original will?—Yes, that is so, but my clerk and myself were both going out to attest the will.

But you have already sworn twice clearly that you wrote those words in there after the will was executed, and you were the solicitor. You wrote them in in the sight and presence of Jaimal. Whereas they are typed?— 30 As a matter of fact, I only wrote my own name above the occupation that was there. It is quite usual for me to write "Solicitor, etc.," "Clerk and Interpreter" at the same time as I type the will. This is a matter of some ten months ago.

I agree with that. But you have seen the will on several occasions since?—I have never seen it since the 13th April.

You have had it in your possession since?—When I got it back I put it into Burns Philp's safe, across the road.

You were handed it yesterday?—Yes. It is a matter of 10 months ago, and on seeing the document it is obvious to me that I did put those words in when I was typing the document. Ninety-nine out of every hundred 40 wills I make I always put those words in if I am going to be a witness.

Now you typed the date at Indar Singh's house did you?—I couldn't say from memory.

Can't you tell me from memory? You told His Honour the other day in these words: "I have a perfect recollection of all those present." You have given us verbatim clearly and distinctly in Hindi and English the exact words you said to Jaimal: thereby displaying, if your evidence is to be accepted, that you have a remarkable memory. In view of that will you please tell the Court as far as you can remember whether you typed or wrote the date in the will?—The chances are that I typed the date in the 50 will. If I were going to get it executed the same day.

But Mr. Davidson, we are not dealing with chances, we are dealing with your memory. What do you think you did?—I can tell in a minute if I saw the will.

The COURT: Remembering who is in the room is a very different thing from remembering whether he had written or typed something.

MACFARLANE: It was typed on the Saturday morning. Did you type the date in then? When you typed the will on the Saturday you thought that Hari Charan was coming back for it on the Saturday. We presume you typed the date in on the Saturday?—I typed the date in
10 on the Saturday for execution on the 3rd, because that was the day I had made up my mind to go: I had made up my mind I wasn't going out until the Monday.

Then, after you executed the will, did you have any other conversation at all about the will with Jaimal?—Only to ask him if it was all right.

But apart from that: did you ask him what he wanted to do with it?—With the will?

Yes?—No. I was going to keep it. I hadn't got my fees.

Now was he coughing a little or a lot while you were there?—He coughed occasionally: as I say, after any attempt at a lengthy speech
20 he used to cough.

Did you notice that there was any saliva coming from his mouth?—None at all.

Did you have any impression as to whether he was a very sick man and wouldn't live very long?—As a layman, I could see at once that he was a very sick man, in a very advanced stage of phthisis.

I put it to you, Mr. Davidson, that his breathing was very difficult and that in fact on Monday he couldn't talk at all. And in fact he couldn't speak?—I say emphatically that he could speak and he did speak and he said the words which I have repeated.

30 Now the defence has pleaded, in answer to an allegation in the statement of claim—the defence has denied that Jaimal was unable to recollect his nephews at the time of the execution of his will?—His nephews?

Yes?—I didn't know he had any nephews.

Can you say whether, at the time of the execution of his will, he was able to recollect his nephews, or did recollect them? The answer is you didn't know he had any?—I didn't know he had any.

And you didn't ask him about them?—I didn't know he had any nephews. I didn't know anything about the man.

40 When Jaimal said to you in answer to the question "Have you any blood relations elsewhere who are known to you?" "I don't know" did you ask either of his dear friends, Amirchand or Mehar, whether they knew anything about it?—I did not.

Or anybody else there present?—No.

The defence says that he was well aware of the fact that he had already made good provision for his closest relatives. Do you know anything about that?—Since I have read the defence and the claim and seen statements made by some other people, I have come to the knowledge that he had relatives, but that was long after his death.

50 Now the defence says that in addition to yourself, your clerk, Khursaid Khan, Amirchand and Mehar and the testator, there were present at the

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—
No. 9.
Leslie
Davidson,
11th and
12th
January
1945,
Cross-
examina-
tion,
continued.

*In the
Supreme
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execution of the will—all present together at the same time—several other persons?—The only other person I know was the taxi driver. There were a number of people in the room immediately behind, talking, and the back door was open.

I just wanted to make it quite clear, because it does say in the presence of you and your clerk, in the presence of one Khursaid Khan and of several other persons, and in the presence of the defendants, all present together at the same time. That means they are all present together?—I didn't draw that.

I know you didn't draw that, but I want to know if you remember who 10 those other persons were?—As far as my recollection goes, the only people that were actually present and saw what was taking place were Khursaid Khan, Amirchand, Mehar, the testator, my clerk and myself.

You were concerned about the testator's health were you not, Mr. Davidson?—As a matter of fact, I think I wrote to you and told you that I was.

Yes, we are coming to that. Well now, after you had executed the will and all the formalities were over, you became concerned with his health?—At the very first sight of the man I was very concerned with his health. 20

After making it you were concerned too?—Undoubtedly. I thought it was my duty.

Did you tell Amirchand to get a doctor?—I wrote a note and told Amirchand, "This man must have a doctor." I gave him a personal note to Dr. Clunie.

And to whom did you give the notice?—To Amirchand, as far as I recollect. It is most likely I did give it to Amirchand.

And did he tell you later what he did with the note?—I think on the 6th April he came into my office and asked me for the will. I asked him then if he had taken my note to Dr. Clunie. He said that he had taken the 30 note and that Dr. Clunie was attending at the Supreme Court at Lautoka, sitting on that day and for some weeks afterwards. So I said, "Well, what did you do?" He said "We went to the N.M.P. at Nailaga, and he told us to bring the sick man down."

He gave the note to the N.M.P.?—I don't know whether he gave the note to the N.M.P. or not. Apparently he did. Anyhow he said he was told to take him down, and the N.M.P. examined him. They brought him back and he died the next day.

You got instructions for probate a week later?—I did later on.

And you wrote a letter to Grahame & Co.?—I did. 40

Excluding the underlining in blue pencil, that is the letter?—Yes.

Apparently there someone told you Amirchand gave the letter to the N.M.P.?—That is my impression.

And apparently at the time you thought this trip to the N.M.P. accelerated his death?—Undoubtedly.

And also it is true that you say the executors couldn't help you in giving you information about the probate?—That is so.

What did you mean by that—that Amirchand and Mehar couldn't help you at all?—When it came to the question of the value of the estate and what his estate consisted of, they were almost a blank. 50

Could they tell you anything about his estate?—They couldn't tell me anything sufficient for my purpose—not for the purpose of the affidavits.

Did they give you any information at all that was likely to assist you?—As far as I remember, when I asked what estate he had they said: “I don’t know; he is a rich man.”

They gave you to understand that he was a rich man; and is that why you told Grahame & Co. that you had learned he was a man of considerable means?—Yes.

Based on that statement?—Yes.

Did Amirchand or Mehar tell you where his wealth lay, or in what manner?—No, I never asked them.

10 Now you said you were surprised that Jaimal hadn’t been visited by a medical man for over a week?—That was the information I got. He hadn’t been visited by a doctor for over a week.

That is relating to the question you asked after the will was executed?—Yes.

Did Amirchand, then and there on that day, after the will was executed, tell you who the doctor was and who had visited him and when and where?—He mentioned Dr. Clunie’s name. As far as I can remember he said who the doctor was, but I wouldn’t say. It might be.

20 Did he mention the doctor’s name to you?—I couldn’t say for certain.

Did he tell you when the doctor had been there?—He told me a doctor had not been there for some time—a week or so.

And you have no idea whether he mentioned the doctor’s name or not. He said just over a week?—He said for a week or more.

No doctor had visited or seen him?—That he had not seen a doctor for about a week or so.

Have you learned since who the doctor was?—I have not. I have learned that before Jaimal’s death he was taken up to the hospital to have some teeth out.

30 You have told us how the will was drawn and executed and you have told us how you got instructions and what you put in the will. The testator was illiterate and uneducated?—Yes. Except that he told me he could write his name in English.

And a stranger to you?—A perfect stranger.

Obviously old and sick?—Old and sick.

And do you think that you carried out all your duties as you should have done in advising him on that will?—Yes.

That is your opinion?—Absolutely. I would never have made the man’s will if I had any doubt whatever about his capacity for making it.

40 (*Witness reads letter*)—I had no reply to that.

You know, do you not, that when a will is being contested an affidavit of scripts has to be filed?—I didn’t know the will was going to be contested.

XXn. Mr. Morley.

What I am after is that document which Hari Charan wrote. Can you give us any further information about that piece of paper which is now missing?—None whatever. It ceased to be of any value whatsoever to me when the particulars in it had been typed in the will.

Why didn’t you send it down to Mr. Munro when you knew the will was being contested?—Because I hadn’t got it—not as far as I know.

50 When did you first miss it?—I first missed it some considerable time after this case started. That was the first time it was ever brought to my recollection.

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Exhibit F.

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tion,
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And who brought it to your recollection?—I couldn't say; most likely Mr. Warren.

But you were looking for this document last Wednesday evening, were you not? Were you not looking for it the day this case opened here?—I was looking to see if it was amongst some letters and things I had, that was all.

Does that mean that you thought you might have it?—I thought I might possibly have it.

And you can give us no further information about it at all?—None whatever. 10

And you regard it as of no importance?—I regarded it as of absolutely no importance after I had used the information that was on it.

When you got to the house where Jaimal was you say you were struck by the extreme cleanliness?—Yes.

Did you give Amirchand and Mehar credit for that?—I didn't give anybody credit for it.

You didn't enquire who was responsible for it?—No,

Did you come to the conclusion that Amirchand and Mehar were looking after him so well?—I only came to the conclusion that the man was being looked after. 20

You didn't know by whom?—Not by whom.

But you knew for instance that his dear friend Mehar had put Jaimal in a stable when he first took him up from Suva?—I hadn't any idea of what happened.

RE-EXAMINED.

Re-examin-
ation.

Exhibit G.

Mr. MUNRO: You also wrote to my firm on the 8th April, 1944?—Yes. Just read that letter will you please? (*Witness reads letter.*)

Mr. Davidson, in your cross-examination you were asked by Mr. MacFarlane, first, did you ask Jaimal if he had any relations in Fiji, and your reply was that he definitely said "No," and then you said to my learned friend that you asked him if he had any relations elsewhere and he said "I don't know"?—Yes. 30

What was your understanding of his reply? Can you give the Court any reason why he made such a reply?—No, I have no reason to say that he deliberately kept me in the dark about it.

Can you account for the nature of that reply in any way?—Yes. The intricacy of the Indian mind.

In what respect?—Since I have heard what I have of this case, I formed the impression that he didn't want anybody that was present to know whether he had any relations or not. That was the impression I formed of the answer. But to me it was quite sufficient—his answer that he didn't know. 40

Dealing with another aspect of your cross-examination, Mr. Davidson: you asked Hari Charan, you remember, these words: "Are they related to Jaimal?" Are Amirchand and Mehar related to Jaimal? Hari Charan replied, "I don't know," and then you said, "Has Jaimal any blood relations in the Ba district?" In cross-examination you said, "Possibly I asked Hari Charan if Mehar and Amirchand were related to Jaimal: I am not quite sure." Now, Mr. Davidson, have you reflected on it at all? Are you sure or are you not quite sure now just exactly what you did say? 50
—I am still not quite sure.

You are still not quite sure whether you asked Hari Charan if Mehar and Amirchand were related to Jaimal?—I am not quite sure.

The testimonium clause in the will, Mr. Davidson, starting "Signed . . ." and finishing up "in full accord with his last wish": Were the terms of that clause carried out in detail? Just look at the testimonium clause again, will you?—(*Witness reads clause.*) That is exactly what was done.

Will you help the Court with regard to the English translation of the word "mullak"?—If I am talking to an Indian telling him I am going up to my home country in Queensland, I would say "— — —" (Hindi).

10 When Jaimal used the word what did you think he meant?—India, naturally. Some part of Hindustan.

With regard to the will which was signed on the 3rd, "It is most improbable that I added anything after I got back to the office." I want you to think carefully, Mr. Davidson. Could you have amended the front portion of the document or could you have added something to the back portion?—My impression is that after I typed the will I never put it into the typewriter again, unless, possibly, for the endorsement, if it is endorsed.

20 There is the backing. When was that placed on the document?—Probably on the 3rd. Most likely on the 3rd, because I had sufficient time.

Was there anything added to the body of the document by you after it was signed and attested?—Everything in that was consecutive typing from beginning to end.

Was the testimonium clause or anything else added to it after it was signed and attested?—Nothing at all.

How far is the N.M.P. from Indar Singh's house?—I should say the best part of 2 miles.

Is it on the main road or off the main road?—On the main road.

30 Are you quite sure of the distance from Indar Singh's house?—It may be less than 2 miles. I know where the mile pegs are.

No. 10.

EVIDENCE of Mohammed Rasal.

MOHAMMED RASUL, *sworn.*

Do you work for Mr. Davidson as his clerk and interpreter?—Yes, I translate for him.

And for how long have you been working for him in that capacity?—Almost 30 years. Nearly 30 years.

Have you seen this document before?—Yes, I have.

What is it?—This is the will that was drawn up.

40 Whose will?—Jaimal's will.

Does your signature appear on that document?—Yes.

And who wrote your signature?—I wrote that down myself. My signature written by me.

Do you remember any instructions being given for that document?—A man did come into the office but I don't know for what purpose he came into the office.

What date was that will signed?—On the 3rd.

What day of the week was that?—Monday.

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No. 9.
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No. 10.
Mohammed
Rasal,
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No. 10.
Mohammed
Rasul,
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tion,
continued.

Where were you on the previous Friday ?—I was in the office.

With Mr. Davidson ?—Yes.

You referred to a man a couple of seconds ago—did that man appear in Mr. Davidson's office on the Friday ?—Yes, he did come into the office on Friday.

What was his name ?—Hari Charan.

And what time of the day, morning or afternoon, was this ?—Slightly after four.

Did he see you ?—No, spoke direct to Mr. Davidson.

And did you hear what the two talked about ?—No. 10

Did Hari Charan come alone, or was he accompanied by anyone ?—Amirchand had come with him but he was standing on the verandah : I saw him.

Can you identify either of those people now ? Are they in Court ?—The boy sitting on the chair is Hari Charan (*indicates*).

Is Amirchand in Court ?—Amirchand is here. That is the man (*indicates*).

And he came with Hari Charan to Mr. Davidson's office after four that afternoon ?—Yes, but this man was standing on the verandah.

And did you remain in the room when Hari Charan was talking to Mr. Davidson ?—No, I went outside at that moment. A man had come to the office and I was speaking to that person. 20

Having gone out of the office on to the verandah, did you speak to Amirchand ?—No, I didn't.

How long was Hari Charan with Mr. Davidson ?—He wasn't there for very long—only a few minutes.

Did you see anything occur between them ?—I saw this much. I noticed that Mr. Davidson handed a small piece of paper about that size (*indicates*).

Could you see if there was anything written on it, or was it blank ?—It appeared to me as if it was just an ordinary piece of paper—couldn't see anything on it. 30

Do you know what Hari Charan did with it ?—He took the paper from Mr. Davidson and went away. I don't know what happened afterwards to it.

Where did you go to ? Did you remain on the verandah, or did you do anything ?—Then I left the office with the other man and went on to a store which is opposite our office.

Did you see Hari Charan again that day near Mr. Davidson's office ?—I didn't take any notice of that. 40

Do you know if Mr. Davidson did anything as a result of that conversation between him and Hari Charan ?—I didn't notice anything afterwards.

That was that afternoon, was it ?—I didn't take any notice of what happened after that.

How was Mr. Davidson engaged the next morning, the Saturday morning ?—On the morning of the Saturday, he typed some document, but I don't know what it was that he typed.

The document which I have just handed to you : do you know where that was typed ?—The letters on that paper were the letters of the machine belonging to Mr. Davidson. 50

Did you see that document typed ?—Well this paper was being typed on that morning of the Saturday, but I can't swear that it was the will of Jaimal that was being typed.

Now this document which you have now seen was being typed on that Saturday morning?—There was nothing else typed on that day. This is the very document that was being typed.

Did you see Hari Charan in Mr. Davidson's office that Saturday morning?—I didn't see him. He may have come in but I didn't see him. Or Amirchand?—I didn't see him either.

When next after that Saturday morning did you see either of them?—I didn't see Hari Charan after that, but on Monday when I went with Mr. Davidson to have the will executed I saw Amirchand.

10 Will you tell me where you saw Amirchand?—I saw him in town. Ba town.

Anywhere near your office?—Yes, in between our office and Messrs. Burns Philp & Co. : just on the right.

Did you see him speaking to Mr. Davidson?—There was a motor car standing there. I didn't take particular notice whether he was talking to Mr. Davidson or not.

And you say you didn't see Hari Charan?—I didn't see him. He may have seen me but I didn't see Hari Charan.

20 Did you and Mr. Davidson do anything that morning together?—That morning between 10.30 and 11, myself, Mr. Davidson and Amirchand all got into this motor car which belonged to one Shankar, and he drove us as far as A.J.C. Patel Bros.—that is the other side of the creek—and there the car pulled up and Amirchand got out.

Did the car move on from there?—Yes, myself and Mr. Davidson went on.

Where to?—To Yalalevu.

To any particular house?—Having gone to Yalalevu we heard there was one Indar Singh's house.

Where did you stop?—The car was pulled up beside the road.

30 In the middle of the road?—About 3 or 4 chains away from Indar Singh's house.

And what did you do?—As soon as our car pulled up Amirchand arrived.

And where did you go from there?—Getting off the car there, Amirchand joined us, that is myself and Mr. Davidson. We all three then went on to Indar Singh's house.

And what did Shankar do—the driver?—Shankar was following us behind.

40 So four of you went up towards Indar Singh's house?—Yes, we were ahead of him—he was behind us. All four went up to the house.

Did you go into the house?—Yes.

All four of you?—Myself, Amirchand and Mr. Davidson. We three went into the house.

What happened to Shankar, the driver?—Shankar stood on the steps near the porch of the house.

What did you see when you got into the house?—When I walked into the house I noticed a man sitting down on a chair. In a reclining position.

And who was that man?—After we were told he was Jaimal.

Did he have anything to do with that paper you have seen?—Yes.

50 What to do?—Sahib approached him and said slowly to him—

Did he have anything to do with this paper?—The Sahib explained to Jaimal that he had brought his will to him.

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No. 10.
Mohammed
Rasul,
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tion,
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Mohammed
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tion,
continued.

Did the man you saw reclining in that chair have anything to do with the paper I have just produced to you?—Sahib had taken that paper because he was instructed to draw it for him.

What is this?—A thumb print.

Whose thumb print?—Jaimal's.

And was he the person reclining in that chair?—That is the man who was reclining in the chair.

Well we will call him the testator?—Yes.

Apart from the testator did you see anyone else in the room?—Yes.

Just tell the Court?—Mehtar. 10

Is he in the Court now?—He is there. (*Indicates.*)

Anybody else?—There was one Khursaid Khan.

Is he in the Court?—No.

Mr. Registrar, would you call him please. (*Khursaid Khan produced and identified.*)

And where was he?—He was behind Jaimal. There is a door there. He was standing behind in the doorway. Like this (*demonstrates*).

You have told us the testator was there, Mehtar, Khursaid Khan. Anyone else?—Amirchand was there.

Yes?—Myself, Mr. Davidson. 20

Yes?—Shankar was still at the porch.

Inside the room or outside?—He was outside.

Outside the doorway?—Yes.

Could he see into the room?—Yes, he was right in front.

What do you mean—was he just inside the doorway, or was he just outside?—Just outside the room.

But he could see into it?—Yes, he could have a clear view.

Was there anyone else in the house?—Not inside this very room in which we were, but there were some voices heard in the next room in the same building. 30

How many people, do you think?—As far as I can say, not more than two persons. The voices of two people I could hear.

About what time of the day was this?—Roughly about 11 o'clock.

When you arrived there, what happened?—After arriving there at this man's house, Sahib salaamed this man.

Did the testator reply?—Yes, he raised his hand and said "Salaam, sahib."

And then what happened?—Mr. Davidson then spoke to him, saying, "You told one Hari Charan to draw up a will, and I have done so and have brought it accordingly." 40

Did Mr. Davidson speak in English or in Hindi?—He spoke to him in Hindi.

He said "I have brought the will"; just carry on, very carefully?—Sahib said to him, "I have brought a will for you; I shall read this out to you in the Hindustani language." If there were any errors, mistakes, he was to let him know.

At that stage where was Mehtar in the room?—He was quite close to Jaimal.

Standing up, lying down, or sitting?—Sitting down.

Quite close to Jaimal. And Amirchand?—Amirchand was sitting 50 by his side.

Which side?—Mehtar was on his right hand side and Amirchand was on his left hand side.

Then Mr. Davidson started reading the will, did he, in Hindi?—Yes.

Prior to that stage, did he have any other conversation that you can recall with the testator?—Yes, I believe he did. I have a recollection that the Sahib told him about his previous wills—that if he had any previous will this one would revoke all that—that is those were automatically cancelled.

Just tell us what took place?—Sahib then said to him, “Your name is Jaimal?”

10 Did he reply?—Yes. “Father’s name Nihala, and Amirchand father’s name Utham, and Mehar father’s name Saudi.” And Mr. Davidson kept on reading the will after that.

How did those names come to be mentioned—Mehar and Amirchand?—Because the estate was bequeathed to those two, and Mr. Davidson was reading out these names to him, saying, “Those are the two persons you are giving the property to.”

Did Jaimal say anything at all when the will was being read to him by Mr. Davidson?—Yes, he did.

Very carefully, tell the Court what he said.

11.30 Adjourned.

20

11.45 Resumed.

You had just started to tell the interpreter what Jaimal said?—Yes.

What was that?—He placed his hand on Mehar and said “This is Mehar.” and then, placing his hand on Amirchand, he said, “This is Amirchand.”

Which hand did he place on Amirchand?—Left hand. And he further said “I regard this man as my son.”

And placed which hand on Mehar?—His right.

30 His left hand on Amirchand, and said “This man is Amirchand”?—He said, “This is Amirchand, and I regard him as my son, and when I recover I will take him to my home.”

INTERPRETER: He used the word “mullak” which literally means “country”—the old country where he came from.

Was anything else said?—Jaimal then said, “In case I die, whatever property I have now here and in any other place in Fiji or wheresoever, after paying the expenses of the medicine they were using for me during my illness, and my funeral expenses—

Jaimal said that, did he?—He spoke those things. “Because they looked after me in the last days of my illness, at this time these are the only two people—Mehar and Amirchand.”

40 Did you hear Jaimal say that?—I heard these words with my own ears.

Did you hear anything else?—“These are the only two people, and I have no one else. And whatever property I now have which is left over after my death I want equally divided between these two.”

You said Mr. Davidson started to read the will in Hindi to Jaimal. Did he read the whole will?—Well, I am just telling you exactly what happened. Mr. Davidson was reading out the will to him in Hindi, and as he was reading Jaimal would reply and tell him what I have just said. Mr. Davidson was reading it out.

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Did Mr. Davidson read the whole will to Jaimal?—The whole will was read out to Jaimal by Mr. Davidson.

And after Mr. Davidson had read the whole will, what was done then?—After the whole of the will was read, Mr. Davidson asked him “Can you write your name?” Before that he said “Is it all correct?”

Before that he asked Jaimal “Is it all right?”—Yes. That is before any signature or anything was placed on the will.

Yes?—He replied “Yes, the whole of it is correct, and this is exactly what I desire.”

Well, the will was read, you say, in Hindi by Mr. Davidson to Jaimal. 10
Jaimal said it was correct. What then took place?—Mr. Davidson asked him “Are there any errors in this, or any mistakes?”

We have had that. What then took place?—He said “Now I shall read it in English and my clerk will interpret it to you.”

And was it so read and interpreted?—Yes.

Did Jaimal have anything to say while it was being read by you to him in Hindi?—No.

When you finished interpreting the document, what took place?—Again the Sahib asked him if it was all correct and he said “Yes.”

And then?—Then he said “Can you sign your own name?” 20

In Hindi presumably?—Yes, he asked him in Hindi. He replied saying “Yes, I can.”

Yes?—We had taken a pen with us from the office, and Mr. Davidson dipped the pen into the ink. He handed the pen to Jaimal who had the ink in his left hand. He handed the pen to Jaimal and Mr. Davidson held the ink bottle in his left hand.

Yes?—And took this ink bottle close to Jaimal like that (*demonstrates*) close to him, and told him to dip the pen into the ink.

Did he?—Jaimal's hand was like this (*demonstrates*) shaking slowly. Then Mr. Davidson held his hand and dipped the pen into the ink like that 30
(*demonstrates*).

Yes?—There was a diary there on the table; he took this diary close to Jaimal and placed the will on top of that diary and told him “Now sign your name.” During this procedure Jaimal was coughing now and again, spasms of coughing. And when he placed this pen on the paper he was not able to write his name because of the shaking of his hand.

But wrote those lines there?—Yes, that is the effort made by Jaimal. Jaimal tried to write?—Yes.

And those are the results of his efforts, yes—then what happened?—Then when Mr. Davidson saw this he said “This is no good.” Then 40
Mr. Davidson asked him “Can you affix your thumb print?” He said “Yes, I can.”

Just tell us what happened?—Then Mr. Davidson took the thumb pad to him, then he rubbed his left thumb on to the pad, and then when he placed it here it was not a very clear thumb print.

Which one wasn't a very clear one?—The lower one.

Yes?—And Mr. Davidson spoke to him and said, “This is not very clear,” and then Jaimal said “Will you help me?”

Then what took place?—Then Mr. Davidson helped him—held his hand, pressed it on the thumb pad, and it was placed again. This top 50
one on the will.

And he made the upper mark?—Yes, just above where his name is written.

That mark was made, and then what was done ?—Then after this, in his presence——

Just one moment. Who were in the room at that stage—when the writing was attempted and when the thumb marks were affixed ?—Khursaid was there ; Mehar ; Amirchand ; Mr. Davidson ; myself.

Anyone else ?—About Shankar, I can't say whether it was visible to him, these things—whether he could see or not.

10 What happened after the last thumb mark was affixed ?—Then, in his presence, Mr. Davidson had this fountain pen with him and there was a table, and right in his presence Mr. Davidson wrote on this and then after he had written I wrote my name.

Just what did Mr. Davidson write ?—With that pen he wrote his own name, and after that all these writings were written in his presence.

Just hold it up, if you please, and show us Mr. Davidson's name ?—(*Indicates.*) The top one is Mr. Davidson's name. After that he also wrote this writing ; that is below the first thumb print.

Now in what part of the room did Mr. Davidson do that writing ?—Right in front of Jaimal. If Jaimal is sitting here (*indicates*) right in his presence in front of him.

20 On anything ? On his knee ?—There was a table there. On the table.

Do you know if Jaimal saw that writing being done ?—Yes, he was looking at Mr. Davidson at the time he was writing. While Mr. Davidson was writing Jaimal was looking on.

And you yourself, were you looking on ?—Yes, I was standing beside Mr. Davidson and close to him.

And when Mr. Davidson had finished writing, did anything take place then ?—Then I wrote my name. Here it is, down below. In their presence. Jaimal's presence too.

And could Jaimal see you ?—Yes, he did see me.

30 Could Mr. Davidson see you ?—Yes, he would see me writing.

Very well, you wrote your name. What then took place ?—There was a bottle of medicine placed near him. Mr. Davidson asked “ Is anyone looking after him ? Is he being treated medically—is any doctor looking after him ? ”

Yes ?—Mehar replied to that, saying, “ For some days now the doctor has not visited him. He has not been seen by any doctor for a few days past.”

40 What exactly did he say ?—The question asked was “ Has any doctor seen him lately during his illness ? ” “ For some days now the doctor has not seen him, but before that the doctor has seen him.”

That is what Mehar said ?—Yes, Mehar.

Yes, after Mehar had said that, did anyone say or do anything ?—Then Mr. Davidson took that bottle and smelled it. “ Is this the medicine you are giving him to take ? ”

Did anyone reply to that ?—Mehar replied, saying, “ Yes, this is the medicine that has been given to him,” and then Mr. Davidson said, “ This is ordinary cough medicine.”

50 After that did anyone speak to Jaimal ?—Then I don't remember. I am not sure what happened—whether anyone talked or not. That I can't say.

Did you speak to Jaimal ?—No.

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Did you see or hear Jaimal speak to anyone else?—I didn't take any notice of that.

What happened to this document?—Mr. Davidson then took charge of the document and placed it in his own bag. His attache case.

Then did you leave?—Yes. When we left the place Mr. Davidson took Amirchand with him. Amirchand came along.

While you were there in that room, did you form any opinion as to Jaimal's mental capacity?—On looking at him the man appeared ill. He was sick.

You think he understood the document he had signed?—Quite clearly. 10

Had you known him before you saw him that day?—I had never seen the man before in my life. That was the first occasion that I saw him.

Was his mind clear or was it wandering?—His mind was quite clear. The only difficulty he had was now and again these spasms of coughing.

Did you think that Jaimal was under the influence of Mehar and Amirchand?—Not at all.

CROSS-EXAMINED.

Cross-
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tion.

Mr. CHALMERS: You have told us that this paper was signed by Jaimal and how Mr. Davidson and you wrote your names, and so forth. Was there any other paper written by Mr. Davidson in that room, apart 20 from that will?—No.

You are quite certain?—Yes; apart from the will there was a letter he talked about Amirchand taking with him to get Dr. Clunie.

So that letter was written to whom?—Dr. Clunie.

And given to whom?—Amirchand.

Did you see Mr. Davidson writing that?—I just can't quite recollect whether that letter was written in that office after he came back with Amirchand or whether it was in that room.

Surely, after telling us all the details about the will, you can tell us whether he wrote it in the room or not?—As far as I can recollect, 30 Mr. Davidson brought Amirchand with him to the office, and it was there that he gave him the letter. That is my recollection.

If that letter had been written in that small building immediately after the will had been made, you wouldn't forget it, would you?—I just can't remember very well. But I do know this for a fact, that a letter was given to Amirchand.

I want you to shake your brain up a bit more than that. You have told us how Mr. Davidson picked up a bottle and smelled it, and even told you what the contents of the bottle were. This letter is important?—I just can't say. I seem to think it was written there, but I have my 40 doubts. But I know this—that a letter was given to Amirchand.

If you can't remember a simple fact like that, surely how do you expect the Court to believe all the little details that you have told us?—I seem to think he may have written it in the office and handed it to Amirchand, after placing it in an envelope.

Was there any discussion after the signing of the will about giving a letter—at Indar Singh's house?—Yes, after seeing the person, Mr. Davidson then and there said, "I shall give you a letter to Dr. Clunie saying this man should be attended to."

But you can't tell us whether he gave it to him there?—I can't. 50

I want you to go back to the 31st March when Hari Charan came to that office?—Yes. It was after 12—in the afternoon.

You say it was after 12. Can you give us any approximate time when he arrived there?—After the hour of 12.

You signed this will as a clerk and interpreter?—I only wrote my name.

Well, you have given in evidence that you are a clerk and interpreter. Are you prepared to answer my questions in English?—Well, not any difficult terms.

MUNRO: I prefer him to answer in Hindi, except in special cases when English words were used.

10 CHALMERS: He is supposed to have translated this will.

The COURT: It is really for the witness to say what he will give evidence in.

CHALMERS: I am not going to force you Rasul, but as a clerk and interpreter are you prepared to answer my questions in English—to try and answer my questions in English?—If you ask me anything very simple I will be able to reply if I can understand what you say.

Do you read or write English?—I can't read.

So that in fact what was written in that will you have no idea?—Not all of it, no.

20 Then would you read as much as you can of that will?—I can read out the names in that will.

That is all?—That is all, yes.

Can you write English?—Only my name.

When Mr. Davidson read over this will to you are you prepared to say to the Court that you understood all those English expressions in that will?—I wasn't able to understand all of the expressions but I heard previous to that Mr. Davidson reading it out in Hindi, and I understood perfectly well then what was required. It was the same paper that was being read in English the second time.

30 I put it to you that your interpretation of that will wouldn't have been very much assistance to Jaimal, would it?—The only difference or benefit that he would have had is, having heard Mr. Davidson read it out before, he would say "Well Mr. Davidson read this in exactly the same words as are being told to me now by the clerk."

You just repeated in Hindi what Mr. Davidson said in Hindi?—After he read it out in Hindustani, then he read it in English, and I explained in Hindustani what he read in English to him.

I just want you to tell us what you expressed. Do you understand the meaning of "devotion" in English?—No, I don't.

40 Would you understand if anybody said to you the words "deep gratitude" in English?

INTERPRETER: The witness says "I understand that to be that I have a great amount of love for him."

Do you understand the meaning of "next of kin"?—Has he any other persons belonging to him.

What was said? What did Jaimal say in respect of these "any other persons"?—Jaimal said, "Apart from me there is no one else: I am the only one that is left: I have no one else."

50 When did he say that?—The same day when this will was taken for execution.

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What part of the proceedings in connection with the will—at what time—the beginning, or the end, or when, did he say this?—When Mr. Davidson read that part and asked him.

What did Mr. Davidson ask him?—“Have you anyone else—blood relations?” He said, “No one. The ones I have with me now are Mehar and Amirchand, these two.”

So, when Mr. Davidson asked him if he had any blood relations he put his hand on Mehar and Amirchand and said “Only these two”?—For him only these two people.

Did he then start to tell Mr. Davidson all that he wanted to give to these people, Mehar and Amirchand?—Yes, he said, “Whatever property I have after my death left over, I wish these two people to get it, Amirchand and Mehar.” 10

What did he say about “left over”? What left over?—“Whatever I have at present now, at the time; whatever it is I have—money transactions.”

And Jaimal said all his money dealings. That is what he had to give?—Yes, whatever wealth he had at that time or what he had outside which he was to get later on.

Did he also say anything about his funeral expenses—who was to pay the funeral expenses?—That is what he said. After payment of expenses—funeral and medicine expenses. 20

Did he actually say that?—Yes, and when Mr. Davidson was reading the will out and saying “These are the things that are in it.”

And he repeated that?—Yes, because when Mr. Davidson read out “After your death, whatever property is left over,” he said “Yes, whatever property I have and whatever it is, I want to be given to these two.”

He was repeating what Mr. Davidson was saying?—When Mr. Davidson read that part he would say, “Yes, that is exactly what I want.” 30

We are getting a bit confused on this. Did this man say all that you have told us? You have told us a lot of things that Jaimal said: did he actually say those things?—This part he said, “After my death whatever property I have I desire that it be divided among these two.” Those are the words of Jaimal, and the rest he acquiesced by saying, “Yes, yes,” while Mr. Davidson was reading it out to him.

But, at the very commencement of the will, he made that declaration himself?—Those words were spoken by Jaimal.

Well now, in connection with this visit of Hari Charan. I will take you back now to the 31st March to the visit of Hari Charan to Mr. Davidson’s office. Is it not usual for clients to go and see you first?—Yes, but a person going in and knowing English would not see me at all: he would go direct to Mr. Davidson. 40

Were you at the office when Hari Charan came in?—Yes.

It is just the one room, isn’t it? It is a small room and you sit with Mr. Davidson?—There is one room and there is a bench outside on the verandah. I usually sit on that bench.

If you were on the verandah you could hear anybody talking in the office, couldn’t you?—Yes, if I pay attention to what is being said.

When did you first hear that Mr. Davidson had received any instructions to draw up a will for Jaimal?—On the Monday morning when we were getting ready to go. 50

That is the first occasion that you heard anything about Mr. Davidson having anything to do with the drawing up of a will for the deceased ?— On that Saturday, apart from typing the document, he had no other typing to do. That was the only document he typed, and I came to know on Monday, just before he left the office, that that was the will he was drawing up on Saturday.

10 So you didn't know until Monday that that was the will ?—That is correct. On the Saturday I didn't know that Hari Charan had come for that particular document. After his conversation with Mr. Davidson on Friday I didn't know what he spoke about to Mr. Davidson on that Friday, but I saw Mr. Davidson handing him that small piece of paper.

I don't want to know all that. When in actual fact did you first learn that Mr. Davidson had drawn a will for Jaimal ?—Monday morning.

Mr. Davidson hadn't, up until that time, told you anything about having prepared a will for Jaimal ?—Neither did I ask him nor did he tell me.

Did he tell you anything about what arrangements had been made for the execution of this will ?—No, he didn't tell me.

You said Hari Charan came on the Saturday.

20 RICE : He said he didn't know Hari Charan came on Saturday.

Well, did you see Hari Charan come at all ?—I didn't see him. The only time I saw him was on the Friday.

Did he come on the Monday ?—He may have seen me but I didn't see him at all.

Did you see Amirchand on the Monday at Mr. Davidson's office—I saw Amirchand near Shankar's car on the Monday morning. About 10.30 or 10 o'clock.

30 Near Shankar's car on the Monday morning. Did you see him go in and have a talk with Mr. Davidson ?—I didn't pay any attention : he may have talked to Mr. Davidson but I didn't take any notice.

Neither Hari Charan nor Amirchand ever came and asked you whether Mr. Davidson had prepared the will for execution by Jaimal ?—No, no one asked me. Neither of those two asked me.

Could you account for the fact that Hari Charan in his evidence says he went with Amirchand on the Monday morning to ask Mr. Davidson why the will had not been drawn up ?—He may have gone there before I arrived, and seen Mr. Davidson in my absence. In the office sometimes Mr. Davidson gets there before I do ; sometimes I get there before he does.

40 Now, Rasul, you say you knew nothing about when that will was to be executed. Did you know on the Monday where you were going to when you got into that car with Mr. Davidson ?—Yes, I came to know then. Shankar was there. Mr. Davidson told me that we had to go to Yalalevu to have a will executed. This was on the Monday.

That was the first intimation you had ?—Yes.

And you have never been asked by Mr. Davidson to go through the contents of this will so you could understand the interpretation of it before going with him ?—No. I can't read, so how can he hand it to me to read ? I wouldn't be able to read it.

50 Now, Rasul, do you know Mehar well ?—I know the man, but he is not a client of ours : he has no business in our office. I know the man. I know the other man as well—Amirchand.

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Is it a fact that he frequently visits the hotel—Ba Hotel?—It is impossible. He can't go there because he hasn't a permit, but he goes to Singh's to have Fiji grog.

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That is quite near where you work?—I don't go with him to drink.

I put it to you that you have known Mehar for about 10 or 30 years?—I know the man. I know him as an acquaintance merely, but he has nothing whatsoever to do with me and neither have I with him. He has never been into our office.

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Mehar has been a permanent resident of Ba for about 30 years, hasn't he?—He may have lived at Ba, I don't know. 10

And Amirchand?—I didn't know him for long. I knew him for a short period only.

Hari Charan?—I always see Hari Charan. He does his business in town. I see him passing the office.

Where does he do his legal business?—I can't tell you who is his solicitor—where he gets his legal business done, but I have seen him frequenting Mr. Rice's office. Every time I go to the Post Office I see him walking into Mr. Rice's office.

Does he ever go to your office?—Not to my recollection.

You have never seen him there on any business?—He may have come 20 to draw up a promissory note or a thing like that, but nothing very big. He was not a regular client.

Can you say whether he has done any business. You are a clerk there?—Apart from promissory notes and receipts, to my recollection, none whatsoever. I don't think Mr. Davidson has ever fought a case for him.

Do you know Khursaid?—Yes, I know him.

He is next door neighbour to Mehar, is he not?—It could be so, but I don't know anything about those people who live at Nailaga. Mehar lives at Nailaga, so does Khursaid—further away.

You have seen them going about together?—Yes, I have on many 30 occasions seen them together, drinking yagona together, and I have seen them in the kava saloon.

Did you ever hear that Mehar and Amirchand were in debt to Jaimal?—I have no knowledge of it whatever. Mehar and Amirchand would know about that—whether they owed him any money or not.

Now, Rasul, when you go home you pass not very far from the house that was occupied by Jaimal—when you go to Mr. Davidson's house?—Oh, no. That man is living in a house at Yalalevu, where the passenger train stops.

Do you know the crossing that goes to Namosau?—Yes, I know that 40 road.

That is the main road Mr. Davidson and yourself take?—No, we don't take that road—the one you mean, that goes to Namosau by the tennis club. We take the road along this side, where the passenger train stops. As soon as you leave the big bridge.

RICE: The road Counsel has suggested is right out of the witness's way.

1 p.m. Adjourned.

2.30 p.m. Resumed.

Before this will was signed, was there any conversation between 50 Mr. Davidson and yourself and Mehar and Amirchand?—No.

Mehar never said anything?—No, he didn't say anything.

And no word ever passed between you or Mr. Davidson and Mehar?—Nothing.

Did Mr. Davidson ask Mehar his father's name?—He read out the name. He read it from the will.

Did he ask before reading the will? Did he find out from Mehar what his father's name was?—Not that way, but he read it out of the will and while reading "Mehar father's name Saudi," he asked if that was correct. He didn't ask Mehar.

10 (2nd answer) Mr. Davidson asked Mehar "Is your father's name Saudi?" and he said "Yes, my father's name is Saudi."

That was before the will was read?—No, during the reading of the will.

And when he came to Amirchand's name, did he also ask Amirchand "Is that correct? Is that your father's name, as written here?" while he was reading the will?—Yes, and he said "Yes."

Did Mr. Davidson also ask him while he was reading the will whether he was a cultivator or what work he did?—He didn't ask him about his occupation.

20 He didn't ask Amirchand about his occupation?—Not in my presence, no. Not while I was there.

Now I just want to take you back again to the 31st March, the day that you saw Hari Charan at Mr. Davidson's office. You say you saw Mr. Davidson give Hari Charan a piece of paper?—That's right.

Where were you at that time?—At that time I was just leaving the office. Inside the office and going out to meet this man, when I heard Mr. Davidson say to Hari Charan get the particulars on this piece of paper.

Did he use the word "particulars"?—I heard the word "particulars."

You heard the word "particulars"?—That's right.

30 Particulars of what?—I don't know particulars of what.

You just heard him say "Get the particulars": You didn't hear particulars of what?—Except the particular word "particulars" I didn't hear anything else.

How far would you be from Mr. Davidson and Hari Charan? When Mr. Davidson was speaking to Hari Charan?—I was on the verandah, a distance of from where I am to the Registrar. I went outside immediately the other man called.

And how far would Amirchand be from you?—About a couple of paces or three paces away from me as soon as I came on to the verandah.

40 Amirchand was quite near to you?—On the verandah when I came on to the verandah.

And Mr. Davidson could see through the window?—No, he cannot see through.

Mr. Davidson couldn't have seen Amirchand on the verandah?—Not from inside the office. From where he is he can't see, because it wouldn't be possible. He sits behind the table there and the desk is in front of him.

You were standing there. Did you have any conversation with Amirchand?—Nothing whatsoever.

50 Did you greet each other?—No, didn't even greet him. I went away with the other man.

I thought you said you were talking on the verandah?—No, I didn't say that.

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You went away with the other man?—Yes, I went to the store next door.

That is only a few yards away, isn't it?—That is so, but we were sitting there for quite a long while talking to each other.

You were sitting there for quite a long while, but you could still see Mr. Davidson's office verandah couldn't you?—My office verandah could be seen clearly from there.

Did you see Hari Charan and Amirchand go away together?—I didn't pay any attention : didn't take any notice.

So you can't tell us when Hari Charan and Amirchand went?—That I 10
can't tell you.

After they had gone away, did you remain in the office until closing-up time?—I was there for some time.

Did you close up the office?—Yes.

Did you see Hari Charan come back again?—He could have come before I started closing up : he may have come and gone back.

Did you keep contact with the office to see who was coming along, in case of any business?—No, I wasn't keeping contact with the office at all : I was concerned with this man.

Who is this man ?

20

The COURT : Does this have some bearing on the case ?

WITNESS : I forget now who that man was.

No Re-examination.

No. 11.

EVIDENCE of Abdul Rahman Sahu Khan.

No. 11.
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ABDUL RAHMAN SAHU KHAN, *sworn.*

Mr. MUNRO : You live in Suva, Mr. Sahu Khan?—Yes.

And you are a commission agent?—Yes.

And also an Indian nominated member of Legislative Council?—That 30
is correct.

I think you were a law clerk from approximately 1916 until half-way through last year?—That is correct.

That is a law clerk and interpreter?—Yes.

Did you know the deceased, Jaimal?—Yes.

And what was his occupation?—Moneylender.

And how long had you known him?—Since 1916.

And over the last 10 years how often would you have seen him, Mr. Sahu Khan?—Very frequently.

During this last 10 years, for whom were you working?—For Mr. Ellis and later Ellis & Munro, and then, Ellis, Munro, Warren & Leys. It was the 40
same office.

And during the last 10 years would you have seen Jaimal almost daily—that is, pretty well every working day?—Well, for six or nine months he was in gaol.

But when he was at liberty?—On the average I would say between three and four days per week.

Where did he keep his documents?—In the office.

In your employers' office?—Yes.

Did he conduct a large or a small moneylending business ?—A large one.

And the documents you refer to were his securities, were they ?—Yes. Mortgages and crop liens and bills of sale ?—Mortgages, crop liens, bills of sale, promissory notes.

Having known the deceased so well, could you assist the Court by describing his character—his personality ?—Well, he was what I would call a typical moneylender.

10 What would you call a typical moneylender ?—If a man contracted to pay him so much interest he would be hard about getting it.

Would you say he was a hard man as far as his moneylending business was concerned ?—Hard, in the sense that he was strict.

Was he of a generous disposition, as far as his customers were concerned and generally speaking ?—No, I wouldn't call him generous.

Did he have any knowledge of his own business affairs ? Did he know what his own affairs were, or did he rely on other people for his information ?—He had a very good knowledge of his business affairs.

20 In other words, he knew what people owed him money and how much ?—He knew the people who owed him money but he couldn't say exactly how much they owed.

Was he careful or careless in his business affairs ?—I would say he was careful.

To your knowledge, did he have many assets, shall we say ?—Assets in the sense of securities.

Yes, generally ?—Yes.

What sort of knowledge would you say he had of those ? Did he know how his assets were made up ?—He wouldn't have an accurate knowledge of it.

30 Would he know if he had property in Suva or in Ba, or didn't he worry about where his assets were ?—Most of his assets at one time were in the Rewa District.

Did he have a pretty keen knowledge or a keen awareness of his own financial position ?—As to knowledge of his worth ?

Yes ?—It is very difficult to answer that question.

Why ?—Well, he would know at the end of the year when his returns were made as to what he was worth, but in the meantime he would have very little money with him. He would always keep on investing.

Did he have a good or a bad knowledge of his own affairs ?—He had a good knowledge.

40 Mr. Parmeshwar, who is known to you, said that he watched his securities very, very closely. Would you agree with that ?—Yes.

He was illiterate ?—Yes.

Could he sign his own name ?—Yes.

So far as his crop liens and bills of sale were concerned, was he able to remember their expiry dates ?—Not the date of expiry ; but because he was making very frequent references to them he had a sort of check on the dates as to when particular liens were to fall due.

Do you know if the deceased ever went to India in recent years ?—Yes.

50 About when was that ?—That would be early 1938.

Did you see him when he came back ?—Yes.

And roughly about when was that ?—About 1940. I wouldn't be too sure what year ; about 1940.

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On his return did he talk to you in any way about his property in India and what he had done with it?—Yes.

What did he say?—He said he had bought lands, he had a house built, he had a well dug; those are the three things I can remember.

And did he say anything about his disposition of those?—No.

Did he say what those items cost him?—Yes, he had made some mention about 20,000 rupees.

In his conversation with you did he mention any relatives that he may have had in India?—Yes.

Who were they?—He had a brother, Nagina, and four nephews 10 who were the sons of Nagina.

And he mentioned the brother and the four nephews?—Yes.

Did he ever mention those people to you in connection with any monetary transaction, or did you do any work for him possibly in connection with any money transaction relating to those nephews?—He had some money in the bank, and some documents were prepared for those nephews—two of them I think—to uplift the money.

What did he do with them?—A power of attorney was sent.

How much money did he have approximately in this bank?— 20 20,000 rupees, plus interest.

And do you know what he did with those moneys?—He allowed the nephews—two of them—to uplift the money, and then, while this power of attorney was being sent, he asked me to write a letter for him to his nephews, in English. In this letter he was repeating himself about telling these nephews to be very careful with the money, not to spend it foolishly, and things of that nature.

In this letter what did he say he was doing with the rupees, 20,000?— I think the letter said that he was sending a power of attorney direct.

Did the letter say anything about making a loan of this money to the nephews, or a gift, or what?—No, I can't remember that. 30

Did he have any subsequent conversation with you about those moneys?—I can't remember anything in particular.

I want you to think very carefully, Mr. Sahu. What was the purpose of Jaimal's writing that letter, or having you write it for him?—Because the boys were uplifting the money.

And for whose benefit were they uplifting the money?—As I understood it, it was more or less Jaimal's money and the boys and Jaimal were together. It was no question of making a distinct arrangement in the letter to say "I am presenting this money to you," or anything like that. 40

You know Amirchand and Mehar?—Yes.

Were they ever indebted to the deceased?—Yes, they were.

And did you keep Jaimal's accounts in respect of that indebtedness? —Yes.

Exhibit H.

What is that book?—It was the deceased's loan ledger.

As kept by you from the time Jaimal was a registered moneylender? —Yes. Most of the entries are made by me. Some are made by another clerk in the office.

Will you tell the Court from that ledger when, according to that, Mehar first borrowed money from Jaimal?—28th February, 1939. 50

And how much?—£1,850.

And is this the form of contract that was prepared—the contract under the Moneylenders' Ordinance?—Yes.

Just what securities does that document say were taken at that time for that advance?—Mortgage and crop lien.

You had better give the title references and the area, that will be enough, I think.—This is rather indistinct; I think it is 6005, 96 acres and 37 perches.

I will pass that in, it will be an exhibit.* If you will refer again to the ledger, what was the next time Mehar borrowed money from Jaimal?
 10 —Before he made the next loan Jaimal had received from the C.S.R. Company £1,078.

On what date?—The date is not stated.

The next time an advance was made?—On the 5th December, 1939.

Of how much?—Of £1,578, which, including £922, the then balance of principal made a total of £2,500.

And is that the contract in respect of that advance?—Yes.

And the securities taken then were a mortgage and crop lien?—No, this contract provided a further advance, and this was an advance under the old securities.

20 And I think the rate of interest was increased from 10 per cent. to 10½ per cent.?—That is correct.

Will you refer to the ledger and tell us when the next advance was received by Mehar Singh from Jaimal?—8th January, 1941—£1,230-1-5

Which brought the total indebtedness of Jaimal at that date to—? —£2,818-16-6 principal, and £15-1-5 accrued interest to that date. But on that same date there is an entry made here showing payment of that interest, so that the actual amount owing after paying £15-1-5 is: principal £2,818-16-6.

30 —That is the principal indebtedness at that date, 8th January, 1941? —Yes.

And the mortgage was left and a new crop lien was taken?—On the 8th January, 1941.

That is the contract?—Yes, the old lien was discharged and a fresh lien was taken.

And the mortgage was still there?—Yes.

I think the next advance was made on the 8th January, 1942. The then indebtedness was £1,669-1-9 and the further advance £1,330-18-3, making a total indebtedness, after the signing of the contract, of £3,000, on the 8th January, 1942. This was the contract?—Yes.

40 And of course the securities are still on demand. Now the parties next had a dealing on the 27th November, 1942, when they re-arranged the whole security?—That is correct.

And Jaimal made a total advance of £6,000?—Yes.

The old securities were discharged?—Yes.

And a new mortgage only was taken?—Yes.

That is the contract?—That is correct.

And the £6,000 was due on demand, with interest at the rate of 10 per cent.?—Yes.

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**Exhibit I.*

Exhibit J.

Exhibit K.

Exhibit L.

Exhibit M.

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And I think your ledger shows that when the total advance was made the old amounts were repaid?—That is correct.

And that mortgage affects three areas of freehold lands?—Three titles. I think one title merged in another.

Now the next transaction which took place between them was on the 15th January, 1944. Just check that from your ledger, will you?—Yes. But that entry is not made in my handwriting.

Well just refer to the ledger then. What is the date of the transaction after he received the advance of £6,000?—15th January 1944, interest was computed, and on that day a further advance of £500 was made, 10 bringing the indebtedness to £6,000 principal and £511-14-0 interest to that date.

Just prior to that, hadn't Jaimal received £500 from the C.S.R. Company?—Yes. On the 10th February 1943 there is an entry of receiving cash £124-18-6 and on the same day another cash payment of £500.

So on the 15th January 1944, when he received the further advance of £500, what was the total principal indebtedness?—£6,000, including the £500.

And interest paid to what date?—Interest was paid up until the 10th February 1943. 20

Is that the contract in respect of that further advance?—Yes, this is the contract.

Will you have a look at these figures? Does that not show the interest there debited to 15th January 1944?—Yes.

So therefore interest was paid, in effect, to the 15th January 1944, and that contract was completed, and the total principal indebtedness was £6,000?—No. Interest was paid to the 10th February 1943, and from that date interest was paid to the 15th January 1944 and debited. £6,000 principal and £511-14-0 interest owing to that date. So that would mean the whole indebtedness would be £6,511-14-0. 30

Would you just be good enough to read the debits and the credits from the top of the page there?—

Debits :

27th Nov., 1942	£6,000 principal
10th Feb., 1943	£124-18-6 interest.

Credits :

10th Feb., 1943 £124-18-6 set off against the interest column. £500 entered in the capital column. Leaving a balance on 10th February, 1943 of £5,500 principal.

Then this £5,500 is brought forward on to the debit side. 40

The next item is 15th January 1944 interest 10 per cent. to date £511-14-0, in the Interest column.

The next entry on the same date: further advance £500 in the Capital column; making £6,000 Capital and £511-14-0 interest on that date.

Exhibit N. Will you refer please to Amirchand's ledger? Before you do that: The interest—what was that at the date of the last contract—reduced or increased?—Interest reduced to 8½ per cent. from 15th January 1944.

From 10 per cent. to 8½ per cent.?—Yes.

Now, Amirchand. You will see from his ledger he received an 50 advance.

The COURT : I think the only point that arose was to establish that these two were in fact in debt to Jaimal.

MUNRO : Well, it is a matter for my friends, Your Honour. They no doubt will require proof of the amount of the indebtedness.

MACFARLANE : We haven't up to date.

MUNRO : I just want to get one point, Mr. Sahu Khan. The amount of the principal indebtedness of Amirchand to Jaimal was £350 as at the date of his death ?—Yes.

10 Did you ever have a conversation with the deceased about those securities ?—About these particular securities ?

About those particular securities ?—I used to have conversation with him at the time of making the securities.

Did he ever say he was satisfied or dissatisfied with these securities ? —He never gave me the impression that he was dissatisfied.

Did he ever give you any positive impression that he was pleased to have those securities ?—No, not particularly.

CROSS-EXAMINED.

Mr. MACFARLANE : Jaimal got a letter from his nephews in the year 1942 ?—Yes.

20 Do you remember the date of it ?—I think it was about June.

From India ?—Yes.

Did he ever tell you he had given any money or any dispositions to his nephews ? That he had given them money or land ?—No. The land he had bought, the house he had built, the well he had dug : he always gave me the impression that it was a sort of family arrangement.

Of course, as solicitor's clerk, Mr. Sahu, you were a guide, philosopher and friend to him, I suppose, in most of his dealings ?—I don't think Jaimal needed any guide and philosopher.

30 He would see that you would do a thing ?—He would come and tell me to do a thing. That's the kind of man he was.

And you were intimately connected with his money affairs ?—As a solicitor's clerk. Not intimately.

Do you know whether in recent years he sent any money to his nephews, through the bank ?—Nothing to my knowledge, excepting the 20,000 rupees for which he sent a power of attorney.

The COURT : Is it to your knowledge that he sent a power of attorney ?—Yes.

MACFARLANE : One of his nephews is Waryama—I think it is the first-named second defendant ?—Yes.

40 He is one of the nephews ?—Yes.

Do you remember him when he was in Suva ?—I wasn't in Suva.

How long ago was that ?—I was out of Suva from the end of 1927 to June 1933.

You know of your own knowledge of his being in Fiji ?—I had heard he was in Fiji. I had never met the man—never seen him.

Did you visit Jaimal at the Sikh temple at the end of 1943 ?—Yes.

Are you aware that I made a will for him ?—At the time I didn't think the will was made.

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Well, did you go up and see him about the 24th February ?—I thought the will was not made then.

You knew there was one about to be made ?—Yes, one was about to be made.

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Did he mention his nephews to you on that occasion, or on any occasion, when you visited him there about that time ?—No.

Did he like his nephews or hold them in any regard ?—Oh, yes, he liked them very much.

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I think you remember about the time I went up and made a will and then he went over to Ba : do you remember if he had any money sent up to him from your office through you or anyone in your office at the time before he went to Ba ?—I came to know of it afterwards. I was on leave at the time, and I had come to know of it afterwards.

You knew through the office ?—It was sent through the office.

About £100 ?—About £50, I think ; I wouldn't like to swear as to the figure.

Some money was sent up to him while he was up there ?—Yes.

He had been suffering from T.B. for some time to your knowledge ?—Yes.

A couple of years, I think—a fairly long time ?—More than a year, I think. He may have had it, but perhaps we didn't know about it.

He was receiving treatment for more than a year ?—About that, yes.

Do you know his biggest debtor ?—Mehtar Singh.

One of the Defendants is his biggest debtor ?—Yes.

RE-EXAMINED.

*Re-examin-
ation.*

MUNRO : Is this letter which Jaimal received from one of his nephews ?—Yes, this is the letter.

Will you just read that out to the Court. It is written in Urdhu, is it ?

Exhibit O. —Yes. (*Witness reads letter in Urdhu and translates.*)

To Court : Did you ever hear Jaimal speak about Amirchand ?—Only referring to his ledger. There was nothing particular about it. He had told me when the loan was made that Amirchand had told him he came from the same village.

And you say you saw Jaimal at the Sikh temple ?—In February last ?—Yes.

That was the last time you saw him ?—That was the last time I saw him.

Would it surprise you to hear that on the 3rd April Jaimal was saying that Amirchand was like his own child and if he got well he wished to take him to his own country ?

MUNRO : This witness was never at Ba, sir ; he was not present—

WITNESS : I would be surprised, knowing Jaimal.

4 p.m. Adjourned.

No. 12.
EVIDENCE of Mehar.

Monday, 15th January 1945.

MEHAR (f/n SANDI), sworn.

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MUNRO : Your father's name is Sandi, not Saudi ?—No. Sandi.

And you live at Yalalevu, Ba, and are a cane farmer ?—Yes.

And one of the Defendants in this case ?—Yes.

Now will you tell me how long you have known the deceased, Jaimal ?
—For the last 38 years.

10 And is that the length of time you have been in the Colony ?—That
is correct.

And when you first came to the Colony, who did you come to ?—Came
to Jaimal.

And how long did you stay with him ?—About one year.

That would be in Suva, would it ?—Yes.

Now, during that period of 38 years, were you at all times friendly with
Jaimal ?—Yes, on very good friendly terms.

Jaimal used to live in Suva. Where did you live for that period of
38 years ?—One year I was in Suva, two years in Rewa : then I went to
20 Tavua.

The other side of the island ?—Yes.

So, for most of the 38 years you have lived on the other side of the
island ?—That is right.

Now, how often would you have seen Jaimal then ?—Sometimes in
six months, sometimes in one year, sometimes in two years. At intervals.

How long has Amirchand been in the Colony ?—17 years.

Have you been associated with him all that time, or only for portion
of that period ?—I have known him for the last 17 years. Ever since he
left Suva and went to Ba I have known Amirchand.

30 How long is that ?—For the last 17 years.

And has he been working with you over that period ?—No, not with me
all that time.

How long was he with you ?—For about one year.

Is he related to you ?—Not related to me.

And now Amirchand has his own lands, has he ?—Yes.

Do you know those lands ?—Yes, I know his land.

I think he has actually approximately 9 acres of freehold cane land ?
—That is correct.

Can you tell the Court what you would value those lands at per acre
40 —Amirchand's ?—In my estimation about £100 per acre.

And he has approximately 9 acres ?—Yes.

When did you first borrow money from Jaimal ?—When I was at
Tavua I used to borrow amounts like £10, £15.

When did you first borrow money from Jaimal ?—After I had gone to
Tavua.

And now you owe Jaimal approximately £6,000 ?—Yes.

And you have borrowed that on the security of your three freehold
titles, comprising approximately 162 acres ?—Yes.

What do you value your lands at per acre ?—I value my land this way :
50 One title £100 per acre ; another £70 per acre, another £60 per acre.

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The 98-acre block. How much do you value that at ?—Portion of that land is £100 per acre approximately—a portion of it.

How much do you value the whole of that title at ?—The whole of it at £80 per acre.

That is, roughly, £8,000. Now you have another title containing 63 acres ; what do you value the whole of that at ?—£70 per acre.

And you have one other title with 1 acre in it. Just what do you value that at ?—£200.

Is that the section you have your house on ?—No, it is vacant land.

Now you have tenants on your whole area haven't you ?—Yes, I 10 have.

And how much, if any, do those tenants owe you ?—Some of them owe me money.

What in the aggregate would they owe you ?—Roughly, between £2,500 and £3,000.

Anyhow, you borrowed the £6,000 from Jaimal on the security of those titles on the 27th November 1942 ?—Yes.

And your last transaction with Jaimal was on the 15th January 1944 ?—Yes.

When your debt was still £6,000 and the interest was reduced from 20 10 per cent. to 8½ per cent. ?—That is correct.

Did Jaimal ever during his life press you for the repayment of your last few loans from him which culminated in the £6,000 ?—Never.

Your freehold lands : are they all occupied by tenants—leased out to tenants—or only part of them ?—Ten acres is not leased out. 158 acres are leased out.

And ten you work yourself ?—Yes, on that ten acres I have my house and stable and I cultivate that.

Over the last four or five years when you used to come to Suva to see about your liens where did you have your meals ?—At Jaimals. 30

With Jaimal at his house ?—Yes. And at times at the Sikh temple.

Did you stay with Jaimal on those occasions ?—Sometimes I would stay and sleep at Jaimal's and other times I would go to the Sikh temple and sleep there.

Do you remember Jaimal coming over to Ba—that is, to your place, early last year ?—Yes.

Just about how long was that before he died ?—As far as I can remember five or six weeks previous to his death.

And how was it that he came around to your place ?—He was ill. 40

Who brought him ?—He pleased himself. He was ill and he just came.

Did he just arrive or did someone bring him ?—He sent two telegrams to Amirchand expressing his desire to come over, so Amirchand brought him from Suva to Ba.

And Amirchand was living then on his farm in the Ba District ?—Yes.

And do you know how many days there were between the two telegrams ?—On receipt of the first telegram Amirchand immediately left for Suva. A day or two afterwards we received another telegram from 50 him, after Amirchand left.

Did he discuss that telegram with you ?—Amirchand ?—

Yes ?—I was present there at the time when the telegram was delivered to Amirchand.

Just where was that ?—At Harnam Singh's store in Ba town.

That was received one day, and on what day, or how many days afterwards, did Amirchand go over to Suva ?—He received the telegram the previous day. The day following the receipt of the telegram he left early in the morning for Suva, and at 10 o'clock on the day he left another telegram was received.

10 Do you remember the contents of the second telegram ?—I don't know.

When did you next see Amirchand ?—When he came back.

How long was that after Amirchand received the first telegram ?—Approximately a week afterwards.

And did he come alone, or was he accompanied by anyone ?—He came back with Jaimal.

Where did he bring Jaimal to ?—He brought him to Yalalevu.

To whose house ?—My house.

20 And when he arrived did Jaimal say why he had come ?—He said, "I am sick, and I thought a change of air would do me good, so I came from Suva to this side of the island."

And did you then instal him in your house ?—Yes.

Well, you permitted Jaimal then to rest at your house, did you ?—That's right.

And how long did he remain ?—For four or five days.

Did he meal with you ?—Yes.

30 And in what part of the house did he sleep ?—The stable that I own is about 51 feet long, and a part of it on this side is where the horses are : that is the stable. On that side is quite an open verandah and a room : it was there Jaimal wanted to stay. He said, "I want to be in the open where I can get some fresh air."

Would you regard that part of the building as a comfortable spot or an uncomfortable spot to sleep in ?—It is quite comfortable.

Could he have been more comfortable in your house ?—If it was warm, as it was at that time, it would be better to remain where he had desired to stay. But if it was cold, then it would be comfortable to stay in my house. It depends on the weather.

And was it warm then or was it cold ?—It was hot and warm.

40 Do Indian farmers and cultivators in your district frequently use portion of their stables for sleeping in, or do they not ?—Nearly all the ones that I know live in a room that is next to the stable or is attached to the stable.

Was his room clean ?—Yes, it had cement flooring.

And it was clean ?—Yes.

You said he remained at that time about four or five days. What happened then ?—Then he was taken to the Lautoka Hospital.

Who took him ?—Amirchand and myself.

And why ?—He was ill and I asked him would it not be better if I showed him to the doctor at the hospital. He said, "All right, please yourself. I am willing to go."

50 And did you take him ?—Yes, we did.

And did he see the doctor ?—Yes. He was admitted to the hospital.

And how long did he remain in the hospital ?—As far as I can remember now, five or six days.

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And do you know why he left the hospital?—When I had gone over to visit him at the hospital I found he was not at the hospital and was at the Sikh temple at Lautoka. It was there I found him.

And did he want to remain there at the temple?—No. He expressed a desire saying, “Take me back.”

And you took him back, and where did you place him then?—Placed him in the house belonging to Indar Singh.

Who paid Jaimal’s expenses from Suva and then from Ba to Lautoka and back again?—After his arrival at Ba I bore all the expenses.

Why did you instal him in Indar Singh’s house?—The reason why I placed him at Indar Singh’s house is because my house is about 30 or 40 chains away from the main road, and during wet weather the road is very slushy and motor cars cannot approach the house. Indar Singh’s was much closer to the main road. 10

And is Indar Singh’s house on your land or is it on Indar’s own land?—It is on his own land.

Off your land entirely?—Yes, off my land. It is not on my land.

And how far away from your house, approximately?—Roughly about 60 or 70 chains away.

Did you take Jaimal to any other hospital apart from the Lautoka one?—On one occasion I took him to the C.S.R. Company’s hospital. 20

And where was that hospital?—At Rarawai, Ba.

Was that before you took him to the Lautoka hospital, or afterwards?—That was before I took him to the Lautoka hospital.

And why did you take him to the Rarawai hospital?—He said he had a toothache.

And did he receive treatment?—Yes, one tooth was extracted.

When you placed him in Indar Singh’s house who went there to live with him?—Myself. I was living there.

Did you come to live there?—I was staying and sleeping there, 30 looking after Jaimal. Occasionally I would go home.

When you brought Jaimal back from the Lautoka hospital to Indar Singh’s house, was anyone living there then?—No, it was empty at the time.

Indar Singh’s house?—Indar Singh’s premises were not occupied at the time I brought Jaimal from the Lautoka hospital.

Did Jaimal live in that house until his death? Constantly?—Yes, until his death he remained in that house.

And who else lived with him, if any?—Amirchand was also there, as well as myself and the man who prepared meals. He would be there 40 during the daytime but not at night.

The cook. What was the cook’s name?—Sukhu.

Did you and Amirchand spend most of your time there, both day and night?—Yes.

What time did the cook come in the morning, and when did he go at night?—Sometimes at 6 a.m. and other times at 7 a.m.

When did he go in the evening?—Sometimes before sunset and at other times after sunset.

Did you have visitors to the place to see yourself or Jaimal?—A number of persons used to come to visit him. 50

Just tell the Court the names of some of those people?—Dewa was one, Dalel Singh would come also sometimes, Nur Ahmed, Nur Mohammed,

Jang Bahadur, Hari Charan, and on some occasions Raghubar Singh, he would come too.

Can you remember any others?—Harichan would come, and several others whose names I have forgotten at present.

Did you welcome visitors or did you try and keep them away from the place?—No, I welcomed them. Why should I chase them away?

Who is your nearest neighbour, or the nearest neighbour, rather, to Indar Singh?—Nur Mohammed.

10 Is he the man you just mentioned as a visitor to Jaimal?—Yes, that's the one.

And would he come to visit Jaimal often or seldom?—Occasionally.

Is he Mr. Ragg's surdar?—Yes.

On occasions how many people would be at Indar Singh's talking to Jaimal?—Sometimes four, sometimes five, sometimes one.

Did you ever leave the property and go about your work or go to visit Ba?—Yes, if I had to do anything in particular I might go away for a few minutes or hours.

20 And would Amirchand leave the premises too for minutes or hours?—We would do it in turns. If I went out on business Amirchand would remain behind to take care of Jaimal. And if he went out I would stay back.

Now from the time he came to stay with you until his death, did you look after him well or poorly?—Looked after him very well.

Did Jaimal mention the fact to you that he had made a will just before he had left Suva to come to Ba?—Yes.

Did he discuss that fact with you?—He simply stated that he had made a will.

30 Did he ever discuss with you his property and his intentions regarding his property, after he came to Indar Singh's house?—Yes, on many occasions he discussed it with me.

That is his property and his intentions regarding his property?—Yes.

Will you tell the Court please what he used to say?—He used to tell me that money is not everything; money is nothing. Whatever there is it is the person himself. The life of a neighbour or the life of a man was everything. To him man was more than money.

40 What else did he have to say about his property?—He said further, "You have looked after me so well that I wish to make my will in your favour."

Did he say that once or often?—Quite often.

And what was the first occasion? How many days before he died did he say that to you?—About two weeks previously.

And how many times after that did he say similar words to you?—After that always. Whenever talking to me he would mention these facts.

And you—how would you reply?—I kept assuring him that he would become well; that he would pick up. I told him he need not have any fear; I stressed to him that he would recover.

50 And would those conversations take place in the presence of other witnesses?—In the presence of several other people he would say that.

Can you remember who they were?—On one occasion he said those words in the presence of Nur Ahmed.

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Any of the other visitors?—Nur Mohammed too. In the presence of Jang Bahadur. In the presence of Hari Charan.

This Hari Charan you refer to now?—Hari Charan, the rice miller, who has been a witness before me.

Is he in Court now?—(*Identifies Hari Charan*).

Can you remember the names of any of the other visitors he made his remarks to?—Harichand. I can't remember the others now. At times he would be talking and telling these people. I wouldn't be there at the time. I would let these people know that I would be going out.

Did Mr. Davidson come to your house subsequently?—Yes. 10

Why did he come?—To make a will.

Just tell us the circumstances surrounding that?—On Friday Hari Charan came——

Which Friday is that? How long before Jaimal's death?—Four days.

Yes?—Hari Charan visited Jaimal. He told Hari Charan "I am asking these people to let me make a will in their favour, and they are refusing. Either you take me or bring the lawyer here to make my will in favour of these two."

Yes?—At that time Amirchand, myself and Hari Charan were all 20 present, when he gave his instructions. Then Hari Charan began to write a letter. He was a school teacher before. I left the room and went out.

Did Jaimal ask for a lawyer before, or only on that occasion?—Yes, he had spoken and asked for a lawyer before that occasion. About twice before that occasion.

Now, coming back to that Friday, the 31st. You have just said you left the room?—Yes.

Now what was the next thing you did?—Immediately I returned back to the room I noticed that Hari Charan and Amirchand were on the point of leaving. 30

Was that the morning or the afternoon?—Evening.

Did you see any part of the writing?—I saw him writing, but I didn't understand what it was.

And you then left the room?—Yes.

And how long were you out of the room?—I had gone outside to relieve myself. Roughly, for about half an hour or an hour I was away.

When you got back you saw that Hari Charan and Amirchand were just about to leave?—Yes.

And did they go?—Yes.

Did you have any further conversation with Jaimal over the week-end 40 about his property or will?—Yes, he asked again later in the evening of the same day, Friday. Jaimal asked me, "Has the lawyer arrived yet?" and I said, "No, he has gone somewhere."

Who was present during that conversation—just you, or someone else?—Nur Mohammed was there at the time. I was there. Only two of us.

After that Friday afternoon, when next did you see Hari Charan?—After Jaimal's death I saw him.

Now you said that Mr. Davidson came to your house. On what day did he come?—On the Monday following. 50

In the morning or the afternoon?—Morning.

And with whom?—Rasul.

Rasul, his clerk ?—Yes, Mr. Davidson and Amirchand—all three came together.

And how was Jaimal feeling that morning ?—He was feeling all right.

Was he able to talk with you ?—Yes, he was. He was able to converse.

Was he coughing ?—Occasionally, spasms of coughing. Otherwise he was all right.

And what happened when Mr. Davidson arrived at the house ?—He entered the room he looked at me and said, “ Who is Jaimal ? ” I said, “ This person.” Then Mr. Davidson asked him, “ Did you send anybody to me ? ” Jaimal said, “ Yes.” “ Who did you send ? ” Jaimal replied “ Hari Charan.”

Yes ?—“ Why did you send him to me ? ” Jaimal said, “ To have a will drawn up.” He said, “ I have drawn up the will as per your instructions in the letter—according to the letter.”

And what did he go on to say then ?—Then Mr. Davidson said, “ I will read it to you.”

Where were you then ?—I was there.

Were you standing ?—I was sitting beside Jaimal.

On which side ?—On his right side.

And where was Amirchand ?—Amirchand was sitting on his left side. And who else was in the room ?—Khursaid.

Whereabouts was he ?—Behind me. He was standing.

Was anyone else in the room ?—Behind Khursaid was Jang Bahadur.

In the room or outside the room ?—He was neither outside nor inside.

Well, you must tell us where ?—He was just close to the doorway. There was another room behind. He was outside that room, and in the doorway of this room where Jaimal was.

Just repeat that will you, so we can get just exactly what you mean ?—If this is the room and if this is the doorway. (*Indicates.*) Mr. Davidson enters this way, facing Jaimal who is here. (*Indicates.*) Mr. Davidson enters through that door. Opposite there is a passage leading into another room. Jang Bahadur was standing where Mr. Davidson couldn't see him, in that passage.

Was Jang Bahadur in front or behind him ?—He was at the back of Jaimal.

And just outside the doorway ?—Just outside, but he could see in this room.

He was able to look through the doorway and see Jaimal ?—Yes.

Who else was in the house ?—Behind Jaimal in the same building was Harichand.

But he would be in a different room from Jaimal ?—Yes. And another one named Said Ali. He was also in the same building but in the other room ; and Sukhu was with them, too.

That is Sukhu the cook ?—Yes.

And could those people in that room hear what was going on in Jaimal's room ?—They could all hear, but Jang Bahadur could see as to what was happening.

Now just going back. You said Mr. Davidson then started to read the will. In what language—English or Hindi ?—At first in Hindi.

And did you hear the Hindi being read ?—Yes, I did.

And could you follow it and understand it ?—Yes, I could understand it.

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And while it was being so read, did you hear Jaimal ask any questions of Mr. Davidson or speak to Mr. Davidson?—Mr. Davidson asked the questions. Jaimal didn't ask any questions. He acquiesced. He said "Yes, it is all right."

Now will you just tell the Court what questions Mr. Davidson asked?—Mr. Davidson said, "Is this all right?"

Anything else?—He said "I read this out to you: the whole of the will. Have you understood it, and is it all right, and all correct?" Jaimal said, "Yes, it is all right."

Can you remember any other conversation which Mr. Davidson had 10 with Jaimal?—Yes.

Please tell them carefully to the Court?—He asked me whether Jaimal could sign his name. He said, "Can you sign your name?" Jaimal said "Yes, I can sign my name."

Yes?—Mr. Davidson then said, "I shall give you a pen: you write your name on this."

Now, during the reading of the will, was your name mentioned?—Yes. And Amirchand's?—Yes, Amirchand's name was taken too.

And did any discussion between Mr. Davidson and Jaimal take place then?—Mr. Davidson asked him to point out who was Mehar and who was 20 Amirchand.

And did Jaimal do anything?—This is what he did. (*Demonstrates.*) "This is Mehar and this is Amirchand."

And was that all he did?—Then Mr. Davidson asked him if he would sign his name.

And then what did Jaimal do?—Mr. Davidson handed him a pen. He had to place the paper on a book so that it would not bend inwards—that is, a stiff cover—and placed it in front of Jaimal. And Jaimal then made an attempt to sign his name. And after having written on the paper he handed it to Mr. Davidson who said, "This is no good." 30

Is that the paper that was being signed that day?—I am illiterate. I cannot say. I cannot read and write English.

Can you recognise what Jaimal tried to write? If you can't just say so?—No, I can't.

Well, then, Jaimal tried to write and Mr. Davidson said "That is no good." Did anything further take place?—Then he was asked to affix his thumb print.

And did he?—He did. That is, Jaimal placed his thumb print and Mr. Davidson had a look at it and he said, "This also is no good."

Tell us what took place then?—Then Jaimal spoke and said, "You 40 assist me and place the thumb print where it is proper to place the thumb print."

And did Jaimal then do so?—Then Mr. Davidson got hold of his hand and assisted him in affixing the thumb print.

After Mr. Davidson assisted him to affix his left thumb print, what took place then?—Then Mr. Davidson signed it. Then Rasul signed. After that he said, "Does a doctor visit you? Has a doctor seen you?"

Mr. Davidson asked?—Yes. Jaimal replied, "For the last five or six days a doctor has not seen me." There was a small bottle which contained medicine. Mr. Davidson smelt that bottle of medicine and then 50 he spoke to Amirchand and said, "You come with me. I shall give you a letter for the doctor."

And did he give the letter?—No, he didn't give the letter there in that room. He said, "You come with me." He took Amirchand with him.

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Mr. Davidson left then, did he?—Yes, and Amirchand went with him. And what happened to the will?—Mr. Davidson took it back with him.

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And did you do anything with Jaimal that day?—Amirchand came back later that day saying that he wasn't able to get the doctor, so Jaimal was taken to Nailaga.

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10 To Nailaga Hospital?—Yes.

Did he give any reason why he couldn't get the doctor?—I heard this from Amirchand. Amirchand said to me, that either the doctor has gone away to Raki Raki or he is at the Supreme Court at Lautoka. After Amirchand arrived he was taken to Nailaga Hospital.

And was he brought back that day?—Yes, he was brought back again.

And how long actually were you away from the house on the visit to the hospital?—Within two hours. It is close by.

20 Now the next day, just what took place?—Did Jaimal have any visitors?—The next morning, Tuesday, the N.M.P. from Nailaga came to visit him.

Do you know his name?—I don't know his name: he is known as "Vuniwai." (*Fijian for "medical practitioner."*)

Did he converse with Jaimal?—No he didn't speak with Jaimal. He looked at him, felt his pulse and was there for a short time and then left.

Was this in the morning or the afternoon?—About 9 or 10 o'clock in the morning.

30 And did Jaimal have any other visitors after that?—I forgot to mention that Nur Mohammed had visited him previous to the doctor's arrival.

Nur Mohammed came that morning before the doctor?—Yes.

And did anyone come to the house to see Jaimal after the N.M.P. had come?—About an hour before his death. There were several people who came after the doctor had gone. I don't remember their names. About an hour before his death Imam Din came and I remember Khursaid Khan and others, but I don't know the names of all the people that saw him.

And then Jaimal died early in the afternoon?—Yes.

40 Now the Plaintiffs allege in their statement of claim that on the day Jaimal signed his will he was not of sound mind. On the Monday. What would you say as to that?—No, he was of sound mind. Just about the time he was dying Dalel Singh came.

What was the state of Jaimal's memory on the Monday when he made his will—good or bad?—His memory was quite good.

The Plaintiffs allege that he was unable to recollect who were his nephews or whether he had any nephews. Did you ever hear Jaimal mention his nephews?—He never discussed his nephews or any relatives with me. He kept saying this: "Whatever there is in this world, man is everything: money is no concern."

50 I prefaced my question by saying on the Monday. Was that on the Monday he didn't mention his nephews?—He didn't say a word about the nephews on Monday.

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Did you know he had nephews?—I knew that.
How did you know?—He had mentioned them to me after he left Suva and came to Ba: he told me about the nephews.
How did he mention them?—With reference to the will already executed in Suva, he said “I have made the will in favour of my nephews.”
Did he have anything to say about them?—That is all—nothing else.

11.30 Adjourned.

11.45 Resumed.

You said that Jaimal mentioned these nephews to you when he came over to you from Suva?—Yes. 10

Now what did he have to say about them?—When he first came to Ba, he said he had made a will in their favour, but after a week he never discussed them.

Did he give you any reason for wanting to make a will in your favour and to cut out the nephews?—

CHALMERS: That is leading.

MUNRO: He mentioned he had nephews, he mentioned he had made a will in their favour, and now I want to know what the conversation was. Did he, Mehar?—He said only this. “Because of the fact that you people have looked after me so well in these days of illness, I want to give what I have to you.” He didn’t discuss his nephews after that. 20

Did he talk with you about the property he had?—No, he didn’t say where was the property he had; he said, “I have sent quite a bit of money to India.”

Did he say why and to whom?—No, he didn’t make it clear to me as to why. He simply said “Home.” He was sending money home.

Just one further question Mehar. You were talking about how the will was read over in Hindi to Jaimal. Did Rasul take any part in the proceedings that morning?—Yes, he took part when Mr. Davidson re-read the will in English. 30

And what was his part?—He was explaining or translating to Jaimal.

And when he was translating, speaking to Jaimal in Hindi, did Jaimal address any questions to Mr. Davidson?—No, he said it was all right.

On the day Jaimal made his will was his mind wandering?—He was of sound mind.

Did you or Amirchand take advantage of Jaimal and persuade him to make a will in your favour?—He was not influenced by us in any way.

Did you try to influence him?—We did not.

That is, you and Amirchand did not try to influence him?—We didn’t influence him in any way. 40

CROSS-EXAMINED.

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Mr. CHALMERS: Did you know Jaimal before you left India?—No.
Did you even know where he lived in India?—No.
Are you the same clan as Jaimal? The same caste?—Yes, of the same caste as Jaimal.

What is it?—Jat.

You arrived in Suva and you say you went straight to Jaimal’s?—When I arrived in the Colony of Fiji it was midnight. The next morning I went to Jaimal’s.

You went straight to Jaimal's?—Yes. I asked if there were any Punjabis here and I was told there were, and Jaimal's name was mentioned.

And Jaimal was the only Punjabi here?—There were other Punjabis. He was the nearest.

So it was just by accident that you went to Jaimal's?—Yes.

And later, of course, you came round to Ba?—Yes.

Now, before Jaimal came to stay in your stable how long was it before that that you had seen him?—The last time before he came to Ba.

10 Yes?—About a month I think.

Where was that?—At Suva. Before he came to Ba, a month before, I saw him in Suva.

And didn't he express a desire that he wanted to go to Lautoka hospital?—No, he didn't say anything of the sort at the time.

Anyway he came to stay with you, as you say, in Ba, and he stayed in your stable?—Yes.

And you say he stayed there because it was cooler than your house?—Yes.

20 Isn't it a fact that the house you put him to live in was a little bit of a tin house in which it was extremely hot—Indar Singh's house? After he left this place?—There are windows on all sides.

But wasn't it a small tin house?—Quite airy.

Wasn't it a small tin house—iron roof and iron walls?—It is not a very small house.

Did it have iron roof and iron walls?—Yes.

I put it to you that he was taken there because he didn't want to stay under the conditions in which he had been staying with you?—No, it was because it was approachable from the main road during wet weather; that is why he was placed in Indar Singh's house.

30 From April onwards in Ba it was the dry season?—No, it wasn't dry then; it was raining. Because of the weather we were not able to plant one seed of cane at that time. You live there, and you know that place very well.

However, you took him to Indar Singh's house you say. Well now, what I want to ask you is: before you took him to Indar Singh's house, did he tell you at your house about his nephews?—That is correct.

You say he came and stayed with you for four or five days and then he went to hospital. Was it during that four or five days that he was with you that he mentioned his nephews?—The day he arrived there at my
40 place, when I had asked him about his condition—as to how he was.

The COURT: When he arrived from Suva?—Yes.

CHALMERS: That is the day he told you he had made a will in favour of his nephews?—That is correct.

And was that also the time he told you that he wished to leave all his property to you because of the way you had looked after him?—No, not at that time.

When was it?—After he returned from the Lautoka hospital.

After he returned from the Lautoka hospital. Where was that?—When he was in Indar Singh's house.

50 Did he tell you that the day he reached Indar Singh's house?—While living there. I forget now whether it was the same day he arrived at Indar Singh's house or a few days after.

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Perhaps you will tell us exactly what you did for this man that made him want to give you everything. Briefly, tell us what were the main things you did for him—Well, we looked after him as a sick man should be looked after. That is how we looked after him.

For how long?—While he was alive.

For how long?—Didn't record it as to how many days.

This looking after: what did it constitute? What was the amount of work you actually did?—Massaged him; looked after him; saw to his requirements; if he wanted anything or desired to get anything it was immediately sent for; whatever he desired to eat, if he said "I prefer such 10 and such a thing," we would get it immediately for him.

And you employed a cook for him?—Yes.

And all this time did Jaimal ever pay anything?—No.

Not even goods from the store?—No.

And he didn't even pay his travelling expenses to the hospital?—I paid all that. Jaimal didn't.

All his travelling expenses to and from the Lautoka hospital—were they paid by you?—The return trip from Lautoka was paid by Amirchand. I paid one side.

Who paid the hospital fees?—It is a Government hospital. We do 20 not pay anything.

You say he was seen by a doctor a week or so before he died. Who paid for this doctor?—Amirchand paid the fees.

To what doctor?—Clunie.

Now we have it. So Dr. Clunie visited this man about a week before he died?—Yes.

And you were there when Dr. Clunie came?—Yes.

Would you be surprised if Dr. Clunie told me he never knew Jaimal and never went to see him? What would you have to say to that?

RICE: I suggest my friend can't put to him what Dr. Clunie told him. 30 He can put it to him that Dr. Clunie never saw him.

CHALMERS: I put it to you that Dr. Clunie never saw him.

And you saw Amirchand paying Dr. Clunie his fee?—Yes.

How much did he pay him?—I don't know.

Are you calling Dr. Clunie as a witness? Do you know whether Dr. Clunie is being called as a witness?

RICE: Isn't that for us, with respect, sir?

The COURT: He is the party, isn't he?

CHALMERS: Is Dr. Clunie being called as a witness?—They can bring him to give evidence. Amirchand and Balwant Singh are the people 40 who paid his fees. If they want they can call him.

Were any of these people present—Nur Ahmed or Jang Bahadur or Hari Chand?—There was myself present on that day, and Balwant Singh was present on the day Dr. Clunie arrived.

Balwant Singh—is that the son of Ganga Singh?—Yes.

And who else?—I don't remember now who else were there.

Amirchand?—Yes, he was there.

Who did you say went to get Dr. Clunie?—Balwant Singh and Amirchand both went to get Dr. Clunie.

And did he come in his own car?—He came in his own car. 50

Dr. Clunie had a car at that time?—I don't know whether he owned that car or whether it was a taxi, but he came in his own car: Balwant Singh and Amirchand didn't supply a car. They didn't get a car for him.

Did Balwant Singh and Amirchand come back with the doctor?—No, they arrived first. Balwant Singh and Amirchand got to the house before the doctor arrived.

And how many days was this before Jaimal died?—As far as I remember, a week before he died.

Why was it necessary to get this doctor—Dr. Clunie?—He was sick and we wanted a doctor to see him. He was a sick man.

And what did Dr. Clunie say should be done about this man?—He examined him and gave him medicine for one week.

10 And was Dr. Clunie asked to come again after that?—Amirchand did make a request that he come daily and visit him.

And did he come daily?—No, he didn't.

Did he come again?—He told Amirchand that he had given him medicine sufficient for a week and that after that medicine was finished he would see him again.

Now you remember Mr. Davidson picking up a bottle and smelling it and saying it was cough mixture—you remember that?—Yes.

I think you said Mr. Davidson asked Jaimal when he had seen a doctor and Jaimal said he hadn't been seen by a doctor for about a week or so.
20 Is that correct?—Yes.

Did any of you there, excluding yourself, tell Mr. Davidson that he had been seen by Dr. Clunie?—We did. We said a week before—a few days ago—a doctor had seen him.

Did you mention the name of the doctor?—Yes, the name Dr. Clunie was mentioned.

Well can you account for the fact that neither Mr. Davidson nor Rasul have mentioned Dr. Clunie's name? —

RICE: My recollection is that Mr. Davidson said either Dr. Clunie or Dr. Broome—he wasn't sure which—was mentioned to him.

30 (Shorthand note read—p. 67—p. 75 of this record.)

CHALMERS: Now Mehar, did Mr. Davidson sit down in that building and write a note and give it to Amirchand to take to Dr. Clunie?—No, he didn't do anything of the kind. He told Amirchand to accompany him.

Would you say Mr. Davidson's memory wasn't very good if Mr. Davidson said that he wrote the chit there and then?—I don't know why he should say that.

Did Amirchand tell you he had been to the Nailaga hospital to see the N.M.P. the day before the will was signed, on the Sunday?—He didn't
40 say anything to me.

Did he tell you that he had taken Jaimal to see the N.M.P. on the Monday?—When he returned from town—that is after he accompanied Mr. Davidson—he came back and said Dr. Clunie was not available, and then in my presence he took Jaimal to Nailaga Hospital.

You saw him?—I saw him take Jaimal to the hospital at Nailaga.

He carried Jaimal out in his arms, did he?—The motor car comes right down to the doorstep of Indar Singh's house, and Jaimal was assisted into the car from the room.

Didn't Amirchand pick Jaimal up off the bed and carry him out into
50 the lorry?—No, he was not carried. Jaimal walked to the car. He was assisted by Amirchand.

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Did he walk down the steps?—Yes, assisted down the steps. He stepped down but was assisted. His hand was held.

Did he get up into the lorry by himself, assisted, too?—It was a motor car. The motor car's door was open just near the step. Having come to the step Jaimal was assisted by Amirchand on one side. Jaimal was holding him with his hand on one side, and with the other hand he got hold of the door of the car and stepped in.

Who went with him to the hospital?—Amirchand.

Why didn't you go?—I stayed back.

Why did you not go?—There was no necessity for two of us to go at 10 the time.

You were not greatly interested in his health?—I had interest in his health, yes.

Did you think it was worth while going to find out what the man's condition was?—Just at the time no one was left at the house to get Jaimal's milk, and I stayed home.

I suppose the question of Jaimal's food was a very important thing. I mean to say at that time his feeding was important—he was eating his food?—Yes, that is so.

Curry and rice and all that sort of thing?—He was having tea made 20 of pure milk. He wanted pure milk to be boiled and tea added to that : no water.

That was what he was living on?—And chicken soup, and sometimes bread with a kind of black sauce ; he liked that on his bread as a kind of bread spread.

And of course you had a cook to cook this for him?—How about ourselves?—Someone has to cook for us.

You couldn't cook yourselves?—No.

And the cook wasn't a Punjabi was he?—No.

Do you usually employ non-Punjabis to cook your food?—Why not? 30 There are many non-Punjabis who are working for Punjabis, and many North-Indian women are married to Punjabis.

I want to take you back to the time one Hari Charan visited Indar Singh's house when Jaimal was there?—Yes.

Now you and Amirchand were there when he arrived, eh?—Yes.

And anybody else?—No.

And immediately Hari Charan arrived was this talk going on then about the making of the will?—Not at the time—not before he arrived. The will was not discussed before he arrived.

Let us have exactly what took place when Hari Charan arrived?— 40 Hari Charan came and sat down and they were talking for a few minutes.

What particular day was this?—Friday. Hari Charan came on the Friday sat down and started talking.

I want to know what took place—what the talk was?—When Hari Charan came and sat down, Jaimal, after a little while, said to him, " Look, Hari Charan, I have been asking these people to take me to a lawyer or bring a lawyer to me to draw up a will, but these people wouldn't."

Had you refused to get a lawyer or take him to a lawyer?—Yes, we had some time ago when he expressed a wish to be taken to a lawyer.

How long ago was this, that he expressed his wish and you said " No " ? 50 —About a week before that time.

Was Hari Charan present on that occasion?—Yes. On one occasion Hari Charan was also there and he refused to take him.

So a week before Hari Charan was present on an occasion when he asked you to take him to a lawyer or to get a lawyer and you refused, is that right?—Yes.

Well, will you tell us why you refused?—We were wishing that he should recover. We knew that he would. He probably was trying us out. He might be just testing us by saying, “Take me to a lawyer.” Maybe he was testing us, I don’t know.

Now, he had made a lot of money, and seeing that he was anxious to give you his property why didn’t you try him out by getting him a lawyer?
10 —Well, he was a man that had never refused me money or anything if I ever wanted it. And I always wished that he would live because I was in no need of his property or anything like that.

When he was anxious to leave you his property and asked you to get a lawyer, why did you not comply with his request, even if he intended to leave his property to you?—We just didn’t take it.

In fact, you didn’t want his property, is that what it was? You weren’t interested?—I am not in want. I wasn’t anxious to get his property.

And that is why you didn’t go to the lawyers?—By him living I
20 was happy. In other words, I wouldn’t be placed in any difficulties by him living. I would rather see him living.

Now, when he said to you that he wished to leave everything to you because you had looked after him so well, did he add the name of Amirchand to that, or was his reference only to you?—He always mentioned both of us.

Well now, you weren’t interested in his intended munificence: what about Amirchand, wasn’t he interested?—Ask him when he is here.

But you were both present when he made this expression?—Well, as far as I know, he wasn’t anxious to get his money either. In my view,
30 as far as I know, I don’t think he wanted it.

Would you call Amirchand a wealthy man?—No.

So Hari Charan was there, you say, a week previously when you refused to get this lawyer or take him to a lawyer; and he was also present a week later again when Jaimal said again, “These people won’t get a lawyer or take me to a lawyer”?—Yes, he was present too at that time.

Why should Jaimal tell Hari Charan “These people won’t take me to a lawyer or get a lawyer for me,” when he must have known that Hari Charan was there on the previous occasion when you people had refused?—Well,
40 that is not the only time he had mentioned it. The day previous to that, on Thursday, he told other people as well.

I am talking about Hari Charan. There were only four people present on the Friday: only yourself, Amirchand, the deceased and Hari Charan?—Jaimal ought to know why he said that to Hari Charan.

Now Jaimal started to tell Hari Charan to do certain things about getting a will made, on the Friday?—Yes.

And did Hari Charan then write down what Jaimal wanted to be put into the will?—I wasn’t present. I had left the room at that point. He was writing when I left the room.

How long had he been writing before you left the room?—Just a short
50 time. I was rolling myself a cigarette, and I left rolling the cigarette.

So you weren’t interested in these instructions that Jaimal was giving about the will?—I didn’t take any interest in that.

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Now how long did this talk go on between Hari Charan and Jaimal ?—I have told you that I left the room and had gone out to relieve myself. Roughly, about half an hour.

What time of the day was it ?—Roughly, about 12 o'clock I think it was. It was an overcast, cloudy day.

When you came back again, was Hari Charan still writing his notes ?—As I entered the house he was just about to leave.

Did you see the paper ?—I saw the paper in his hand as he was leaving. Was it in pencil or ink ?—I didn't pay any attention to that. I don't know whether he wrote with a pencil or ink. 10

Did you make any enquiries as to what he was writing down ?—No, I didn't.

He can write in English. Did you suspect that he might be preparing the will for him ?—I had no suspicions of anything like that, no.

And then before they set out, did you make enquiries to find out all that had been taking place in your absence ? Before these people left did you ask them what they were going to do ?—I came from the back into the room, and they were going away towards the front of the house, leaving the house. I didn't ask them any questions.

Did you make any enquiries to find out when the will was to be made ?—Of course you didn't know what they left for ?—I didn't know what they were doing. 20

In fact, it is clear that when they left you didn't know that Hari Charan or Amirchand were going to get a will made ?—I didn't know that they were going to make arrangements to draw up a will.

When did you first hear ?—Jaimal was the one that told me afterwards. Jaimal told you afterwards. When was that ?—After these two had left.

And then when they came back ; did Amirchand come back after going away with Hari Charan ?—Amirchand returned alone. 30

Did he tell you that he spoke to Mr. Davidson about a will ?—Jaimal asked Amirchand " Why all this delay ? Where have you been all this time ? Why didn't you come back earlier ? " He said, " I didn't find a lawyer. He will come to-morrow." (*Corrected.*) " I didn't get a lawyer ; he will come to-morrow." " I couldn't get a lawyer : he will come to-morrow."

Did he mention anything about going to Mr. Davidson's office with Hari Charan ?—It wasn't told to me ; it was told to Jaimal. He didn't mention any names. He simply said, " The lawyer will be here in the morning." 40

And he never told Jaimal that they had been to Mr. Davidson's office and they hadn't been able to get Mr. Davidson ?—He didn't mention any man's name. He simply said to Jaimal, " The lawyer will be here to-morrow."

You heard Amirchand, a great friend of yours, talking to Jaimal about this. Did you ask Amirchand what arrangements had been made about the will ?—No, I didn't ask him.

Again you weren't interested ?—I didn't take any interest.

From what Amirchand said the arrangements were that the lawyer should go on the Saturday morning to make the will ?—Yes. 50

Then did the lawyer come on the Saturday ?—Jaimal asked again.

On the Saturday he asked again ?—Yes, he asked on the Saturday.

Asked you?—He asked Amirchand.

In your presence?—In my presence.

What did Amirchand say?—He said—Jaimal said—“you told me a lawyer would be here this morning; he has not arrived.” Then Amirchand said, “I am going out now; if I get him I will bring him back.”

What time of the day was that?—In the morning—about 8 o'clock.

Did he leave to get a lawyer?—He left the place and went away to the town.

Did he get a lawyer on the Saturday?—No.

10 Did he come back and tell Jaimal?—Yes, he did.

And what conversation did he have?—Amirchand told Jaimal, “To-day is Saturday and he is very busy. He was not able to come to-day.” The conversation was about the lawyer.

I want to hear all about the lawyer?—He said, “Why didn't you bring the lawyer with you?” Amirchand said, “It is Saturday to-day, it may be he will come on Monday.”

Was there any mention then of the lawyer's name?—Even then no mention was made of any lawyer's name.

20 Nothing happened on the Saturday, then. When Sunday came did he ask for a lawyer?—On Sunday he did ask. He said, “Is the lawyer coming to-morrow?” Amirchand said he would be coming in the morning, the next day.

So that on the Sunday Amirchand told Jaimal that the lawyer would be coming in the morning?—Yes.

And was any lawyer's name mentioned then?—No mention was made as to what lawyer or who was to come on Monday.

On the Monday morning did the lawyer come?—Yes, round about 10 or 11 o'clock, the lawyer arrived.

30 Before 10 or 11 o'clock did Jaimal ask anything further about this will? Ask you or anyone else?—Yes, when he woke on Monday morning he said, “To-day is Monday. Bring the lawyer this morning.”

Up to that time did you know who the lawyer was?—No.

Now on the Monday who went to get the lawyer?—Amirchand.

Was there any discussion between Amirchand and Jaimal before Amirchand went to get the lawyer?—Jaimal asked him to go. He said, “Go and get the lawyer as you said.” So he left.

What time was this?—Round about 8 o'clock. 7 or 8.

1 p.m.—Adjourned.

2.30.—Resumed.

40 You have told us that on Monday morning, the day the will was drawn Amirchand went to get a lawyer?—Yes.

When Mr. Davidson arrived was that the first time you knew anything about Mr. Davidson in connection with the will?—Yes, I didn't know before that.

You are a very great friend of Amirchand, are you not?—Yes.

50 Were you not surprised at Amirchand not telling you what arrangements had been made in connection with the drawing up of the will?—Well, Jaimal asked it in my presence. I have already told you I was there. In my presence Jaimal asked about the lawyer and Amirchand said that he would go.

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Being a friend of Amirchand, and your name and Amirchand's being mixed up in connection with this bequest that Jaimal intended to make to you, what I am putting to you is this. Were you not surprised that Amirchand shouldn't have told you what had been arranged about the making of that will?—I was standing there, and in my presence Amirchand told Jaimal.

(*To Interpreter*): Will you ask him to answer the question?—I was satisfied. When he came back on the Friday, Jaimal asked him what had happened, and Amirchand replied that the lawyer would be coming.

And you weren't interested to find out who the lawyer was?—It wasn't necessary for me to ask. He said a lawyer, and that was sufficient for me. He didn't name any lawyer. 10

Didn't he come back and tell you "First of all we went to get Mr. Rice; we couldn't get Mr. Rice and then we went to see Mr. Davidson." Didn't he tell you that?—I was standing there and I could hear with my ears what questions Jaimal was putting to Amirchand and his replies to Jaimal were satisfactory to me.

Now on that day or round about that day that Jaimal came to your house he had told you that he had made a will leaving all his property to his nephews?—Yes. 20

So did you know at that time or before that that he had any nephews?—Yes, I knew.

So that when he told you he had made a will leaving his property to his nephews you would know who he meant?—Yes, I understood.

And those are his nephews in India?—Yes.

How many are there?—I don't know how many.

Now what led up to it? What made him tell you about his nephews in India?—He started off by saying he was ill, and that is why he said, being a sick man, "I have already made my will in favour of my nephews, and I have come here." 30

Did he tell you at that time too that he didn't expect he was going to live long?—He had this hope of going back to his home in India.

Did he tell you that he didn't expect to live long?—No, he didn't say anything of the sort.

The COURT: When did he tell you he hoped to go back to India?—The day he arrived in Ba.

CHALMERS: Did he ever tell you that he felt he had not long to live?—Roughly about two weeks or 2½ weeks prior to his death he did say that. That he didn't think he would live long.

Where was he when he said that?—It was in Indar Singh's house. 40

After that did he tell you or mention anything about his nephews again?—No.

Did he by any chance tell you that when he made the will leaving his property to his nephews Amirchand was present?—You mean in Suva?

Yes?—Amirchand had gone to Suva. He was here in Suva at the time. I didn't ask Jaimal that.

Did Jaimal tell you that when he made the will leaving his property to his nephews Amirchand was present?—No, he didn't say anything like that. I didn't ask him and he didn't say it.

Did Amirchand tell you he was present when that will was drawn, leaving the property to his nephews?—Jaimal told me. Amirchand was standing there. Jaimal told me. 50

To Court: Told you what?—That he had already drawn a will.

CHALMERS: Did Jaimal tell you or did Amirchand tell you that Amirchand was present when Jaimal made the will leaving property to the nephews?—Jaimal didn't tell me Amirchand was present when the will was signed, nor did Amirchand tell me he was present when the will was signed.

10 Was Amirchand present at any time when Jaimal said he had made a will in Suva leaving his property to his nephews?—Yes, the very same day he arrived in Ba and at the time when he said he had left his property to his nephews, Amirchand was sitting right in front of him.

Now when Mr. Davidson arrived there in connection with the will—I want you just to remember very carefully. There are just a few questions I want to ask you about things that happened. Mr. Davidson you say explained the will in Hindi?—Yes.

What did Mr. Davidson say about relatives?—Mr. Davidson asked him if he had anyone—“Have you any wife or children or anyone belonging to you?” “I have no one” was the reply.

Where were you at that time, when that very question was asked by Mr. Davidson?—I was there.

20 Where?—Close to Jaimal.

When Jaimal said that he had no one, what did you say?—I didn't say anything.

Why didn't you?—He said, “I have no one. Whatever I have are these two only. Only these two I have: no one else. Mehar and Amirchand.”

When Jaimal said that he was saying something which you knew to be absolutely incorrect, didn't you?—Jaimal ought to know if that was incorrect or not.

30 But you told us that you knew of your own knowledge that he had nephews?

INTERPRETER: He said, “——” (*Hindi*). That is an expression, when a man's heart goes out to those people who are with him at that time. He may have a wife or children, but his affections are only for those who are near him at that time.

But when he said he had no one, you knew that was incorrect.

PATEL: Could we have the implication of those words.

RICE: Our suggestion is that those words are really an idiom—that really they do mean what Mr. Interpreter says. There are two possible translations, one the literal and one the idiomatic.

40 The COURT: You can call someone to tell us what the sentence means.

RICE: Such being the case, may we have from Mr. Interpreter what the Hindi words were.

INTERPRETER: Hamara koi nahi—meaning “I have no one.”

CHALMERS: Did Jaimal say this: “I have no next of kin nor blood relations in Fiji”—“At this time there is no one for me but these two.”

I would just like to put these words to him. I want to know did Mr. Davidson put these words to him. The words are: “I have no next

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of kin nor blood relations in Fiji." Did Jaimal say that?—This is what happened. Mr. Davidson asked him "Do you have a wife, family or children?" and his reply was, "At this time I have no one."

Did he use the words "blood relations"?—Jaimal said, "I have no one."

Did he say, "Have you any blood relations"?—He did.

What did Jaimal say?—"I have no one."

What did you think he meant?—At that time I understood it to mean that because of the fact that these two people had helped him at this time of need his affections were for them. 10

Was he asked if he had any blood relations outside of Fiji?—He was asked anywhere at all: "Have you anyone related to you?" It can mean by blood as well.

Did you not think of telling Mr. Davidson then, "Yes, I know he has relatives"—Why should I interrupt? The conversation was between the other two.

You didn't see any reason to interrupt?—Couldn't see any reason.

You knew that the effect of the will was to deprive these nephews of the property which he had said he had left to them?—Yes, at the time it was being read out I knew. 20

Did Mr. Davidson ask you your father's name?—Yes.

At that time?—Yes, during the reading of the will.

Did he ask Amirchand his father's name at that time?—Yes, he asked him also.

What did you say your father's name was?—I told him my father's name.

What did you tell him it was?—Sandi.

What did he read out from the will?—Mr. Davidson said "father's name Sandi."

In connection with Rasul; you say Rasul interpreted the will?— 30
Yes.

Where were you before Mr. Davidson and Rasul arrived?—I was near Jaimal.

And you were waiting there expecting Mr. Davidson, were you?—We were looking after Jaimal at the time. We were waiting. Jaimal told Amirchand to go and get the lawyer and we were waiting and expecting the lawyer to come.

Now you went and sat right alongside Jaimal?—Yes.

You knew that shortly somebody was to arrive with a will?—Well, Amirchand had gone for that purpose. 40

I put it to you that you were expecting somebody to turn up?—Jaimal was asking me and I said "They will come."

How long did you sit there waiting for the will to arrive?—These people arrived about 10 or 11 o'clock.

How long were you sitting there waiting for the will to arrive?—I always sat there beside Jaimal, every day.

The COURT: Tell him to answer the question?—Day and night I sat beside him.

The COURT: Tell him that if he doesn't answer the questions put to him the Court is liable to draw very unfavourable conclusions. He must 50
listen carefully to the questions and give an exact answer, and not answer

something else. The question he has just been asked is : How long was he sitting there waiting for the lawyer to come ?

WITNESS : About two or three hours.

CHALMERS : You have previously told the Court that you were not interested in what went into the will so you were not listening to the instructions that were being given about it. Is that correct ?—Jaimal asked me to sit down there : that is why I was sitting there.

(*Question above repeated.*)—That is true.

10 But you were interested the day the will was being signed ?—That is because Jaimal asked me to sit down near him.

Did he ask you to sit there and wait until the will came ?—Yes, he said, “ Keep sitting here until the will arrives.”

I take it he was terribly afraid he might die without leaving you this property ?—Jaimal would know about that : I don't know about that.

I put it to you that all along he was most keen to leave you this property wasn't he ?—Since when ?

You have told us that on many occasions he asked for a lawyer or to be taken to a lawyer ?—Since he came to Ba ?

20 Yes ?—After he stayed one or two weeks at Ba it was then that he decided to change the beneficiaries.

Why did you yourself not go at his request and get the lawyer ? Why was it left to Amirchand ?—I had hoped and I wanted my financier to live. I didn't want him to die, and Amirchand did speak to me and say, “ You go and get a lawyer,” and I said, “ No, you go.” Occasionally Jaimal would tell Amirchand and me—would tell us both together. And I also was suffering with a cough and asthma. It was wet weather and I couldn't move about very much outside.

Who normally does your legal business ?—At first you were my counsel, and you left the Colony and went away to New Zealand.

30 Since ?—Mr. Rice.

At that particular time, who was your lawyer ?—Mr. Rice and Mr. Bagnall.

When Jaimal was asking for a lawyer, didn't you suggest your own lawyer ?—I didn't suggest my lawyer to him.

Now I want you just to go through these people whose names you have mentioned. Nur Ahmed : is he a Punjabi ?—No, he is from the western provinces in India.

Nur Mohammed ?—They are quite close to Punjabis, these two men.

Is he a Punjabi ?—Those who have long beards are Punjabis.

40 Is he, or is he not, this Nur Mohammed ?—It is close to Delhi. These people, Nur Ahmed and Nur Mohammed are close to the provinces of Punjab.

Are they Punjabis ? Are they members of your Gurdwara Church ?—That is not their church. They would go to a Moslem temple.

Is he or is he not a Punjabi ?—From the western provinces.

You are not prepared to say whether he is a Punjabi or not. Jang Bahadur : is he a Punjabi ?—No.

Raghubir Singh ?—No.

Hari Chand ?—Yes.

50 He is a brother of Amirchand ?—Yes.

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ation.

This man who took the instructions—Hari Charan—how many times did you see him at Indar Singh's house?—Came there about three or four times.

Did he ever stay long on those occasions?—Sometimes he would stay for half an hour, sometimes for an hour, or less than that.

RE-EXAMINED.

Do Indians in your district, when referring to lawyers, refer to them by name, or do they merely call them wakhil-sahibs?—Without being asked they won't mention the name. They will simply say "wakhil-sahib," and if you ask "Who is he," they will say so-and-so. 10

You say you had been sitting beside Jaimal for two or three hours before Mr. Davidson came that Monday morning. Did you often sit beside Jaimal, and for some length of time?—Yes, for long periods. Nearly every day I used to go there.

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Boko Tavai,
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No. 13.

EVIDENCE of Willieme Boko Tavai.

WILLIAME BOKO TAVAI, *sworn.*
Native Medical Practitioner.

RICE : Subject to the Medical Officer for the Ba District, you are, I think, in charge of the Nailaga Hospital at Ba?—That is correct. 20

I understand that on the 4th April last year you authorised the burial of an aged Punjabi who had just died?—That is correct.

Do you know his name?—Jaimal.

That was on the 4th April. The day before—3rd April—did you see the man?—I did.

Whereabouts?—At the dispensary, Nailaga Hospital.

Was he brought in to you?—Yes.

By whom—do you know?—Amirchand.

Is this the man you mean?—That is the man. (*Amirchand identified.*)

And did you talk to the patient, Jaimal, at all?—Yes, I spoke to 30 him.

In what language?—In Hindi.

And what did you say to him—do you remember?—I said, "Have you any pains anywhere in your body?"

Just before we get his reply, can you tell us what time of the day this was?—After one in the afternoon.

You can't say how long after one, can you?—I can't remember now. It was after one, I know.

And you asked him whether he had any pains in his body. What was his answer to that?—He didn't speak but pointed like this. (*Indicates 40 left side of chest.*)

And did he point anywhere else?—To his throat, below his neck, just near the Adam's apple.

Did you ask him anything else at that stage or not?—That was all I asked him.

And then did you examine him?—Yes, I examined him.

As a result of the examination, what did you find?—I found that he was suffering from pulmonary T.B.

During the examination did you ask him any questions about his condition? Or anything else, for that matter?—I didn't ask him any further questions.

Having examined him, what did you do?—I gave him some medicine.

And did you do anything further for the man after giving him the mixture?—Then I told Amirchand he could be taken away.

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William
Boko Tavai,
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10 Do you think he understood the questions you put to him all right?
—I believe he understood thoroughly what I asked him.

Well you told Amirchand to take him home?—Yes.

Now the following day, the day he died, did you see him then?—I saw him.

Where this time?—At the house he was kept in. Where he was staying at the time.

Do you know who the owner of that house was?—I think it is Indar Singh's house.

In Yalalevu?—That is correct.

20 And you have told us it was on the 4th April—what time, do you remember?—Shortly after 11.

Morning?—Morning.

And this time what did you find his condition to be?—A very weak condition.

Was he conscious? Could he understand what you were saying this time, or not?—4th April, at 11 o'clock?

Yes.—No, I don't think he was conscious enough to understand what I was saying, or was able to understand what I was saying.

And on this occasion how long did you stay with him?—Roughly, about five minutes.

30 Were you present when he died?—No, I was not.

But I think you were called in, weren't you, shortly afterwards?—No, I wasn't.

At any rate, you certified the cause of his death, I think, didn't you?
—I certified his death, yes.

What did you certify the cause as?—Pulmonary tuberculosis : cardiac failure.

And as near as you can say, can you tell us what time he died?—It must have been in the afternoon, about 1 o'clock or thereabouts. Immediately he died word came to me.

40 And you authorised the burial, I think?—Yes, I did.

CROSS-EXAMINED.

MACFARLANE : Amirchand brought Jaimal to see you?—Yes.

And he carried Jaimal from the bus into the dispensary?—He was carried, yes.

Cross-
examina-
tion.

Jaimal was in a very weak condition?—He was.

Amirchand told you he had a sore throat?—Yes, he did.

Amirchand also told you Jaimal was coughing a lot and couldn't speak?—Yes, he did ; he told me that.

50 Amirchand saw you on the Sunday, 2nd April, did he not?—Yes he did.

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And asked you to go and see Jaimal ?—Yes.

He told you that Jaimal was too ill to be brought to you ?—He said that to me, yes.

And you told Amirchand to bring Jaimal to your hospital ?—I said, “If you can’t find another doctor who would visit him, then bring him to me.”

You are not permitted, according to your duties, to visit outside patients ?—That is true.

You suggested to him, I think, some doctors’ names—Dr. Delbridge, and I think another ?—I mentioned Dr. Clunie and Dr. Delbridge, both, 10 to him.

Dr. Delbridge is at the Namosau Methodist Mission ?—She is a lady doctor at the women’s and children’s mission hospital at Namosau.

At Ba ?—Yes, at Ba.

Well, Amirchand went away after this conversation ?—Yes.

And he came back to see you on the Monday morning early ?—Yes.

And again asked you to go with him to see Jaimal ?—Yes, he did.

And you told him you couldn’t ?—Yes, I told him it was difficult for me to go.

Did he give you a letter from Mr. Davidson ?—No. 20

A letter addressed to Dr. Clunie ?—No.

Did he mention that he had a note or any sort of letter from Mr. Davidson ?—He didn’t mention it or let me know about it.

When you saw Jaimal on the morning of the 4th, on the Tuesday morning, you realised he was dying, didn’t you doctor ?—I knew that he was going to die.

RE-EXAMINED.

Re-examin-
ation.

Can you tell us whether at that particular time Dr. Clunie was in Ba or not ?—I don’t think he was in the Ba district at the time.

Now, Dr. Delbridge, she is a lady doctor, isn’t she ?—Yes. 30

She is the wife of the reverend gentleman who is in charge of the Methodist Mission at Namosau, Ba ?—That’s right.

And in connection with that mission they run a small hospital, don’t they ?—Yes.

Dr. Delbridge being in charge ?—Yes.

Now, Dr. Williame, can you tell me this : does Dr. Delbridge ever visit outside patients, or does she confine her activities solely to the hospital, as you do ?—I don’t know about that.

You don’t know ?—I don’t know whether she visits outside patients or not. 40

To the Court : When you saw Jaimal at the hospital on the 3rd, did you form the opinion that he was dying ?—I did. I knew at the time that this man would die very soon.

Was it any surprise to you that he died the next day ?—I wasn’t at all surprised to hear the next day that he was dead.

Adjourned.

EVIDENCE of Amirchand.

Tuesday, 16th January, 1945.

Fifth Day.

AMIRCHAND (f/n Utham), *sworn*.

RICE: You are a cane cultivator at Ba, Amirchand?—Yes.

You cultivate your own plot of freehold land?—Yes.

What is its area?—I have 9 acres of freehold land and 9 or 10 acres of a Company block.

10 Now did you know the deceased man, Jaimal, of whom we have heard so much in this case?—Yes.

How long had you known him?—I came to the Colony in 1928, and since then I have known him.

Did you know him in India at all?—I was very young then, and knew his name, but I hadn't seen him.

Do you know of the village in India Jaimal came from?—My village.

Is that in the Punjab?—Yes.

Did you know any of his relations in India?—Yes.

20 What relations? Tell me the relationship between the people you knew and Jaimal?—The brother and the brother's sons.

Nephews?—Yes.

I think it is common ground that his brother is dead, but as regards the nephews can you tell us what their circumstances were? Were they well off or otherwise?—They are in very good circumstances. They are very well off. The brother is dead; the nephews are all well off.

You have told us that from the time you came to this Colony in 1928 you have known Jaimal?—He regarded me as his son.

30 Now this block of land of yours—I mean the freehold block, not the Company block; we have had it in evidence that you have a mortgage on that to Jaimal?—That is true.

What is the amount of the principal?—£350.

And at what figure do you value your land—I mean the freehold block?—Nowadays it is about £100 per acre.

And would that be the valuation?—Yes.

In the month of February last year did you get a telegram from Jaimal?—Yes.

Where were you at the time you got it—in what town?—I was at Ba.

And the wire was sent from what town?—Suva.

40 Will you have a look at this telegram in its envelope and tell me whether that is the communication you refer to?—I can't read, but if the interpreter reads it out to me I can tell you if that is the one.

INTERPRETER: "Seriously ill come immediately Jaimal."?—This is the one.

As a result of that wire did you do anything?—I received this wire some time between 3 and 4 p.m., and the following day I left.

That telegram is dated 15th February. Can you tell us whether you got it on the day of the post office stamp?—That I don't remember—whether I received it on the same day as the post mark, but I do know I left the next day after receiving the telegram.

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*No. 14.
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tion,
continued.*

You didn't hear anything about its having been delayed in its delivery to you, or anything like that?—Well H. Singh told me "There is a telegram for you." And I was in Ba town at the time H. Singh called me and gave me the telgram.

The day after, you left for Suva. And where did you go in Suva? —I went straight to Jaimal.

Where in Suva was Jaimal at that time?—He was at the Suva Hospital.

Did he ask you to do anything for him?—Jaimal said "I was expecting you yesterday and sent a telegram yesterday to you. I looked and 10 expected you the whole of the night, and this morning I sent another telegram."

Told you he had sent a second telegram?—Yes.

Did you actually receive into your own hands that second telegram? —I was here; the telegram had already gone to Ba.

Just tell me whether you received it into your own hands or not?—No.

Did Jaimal say to you what he had said in the second telegram, or not?—He said, I have asked in the second telegram that you come immediately.

Did he ask you to do anything for him?—Yes. 20

What was that?—He said, "You had better take me away from here to Ba."

And ultimately I think you did take him to Ba?—Yes.

How long after you arrived in Suva would it be that you left for Ba with Jaimal?—Between seven and ten days.

And in the interim, that is to say, during those seven to ten days, did Jaimal move from the hospital?—He was at the hospital for three or four days, and then he was released and was taken to the Sikh Temple at Samabula and remained there for about four or five days.

Until you left for Ba?—Yes. 30

Now during his stay at the Sikh Temple—during those four or five days—did he, to your knowledge, make a will?—Yes, he did.

And do you know in whose favour that will was made?—Yes.

In whose favour was it?—In the favour of the nephews, and the executors were Battan Singh, Walaiti Ram and Khazan Singh.

We have had it in evidence from Mr. Parmeshwar, who was called earlier in this case, that Dr. Gopalan was attending Jaimal at that time. Was that so?—That is true.

In his evidence Mr. Parmeshwar said that the doctor told Jaimal that he couldn't undertake a long journey to Ba for six days. Did you 40 know that?—That is true.

Well you took him through to Ba. Did the doctor know you were taking him?—Jaimal told the doctor that he was being constantly troubled by these borrowers, all the time at him, seeing him and worrying him. So to keep him away from all these men he said, "I want to go away to Ba. It would be better for me to stay at Ba."

Well you got him through to Ba; and when you got him there where did you take him?—Yalalevu, Mehar's house.

You mean your co-defendant Mehar?—Yes.

Was he made perfectly comfortable there?—Yes. 50

Was he properly looked after?—Yes.

Who by?—Myself and Mehar. We both looked after him.

Did he get any medical attention?—Yes.

Now what was the first time you took him for any medical attention : how long after you got to Ba?—After two days' stay at Ba he was taken to the Company's hospital at Ba.

What for?—Dual purpose. He had a toothache, and he wanted to get examined and get some medicine to take internally.

That, by the way, is the hospital we have had referred to earlier in the case as the Rarawai Hospital in Ba?—Yes.

And who attended to him there?—Mr. Wallace, the dispenser.

10 He is the hospital superintendent?—That is the man.

And from there did he go back to Mehar's house?—Yes.

What was Jaimal's next move for medical attention—where did he go next?—Lautoka Hospital.

Who took him there?—Myself and Mehar.

And can you tell us as near as you can say how long after he came from the Rarawai Hospital he went to the Lautoka Hospital?—Two or three days after.

Was he admitted as an in-patient at the Lautoka Hospital?—Yes.

20 For how long did he remain there as an in-patient?—Between six and eight days. I just can't remember how many days.

Did you visit him during that time?—I was living at the Sikh Temple at Lautoka and visiting him daily.

And when he came out of the Lautoka Hospital where did he go?—He was brought back from Lautoka to Indar Singh's house at Yalalevu, Ba, which is close beside the main Government road.

Immediately prior to Jaimal going into that house of Indar Singh's, had it been occupied, or was it vacant?—It was vacant.

Was the tenancy of it taken, or something like that?—Yes.

30 Who by?—Mehar had talked about it, and he was the one that made the transaction.

And why did you think it necessary through Mehar to get a tenancy of that place and put Jaimal into it rather than take him back to Mehar's house?—The reason why we had him in Indar Singh's house was that during that time it was raining very much and the road to Mehar's was very slushy and was unapproachable by car, and this house being close to the road was handy in that we were able to take him to the hospital or get medical attendance, food supplies and milk, and it was easier for these people to attend him.

40 Well, in that house, knowing as we do that Jaimal was a sick man at that time, who looked after him, if anybody?—Mehar and myself were there day and night looking after him.

Did you cook for him?—We had a man employed to do his cooking.

What was his name?—Sukhu.

The people on the other side of this case, one of their complaints against you is that you didn't allow Jaimal any visitors into the house.

CHALMERS : }
MACFARLANE : } No.

Well, did you allow Jaimal visitors into the house?—We didn't stop people visiting.

50 Did Jaimal get visitors?—Yes.

Was anybody who wished to see him allowed to do so?—Yes.

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From the time you brought Jaimal around to Ba until the time he died did he ever mention the question of making a will?—Yes, he did.

And could you tell us how long after he came to Ba that he first mentioned that?—About two weeks prior to his death.

And who was present when that happened?—The very first time he mentioned it I was alone with him, because he usually talked to me at nights while I was with him. The very first time, I was alone with him.

What did he say?—He said, “Look, you and Mehar have looked after me so well, and I desire to leave everything to you in my will. To you both.”

What did you say?—I said, “Well, you have just made a will in favour of your nephews about two or three weeks ago in Suva.” He said, “The nephews are well provided for: I need not worry about them: I am concerned about you two because you have looked after me so well during my last days of illness.”

Did he say how he proposed to make this will? Was he going to draw it himself or get somebody else to draw it for him, or what?—He said, “I will bequeath all my property, whatever it is, to you both, but in case I recover I shall take you (Amirchand) with me back home to India.”

To Court: You mean you alone?—Yes, alone.

RICE: To India or to the Punjab?—Home.

Did he say how he proposed to get the will drawn up? Was he going to do it himself or was somebody else to do it, or what?—He said, “It is necessary to call a lawyer. You must call a lawyer.”

What did you say to that?—I said, “Look, don’t be over-anxious: you will recover: we hope that you will recover. Don’t talk about making wills and that sort of thing. We want you to get well.”

You have told us that conversation took place between you and Jaimal when you were alone together one night. Did Jaimal ever mention in your presence the same subject again?—Yes.

During that fortnight that you have spoken of, how many times would you say he had mentioned this matter in your hearing?—He talked to me about four or five times about this will. During that period. And on Thursday again.

On those other four or five occasions, was there any time when you and Jaimal were alone?—Twice I was alone but the rest of the times other people were present.

Tell me the names of as many of those other people as you can remember?—Myself; Nur Mohammed, sirdar; Mehar. This is on the Thursday.

Anybody else?—Raghubir Singh.

Anyone else?—That was on the Thursday.

I mean on any one of those four or five occasions?—Nur Ahmed also.

On the Thursday?—Yes, but he was on the verandah. He was at the rear having kava to drink.

Was there anyone else other than those four persons who heard any conversations about a will?—Hari Charan was another one, on another occasion. Jang Bahadur and Nur Mohammed were also present.

Well I want you to bring your mind, if you will, to the Friday before Jaimal died?—Yes.

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To Court : You have told us that on Thursday other people were present : what Thursday do you mean ?—This is the Thursday before the Friday that we had gone out to Mr. Davidson's office.

RICE : Do you happen to remember what day of the week Jaimal died on ?—Tuesday.

And where was that Thursday in relation to that Tuesday, a long way away from it or near it, or where ?—Before that Tuesday. The week previously.

10 Now on the following day, the Friday before Jaimal died, was the will discussed ?—Yes.

And who was present that day when it was discussed ?—Hari Charan was there, Mehar and myself.

And Jaimal ?—Yes.

Tell us as near as you can remember all the discussion that took place that Friday about the will, between you four people ?—Jaimal was speaking to Hari Charan and he said to Hari Charan, " I have spoken to these two people to make arrangements to draw up a will, but they don't seem to do anything in the matter. You go and get a lawyer."

20 What did Hari Charan say to that ?—Hari Charan said, " Well, if you insist I will go." Then Jaimal said, " Take Amirchand with you."

Did Jaimal tell Hari Charan in whose favour he wanted to make this proposed will ?—Yes.

What did he say ?—He said, " I want the will drawn in favour of Amirchand and Mehar, because they have looked after me so well."

Did Hari Charan say he would get him a lawyer, or not ?—Hari Charan simply said, " I am going." and Jaimal said " Take Amirchand with you."

Before Hari Charan left was there any other conversation about this will that you can remember took place ?—No.

30 Did you and Hari Charan go ?—Yes.

Where ?—We came to Mr Rice's office.

What happened there ?—And we couldn't find Mr. Rice there. Mr. Rice was not in.

And then what happened ?—Then Hari Charan went away to Mr. Davidson's office.

Did you see Mr. Davidson with Hari Charan ?—Yes.

Were you present at the conversation between Hari Charan and Mr. Davidson ?—I was outside on the verandah. They were talking inside the office.

40 Can you tell us what conversation took place between Hari Charan and Mr. Davidson or not ?—No, I couldn't. I wasn't able to understand, They were talking in English.

After Hari Charan had had his conversation with Mr. Davidson, did he rejoin you or not ?—Yes.

Where did you two go then ?—He came outside and asked me my father's name and Mehar's father's name, and taking them down in writing on a little piece of paper he took it back inside the office.

Who were you speaking about, Hari Charan or Mr. Davidson ?—Hari Charan.

50 Well, when that interview between Hari Charan and Mr. Davidson was over and done with, did you two go away together, or not ?—We left the office together, yes.

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And where did you go to?—I then went back to Yalalevu and Hari Charan returned home to his own house.

And when you got back to Yalalevu, did you report to Jaimal that a lawyer had been instructed?—Yes.

Very well, that was on Friday. Now, coming to the Saturday, that is the following day: was there any talk to Jaimal about the will that day, or not?—Saturday morning Jaimal spoke to me. The first time I was alone, and on the second occasion Nur Ahmed and Nur Mohammed were present.

The first time you were alone?—He asked me “Is the lawyer coming?” 10 I said, “Yes, Saturday, Hari Charan most probably will be bringing him.”

And then you say there was some more talk when some other people were present. Let us first know who those people were?—I have made a mistake. I wrongly remembered the day. It was Sunday the other people were there. The Saturday we were alone.

Who were the other people there on Sunday?—Myself, Mehar, Nur Mohammed, Jaimal.

Anyone else?—At that time no one.

What was the talk this time?—Jaimal said to the sirdar, speaking to Nur Mohammed, “You were present when I requested these people to 20 make arrangements for me to draw another will, and they haven’t done so far.” Jaimal, still speaking to Nur Mohammed, said, “Would you be good enough to take me to a lawyer and I will there make my will.”

Did Nur Mohammed make any reply to that?—Then Nur Mohammed, addressing us, said, “Look, he keeps on insisting that he wants to make a will: why don’t you get it done?”

And did you or Mehar make any answer to that question?—Yes.

What did you say?—I told him I had gone on Friday and wasn’t able to get the lawyer, and I was going to-morrow—that is the Monday 30 following—and bring him.

And do you think Jaimal heard you say that: that is, that you would go to-morrow or Monday?—Yes, he did.

And did he seem satisfied with that, or not?—Yes.

The next day, Monday, the day you promised to go and look in to this matter, what did you do?—The morning of the Monday following, Jaimal said, “Either you take me, or you go and bring a lawyer.”

Did you go?—Yes.

Where to?—Went to Mr. Davidson’s office. As soon as I went into town I went to A. J. C. Patel Brothers’ store in town.

Did you meet anybody at the store?—Yes, I met Hari Charan there. 40

And did you two, that is, you and Hari Charan, go anywhere together?—Yes.

Where to?—Mr. Davidson’s office.

Did you see Mr. Davidson?—Yes.

Tell me exactly what happened after that?—Mr. Davidson in English asked Hari Charan, “Why didn’t you come yesterday, on Saturday?” Hari Charan told him that he wasn’t free—he was busy, therefore he wasn’t able to come on Saturday.

To Court: In what language were they talking?—In English; but I asked Hari Charan what it was all about, and he told me. 50

RICE: You heard some conversation and at that time you didn’t know what it was all about?—That’s right.

- Did you go anywhere ?—Then the solicitor, Mr. Davidson, and his clerk were taken to Yalalevu.
 And in what manner did they travel to Yalalevu ?—In a motor car.
 Driven by whom ?—Shankar.
 Did you go with them in that car ?—No, I went in a different car.
 Close to their heels, or not ?—Yes.
 And when you got to Yalalevu, where did you go to ?—Having got to Yalalevu we went to Indar Singh's, the place where Jaimal was.
 Went inside the house ?—Yes.
- 10 Who went in ?—Mr. Davidson walked in first, walked in and said, "Salaam."
- Did anybody else go in ?—Mr. Davidson, his clerk and myself.
 What is the name of his clerk ?—Rasul.
 Rasul and you went into the house ?—Yes.
 What happened to Shankar ?—He was standing on the porch outside.
 And when you got inside was Jaimal there ?—Yes.
 Standing up, sitting down, or what ?—He was reclining in a chair.
 And did you find anybody else inside except Jaimal ?—Others were there, too.
- 20 Tell me who they were ?—Mehar was there ; Khursaid Khan.
 Anyone else except Jaimal, Mehar and Khursaid Khan ?—At the rear—behind—were Jang Bahadur ; Sukhu, the cook in the kitchen ; my brother Harichand was also at the rear.
 Now tell us exactly what happened when you got into the house ?—As soon as Mr. Davidson approached Jaimal, he said, "Salaam," and Jaimal said, "Salaam, Sahib." Mr. Davidson said, "Are you very sick ?" He said, "Yes, I am." Mr. Davidson said, "Your name is Jaimal, isn't it ?" "Do you lend money on interest ?" Jaimal said, "Yes."
- 30 Did Mr. Davidson have any document with him ?—Yes.
 What sort of a document was it, do you know ?—It was a typewritten document.
 Do you know what was written in it, or not ?—I don't know what was typed in it.
 Did Mr. Davidson do anything about that document ?—Yes.
 What did he do ?—With the paper in his hand, he asked Jaimal, "Did you send anybody to me on Friday ?"
 Did Jaimal say anything to that ?—He said, "Yes." Mr. Davidson then asked him, "Who was it you sent to me ?" Jaimal replied, "Hari Charan." Mr. Davidson asked him, "What for ? Why did you send him ?" "To draw up a will," said Jaimal. Mr. Davidson asked, "In whose favour do you wish to have the will drawn ?" He said, "Mehar and Amirchand." Mr. Davidson said, "Which Mehar and which Amirchand ?" Mr. Davidson placed his hand on Mehar and said, "This Mehar," and placed his hand on me and said, "This Amirchand."
- 40 Where were you both sitting at the time ?—We were both squatting on the floor beside Jaimal.
 Do you happen to remember which side you were on ?—On his left side.
 And Mehar ?—On his right hand side.
- 50 Now tell me, while all this was going on that you have been telling us about, where was that typewritten document you said Mr. Davidson had ?—Mr. Davidson had it in his hand.

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What was he doing with it?—He just held it in his hand at that time : he didn't do anything with it.

Go on?—Then Mr. Davidson, speaking to Jaimal, said, "I have brought a will drawn up, and I wish to read it to you now in Hindi, and you are to let me know if there are any errors in it."

Did Mr. Davidson read it in Hindi?—He did.

Did you hear that?—Yes.

Well, I don't expect you for a moment to repeat any phrases in legal jargon, but can you tell us in ordinary language what was in it?—He asked if he had any relatives, close relations, meaning blood relations. 10

Was that something Mr. Davidson asked, or something he read out?—He read that out and then asked him.

Do you happen to recollect whether Jaimal made any reply to that, or not?—Yes.

What did he say?—He said that he had no one at that particular time. That is, at that particular time the only ones he had were those who looked after him.

Hindi?—(*Interpreter repeats answer in Hindi.*)

Then what happened?—After having read the whole of the will Mr. Davidson then— 20

Mr. Davidson went on reading the will?—Yes.

Do you remember what was the gist of the will?—I don't remember now as to what else he read out.

Did he read out, for instance, to whom Jaimal's estate was to be left?—I have already told you that the will was in favour of Mehar and Amirchand.

I am asking you whether Mr. Davidson read that out?—Yes, he did say so. It would mean bequeathed to us.

Did Jaimal hear that?—Yes.

Did Jaimal make any comment about it?—He said, "It is quite all 30 right." He said, "That is my desire—that is my wish."

After Mr. Davidson had read over the will in Hindi what happened next?—He said, "Now I shall read it back again in English and my clerk will explain to you in Hindi."

And was that done?—Yes.

Did Jaimal make any comment?—Jaimal said it was all right.

And then what was done?—Mr. Davidson again asked him, "Now that you have heard it in Hindustani, is it all right?" Again he said, "Yes." Then he asked him if he could sign his name.

Who asked who?—Mr. Davidson asked Jaimal if he could sign 40 his name.

What was Jaimal's answer to that?—He said, "I will try."

Did he make an attempt?—Yes, he did.

Tell me as near as you can remember what happened when he made that attempt?—Mr. Davidson took a pen out and handed it to him and placed the paper in front of him and asked him to sign it.

The COURT: We have had the mechanics of the execution of this will once or twice already. Does anything turn on this?

RICE: Nothing at all, sir.

Did Jaimal sign?—Jaimal did make a few strokes on that paper. 50

Was Mr. Davidson satisfied with his signature?—No.

What happened then ?—He said, “ You had better affix your thumb print.”

Did Jaimal do that ?—When Mr. Davidson told him the signature was not legible, Jaimal said himself, “ All right I will place my thumb print.”

Did he place his thumb print ?—Yes, he did.

What happened after he had thumb-printed it ? Did he thumb print it just the once, by the way ?—The first thumb print Mr. Davidson had a look at and said it wasn't clear.

10 Was there a second thumb print ?—Then Jaimal said, “ Will you assist me and place it where you think it should be placed.”

Was that done ?—Yes.

After all that—one attempt at his signature and two thumb prints, what happened ?—Mr. Davidson then signed his name and Rasul signed his name.

Yes ?—Then Mr. Davidson asked—

Could Jaimal see them sign or not ?—Yes, he was looking at them.

How did you know Jaimal could see Mr. Davidson and Rasul sign their names ?—He was seated near the table where they signed.

20 Then what was done ?—He asked us, “ Have you brought any doctor to see him ? ”

Who asked ?—Mr. Davidson asked Jaimal. Mr. Davidson said, “ Have these people brought any medicine for you and the doctor ? ”

Yes, and then ?—Jaimal said the doctor had come.

Did he say when or how long ago it was ?—About a week ago.

Well now, going back to that, was there a doctor that visited Jaimal about a week before ?—Yes.

What doctor—do you know ?—Dr. Clunie.

30 And who had sent for Dr. Clunie ?—Myself and Balwant Singh : we both went over to Dr. Clunie.

And did Dr. Clunie come to the house and attend Jaimal, or was Jaimal taken to Dr. Clunie ?—The doctor came to the house.

Did he prescribe for Jaimal ?—He gave him a mixture.

And was that actually there on this day when this will was signed—that mixture—or not ?—Yes, it was there.

40 Well, going back now to the conversation. You say Mr. Davidson asked whether the doctor had been there and he was told that Dr. Clunie had been there about a week before. Did Mr. Davidson do anything as a result of that ?—He said, “ Is he giving you any mixture ? ” and Jaimal said, “ Yes.” Mr. Davidson asked, “ Where is the mixture ? ” and I pointed it out to him. I said, “ Here in this bottle.”

Where did you get this mixture from, by the way ?—Dr. Clunie had given that mixture. He left it himself and said, “ This is sufficient for a week.”

Did Dr. Clunie actually bring the mixture with him ?—The Doctor, having seen the man, went to Nailaga Hospital, which is close by, and on his return left the medicine with Jaimal—brought it himself to the house.

Well, when it was signed, what was done to the will ?—Mr. Davidson took it back to his office.

50 Did you go anywhere ?—When Mr. Davidson left the house he took me with him.

To his office ?—Yes.

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And at his office did he give you anything?—Yes.

What?—He gave me a letter addressed to Dr. Clunie and asked me to take it to him.

Did you do so?—Yes.

Did you actually deliver the letter to Dr. Clunie?—I wasn't able to find Dr. Clunie.

Why not?—I was told that he was out of the district at the time: whether he had gone to Raki Raki or Lautoka, I don't know.

Well, not being able to find Dr. Clunie, did you do anything else about medical attention for Jaimal?—I went back to Yalalevu, and not being able to get any other doctor I took him to Nailaga Hospital. 10

And so, I think, he was attended by the witness, Williame, who testified yesterday?—Yes.

To Court: Was this the same day, or later?—The same day.

RICE: What time of the day, as near as you can tell us, would you say the will was signed?—10.30 or 11.

At what time of the day would you say Jaimal was examined at Nailaga Hospital?—Roughly, between 2.30 and 3. It was raining at the time, and I don't know the correct hour of the day.

Did you bring him home the same day?—Yes. 20

And I think the next day he died?—Yes.

You have told us about the telegram you got, and you have put it in as an exhibit. You have told us that at the time it was sent Jaimal was in hospital. Did you find out or did you not find out who dispatched it on his behalf?

The COURT: Could he really tell us who dispatched it?

RICE: I suppose it is hearsay, but I was going to call a witness on the subject, and I just wanted to link it up. However, it doesn't matter.

Now, as to the week or ten days you said that Jaimal was in the Lautoka Hospital. Do you remember that period?—About seven or eight days, 30 yes.

During that period, did you go to Suva at all?—Yes.

What for?—Jaimal had to fix up his income tax. He sent me to find out whether it was paid, and if it wasn't, to ask for more time.

And did you perform that service for him?—I only came for this one purpose. Jaimal asked me to come.

Now, in the statement of claim taken out by the solicitors on the other side of this case, it is pleaded that at the time Jaimal made his will he wasn't of sound mind, memory and understanding. What have you to say about that?—It is not correct. 40

That was on the Monday. What about the Friday before? Was his mind all right then?—He was of sound mind.

Now it is pleaded, too, in this statement of claim, taken out against you, that you and Mehar influenced Jaimal—coerced him into making a will. What have you to say about that?—It is not true.

And, finally, it is pleaded in this statement of claim that Jaimal didn't know the contents of his will and he didn't approve the contents. What have you to say about that?—He knew everything perfectly well. He understood all and he approved of it. I was there present.

CROSS-EXAMINED.

Mr. MACFARLANE: Amirchand, was Jaimal a mean or a generous man?—He was a good man, and that is how he was carrying on such a big business.

I am not asking you about his qualities of the spirit—I am asking you whether he was mean or generous?—That depends on circumstances: how he felt. At times when he had to give out anything he would be generous, that is when he had to give money to subscriptions or donations.

So you knew him to be at times a generous man?—Not always, but every man is the same. They give when they have to give and they don't give when they don't.

You knew him 16 years. Can you give us any illustration of his generosity?—Well, when he did give out anything like that as donations, all the time. How would I know what he has done?

Would you regard yourself as a wealthy man or not?—I would say that I am not a rich man and I am not poor either. I am not wanting anything. I carry on my business.

And you don't want any more than you have now?

The COURT: It is rather a question of how much he has got now, isn't it?

MACFARLANE: The witness said he wasn't in want.

You don't want any more than you have now?—The solicitors keep making money, and they won't stop if they can get any more.

Now, you were a very close friend and a dear friend of Jaimal's?—Yes.

Did he discuss with you at any time his business affairs?—Sometimes, yes.

Did he tell you, for instance, what property he owned in India?—Yes.

What did he own?—He didn't actually say what it was, but he made it general. He said he had bought quite a bit of land, he had also purchased nice dwellings and he had dug wells.

And that he owned them?—Both he and his brother. He bought these things and gave him some and kept some of them for himself.

On the 25th February 1944, a will was made by me and Jaimal signed it at the temple?—Yes.

And you were present?—Yes.

And Dalel Singh was also there, amongst others?—Yes.

On that day, the 25th February last year, did not Jaimal say, when you were there and Dalel was there, while Walaiti Ram was there, and while I was there, that he wanted to go to the Lautoka Hospital—on the 25th February 1944?—Yes.

He said he wanted to go?—Yes.

Did Jaimal give you any money before he left for Ba, after the will was made by me?—Before the will was made.

Before the will he gave you money?—Before the will was drawn he gave me the money.

How much?—He gave me something in the vicinity of £70 or £80.

I think it was £80?—Yes.

And was that to provide for his expenses?—One of his clients had come up when he was at the Sikh Temple. One of his clients came and paid him that amount and he told me to accept the money and give him a receipt for that amount.

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I put it to you that he gave it to you to use for his expenses on the trip to Ba and thereafter?—Yes, that is true. He said “Use it for my expenses : keep it with you.”

He gave it to you for his own expenses?—Yes.

Now you hired a special bus and went round in that to Ba?—Yes.

And Dalel Singh went with you?—Yes.

Would it be correct to say that Dalel Singh paid for the bus from Suva to Ba?—Why should Dalel Singh pay it? I paid the fare.

You paid the fare?—I did, yes.

You swear that?—I swear that.

To whom did you pay it?—I sent Dalel Singh and asked him to go and make arrangements for a bus to take us to Ba. Dalel Singh made the arrangements, came back and told me. It cost £7 or £8. I paid the amount to Dalel Singh and he went and paid it.

Out of the £80?—Yes.

Now we get to Ba. Where did you say Jaimal was? He went to the stable first, in this order—correct me if I am wrong. He went to the stable first : while at the stable he went to see Mr. Wallace at the Rarawai hospital?—Yes.

Then, after being at the stable a few days, he went to the Lautoka hospital?—Yes.

And after being there a few days he went to Indar Singh's house?—Yes.

That is what you told your learned counsel, and you repeat it. Do you now say that is correct, or do you wish to alter it?—I say the same thing.

So he didn't stay anywhere else but those three places mentioned. The stable, the hospital and Indar Singh's house?—After he was released from the hospital he still stayed a couple of days at the Lautoka hospital while I was in Suva attending to his work.

Besides the three places mentioned, did he stay anywhere else?—After he was released from the hospital he stayed at the Sikh Temple for two days, then I went back from Suva and got him back to Indar Singh's house from the Sikh Temple.

You forgot to mention the Sikh Temple before?—I wasn't asked.

And while at the Sikh Temple who looked after him?—I paid Dalel Singh to look after him.

How much did you pay him?—I paid 10s. on the day I left for Suva and I went back again with another £1.

You paid him 10s. on the day you went to Suva?—Yes.

He was still in the hospital then?—Yes.

Why did you give Dalel Singh 10s. while Jaimal was still in the hospital?—To buy something for him, food and other things to take over to Jaimal.

That is out of the £80?—You can take it for granted.

I am asking you did you pay it out of the £80?—Let me explain the £80 to you properly before you start asking questions about the £80. On a previous occasion, before Christmas, when I had come to see Jaimal at his house, I had owed him £350 and I gave him £30 as interest on that amount. I said, “I am going away now, but I will get a receipt from you later on after Christmas. After receiving this telegram I had come back again to see him ; then I asked him if he had made my receipt out. He had not, and I said, “Well, in that case return the money back again

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and I will pay you the whole of the interest later on." And he paid me £20 out of that £30 at the Sikh Temple. And then he gave £1 to Walaiti Ram for a bag of sharps. He paid another £1 to another man, and for the week that he stayed there things were being bought for him and money spent in buying these things for Jaimal.

Are you suggesting that he didn't get his provisions and food free at the temple in Suva?—When rich people go there they do not wish to be a burden to the temple. They pay for what they eat there. In other words, they help the temple by paying.

10 And are you suggesting now that the £80 wasn't for medical expenses? —Well, it just happened that the money actually came in at the time and it was being used.

Now Mehar said he paid all the expenses while Jaimal was at Ba? —Whenever he went out or did anything it was paid out of his pocket, and whenever I did anything it was paid out of mine.

So you don't agree that he paid all the expenses?—No, Mehar didn't pay all the expenses himself.

20 While at the Sikh Temple at Lautoka you didn't pay anything for expenses of board and lodging, did you?—Nothing was given. I know of a promise that Jaimal made that he would give £10 to the temple if he recovered.

I am not talking of any promises. Did you or Mehar give anything to the temple?—No.

And the Government hospital was free?—Yes. The medical treatment and everything was free but you have to pay for the food that you have from outside. You buy your food and take it to the place.

Dalel took that food to Jaimal?—Dalel Singh did that two days only, while I was at Suva.

How much did you pay Dr. Clunie?—5s.

30 Where was that?—In the house where Jaimal was.

Did he give you a receipt?—No.

And that was for his attendance on Jaimal, was it?—Yes.

What time of the day or night did Dr. Clunie come to Indar Singh's house?—Daytime, between the hours of 10 and 11 he visited Indar Singh's house to see Jaimal.

And how did you get Dr. Clunie there—how did you take him there? —He came in his own car.

40 Did you go to him and ask him to come?—I went myself to his place to ask him to come and see Jaimal, and he said, "I am going out to Nailaga hospital and if you wait on the way and stop me I shall come and see this patient."

And Dr. Clunie told you that the cost was 5s.?—Yes.

Did you go with him to the Nailaga hospital?—No.

Now while you were in Indar Singh's house did Dalel ever visit there? —Twice.

Only twice?—Yes.

Can you remember the days?—He came there on the day of Jaimal's death and he also came a week prior to his death or a few days, four or five days prior to his death.

50 I put it to you Amirchand that the two people that occupied this house were you and Dalel all the time during the two weeks or so that you were there looking after Jaimal. That the two persons looking after Jaimal

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while he was in this house were you and Dalel ?—It is a lie. Were you there ?

I put it to you that you and Dalel took turns to sit up at night ?—No.

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Now what was the state of Jaimal's health the day you took him into Indar Singh's house ?—He was all right. He was in a condition as a sick man would be. Not very seriously ill, nor was he quite well.

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Did you think he would recover from his sickness ?—Yes.

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What was his condition when you took him to see Mr. Wallace ?—

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He was weak because the travelling from Suva to Ba had exhausted him 10
a bit. Otherwise he was all right.

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So, during that fortnight that he was at Indar Singh's house, you had no worries about his health ?—Why not ? We were anxious about his health, trying to make him get well. We were looking after him.

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But was his health improving or getting worse each day ?—It would rise and fall. He would be getting better and then he would fall again, and so on.

You fed him with a spoon, did you not ?—At times he would eat himself and at other times I would feed him, yes.

I put it to you that during the last few days of his life he was fed 20
every time with a spoon ?—No, that is not correct. It was only on occasions when he would be very weak.

Sometimes he would be too weak to eat by himself and other times he would be much stronger ?—That is correct.

The day you took him to see the N.M.P. at Nailaga did he walk into the bus ?—No, I helped him into the bus at the house.

And how about the dispensary ?—The car doesn't go quite close to the hospital, and there was a pool of water between where the car stopped and the hospital, so I carried him in.

You carried him across the pool of water not by any chance because he 30
was too weak to walk ?—If there had been no water I would have helped him along. He would have walked along.

Are you trying to suggest that the car couldn't go right up to the door of the hospital ?—Because it had rained very much then the driver wouldn't go any further.

Now the morning you took him to see the N.M.P. what was the condition of Jaimal's voice ?—It was rather loose, weak.

You told the N.M.P. when the N.M.P. examined him that Jaimal was coughing a lot and couldn't speak ?—I didn't say that latter part ; I told him he coughed very much, but I didn't say he wasn't able to speak. 40

Yesterday your counsel called the N.M.P. from Nailaga Hospital, who said that just after 1 o'clock on Monday, the 3rd April, the N.M.P. said, you told him that Jaimal was coughing a lot and that he, Jaimal, couldn't speak ?—Yes, I told him that.

You told the N.M.P. that he couldn't speak ?—Not that he couldn't speak. I said " He is in a very weak condition : he coughs very much and he is in a very weak condition."

So you say the N.M.P. wasn't telling the truth ?—I didn't say he was lying.

You were anxious about Jaimal's health, weren't you, on the Sunday ? 50
—I had been anxious ever since he became ill.

And you went to the N.M.P. on Sunday to see him ?—Yes, I did.

And on the Monday morning ?—Yes.

Because you thought Jaimal was in a very bad condition ?—Yes, the man was sick, and I knew he was sick.

Did you think he was dying then, on the Sunday ?—It is very difficult to say whether he was to die then or whether he would die later on. All sick people die eventually.

But you thought on Sunday and early Monday morning that Jaimal was getting much worse than he was before ?—Well, he was in difficulties I would say. As I said, he used to get that in turns. He would be very
10 sick one day and then suddenly he would be on the way to recovery.

On the Sunday, Amirchand, you told the N.M.P. that Jaimal was too ill to travel ?—I said that it would be difficult for him to come there. “ He would find it hard to come here : you had better come and see him at the house.”

Did you say that Jaimal was too ill to go to the doctor ?—No. He said, “ You bring the patient here,” and I said “ It would be better if you came and saw him there.”

Yes, that is correct : the doctor admits it : but you also told the doctor that Jaimal was too ill, and I want an answer please ?—Yes, I
20 told him he was sick and asked him to go and see him.

You won't answer that question, is that it ? You won't admit that you told the N.M.P. that he was too ill to travel ?—Yes, I agree that I did say that.

That you said what ?—I went and asked him to come and see him : I told him to accompany me. He said, “ No, I am a Government servant and not allowed to see patients outside.” Then I told him, “ He is too ill to travel : you come and see him.”

Now on the 31st March when Hari Charan took instructions for a will ?—Yes.
30

Was there any mention of relations on that day ?—No.

No mention of blood relations ?—I didn't hear ; Hari Charan may have said it or asked him about it : I didn't hear.

But you were present there all the time weren't you ?—Well, yes, but at times I would go away to the kitchen.

Now, are you trying to tell us that you weren't in the room all the time Hari Charan was taking instructions from Jaimal ?—I wasn't all the time in the room.

Why ?—What was the use of me sitting down there ? He was talking to the other man. I was attending to his wants.
40

You weren't interested in what Jaimal was going to do with his money ?—I had no interest whatsoever.

How long was Hari Charan there ?—From half an hour to an hour.

Did Hari Charan make any notes of his instructions ?—No.

Did he obtain particulars of the fathers' names from Jaimal ?—Not in my presence. He may have done so while I wasn't in the room.

Did Hari Charan obtain, or ask for, the fathers' names of Amirchand and Mehar ?—No, not at that place.

Mehar said he saw Hari Charan writing a letter ?—Mehar may have seen that but I didn't.
50

Now, you left with Hari Charan, did you not ? Left Indar Singh's house after this discussion with Jaimal ?—Yes.

Mehar said that Hari Charan was walking away with you and he had a piece of paper in his hand ?—Mehar may have seen him ; I didn't see him.

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Was Mehar in the room at all during that period?—He was there for a short time, then he left.

What did you do during your absence from the room?—I left Hari Charan talking to Jaimal.

What did you do when you left them?—I had gone towards the kitchen just for a short time.

Was Sukhu in the kitchen?—Yes.

He did the cooking?—Well, when the time for cooking came he used to prepare the meals.

So you didn't go out to prepare the meal?—No. 10

Very well, on the Monday morning did you ascertain from Mr. Davidson or his clerk whether the will was ready?—I didn't. That is what I was telling you. I had asked Hari Charan. It was Hari Charan who did the asking.

Before you saw Hari Charan did you go to Mr. Davidson's office that Monday morning and ask whether the will was ready?—No.

Then why did you tell Hari Charan on the Monday morning when you met him that the will was not ready?—I didn't go as far as the office. As soon as I met Hari Charan I said, "Look, you haven't come with the lawyer yet, and Jaimal is still anxious about his will." 20

Now Hari Charan said that you met him in the street and told him the will was not ready.

RICE : In A. J. C. Patel Bros.' store.

MACFARLANE : You met Hari Charan in or near a store and you told him the will was not ready yet?—How could I say that? I hadn't gone to the office and enquired whether it was ready or not, so how could I say that?

Hari Charan said this, "I met Amirchand and he said 'The will is not ready yet.' " ?—What I am saying is when I met him I said, "You haven't come yet : what has happened?" I didn't mean that I had gone to the office and made enquiries. 30

So you deny that you told Hari Charan that the will was not ready?—Yes. I did say this when I met him : "You promised to come on Saturday and you didn't. Is the will not ready yet?"

During the fortnight at Indar Singh's house you said Jaimal requested you to get a will made?—Yes.

Now, if you were like a son to him, why didn't you carry out his wish?—Well, since I owed him some money at the time I thought to myself that he would probably think that I was being greedy.

But he kept on insisting, did he not?—Well, he didn't say every day, 40 but he told me two or three days before that, and he again asked that it should be drawn.

And you didn't think it the proper thing to do his bidding when Jaimal asked?—I wasn't very anxious to get his property that I should go and do his bidding at that time, and no one wants to do a thing like that when a man is sick.

To the Court : That is why you didn't make arrangements for the will to be drawn?—Yes.

MACFARLANE : Did Jaimal express any view to you during the last week of his own state of health?—He did say this much : that there 50 is no certainty about life ; one didn't know when he was going to die. " If

I live everything is all right : if I don't the property and everything will be yours."

Did he ever tell you that he thought he was going to die soon ?—No. He said it this way : " There is no certainty about life," one didn't know when he would die.

The question is, did Jaimal ever say to you, " I think I am going to die soon " ?—No, he didn't.

Not at any time during the week before his death ; I want to make that clear ?—No, he didn't say that he felt he was going to die soon.

10 We come now to what may be termed the Socratic dialogue of Jaimal. Did he ever say to you, " Money isn't everything : the life of a neighbour is " ?—He said it this way : that money wasn't everything during the last days of a man's life : man is everything.

And to whom did he make this philosophical statement ?—He told me that personally.

Did he tell it to anybody else ?—Yes, he said that on several occasions, to me.

And do you remember if he said it to any visitors ?—I don't know : he may have, and I may have been out at the time.

20 In your presence ?—No, not in my presence. I believe Nur Mohammed was once present when Jaimal said those words.

Did you go on the Saturday morning to bring the lawyer out to get the will signed ?—No.

You didn't go on Saturday morning ?—No.

Jaimal asked you on the Saturday morning about getting a lawyer, didn't he ?—Yes.

And you went to town ?—Yes. I had gone to get something for Jaimal.

30 Didn't you tell Mehar that you were going to get the lawyer ?—No, I didn't tell him. I didn't go out to get a lawyer on Saturday.

Now, when this will was executed on the Monday morning ?—Yes.

You heard Mr. Davidson give evidence ?—Yes.

And Mr. Davidson said that he read it over in Hindi ?—Yes.

And Mr. Davidson said that he read out this phrase : " I declare that I have no next of kin nor blood relations in Fiji nor elsewhere who are known to me " ?—This is what was asked. Mr. Davidson said, " Have you any blood relations ? " and Jaimal in reply said, " No, I have no one at this time ; in this hour of need whoever is dear to me is looking after me."

40 I am going to put to you what Mr. Davidson said happened. Mr. Davidson said he read out those words in Hindi : I want to know whether you say that Mr. Davidson did read out those words in Hindi ?—Yes, he did.

Mr. Davidson said that when he read those words to Jaimal, Jaimal's reply was, " I don't know " ?—I didn't hear Jaimal say that.

In Hindi, Mr. Interpreter, what would the literal translation of those words be ?

INTERPRETER : Hum nahi juntae.

Mr. Davidson said in the witness box, " I don't know." What would be the literal Hindi translation of those words ?

50 (INTERPRETER) : Hum nahi juntae.

And Mr. Davidson speaks the local Hindustani, does he not ?—Yes.

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And you were sitting two feet away from Jaimal?—Yes.

To Court: The witness told us Mr. Davidson did read “I have no next of kin nor blood relations in Fiji nor elsewhere who are known to me.”?—Yes, Mr. Davidson read that.

And when he read that did Jaimal say anything, or not?—Jaimal said, “No.”

What is that one word in Hindi?—Nahi.

That is all he said?—Yes. Mr. Davidson asked him the question, “Have you any next of kin or blood relations?” To that Jaimal replied, “Nahi,” which is “No.”

10

MACFARLANE: When Jaimal answered “No” to Mr. Davidson’s questions about blood relations you didn’t say anything?—I did. I said “He has nephews in India.”

You told Mr. Davidson then and there that he had nephews in India?—Yes.

What did Mr. Davidson say?—Then Mr. Davidson asked Jaimal, “Is it true? Is it a fact that you have nephews?”

And Jaimal’s reply was?—Jaimal said, “Yes, it is true, I have nephews, but in this hour of need they are not at hand, or they are not of any help. Therefore I say that I have no one.”

20

What was Mr. Davidson’s reply?—“That’s all right. If you say there is no one, all right.”

And then Mr. Davidson went on reading the will?—Yes.

And this conversation took place in Hindi?—At first in Hindi.

Well, the conversation we are referring to about the nephews?—Yes, that conversation was all in Hindi.

1 p.m.—Adjourned.

2.30 p.m.—Resumed.

After the conversation that you mentioned before lunch about the nephews, was there any mention of Jaimal’s property, between Jaimal and Mr. Davidson?—Yes, at the time when this question of nephews was being talked about I spoke to Jaimal in our own mother tongue, that is the Punjabi language. Whether Mr. Davidson understood that or not, I don’t know.

30

What did you say?—I said to Jaimal, “Surely you have nephews,” and he said, “I know all that. At this time I have no one.”

And did you translate that from the Punjabi language into Hindi for Mr. Davidson?—No, I didn’t.

Why didn’t you do it?—Jaimal stopped me from doing it. He said, “Don’t say anything. I have none other than yourselves. Don’t say anything.”

40

Did you say to Jaimal, “Why shouldn’t I tell Mr. Davidson?”?—Since he said “None other than yourselves,” I didn’t take it any further.

And Mehar and Rasul and the others heard this conversation, did they?—Yes.

Mehar would understand the Punjabi language?—That I don’t know, whether he understood it or whether he didn’t.

Come. Would Mehar understand that dialect that you spoke?—Having heard what I said to Jaimal he surely would have understood me.

And at that time he was sitting on the other side of the chair, as you have told us so often?—Yes.

50

Was there any other person in the room at the time you spoke to Jaimal?—There were no other Punjabis inside that room.

At the time of the execution of the will—except you and Mehar?—Mehar was just a little bit away from the chair: I was quite close to the chair: and there were no other Punjabis in that room except ourselves.

Or any other Punjabis within hearing?—No, they couldn't have heard. They were at a distance.

During the time Mr. Davidson was there, was there any mention of his property—the nature or extent of his property?—No, there was no talk about where it was, as to the extent of it, or what it was, except, “Whatever you have you are making over to these people?” and he acquiesced.

On Monday afternoon after Jaimal came back from seeing the N.M.P., did he talk to anybody?—I don't remember now. Some may have come to see him, but I don't remember.

Did you talk to him on the Monday afternoon?—Yes.

Did he talk to you?—Yes, but in a very low voice. Slowly.

After the execution of the will until he died, apart from Mehar and you, who came to see him?—Dalel Singh came the following day, the Tuesday. Harichand, my brother was there after the will was executed. And Iman Din. And there were several other persons whose names I don't remember.

Several other persons?—I wouldn't say more than one or two: the people living in the neighbourhood.

You mean you know these people but you can't recollect their names now?—That's right.

Now out of all these visitors that came to see Jaimal during the last two weeks, Mehar has named Dewa and Dalel, amongst others?—On that Tuesday Dalel came first: Dewa arrived in the evening, late in the evening.

Hadn't Dewa visited Jaimal several times during the fortnight in Indar Singh's house?—Only once. Only once prior to his death, and again as second time on the day he died.

Dewa comes from the same village as Jamail and you?—Yes.

And I put it to you, Amirchand, that Dewa not only came there but he stayed on several occasions at night?—He didn't sleep there one night. He went one day to see him and slept at Harnam Singh's.

Now, apart from Dewa and Dalel, name a Punjabi, other than those two, who visited Jaimal during that fortnight?—I don't remember. If I see the person I will recollect, but I don't remember.

Is it because you don't remember?—Those Punjabis who visited him in my presence I know, and those who may have gone in my absence I I don't know.

Who were those Punjabis that you saw?—For instance, Harnam Singh visited him. He used to come and go. Santa, another Punjabi, who would accompany him just to see how Jaimal was getting on.

Do you know Siubaran Singh?—Yes, I do.

You don't remember seeing him there?—No, I don't.

Gurdayal Singh?—Yes, he was there on Tuesday. Gurdayal stayed there the night Jaimal had died.

I put it to you that both those last-named men were there prior to the execution of the will?—Only Gurdayal Singh I saw on one occasion before the will was executed. Within that fortnight. A week or two before

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his death and then on that Tuesday. About Siubaran Singh I don't know.

What religious ceremony was performed after Jaimal's death?—Whatever our religion allows. Whatever we have to do according to our religious rites, they were performed.

What were they?—When a Punjabi dies we do the necessary things for his cremation: there was cloth and all that bought, and he was cremated.

Did you arrange for any ceremonies or prayers or readings at the Temple?—No, not till now: nothing has been done.

So neither you nor Mehar arranged any function or ceremony at the 10 Temple?—We haven't done so far.

RE-EXAMINED.

You said early in your cross-examination that Jaimal once told you he had given some property to his brother in India. Do you remember that?—Yes.

Do you know that brother's name?—Nagina.

And would he be the father of the nephews concerning whom we have heard so much in this case?—He was the father of the nephews.

Would you understand then that the gifts you talked about were made during the lifetime of Nagina?—During the lifetime of his brother. 20 He was alive.

Did Jaimal ever tell you anything about gifts to the nephews after Nagina's death?—Yes, he did.

Did he say what they consisted of?—He said, "I have provided them with land, plenty of land, good house, and have dug a well."

You were cross-examined on the question of Dalel Singh looking after Jaimal when he was at Lautoka?—That was just because I had to go away to Suva.

And how long were you away in Suva, by the way?—I think I returned after the third or fourth day. 30

Then you were cross-examined about Jaimal's condition on the day he went to see Mr. Wallace at the Rarawai Hospital at Ba, do you remember that?—Yes.

And you said, if I have recorded you aright, that he (Jaimal) was weak from travelling from Suva?—That's true.

Can you tell us how long after Jaimal made his journey from Suva he saw Mr. Wallace at the Rarawai Hospital?—If he went from here to-day and stayed the next day, it was the day after. Not the day following but the day after that.

One vacant day in between?—Yes. 40

And then you were cross-examined as to what you had told the N.M.P. at Nailaga. I think you admitted that you said he was too ill to travel—Jaimal, I mean?—Yes, I said that.

That was on the Monday?—Yes.

On the previous Friday, what was his condition?—He was all right on the Friday.

To the Court: I want in sequence the dates that these various occurrences took place. First of all, we know that the telegram that was dispatched to him was dispatched on the 15th February, and he went to Suva either on the following day or the day after that?—Following day. 50

You don't know whether you received it on the 15th or the next day ?
—No, I don't remember the date I received it : I went the following day.

You found Jaimal in hospital ?—Yes. The same day.

And he was in hospital how long after that ?—Two or three days after my arrival he left the hospital.

He went to the Sikh Temple on Sunday ?—Yes.

How long did he stay there ?—Between four and six days. I am not quite clear as to whether he was there four, five or six days. Not more than six : not less than four.

10 Then you went to Yalalevu—Mehtar's ?—Yes.

And two days after that you took him to Rarawai Hospital ?—There was one vacant day in between, the day he left here and the day I took him to Rarawai Hospital.

Then what was the next thing ?—The second or third day, I think, we took him to Lautoka Hospital.

And he was there ?—Less than eight, not more than nine.

Tell us : it would save time looking it up ?—I did say six or seven or or eight, I don't remember.

And then ?—He was brought to Indar Singh's house at Yalalevu.
20 I had come away to Suva and I don't recollect now. Five or six days in the hospital, then I came away to Suva : two or three days at the Sikh Temple.

You didn't move him from the hospital ?—I didn't place him at the Sikh Temple ; the others did. I went away : when I came back I found him there.

And he was there how many days after that ?—As far as I can remember, three days altogether at the Sikh Temple after he got out of the hospital. On the third day I got him away.

And then what happened ?—Then I brought him to Indar Singh's
30 house. He remained there until he died.

And did a doctor see him ?—Dr. Clunie was in medical attendance : saw him when he was at Indar Singh's.

When did he see him ?—As far as I can remember, two or two and a half weeks after he came back from the Sikh Temple Dr. Clunie visited him.

How long before the Monday when Mr. Davidson came was that ?—
Between eight and ten days—I am not too sure.

And then on the 3rd April Mr. Davidson came, and later in the day you took Jaimal to the hospital. Before you got that telegram in February
40 did you see Jaimal often ?—Twice before I received the telegram I had seen him.

How long before ?—Once just before Christmas and once after Christmas. He was at home at the time.

Apart from those two occasions, were you in the habit of seeing him often ?—In a year, about three, four or five times he would visit me at Ba.

You have told us Jaimal gave you £80 ?—Yes.

What became of that money ?—I came on the first occasion and paid £30 interest on the £350 I owed Jaimal. I handed him the money and went away, telling him I would call later and take the receipt. Then I came back the second time and I said there was a strike on, a cane strike ; would
50 he give me back the money I had given him and I would pay him the whole lot with interest at a later stage. Then he gave me £20. He paid £1 for a bag of sharps ; he paid another £1 to somebody else. Out of this £80

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No. 14.
Amirchand,
16th
January
1945,
Re-examin-
ation,
continued.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 14.
Amirchand,
16th
January
1945,
Re-examin-
ation,
continued.

Jaimal returned me the £30 I had given him for interest : that left £50, and out of that he gave £20 to the Sikh Temple, £1 for sharps and £1 for another man. £30 and £22—£52, and £8 lorry hire. The balance of £20 I spent : I didn't enter it up or keep an account. That makes £80 altogether.

What did you spend it on ? The £20 ?—That £20 which was left over, also some more of my own money, was spent looking after Jaimal.

You spent the £20 looking after Jaimal ?—And I was out of pocket too, plus this £20.

So that all you got out of it was repayment of the £30 which you owed 10 Jaimal for interest ?—Yes.

And which you now owe to Jaimal's executors ?—Yes, principal plus interest.

You knew Jaimal quite well ?—Yes.

Did you know anything about his financial affairs, apart from the loan to yourself ?—I know some of his dealings, where he spent the money, but not all.

Did you know he was worth over £20,000 ?—Yes, I knew that.

So you realised that when this will was made in favour of Mehar and yourself you were being very handsomely paid for your trouble ?—But 20 at that time I was under the impression that he had sent quite a big sum to his people in India and he might have some left—a little left here.

Now before this event did you know Mehar well ?—Yes, I knew him before Jaimal.

Was he a very great friend of Jaimal's ?—Yes, they were friends.

Great friends ?—I would always see them conversing and talking together, and Jaimal used to visit him occasionally and stay with him in his house.

How often did he do that ?—Since Mehar borrowed a large sum 30 of money from him he visited him quite often.

To collect his interest ?—No, just to pay him a visit. His interest was collected here in Suva.

And can you suggest any reason why Jaimal should leave the whole of his fortune to you and to Mehar and none to Dalel Singh who apparently also did a good deal towards looking after him in his last days ?—I don't know. Jaimal would know about that. Dalel didn't do anything. He didn't help in any way.

I thought he looked after him while you were in Suva ?—I had given him money : I had told him what to do while I was here in Suva, telling him I was going there to look after Jaimal's business. 40

No. 15.
Dhanna
Singh,
16th
January
1945, Ex-
amination.

No. 15.

EVIDENCE of Dhanna Singh.

DHANNA SINGH, sworn.

MUNRO : Where do you live ?—Samabula.

And I think you are a hawker ?—Yes.

I think also you knew the deceased Jaimal before his death ?—Yes, I knew him.

And went to see him when he was at the Suva hospital in Toorak ?—Yes.

Did you send any messages for him?—When I went to the hospital to see him, and after I sat down for a few minutes, Jaimal said, “Would you do me a favour please.” I asked him what was it and he said, “I want you to send a telegram to Ba.” I asked him to whom. “To Amirchand,” he said.

Did you send the telegram?—Wait a minute. I asked him “Why do you want to send this telegram?” He said, “He is my client, I want to talk to him about some of the dealings I have been having about his indebtedness to me.” He gave me money and I went to send the telegram.

10 I sent the telegram.

Just tell the Court what you sent in the telegram?—I said, “Jaimal has asked me to send a telegram to Amirchand.”

Who did you send the telegram to?—I sent it to Amirchand. Because he said he wanted to talk to Amirchand about his indebtedness to him.

And what was Amirchand’s address?—I am not a clerk: I am an illiterate man. I sent it there, probably to the C.S.R. Company’s office, or something.

20 Can’t you tell us what the telegram said?—This telegram to Amirchand was: Jaimal wants Amirchand: he is indebted to Jaimal and he wants to see him.”

What address did you give in the telegram?—I don’t know anything else.

You are here to tell the truth and to tell the Court exactly what you know, and I would like you to remember?—Whatever I am telling you in Court is the truth.

Just tell us how you addressed that telegram?—There is a post office in Ba, isn’t there? I went to the post office here and told them the instruction Jaimal had given me.

30 How did you address Amirchand?—Amirchand’s name. I don’t know the address.

Just try and recollect, and be very careful?—I only said, “Here, send a telegram to Amirchand,” and that is all. I don’t know anything else.

Did you know Amirchand before?—Yes. He is a Punjabi: he is one of ourselves.

And did you know his address?—Yes. Matanigara.

Did you tell the post office precisely what the address was, or were you unable to do so?—I told them, “You will probably get him at Matanigara.”

40 Did you mention to the post office Harnam Singh’s name?—No, I didn’t.

MUNRO: I wonder if I would be justified in declaring this witness a hostile witness. At the moment he is professing ignorance, and not only ignorance but I think a willingness to mislead the Court.

To Court: When you dispatched the telegram did you know what was in it?—No. I am an illiterate person.

Somebody in the post office read it for you?—Someone in the post office read it for me. It wasn’t even sent in my name. It was sent in Jaimal’s name.

50 MUNRO: The point is he admits receiving the instructions from Jaimal, and earlier in his examination-in-chief he says, “I don’t know

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—
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Dhanna
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Supreme
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Dhanna
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tion,
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anything else : that is all I know." And then he goes on with the rest of the information which he has tendered to the Court. I can't produce to the Court the original telegram because apparently the post office destroys its copies 10 months after the telegram is handed in. Possibly I could assist the Court more if I cross-examined.

MACFARLANE : Does anything turn on this ?—Nothing as far as the Plaintiffs are concerned, as far as I know. (*The telegram is produced.*)

The COURT : You will admit this telegram and the next one ?

MACFARLANE : I don't know anything about the next one.

The COURT : I suppose this witness is really a material witness. 10

MUNRO : My instructions are that he sent not only this telegram but the next one. As has already been testified by Amirchand, he hasn't the second telegram : that is not in his possession.

The COURT : Harichand, wasn't it, knew about the receipt of the second telegram after Amirchand had started ? Is the second telegram material ?

MUNRO : That is a matter for the Court. I have not seen the second telegram. I have only instructions from my clients.

The COURT : I can't see how the second telegram affects the case at all. Here is the telegram which apparently put Amirchand in motion. 20

MACFARLANE : I wouldn't deny that the witness did send the first telegram.

The COURT : Is it not suggested that this was the telegram that was actually sent and received ?

MUNRO : Yes.

The COURT : I think you might at this stage put the telegram to him.

MUNRO : Is that the telegram you sent ?—I have never seen it before. I can't read or write.

You will have it read to you. (*Telegram read*) ?—This is what 30 happened. Jaimal asked me to send a telegram for him. I asked, "To whom," and he said "To Amirchand." I asked why. He said, "He is indebted to me and I want to discuss the indebtedness with him." And I came to the post office and sent that telegram to him.

I just want you to tell the Court definitely. Did you send that telegram ?—No. I never put the words "seriously ill." Didn't mention them.

Do you say, therefore, you didn't send that telegram ?—I didn't send this telegram.

To the Court : The telegram you sent to Amirchand : what address 40 did you send it to ?—The post office in Ba. I sent it care of Post Office, Ba, so that Amirchand would receive it there.

And not to the care of any particular person ?—Not to the care of any person.

4 p.m. Adjourned.

No. 16.
EVIDENCE of Khursaid Khan.

Wednesday, 17th January 1945.

SIXTH DAY.

KHURSAID KHAN, *sworn.*

*In the
 Supreme
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*Defendants'
 Evidence.*

No. 16.

Khursaid
 Khan,
 17th
 January
 1945.
 Examina-
 tion.

- MUNRO : You live at Nailaga, Ba, and are a cultivator ?—Yes.
 Did you know the deceased, Jaimal, prior to his death ?—I knew him,
 yes.
 And where was he living just prior to his death ?—He was living at
 10 Yalalevu.
 Whose house ?—House belonging to Indar Singh.
 And how far away from Indar Singh's house do you live ?—Roughly,
 about a mile.
 Did you see Jaimal in Indar Singh's house prior to his death ?—Yes.
 How many days before he died did you first see him ?—About three
 days prior to his death. I have seen him three times while he was there
 at Ba, and in Indar Singh's house I have seen him twice.
 Now can you tell the Court on what day of the week Jaimal died ?—On
 Tuesday.
 20 Now you saw him twice in Indar Singh's house : how many days
 then before the death did you first see Jaimal ?—On the Friday.
 On the Friday before he died ?—Yes.
 Was this in the morning or afternoon, or what part of the day ?—In
 the morning.
 And was he alone when you saw him or were there others there ?
 INTERPRETER : He goes on to explain that he didn't particularly
 go to see Jaimal on the Friday : he was going to the town.
 Anyhow, you saw him on the Friday. Were there others there when
 you saw him ?—I saw Mehar and Jaimal.
 30 Was there any one else present ?—No, not at that time.
 And did you have any conversation with Jaimal ?—I greeted him.
 Did he reply ?—Yes.
 What were his words ?—He said " Salaam."
 Did you have any conversation with him ?—In the meantime the bus
 arrived and I left.
 When did you next see him ?—Saw him again on Monday.
 About what time of the day was that ?—Roughly, about 10 or more
 —past 10.
 That was Indar Singh's house, was it ?—At the time I arrived at
 40 Indar Singh's house Jaimal and Mehar were the only two in the house.
 And others came later, did they ?—Yes.
 And while you were there and before the others came, did you speak
 to Jaimal ?—Yes, I greeted him, I asked him how he fared, I said, " How
 are you Mahajan ? " He said, " I still cough very much and I have pains
 all over here," pointing to his chest.
 How long were you there with Mehar before these others you refer to
 arrived ?—About three or four minutes. Afterwards the others came.
 And who were they ?—Mr. Davidson, solicitor, his clerk Rasul,
 immediately behind him Amirchand. Mr. Davidson came into the house

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and salaamed Jaimal and then asked him if he was Jaimal, and he said, " Yes, I am Jaimal."

Just tell us exactly what the conversation was as you heard it?—Mr. Davidson asked him if he had sent word to him to draw up a will. Jaimal said, " Yes." Then Mr. Davidson spoke to Jaimal and said, " In whose favour did you want the will to be drawn up ? "

Where were the parties in the room at that time ? How were they seated ?—Jaimal was seated on a chair. In front of him on his right side was Mehar. When Amirchand entered the room he went and sat down on his left side. The lawyer was standing right in front of him and his clerk 10 was beside him.

And where in the room were you ?—I went behind Jaimal. I was standing behind Jaimal.

Precisely where ? Against the wall, or where ?—Immediately behind Jaimal, behind his chair, in the door behind him—just between the door and the chair. In the doorway immediately behind him.

You were in the doorway ?—Yes, the door that leads towards the kitchen on the other side—right in the doorway.

And was there anyone else there apart from those you have just mentioned ?—In the porch in front of the house was Shankar, the driver : 20 he was standing there.

And was there anyone else about who could hear what was going on inside the room ?—There was no one else in the room.

Was there anyone else about ?—I could hear voices towards the kitchen. There were people talking.

Could you see and hear what was going on in the room ?—Yes.

Well we will just carry on. After Mr. Davidson said, " Are you Jaimal ? "—

The COURT: " In whose favour did you want the will to be drawn up ? "

MUNRO: Yes. What next ?—" This is Amirchand and this is 30 Mehar."

Then what happened ?—Mr. Davidson held the paper and started reading it out in Hindi. He read the fathers' names of Mehar, Amirchand and Jaimal, but I have forgotten the names he read out. Then the lawyer asked him, " Do you have any blood relations here ? "

Did Jaimal reply ?—Jaimal said, " No, there is no one here."

Just repeat the Hindi words you heard Jaimal use ?—" _____ " (Hindi) meaning " Over here there is no one."

What further conversation took place between the two ?—" Whatever I have here belonging to me are these two." 40

Jaimal said that ?— Yes. Then Mr. Davidson asked him, " Do you wish to make these two the executors of your will ? " and he said " Yes."

Do you recollect anything further ?—Jaimal further said, " Until I live everything is mine : after my death it belongs to these two."

While the will was being read by Mr. Davidson in Hindi was anything further said by Jaimal ?—After completing the reading of the will he asked Jaimal if it was all correct : Jaimal said, " Yes."

And did Jaimal answer that question ?—He said, " Yes."

Did Rasul take any part in the proceedings ?—Yes. The lawyer then read the will in English and Rasul translated it back to Jaimal as I 50 have already stated.

During that did Jaimal say anything?—After it was all read over and translated by Rasul, Mr. Davidson asked if that was all right, and he said, “ Yes.”

And what took place then?—Then he was asked, “ Do you sign your name or do you affix your thumb print? ” He replied, “ I always sign my name.”

Did you see the will executed then?— Yes.

Now just tell us very briefly how it was executed?—He signed it when Mr. Davidson handed him a pen, but Mr. Davidson said it was not a good signature. He said, “ Would you affix your thumb print.” Mr. Davidson had a look at that thumb print and said it wasn’t clear, then Jaimal said, “ Will you assist me and place the thumb print? ”

And was he assisted?—Yes.

And did you then see Mr. Davidson sign his name?— —

To the Court : Who helped Jaimal make his mark?—Mr. Davidson.

MUNRO : That was the second mark?—The last mark.

Then you saw Mr. Davidson sign his name?—Yes.

And Rasul his name?— Yes.

Where were Mr. Davidson and Rasul when they signed their names?
20 — Right in front of Jaimal. In the room was a table and on that table Mr. Davidson and Rasul signed their names.

When Jaimal tried to write his signature and when he affixed his thumb mark, where was Rasul?—He was there.

And could Jaimal see him?—Oh yes, surely.

Very well, what happened after the will had been signed and attested?
—Then Mr. Davidson enquired of Mehar and Amirchand. He said, “ Do you have a doctor attending this man? ” He said, “ Yes, a doctor has seen him and we got mixtures for him.”

What impression did you gain of Jaimal’s memory and the soundness
30 of his mind?—He was in a sound mind.

Did you gather that he understood what he had done when he signed his will?—He understood what he was doing.

And I think you were present again on the 4th, just about the time Jaimal died?—Yes, in the evening I went there.

To Court : After his death?—No, he hadn’t died then. I was there just before he died.

CROSS-EXAMINED.

CHALMERS : You say you saw him just before he died. Were you talking to him just before he died?—No.

40 Was he able to speak on that Tuesday?—I didn’t see him talking, no.

What time was it when you saw him first?—3 or 3.30.

To COURT.—Monday or Tuesday?—Tuesday, 3 or 3.30.

CHALMERS : I understood he died about 1 o’clock?—No, he died about 3 o’clock.

It wouldn’t be correct that the N.M.P. gave his certificate before 1 o’clock?—He may have done so, but he died at 3 o’clock.

When was the first time you ever set eyes on Jaimal?—About 9, 10 or 11 years ago, the first time I set eyes on the man, but I didn’t talk to him.

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No. 16.
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17th
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Examina-
tion,
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Cross-
examina-
tion.

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continued.

You didn't see him in 10 years prior to the time you saw him at Indar Singh's house?—I saw him at Mehar's before seeing him at Indar Singh's. You haven't told us about that?—Yes, I have seen him at Mehar's house also.

Where was he staying?—He had just arrived from Suva.

Where was he staying?—At Mehar's house.

He was living in Mehar's house?—I saw him at Mehar's house.

Inside the house?—In the stable where everybody sits down.

As a matter of fact you are a next door neighbour of Mehar's are you not?—Yes, that's right. The boundaries are attached. 10

You and Mehar have been living close to each other for quite a long while, haven't you?—Yes, ever since I bought my land I have been living there.

And you are very good friends with Mehar, aren't you?—Just an acquaintance. We are not very thick friends.

Now I just want to ask you. You have how many acres of land—you and your son?—16 acres in the name of my son. Five acres in my name. You have a mortgage; you ought to know.

You have only 5 acres in your name, haven't you?—Yes.

And your son has how many acres in his name?—26 acres, more 20 or less.

And how much money do you owe on the 16 acres of land? I owe you £400. I borrowed £400; I pay you the interest and I owe you the principal.

What did you originally pay for that 16 acres?—£507.

What rate of interest are you paying?—8 per cent.

And Mehar is paying 8½ per cent.?—That I don't know.

It is proved in Court here that he is paying 8½ per cent.?—Well, he may be: I haven't asked him. I don't know.

I put it to you 8½ per cent. interest is a reasonable rate of interest for that class of land?—For poor people like us it is rather heavy. 30

And you admit you are paying less?—I am paying 8 per cent.

Well, did Mehar take you along to see Jaimal?—No, he didn't.

Well you were not interested in borrowing money from Jaimal: you have made your financial arrangements hadn't you?—Yes, that is so.

And are you a Punjabi?—No.

You are a Muslim?—Yes.

Well what made you visit Jaimal?—Not in particular to see Jaimal.

I am asking you what induced you to go and see Jaimal?—You mean on the Friday? I was coming along to the mosque. 40

You said you visited him three times at Indar Singh's house?—It happened this way. I left town and went to Mehar's and I was sitting down there when Amirchand arrived with Jaimal to the house.

I quite admit you might have been at your neighbour's house when Jaimal arrived, but I am asking you why you should go and visit him while he was at Indar Singh's house?—I didn't go there to visit Jaimal: I was going along to the mosque on Friday, and during those days we were attending a lot of these Kisan meetings at Lautoka.

Why did you go off the road a distance of a chain and a half to visit Jaimal?—This happened on Friday. I was waiting for the car and it was raining. Just to get out of the rain I went into Indar Singh's. 50

You happened to be on the road and you went in there for shelter?—Yes.

What day was that ?—It was Monday. When I took shelter it was Monday.

Almost beside it on the other side is Nur Mohammed's store, isn't it ?—Further ahead.

No further distance away from where you would be on the main road ?—About 2 to 2½ chains away.

You were standing on the road. What distance would you be from Indar Singh's house ?—About a chain and a half.

10 And how far would the store be ?—About 2½ to 3 chains from where I was standing.

And were you walking along the road from Nailaga ?—Yes.

And you passed right alongside of Nur Mohammed's store, didn't you ?—Yes.

Why didn't you go in there to shelter ?—You get to Indar Singh's first, before you get to Nur Mohammed's.

And that is your only reason for going in there—just to shelter ?—That is so.

So that it was just by accident that you happened to be there when this will was made ?—Yes.

20 And what about the Friday : how did you come to be there on the Friday ?—I was standing there awaiting the arrival of the bus.

Whereabouts ?—Right in front of ——'s house. I was walking along : the bus didn't come in time—delayed—so seeing Mehar I just walked up to him.

So you walked along to get a bus and you walked in there because you saw Mehar ?—Yes.

What did you want to see Mehar for ?—He is my neighbour, and when I saw him I thought I would talk to him until the bus arrived. All neighbours do that if they happen to meet a neighbour of theirs.

30 But you say there is nothing in common between you and Mehar ?—I didn't come because of my friendship : I am not a friend of his.

So you walked a distance of a chain and a half from the road to this house just because you happened to see Mehar there ?—I saw Mehar and therefore I went. If I hadn't seen Mehar I would have just walked on.

Any acquaintance that you see, no matter who it is, you must walk up to him : is that the theory you put forward ?—If one is waiting and expecting the arrival of a bus or anything like that, and he meets an acquaintance, he would naturally go and talk to him.

40 You had walked quite a long distance that morning towards Ba, had you not ?—I was waiting there and the bus arrived at that place.

As a matter of fact, where you would go to meet the bus is near Nailaga town ?—That is so.

I put it to you where you go to meet the bus at Nailaga town would be a mile from Indar Singh's house ?—At that time I didn't know I had to go to Lautoka.

Where did you go to meet the bus that morning ?—I was going to the mosque to say my prayers that Friday morning.

Into Ba ?—Yes.

Where did you go to meet the bus ?—

50 INTERPRETER : He says he was going along to the mosque and when he was going along he was told to wait and the bus would come and take him to Lautoka, so he said his prayers at the Lautoka mosque.

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continued.

So you didn't go in the direction of Ba—you went in the opposite direction?—Yes.

The Ba mosque would be about 2 miles away and you went 25 miles away?—There was other work besides at Lautoka.

So you weren't just going to say your prayers that morning?—Yes. You happened to be in the room just by accident when you heard this will being made?—This happened on the Monday.

When Mr. Davidson read out this will in which he said that the deceased had no next of kin or blood relations in Fiji nor elsewhere, did you hear him say that?—No, there was nothing about "elsewhere" 10 just "here."

Do you agree or do you not agree that Mr. Davidson read this out: "I have no next of kin nor blood relations in Fiji nor elsewhere who are known to me"? Do you agree Mr. Davidson said that in Hindi?—Nothing about "elsewhere." Mr. Davidson read out about "here" only. He asked him a question, "Have you any blood relations here?" and Jaimal said "No."

Nothing about "elsewhere"?—Nothing about "elsewhere."

Was there any talk about the deceased's nephews?—No, nothing.

During the time that Mr. Davidson was reading this will, and again 20 when it was being interpreted by Rasul, did Amirchand or Mehar say anything?—No.

Neither of them spoke a word?—Nothing.

You are quite clear on that point? If Mehar or Amirchand said anything to the contrary—that they did speak or say something—that wasn't the truth? If they did say it it couldn't be true?—

The COURT: They don't like to admit that as a rule.

CHALMERS: How long did you stay after the will was made?—I left immediately with the lawyers.

You left with the lawyers?—Yes. 30

In the same vehicle?—Yes.

With Mr. Davidson and Rasul?—Yes, and Amirchand went with us, too.

RE-EXAMINATION.

None.

No. 17.
Balwant
Singh,
17th
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tion.

No. 17.

EVIDENCE of Balwant Singh.

BALWANT SINGH, *sworn.*

I think your father's name is Ganga Singh?—Yes.

And you live at Varoka in Ba?—Yes.

Did you know Jaimal deceased who has been mentioned in this case? 40 —Yes.

When did you first meet him?—The first time I saw him was when we all went together to Indar in 1938.

And to what part of India did you go?—To Punjab.

And Jaimal, do you know what part he went to?—He also went to Punjab.

Now the village where you subsequently went. Was that anywhere near the one where Jaimal went?—The village I went to would be about 3 to 4 miles from Jaimal's village.

And did you meet any of Jaimal's relations when you were in India in 1938?—Yes.

What relationship were they to him, do you know?—Jaimal told me that they were his nephews.

Do you happen to remember their names?—Yes.

What were they?—Bariam Singh, Batna, Sindhu, Shiama.

10 Were they all sons of one man, or sons of different people?—That I don't know, but he said "These are my nephews."

Do you happen to know the father's name of any one of them?—I don't know the father's name.

Well now, could you tell us anything about the circumstances in life of those four people. Were they well off, badly off, or what?—They have their own land. They have property.

They have their own land and property?—Yes.

So much for your activities in India. Now last year—that is 1944—did you see Jaimal at all?—Yes.

20 Where?—At Ba.

What part of Ba?—At Yalalevu.

In whose house, do you know?—In Indar Singh's house.

How many times did you see him there—just the once or more?—Three or four times.

And the first of those occasions would be, as near as you can tell us, how long before he died?—About eight or ten days prior to his death.

At that time was there anybody else present except you and Jaimal?—Jaimal, Amirchand and one or two people in the kitchen.

Did you have any talk with Jaimal?—Yes.

30 What conversation?—I asked him about his condition—how he felt and all that. He said, "I feel just the same as I felt in Suva. I am not any better than I was in Suva."

Was there any talk about a doctor?—I asked him if he had been shown to any doctor.

What did he say?—He said, "The doctor has seen me but it has been of no avail."

Do you happen to know what day of the week he died?—4th April.

Do you know what day of the week it was?—Tuesday.

The day before that—Monday, the 3rd—did you see him then?—Yes.

40 About what time?—Between 4 and 5 o'clock.

Where?—At the same place where he was then.

You saw him there at 4 or 5 in the evening that Monday. Did he recognise you, do you think?—Yes.

Did you speak to him?—Yes.

And he to you?—Very slowly.

Will you tell us what conversation you had with him?—I asked him how he felt and how he was getting on. He was in a very weak condition. He said, "I am not feeling too good. I don't hope to live. Whatever I have I have left by will to Mehar and Amirchand."

50 Did he say anything about relations, or anything like that?—He tried to speak very much—he wanted to say a lot of things, but he wasn't able to say all. He would say a few words and then stop.

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I am just asking you about the things he did say ?—That was all I was able to gather at the time.

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examina-
tion.

CHALMERS: Your father is Ganga Singh ?—Yes.

And Ganga Singh is a wealthy man, is he not ?—Yes.

And I am his attorney in Fiji, am I not ?—Yes.

Now, isn't it a fact that you were running a store business financed by him and he turned you out ?—There was a loss in the store and therefore he said to close it down.

He went away to New Zealand and when he came back he found there 10 had been a big loss in the business.

MUNRO: Is that a challenge to his veracity—proving that he is a bad storekeeper ?

CHALMERS: You have described yourself as a merchant—what are you a merchant of ?—Selling motor car parts and all that.

Is that your only occupation ?—I was looking after my father's building, one of the buildings on which I am to collect rent. He has left the building for me, the rent of which is for my own use.

You sell motor car parts ?—Yes, I buy and sell motor car parts.

And have you a licence ?—Since I have sold out all my parts I don't 20 take out any licence.

How long ago is it since you sold out your parts ?

The COURT: This has something to do with it, Mr. Chalmers ?

CHALMERS: For months now what have you been doing for a living ?—I have already told you father has left a building the rent of which is for my own use.

Did you go to see Dr. Clunie ?—Yes.

When ?—A week or four or five days prior to Jaimal's death.

Did you accompany Dr. Clunie to Jaimal's ?—No. I didn't accompany 30 Dr. Clunie from the hospital, but I went with him to the house.

If Amirchand said you went and got Dr. Clunie, would he be correct ? —That is what I am saying.

You say you went to see Dr. Clunie ?—Yes.

You had a talk with Dr. Clunie ?—Yes.

Did you see Dr. Clunie at Jaimal's ?—Yes.

Did you come back with Dr. Clunie ?—I didn't come back with him, no.

How did you know he was there ?—He said, "You people go ahead and wait for me on the road, and as I go to Nailaga you can stop me and I will go and see Jaimal." 40

Did he go to see Jaimal at his house ?—We stopped him on the road and took him to see Jaimal.

When you were asked by counsel about the doctor why didn't you tell us that ?—No one asked me about a doctor this morning.

RE-EXAMINATION.

None.

No. 18.
EVIDENCE of Nur Mohammed.

NUR MOHAMMED, sworn.

MUNRO: Your father's name is Maula Buksh?—Yes.

And you live at Korolevu, Sigatoka, and are a sirdar?—Yes.

You have freehold property at Yalalevu?—Yes.

And in addition to that you are Mr. H. H. Ragg's sirdar?—Yes.

I think your house at Yalalevu is very close to Indar Singh's house?
—Yes.

10 Did you know the deceased, Jaimal?—Yes.

And where did you first see him last year?—At Indar Singh's house.

Now how did it come about that you saw Jaimal at Indar Singh's residence?—I went back from Nasawa, Sigatoka, Mr. Ragg's land where I am sirdar, to my house, and from my home I noticed a light burning in Indar Singh's house.

And what did you do next morning?—I went next morning to tether my horse close to that building.

Did you see Jaimal that morning?—Yes I went in and saw Jaimal, and I saw Mehar there too.

20 How long was that before Jaimal died?—Roughly about 3 weeks prior to his death.

And when you saw him that morning he was living in Indar Singh's house, was he?—Yes.

And he was no doubt sick?—Yes.

Was anyone looking after him?—Yes. Mehar and Amirchand were looking after him.

How do you know that?—I could see them there. They were always living there.

30 Was there anyone else there—regularly that is—looking after him?
—There was a cook there.

Do you know his name?—Sukhu.

And did you speak to Jaimal that morning?—Yes.

How often after that first visit did you go back and see Jaimal?—Occasionally I would be going there to untie my horse or the goats. As I live close by I see all this.

How often did you visit him at Indar Singh's house?—Occasionally I would be there in the morning and sometimes in the evening. Whenever I saw any people about the place I would go.

40 Would that be every second day, every third day, or how often?
Well, I tie my horse near the place every day, but I visited him about two or three times a week.

And you would speak to him on those visits, would you?—Yes.

And did that go on right up until his death?—Yes.

How did you think he was being looked after—well or badly, or how?
—I would be only there for ten or fifteen minutes at a time, and it seemed to me they were looking after him quite well.

Did he ever discuss with you his property and what he was going to do with it?—Yes, he talked to me about it.

50 When did he talk to you first about his property after you first met him that morning?—Roughly about a week or ten days after I first met him in that house he spoke to me about his property.

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tion,
continued.

And about what time of the day was that ?—7 or 7.30 one morning, roughly, guessing the time.

And was there anyone else there ?—Yes. Mehar was there.

Anyone else ?—The cook was there too, in the kitchen.

Was there anyone present, apart from you and Jaimal ?—Mehar was the only one.

What was the discussion. What did he say ?—Jaimal, speaking to me, said, " On several occasions I have told Mehar and Amirchand to have a will drawn," and I said to Mehar, " Your financier insists that you make a will ; why don't you do it ? " and to that Mehar replied, " My financier 10 will recover."

Was anything further said that morning ?—" It is all his : he will become well." And after that I left.

On any other days did you have any further conversation about his property ?—On Thursday, I remember, round about 5 p.m.

What particular Thursday ?—Thursday prior to his death.

Who was there then ?—Amirchand, Mehar and Nur Ahmed.

Roughly, what was the time of this conversation ?—Past five p.m.

Just tell us the conversation ?—I went and salaamed him—greeted him. Jaimal, speaking to me, said, " I have told you before and also 20 in the presence of several other people that I want these two people to draw a will in their favour, but they will not. They will not bring a lawyer."

Yes ?—Then Mehar replied to that and said, " All right, Sir, I will get one."

Did you or Jaimal say anything ?—I didn't say anything else to Jaimal. When Mehar agreed to get a lawyer I didn't say anything.

When did you next see Jaimal ?—On Sunday.

That was the Sunday prior to his death, was it ?—Two days before his death.

And about what time was this ?—In the evening, round about 5 or 30 5.30 p.m.

And who were there ?—Amirchand, Mehar, Jang Bahadur, and Sukhu in the kitchen.

And Jaimal himself ?—Jaimal was on the cot.

And did Jaimal have anything to say ?—Did you speak to Jaimal ? —I salaamed him, greeted him. He said, " Look here, I have told these people on this day also. To this day they haven't brought the lawyer." Then I spoke to Mehar, saying, " Why don't you get it done ? Your financier is anxious to have the will drawn in your favour : Why don't you do it ? "—He said, " All right, I will bring him to-morrow." 40

And anything further that Sunday afternoon ?—Then I assured Jaimal : I said, " These people promise to bring one to-morrow. They will get one to-morrow." Jaimal said, " All right."

Did you remain then or did you go ?—The total time I stayed there would be about 10 minutes ; and I untethered my horse and went away.

Did you see Jaimal the next day, Monday ?—Just as I was leaving Nur Ahmed walked into the house.

Which day was this ?—The Sunday. This is the Sunday evening about 5.30.

Did you see Jaimal the next day ?—I will tell you what I saw on 50 Monday. I was sitting down on my verandah. From there I saw a taxi arrive ; I saw Mr. Davidson and his clerk alight. Get off that car and go in.

Did you yourself see Jaimal or speak to him that day?—No.

Did you see him the next day, the Tuesday, the 4th?—On Tuesday, I did.

What time was that about?—Before 7, or slightly after 7 in the morning.

And where was he?—On his bed.

Did you speak to him?—I went near the doorway and said “Salaam” to him, and he said “Salaam.”

10 I said, “How are you, Mahajan?”

And did he reply?—He said, “I am not feeling very well.”

And did he have anything further to say to you?—No. I didn’t see anybody else there at the time, so I left.

Now, when you had these conversations with Jaimal, up to the Sunday preceding his death, what did you think of his mind and his memory—were they good or bad?—As far as I know, he was of sound mind. In good condition at the time. The reason why I say that is that he was able to understand what was being said to him and he would reply to the question that was asked; would give a right answer for it.

20 Did you form the opinion that he was under the influence of Mehar and Amirchand?—No.

Or that they were coercing him into making a will in their favour?—No; every time Jaimal himself used to say: “Get the will drawn in their favour.”

CROSS-EXAMINED.

CHALMERS: About this time you tell us you came back from Sigatoka and you saw a light. Where were you living round about that time?—I was living at Ba.

30 Weren’t you working for Mr. Ragg at Korolevu?—Not at that time. You weren’t working for Mr. Ragg at all in any capacity?—Mr. Ragg had sold that property to Mr. Booth at Sigatoka, so therefore just at that time I wasn’t looking after that place, although I was the servant of Mr. Ragg.

You describe yourself as a sirdar. A sirdar of what?—What I mean is I act as an agent for him. I collect his rent, look after his place.

Whereabouts?—Nasawa.

Sigatoka?—Yes.

Do you know Mehar very well?—Yes.

40 How many years have you known him?—Roughly about 18 to 20 years.

In fact I think you arranged the sale of the land that Mehar has got now from Mr. Ragg to Mehar, didn’t you?—Yes.

How long had you known Jaimal before you saw that light in the house that night?—15 or 16 years. From Suva.

Did you ever visit him?—Yes, I was hawking at the time. I had a licence and I had come to Suva nearly every month.

You would visit him?—No, I used to see him in town.

That was all your knowledge of him?—We talked to each other: he was an acquaintance: I knew him.

50 Then you say the next time you saw him was at Yalalevu?—Yes.

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tion.

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tion,
continued.

Did you visit him there as a friend or just as an inquisitive sort of person?—I knew the man. When I had gone there to tether the horse I saw him and went there to greet him.

Are you a Punjabi?—No.

You say you discussed this will with him?—Yes.

When you saw him was that the first thing he started talking to you about—his will?—No.

You talked about all sorts of things and then he would bring up the question of his will?—The will was discussed two weeks after I had seen him there. 10

I am talking about the time he first discussed the will with you. Did he discuss it with you immediately on your arrival that day?—No. Two weeks after my arrival. After I arrived back from Sigatoka and saw the light in the house, two weeks after that.

On the occasion of that visit did he bring up the question of his will as soon as you went into the room?—No, I went and stood there, and I greeted him and he talked to me, and during the conversation he started.

How many times did he actually tell you that he wanted to get this will drawn up?—Three times.

On each of those occasions he asked for a lawyer, is that right?—I 20
didn't say he asked for a lawyer on all three occasions. He said, "I want the will to be drawn in their favour." But I remember clearly him asking for a lawyer on the third occasion. It was on the third occasion he said he wanted a lawyer.

To COURT : What two people?—Amirchand and Mehar.

CHALMERS : How did you know that?—He said that to me. Jaimal used those names.

You said he discussed this with you on the Thursday before he died?—Yes.

And then again on the Sunday?—Yes. 30

On the Thursday did he say he wanted to see a lawyer?—Yes, he did.

Why, when he made this request, didn't you comply with it and go and ask some lawyer to go and see him?—It is nothing to do with me. It didn't concern me.

Wasn't he asking you especially? Didn't he say, "These people are not bringing a lawyer and I want a lawyer?" He was complaining to you?—That is so, he did complain to me, but it was nothing to do with me. He wasn't telling me he was making a will in my favour. The man in whose favour he wanted to make the will, he should take interest. 40

On the Sunday you say he asked you again about the will?—Yes.

Were Mehar and Amirchand present?—Yes. And Jang Bahadur, too.

Did either Mehar or Amirchand say anything about instructions having already been sent for the drawing up of a will?—Mehar said for certain a lawyer would be here to-morrow.

Did they say to Jaimal that arrangements had already been made for the drawing up of a will?—They said this, "A lawyer will come for certain to-morrow." That is what was said to Jaimal. "A lawyer will come for certain to-morrow." 50

Did you hear the name of Hari Charan mentioned by any chance on the Sunday?—I didn't hear the word Hari Charan mentioned in my presence.

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RE-EXAMINATION.

None.

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To the Court: Which day was it that Jaimal told you he wanted his will drawn in favour of these two, Amirchand and Mehar?—Monday—nine days before his death.

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10 Was that the only time he mentioned what he wished to do?—No. Three times altogether he told me what he was going to do.

Did you ever ask him why he was leaving his property to them?—I really felt at the time that I wasn't concerned in the matter. I was just simply hearing what he was saying to me.

INTERPRETER: It can also mean "I was being inquisitive."

No. 19.

EVIDENCE of Jang Bahadur Singh.

JANG BAHADUR SINGH, *sworn.*

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tion.

RICE: Where do you live?—Nasade, in the Ba district.

You are a cultivator?—Yes.

20 Do you know a house in Yalalevu, Ba, which is owned by Indar Singh?—Yes.

The owner, Indar Singh, by the way, is he a relation of yours?—Yes, he is an uncle of mine.

In April of last year did you visit that house at all?—Yes.

And was there there then a man called Jaimal?—Yes.

Now, how many times did you visit that house last April when Jaimal was there?—I visited the place three times during Jaimal's stay there.

I think you know that Jaimal is dead?—Yes.

30 The first occasion on which you visited the place: could you tell the Court how long that would be before Jaimal died?—Sunday.

What Sunday?—About 10 days before his death.

And the second occasion, could you say how long that would be before he died?—The Sunday before his death. I saw him on the Sunday and the following Tuesday he died.

That is two Sundays before he died. And the third occasion was when?—On Monday.

Very well, come to the Sunday before he died, that is, you have told us, the occasion of your second visit?—Yes.

40 Who else was there besides you and Jaimal on that occasion?—Mehar was there; Nur Mohammed, the last witness. After a little while Nur Ahmed—after Nur Mohammed left.

And on that day was there any talk about a will in your presence?—Yes.

Can you tell us what the conversation was?—Jaimal was speaking to Nur Mohammed, and he said, "I have requested Mehar and Amirchand on several occasions to make a will in their favour, but they would not. Will you make them comply with my request."

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tion.

continued.

Anything else?—Nur Mohammed told him not to be anxious or worried : he said he would speak to Mehar about it.

Now, the Monday, the occasion of your last visit, the following day, what time did you get there, roughly?—Roughly, about 9.30 or 10 o'clock in the morning.

Who were there when you arrived?—When I arrived at the house, Mehar, Jaimal were there, Sukhu and Said Ali were towards the kitchen ; they were getting a fowl ready.

Where was Jaimal?—He was sitting down on the chair.

Who were in the room where he was sitting down?—Jaimal, Mehar, 10
Khursaid Khan, and a short time afterwards Mr. Davidson and his clerk arrived.

Did anybody else arrive with them?—Followed by Amirchand.

Do you know how Mr. Davidson and Rasul had come there? Had they walked from town, or what?—I was in the house so I don't know how they arrived. I saw them walking up to the house.

Did they come into the room where Jaimal was?—Yes.

And what happened after they went in there?—The lawyer said to him, "Salaam, Mahajan, are you very sick?" and then, "Did you send anybody to me?" Jaimal said, "Yes, Amirchand and Hari Charan." 20
He asked, "Why?" "I sent them because I wanted a will drawn in favour of Amirchand and Mehar."

What happened then?—Then the lawyer asked him if he had anyone else belonging to him as relatives. "Whatever I have which I call mine are these two." And then he placed his hands on Amirchand and Mehar.

Did Mr. Davidson have any document with him?—Yes, he had a paper about that big (*indicates*).

Was it opened up or folded or in an envelope or what?—He had it opened.

In his hand?—Yes. 30

And did he read anything out of it, or anything like that?—Yes, he read out in Hindi.

Did you hear the reading?—Yes, I could hear it.

What sort of document was it?—It was a will.

Whose will?—The will that Jaimal had drawn in favour of Amirchand and Mehar.

You heard that read out?—Yes.

In what language?—In Hindi.

By whom?—The lawyer.

And when the lawyer, Mr. Davidson, had read it out what happened 40
then?—He asked Jaimal if there were any errors or mistakes in it, and Jaimal said, "No. It is all quite right."

What was the next thing that took place?—Mr. Davidson asked him if he could sign his name, and he said, "Yes."

And after that?—Just as he was about to write he had this spasm of coughing, and then Mr. Davidson had a look at what he had written and said it was no good.

And what was the next thing done?—Then Jaimal placed his thumb print on that paper.

Was the thumb print all right or not?—Then Mr. Davidson had a 50
look at it and told him it wasn't clear. Then Jaimal said, "Here, take hold of my thumb and assist me."

Did Mr. Davidson do so?—Yes.

Well you have told us that Jaimal made an attempted signature and two thumb prints. Was anything done to the will after that?—Yes.

What?—Then Mr. Davidson wrote his name and Rasul signed his name.

Whereabouts in the room did they do that?—On a table.

Do you think Jaimal could see them doing that?—Oh, yes.

You say that both Mr. Davidson and Rasul signed their names?—Yes.

10 And when Mr. Davidson signed his name were Jaimal and Rasul still in the room?—Yes.

Just one other thing. You told me Mr. Davidson read over the will in Hindi. This was before it was signed, of course?—Yes.

Did Rasul take any part in the matter?—After it was read over in Hindi and Mr. Davidson said he would read it over in English Rasul interpreted that.

Was that done?—Yes.

20 Before or after the will was signed?—First it was read over by Mr. Davidson in Hindi and then it was re-read to him in English and interpreted by his clerk and after that Jaimal signed the will.

Well, I suppose Mr. Davidson ultimately left, did he?—Yes.

10 And did you remain behind after he left?—I was there for another or 15 minutes. I asked Mehar—

Did you remain behind after Mr. Davidson left?—Yes, I stayed back.

And when Mr. Davidson left did anybody go with him?—Rasul, his clerk, and Amirchand and Mr. Davidson; I think they all went together.

And you remained behind?—Yes.

30 Now you were going to tell us something you asked Mehar at that stage; what was it?—Yes, I did.

What did you ask him?—I asked Mehar if Nur Ahmed had been there.

Do you know who Nur Ahmed's father is?—I don't know. (*Nur Ahmed identified.*)

You asked Mehar whether this man had been there?—Yes.

And will you tell us why you asked Mehar?—I had something to do with him. This man owed me some money.

And did Mehar answer your question about Nur Ahmed?—Yes, he did.

40 What did he say?—Mehar said he did come about 8 o'clock in the morning, and he saw him go towards Ba town.

And so you missed him?—I wasn't able to see him.

You have told us how that will was signed in that room?—Yes.

Tell the Court whether the various persons whom you mentioned were either seated or standing in the room. Commence with Jaimal; where was he?—Reclining in a chair.

Mehar and Amirchand?—Seated close to Jaimal. Mehar on his right hand side and Amirchand on his left hand side.

During the reading of the will, Mr. Davidson and Rasul?—They were in front of him—in front of Jaimal, Mehar and Amirchand.

50 You have told us about Jaimal, Mehar, Amirchand, Mr. Davidson and Rasul; anybody else?—Khursaid Khan was standing.

Where were you?—I was immediately behind Khursaid.

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tion.

MACFARLANE: Were you indebted to Jaimal?—No.

Are you a Punjabi?—No.

Why did you go to see Jaimal?—I didn't go to see Jaimal. I had gone to make enquiries about Nur Ahmed.

I take it you weren't a friend of Jaimal's at all?—No.

And you went there three times looking for Nur Ahmed?—The first time I went there I was going to Sarava, and met Nur Ahmed there at Indar Singh's.

You mean that you met him by arrangement or by accident?—By 10
accident.

How did you come to go into Indar's house in the first place, on the first occasion?—As I have told you, I was going along to Sarava, and accidentally met Nur Ahmed who was going to Indar Singh's house. I continued with him.

Why did you go into the house with this other man?—Well, no one stopped me from going in. There was no such thing as you are not to come in or anything like that, and therefore I just walked in.

Why did you go to Indar Singh's house on the second occasion?—Because Nur Ahmed called me, asked me to come. 20

What do you mean by called you. Called out to you, or what?—He didn't call out to me. He called me to come and see him.

In other words, he arranged to meet you there at a certain time to give you money, is that it?—On the second occasion he did tell me to go there.

On the second occasion you went there you went by arrangement with Nur Ahmed, to get money from him?—Yes.

At what time was the arrangement made to meet him?—He said, "Come in the afternoon" so I went about 3 or 4 o'clock.

What day of the week?—Sunday. 30

Did you meet him there on the Sunday?—Well I arrived first. The last witness, Nur Mohammed, was there when I got there on Sunday, and later Nur Ahmed arrived.

He arrived while Nur Mohammed was there?—Yes.

And you got your money, I suppose?—He only came to make an excuse. He said, "I am sorry I troubled you. I haven't got the money to-day, but I will fix it up to-morrow."

And then you arranged to come back to that house the next morning, Monday—at what time?—He didn't tell me to come to Indar Singh's on Monday: he told me to come to his own house on Monday. 40

And what time did he ask you to go to his house on Monday?—There was no time fixed. He said, "To-morrow morning, some time."

Why did you go at an early hour—9.30—to Indar's house?—I went straight to Nur Ahmed's house on Monday morning. When I got there his son told me, "My father has just gone ahead. He is on the road, or possibly at Jaimal's."

So you still chased him for your money?—Yes.

You told us that Jaimal said to Nur Mohammed, "Will you make them comply with my request"?—Yes, that is correct.

That was a request to make a will?—Yes. Jaimal said that. 50

And Nur Mohammed then said, "Don't be anxious or worried, I will speak to Mehar about it"?—Yes, he said, "I will explain it to him: I will talk to him."

He was sitting there?—Yes.

Did Nur Mohammed talk to Mehar?—Yes, he spoke to Mehar.

What did he say?—He said to Mehar: “He (Jaimal) is willing to make a will in the favour of both of you. Why don’t you both do it, and accept it.”

What did Mehar reply?—“Already a lawyer will come to-morrow.”

When the will was read over by Mr. Davidson, did you hear Mr. Davidson say these words to Jaimal: “I declare that I have no next of kin nor blood relations in Fiji nor elsewhere who are known to me”?—
10 I don’t remember each and every word. Something to that effect was said, but I don’t remember every word.

Did you hear Mr. Davidson mention to Jaimal “next of kin or blood relations”?—Yes, he asked him if he had any close relations, and he said, “I have no one except these two,” and he placed his hand on Amirchand and Mehar.

Did you hear Mr. Davidson mention “next of kin or blood relations” to Jaimal?—Mr. Davidson asked “Have you any relatives,” yes.

What sort of relatives?—Next of kin or very close relatives.

RICE: I think I am entitled to point out that in Hindi the word for
20 “next of kin” and “relations” is the same, and I fancy Mr. Interpreter is using the same phraseology for each.

INTERPRETER: That is so.

RICE: So a nice distinction of that kind cannot really be brought home to the witness.

MACFARLANE: Did he ask him whether he had any next of kin or blood relations?—Yes.

And did he ask him whether he had any in Fiji or elsewhere?—Yes, in Fiji or elsewhere.

What was Jaimal’s reply?—Jaimal said, “Whatever I have to call
30 my own at this moment are these two, Amirchand and Mehar.”

Is that all he said?—That is all he said.

And did Amirchand or Mehar speak while the will was being read out?—Didn’t say any more while the will was being read.

Did Amirchand mention nephews to Mr. Davidson at all?—I didn’t hear all the conversation—just here and there. I can’t remember everything.

Now, Jang Bahadur Singh, you were telling us that on the occasion of your second visit to Jaimal you were going to Sarava?—Yes, that’s
40 right.

And that you met Nur Ahmed?—Yes.

Why were you going to Sarava?—On some business to do with my uncle who lives there.

From where were you going?—From Nasade I was going to Sarava.

And is this house of your uncle’s, Indar Singh’s, on the road between Nasade and Sarava, or not?—That’s right.

Nur Mohammed’s house—how far is it from the house owned by your uncle, where Jaimal was?—Roughly 20 or 25 chains.

To the Court: On that Monday morning, having failed to find Nur Ahmed at his own house, you were told that probably he was at Jaimal’s?
50 —His son told me he would probably be there.

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*Defendants’
Evidence.*

No. 19.

Jang
Bahadur
Singh,
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tion,

continued.

*In the
Supreme
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*Defendants'
Evidence.*

No. 19.

Jang
Bahadur
Sing,
17th
January
1945,
Cross-
examina-
tion,
continued.

And so you went to Jaimal's ?—Yes.

To Court : And did you find Nur Ahmed there ?—No, when I got there and asked Mehar I was told by Mehar that he had left for Ba town.

Was that before or after Mr. Davidson arrived ?—When I arrived there I didn't think it wise or proper to bring up the subject straight away, because this will was being done in the house, so I waited until it was all over, and then I asked Mehar.

After Mr. Davidson left ?—Yes—.

You had arrived before Mr. Davidson ?—Yes, about 10 or 15 minutes before they arrived, and just as I washed my hands and legs— 10

In 10 or 15 minutes you didn't find time to ask " Is Nur Ahmed here ? " —I came from the other side. By the time I had got round from the other side I had mud all over my feet. Washing my legs and going into the house—in the meantime, these people arrived, just as I got into the house.

And you are really telling the Court that, having gone to Jaimal's for the sole purpose of finding Nur Ahmed, you were unable in the course of 10 to 15 minutes to put that one question ?—By the time I got to the rear Mehar wasn't there. He was inside the house. And my feet were dirty so I washed them. Having washed my legs, I went into the house, and just as I went into the house these people came in. 20

Didn't Sukhu tell you ?—After washing my legs, I came to the house and noticed Sukhu in the kitchen.

Why bother to wash your legs ?—I was under the impression that the man was inside the house, so therefore I thought I had better go inside the house and find out.

And it took you 10 to 15 minutes to get washed in order to do that, and then when you had done that you found Mr. Davidson had arrived ? —I wouldn't say 10 or 15 minutes. It is a loose way, for us Indians to say 10 or 15 minutes.

Would you say 5 minutes ?—Five minutes washing. 30

Then you went in and found Mr. Davidson arriving, and you couldn't ask your one question until the whole of this thing was finished ?—Because they arrived I wouldn't think it reasonable to go and interrupt them then or disturb Mehar or ask them any questions at that time, thinking it wasn't the proper thing to do.

1 p.m.—Adjourned.

2 p.m. Resumed.

On the Monday when Jaimal signed his will, you were standing in the passage leading from the room where he was ?—Right at this end of the passage, close to the door. 40

That is to say, close to the room ?—Yes.

And Khursaid Khan was in front of you ?—Yes.

And Jaimal in front of him ?—Yes.

With his back to him ?—Yes.

And Mr. Davidson was in front of Jaimal ?—Yes.

And facing towards Jaimal ?—Yes.

And therefore, facing towards you ?—Yes, if he was facing Jaimal he should be facing me.

I don't want to know what should be, I want to know what was ?— Yes, it was possible to see him. 50

I don't want to know whether it was possible. Was he facing you ?
—Yes.

You say it was possible for him to see you ?—Yes.

Is there any reason why he didn't see you ?—I can't answer that.

Where was his clerk, Mohammed Rasul ?—Beside Mr. Davidson.

Was he facing towards you, or not ?—Yes.

Was there any reason why he shouldn't see you ?—They were conversing with the sick man : maybe they didn't take much notice of me.

10 And then it was after the will was signed and Mr. Davidson and Rasul and Amirchand had left that you asked Mehar about Nur Ahmed ?—that is so.

And he told you he had gone to Ba ?—Yes.

Did you ever get your money from him ?—Yes, I have got my money from him.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 19.

Jang
Bahadur
Singh,
17th
January
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tion,
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No. 20.

EVIDENCE of Nur Ahmed.

NUR AHMED, *sworn.*

No. 20.

Nur
Ahmed,
17th
January
1945.
Examina-
tion.

MUNRO : You are a cultivator, living at Yalalevu ?—Yes.

20 Do you know Indar Singh's house—the house in which Jaimal died ?
—Yes, it is close beside the main road.

And how far from that place did you live when Jaimal died ?—Roughly about 20 or 25 chains from this house where Jaimal died.

On the Ba side, or on the other side ?—Lautoka side.

And did you know Jaimal ?—Yes.

And do you remember when he came into that house ?—I saw him for the last three weeks prior to his death.

Do you remember when he came to that house ?—I don't know actually when he came.

Do you remember when he died ?—It was a Tuesday when he died.

30 And how long before that day did you first see Jaimal ?—Ten days prior to his death I saw him the first time in that house.

Did you often go to Ba town ?—Yes.

And going to Ba you pass this place ?—It is on my left as I go to Ba town.

Did you ever visit Jaimal there at his house ?—Yes.

How often ?—I think I must have gone there 10 or 12 times.

And would you speak to Jaimal when you went to the place ?—Yes, I would greet him.

40 And did you speak to him every time you went ?—Yes, I would converse with him whenever I visited him.

Did you ever speak to him about his relations in India ?—Yes, I did.

And on how many occasions did you and he talk about his relations in India ?—On one occasion only. One day.

How long before he died ?—Twelve days. It was Thursday as far as I can remember.

And what did he have to say about them ?—I said, "Mahajan, you are a very wealthy man ; have you any children—wife, family and children ?"

*In the
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No. 20.
Nur
Ahmed,
17th
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1945,
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tion,
continued.

What did he say ?—" I have no family of my own. I am not a married man."

Anything else ?—" I only have nephews." I said, " Have you provided for those nephews in India ? "

The COURT : In India ?

INTERPRETER : (He used the word " mullak," which means his own country—home).

MUNRO : What did he say ?—He said, " I have dug a well for them and bought land and house."

A house ?—The way I understood it was that he had bought land and 10 house for them.

Did you have any further conversation about his nephews and his property ?—I asked him if he left any money, cash, for them. He said, " Yes, I have."

Anything further ?—I said, " You have done very well."

Was there anyone present there with you on that occasion, or were you on your own ?—Amirchand was seated there, and so was Mehar.

When did you next see Jaimal ?—The following Thursday I saw him again.

Now you have told us that the Thursday you have just been speaking 20 about was a Thursday before his death. What was that day ?—I meant 12 days before his death.

Are you sure it is 12 days ? Think carefully ?—This conversation that took place was 12 days prior to his death, on Thursday. And I saw him again on the Sunday following.

And how many days would that be prior to his death ?—This is the Sunday, 10 days before his death.

That is the next time you saw him, the Sunday, 10 days before his death. And did you have any conversation with him ?—Yes, we did.

And what did you speak about ?—I said, " Salaam," to him, and Jaimal 30 said " Sit down."

Just tell us what you spoke about ?—Jaimal was saying, " I have been asking Mehar and Amirchand to draw a will in their favour, but they wouldn't." I said, " You can please yourself, Jaimal, about that."

Who was there on that occasion ?—Jang Bahadur Singh was there, Mehar and Amirchand. Nur Mohammed Sirdar was there, too. He came in later. He followed me after I had been there about a minute.

You just mentioned the name Jang Bahadur Singh. Was he there on that day, or what day ?—Yes, he was there.

That was a Sunday, you say, nine days before Jaimal died ?—Yes. 40

Did you speak to Jaimal on any other Sunday when Jang Bahadur Singh and Nur Mohammed were present also ?—No, this is the only Sunday.

Did you owe any money to Jang Bahadur Singh, or did Jang Bahadur owe money to you ?—I owed Jang Bahadur £1 10s.

Now after the Sunday you have just told us about, did you have any further conversations with Jaimal when others were present ?—The same day, you mean ?

No, after that Sunday ?—The first occasion I had gone in. The 50 second occasion was a Thursday.

The afternoon or the day you were there speaking to Jaimal when Nur Mohammed and Jang Bahadur Singh and Mehar and Amirchand were present at the same time ; what day was that ?—Thursday.

And how many days before Jaimal died ?—About six or seven, approximately.

Were you ever there talking with Jaimal on a Sunday ?—Yes, the Sunday following this Thursday I was there.

How many days before he died was that ?—About two days.

10 Who was there on that Sunday, two days before Jaimal died ?—I got there, saw Jang Bahadur Singh seated, and Mehar was there and Amirchand.

Anyone else ?—And Jaimal.

Who else ?—And just as I was going in I saw Nur Mohammed sirdar coming out.

I suppose you said, “Salaam,” and after that did you hear him speak ? —Yes, he said “Salaam ; sit down.”

Did you hear him speak after that ?—Yes.

Tell the Court what he said ?—He addressed Mehar : Jaimal asked Mehar to get tea and kava.

20 Anything else ?—He didn't say anything else ; I went out to pound the kava.

I suppose you came back with the yaqona ?—Jaimal spoke to Mehar. This is when I came back.

You pounded the yaqona then you came back, and you heard Jaimal saying to Mehar ?—“Massage this place : I have a pain here,” pointing to his left rib. Mehar then massaged it.

Did he say anything else ?—Then I didn't pay any attention to what he said. I was drinking yaqona with Jang Bahadur Singh.

Tell me if you did eventually hear Jaimal say anything ?—Yes, I heard him telling Mehar, “That will do ; that is enough ; stop massaging.”

30 Is that the last word you heard Jaimal speak on that Sunday, or did you hear him say any other words ?—After that I didn't hear anything. I was busy with the yaqona.

Now that was a Sunday. Next day was Monday. Did you go to the house on the Monday—the next day ?—About 7.30 I did.

Were you to meet anyone there that morning ?—I had to go to the town, but I saw him reclining on a chair, so I went to see him.

Were you to meet anyone especially there that Monday morning ? —I didn't have to meet anybody. I had to go to the town.

Did you talk with Jaimal that morning ?—Yes, I talked with Jaimal.

40 Did you just pass the time of day with him or did you have a conversation ?—I was standing there for some time.

And then no doubt you went to town, did you ?—Yes.

And did you see Jaimal after that before he died ?—I saw him on Tuesday morning before he died.

CROSS-EXAMINED.

MACFARLANE : Were you a friend of Jaimal's ?—He is a Punjabi and I am a North Indian from the Western provinces.

You had nothing to do with him before he came over to Ba during his last illness ?—Nothing to do with him.

50 Would you tell the Court just why you went to Jaimal's house ten or twelve times ?—Every time I used to go to town I used to see the door

*In the
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Court of
Fiji.*

*Defendants'
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—
No. 20.

Nur
Ahmed,
17th
January
1945,
Examina-
tion,
continued.

Cross-
examina-
tion.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 20.
Nur
Ahmed,
17th
January
1945,
Cross-
examina-
tion,
continued.

open where this man was residing at the time ; and he was well known ; and therefore I used to turn in and go and see him.

That is your only reason ?—Yes.

To see this perfect stranger ?—Well, acquaintance. I had no money dealings or transactions with him.

When did you pay this debt of £1 10s. to Jang Bahadur Singh ?—1 o'clock on Monday, in town.

Which Monday ?—One day before Jaimal died—a Monday. The following Tuesday he died.

Did you arrange to meet Jang Bahadur Singh on the Monday ?—Yes, 10 I told him that on the Sunday. I said, " Look, don't make me ashamed about this money of yours. I will pay you to-morrow morning."

And did you tell him where to meet you ?—" If you come early enough you will get me at home, but if not, at Mehar's."

At Mehar's house ?—No, I meant the house where Jaimal was.

So you knew on the Sunday that you would be at the house where Jaimal was early on Monday morning ?—Yes. To pay that money that I owed.

Would you go over to Jaimal's house deliberately to pay the money ? —No. I had told the person either to meet me at my own house or at the 20 house where Mehar was staying at the time.

But why would you go over there early on Monday morning ?—I have a habit of going to town every morning. I have been doing that for the last ten years.

But why would you go into the house where Jaimal was at 7.30 on the Monday morning ?—I saw the door open and saw him sitting there on a chair, so I turned in.

Now you say that on the Thursday before Jaimal died you went to Jaimal's place. And you saw Jang Bahadur Singh there, did you ?—Not on the Thursday. Myself, Mehar, Amirchand, Jaimal, and Nur 30 Mohammed sirdar was coming out as I was going in.

You saw him on the Tuesday morning before he died ?—Yes.

Did you speak to him ?—I said, " Salaam " to him, and in a very weak voice he said, " Salaam."

RE-EXAMINATION.

None.

No. 21.
Raghubar
Singh,
17th
January
1945.
Examina-
tion.

No. 21.

EVIDENCE of Raghubar Singh.

RAGHUBAR SINGH, *sworn.*

RICE : Your father's name, I think, is Natsu, Singh ?—Yes. 40

You live at Yalalevu, Ba ?—Yes.

And you are a cultivator ?—Yes.

Do you know the deceased man, Jaimal, whose will is being contested in this case ?—Yes.

And do you know the two defendants, Mehar and Amirchand ?—Yes.

In March of last year did you see Jaimal in Yalalevu ?—Yes.

Whereabouts exactly ?—I saw him in Indar Singh's house.

Just the once ?—I think twice.

By the way, have you got a motor car?—I drive for Jang Bahadur Singh : I drive his car.

And in March and April of last year where was that car garaged?—I usually keep it at Duraj Singh's, but in bad weather, rainy weather, when I take it to my home, I would leave it near Indar Singh's house.

Did you do that at all in March or April—leave it near Indar Singh's house?—Yes, I had it garaged there.

Now you have told us I think, that you saw Jaimal twice. On the first of those occasions can you say how long it would be before he died?—
10 Fifteen or 16 days prior to his death.

And the second time?—Seven or eight days prior to his death.

Now, on the second occasion, was there anybody else present except you and Jaimal?—I was, Jaimal and Mehar.

Just you three?—Yes; but Sukhu was in the kitchen, I believe.

Did you have any conversation with Jaimal?—Yes.

And during that was Jaimal standing up, sitting down, or what?—He was reclining on this lazyboy chair.

Tell us the conversation, will you?—I asked him how he was getting on—how he felt.

20 And he said?—"I am not feeling too well." He said "The man who hasn't a family, his life is useless."

Anything else?—He said, "I have lived so long in Suva and earned a lot of money, and here I am in Ba near my last days."

Anything else?—"And the only ones that are looking after me now are Mehar and Amirchand.

Yes?—"And for me now I look upon these two as my family—my wife and my children."

Did you say anything to him when he made these remarks?—I tried to console him by saying, "Mahajan, don't be anxious and worried.

30 You will recover."

CROSS-EXAMINED.

MACFARLANE : You were a particular friend of Jaimal's?—Not a particular friend, no.

Were you a friend?—I was an acquaintance—I knew him.

Were you a friend of his—Jaimal's?—I knew the man and he was an acquaintance.

How long had you known him?—About eight or nine years.

And when you first saw him at Indar Singh's house, how long was it before then that you had seen him?—About a year and a half. I met
40 Jaimal on a certain occasion near my house on the road.

That was the last time previously that you had seen him?—That is right.

And during those eight or nine years that you mentioned, in each year about how many times did you see him to speak to?—I couldn't tell you as to how many times in each year. The one thing I do remember is that in Ba he used to come and collect his debts, and I used to see him often.

How many times a year over the last eight years have you seen him to talk to?—Once, I suppose. Once I would talk to him—or in a year and a half. I would talk to him whenever I met him.

50 And did you go into Indar Singh's house?—From Indar Singh's house to my house the road isn't metal, and therefore I must park my car near Indar Singh's house when I come home.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 21.
Raghubar
Singh,
17th
January
1945,
Examina-
tion,
continued.

Cross-
examina-
tion.

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Supreme
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*Defendants'
Evidence.*

No. 21.
Raghubar
Singh,
17th
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1945,
Cross-
examina-
tion,
continued.

On the road?—No. Close to Indar Singh's house. Off the road.
Why did you go into the house to see Jaimal?—When you stop or park a car near a house, and you know full well that there is a sick man in that house, it is according to our custom to visit the sick man and find out how he is getting on.

You are a Punjabi, of course, are you?—No.

When you had asked Jaimal how he was he offered to you this philosophical conversation, is that correct?—Yes.

He disclosed to you his feelings?—Those were his words to me.

And at that time he told you he was about to die?—He said, "I am 10 on my last days now."

RE-EXAMINATION

None.

To the Court : You say Mehar was present at this conversation between Jaimal and you which you have given in evidence?—Yes, but he didn't stay all the time. He kept going in and out. He was going into the kitchen and bringing tea and all that.

No. 22.
Imam Din,
17th
January
1945.
Examina-
tion.

No. 22.

EVIDENCE of Imam Din.

IMAM DIN, *sworn.*

20

MUNRO : You live at Yalalevu, Ba?—Yes.

You knew the deceased, Jaimal?—I didn't know him at first.

Did you come to know him?—Yes.

And he was living before his death at Indar Singh's house?—Yes.

And you live nearby?—About seven or eight chains away.

Did you visit him before he died?—Yes.

Did you ask him how he felt?—Yes. I will tell you what happened.

And you had a conversation with him?—Yes.

And what impression did you gain of his understanding and general mental capacity?—He was in a quite good and normal condition. 30

How many days was this before Jaimal died?—About two or three days before he died.

And how long did you remain there talking?—For about five or six minutes.

And was there anyone else there?—Mehar was there and other Punjabis, but I don't know them.

CROSS-EXAMINED

Cross-
examina-
tion.

MACFARLANE : How many other Punjabis?—Mehar was one, and two other Punjabis whose names I don't know. Those two were in the verandah. I don't know who was in the kitchen. 40

Is that the only time you went there?—I went there again on Tuesday, the day he died.

Did you say there was a verandah on the house?—A covered room. A big house, and a kitchen on the other side.

A big house?—Not a very big house, no.

What did you go there for ?—Mehar had taken me there. You mean the very first time ?

Yes ?—Mehar took me over there and said, “ Look, will you pray to Almighty God for this man : ask God to make him better.”

You are a Mohammedan ?—Yes.

And Jaimal was Punjabi ?—I am a Mohammedan and he was a Hindu, but all the same, we are all human beings.

He was sick ?—Yes.

And did you pray for him ?—Yes.

10 What did you pray about ?—I prayed God that he would make the man well.

And your prayers were not answered ?—God pleases himself.

To the Court : Do you remember which day of the week you had a conversation with Jaimal ?—I forget now. It was two or three days before his death.

What did you talk to him about ?—Jaimal said, “ I have paid over here and here,” and he said, “ Pray to God for me.”

Talked to you about himself ?—Yes.

Anything else ?—Nothing else with me.

In the Supreme Court of Fiji.

Defendants' Evidence.

No. 22.
Imam Din,
17th
January
1945,
Cross-examination,
continued.

20

No. 23.
EVIDENCE of Sukhu.
SUKHU, *sworn.*

No. 23.
Sukhu,
17th
January
1945.
Examination.

MUNRO : Where do you live now ?—Ba.

And is your occupation still a cook ?—Yes.

Last year, I think you knew a man who has since died—one Jaimal, a moneylender ?—Yes.

And did he live at Indar Singh's house before his death ?—Yes.

And were you in the same house ?—No. I wasn't living in that same house.

30 Were you working in that house ?—I was working in the house.

And for how long did you work at Indar Singh's house when Jaimal was there ?—Two weeks, two days.

That was the length of time you actually worked there ?—That was the length of time I worked for Jaimal at that house.

Did you leave on the day Jaimal died ?—Yes.

And what was your work ?—Preparing meals for the sick man as well as the visitors and others who would go to visit him and have their meals there. I would prepare their food, too.

40 —6 to 6.30 I would arrive.

And did you stay there all day ?—No. One o'clock I would leave, and then I would go back at 3.30 and start to do my work.

And when would you leave ?—6 p.m. I would knock off again.

Who else helped to look after Jaimal ?—Apart from me, Mehar and Amirchand.

Did you have visitors to the house ?—Yes.

Many or few ?—I would be occupied in the kitchen, but now and again I would see two or three people visiting him.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 23.
Sukhu,
17th
January
1945,
Examina-
tion,
continued.

Would two or three people come every day, and would they be the same people?—No, not the same people—others.

Were they welcome there or were they unwelcome visitors?—They were welcomed to come and see the man.

Did you yourself ever speak to Jaimal during the day?—Yes.

Throughout the time that you were there until, say, the last week-end, what was his mind and understanding like?—Quite good.

You remember the morning he made his will?—Yes.

We will take the day before that?—Yes.

Did you speak to him in the morning or the afternoon of that day?— 10
Yes, I did.

The Friday before he died, did you speak to him in the morning and in the afternoon?— Yes, I did.

What were his mind and memory and understanding like that day?—
Quite good. He could understand what was said to him.

Do you remember what they were like on the Saturday?—He was all right on the Saturday, too.

You remember he signed his will on the Monday morning?—I wasn't present, but I know he signed.

Did you speak to him that Monday morning, before and after he made 20
his will?—Yes, I did.

Would you tell the Court what your opinion is of his mind and memory and general understanding then?—He was a sick man, but he perfectly understood what was said to him, and he was able to talk.

And did he talk with you that Monday morning?—Yes.

And did he talk intelligently?—Yes, but in a low voice.

CROSS-EXAMINED.

Cross-
examina-
tion.

MACFARLANE : What were your wages?—2s. 6d. per day, and two meals a day.

Where do you live?—Yalalevu. 30

On Mehar's land?—My house was on Mr. Ragg's land at that time.

Do you hold any land from Mehar?—At present, yes. A long time after Jaimal's death.

You still hold it?—Yes.

And are you indebted to Mehar?—Yes.

How much?—Roughly, about £350.

What security?—I bought this land from him : the money I owe him is for the land. I have given him a sale and purchase agreement and also a lien on the crop.

What is the size of the land?—15½ acres. 40

Did you see many Punjabis visiting Jaimal?—Yes, Punjabis used to visit him—come and go.

Can you name any of them?—No ; the reason being I was a new man at that place, therefore I didn't know a lot of those people who came to visit Jaimal.

How long had you been in that district?—Six or seven weeks.

Is that all?—Yes, that was the first time I had been there.

Where did you come from?—I was working in Lautoka : I was working for the Company at Lautoka and I left. It was during the strike they had at Lautoka, and I left the job after the strike. 50

And came straight to this job for Mehar ?—No. I came and made my house.

When did you leave the C.S.R. Company ?—About two years ago from now.

Where were you working immediately prior to taking this job at Indar Singh's house ?—I was just doing an ordinary labourer's job. Anywhere I was called I would go there and do a day's work.

As casual labourer ?—Yes

In what district ?—Ba district.

10 How long had you been a casual labourer ?—At Ba, you mean ?

Yes ?—Whenever I would get a job I would do it, until I was working at Indar Singh's.

How long were you at Ba before you went to Indar Singh's house ?—Six or seven weeks.

What work did you do for the C.S.R. Company ?—Driving a tractor.

What sort of work did you do as a labourer ?—Cane planting, grass cutting.

How did you come to go to Indar Singh's house ?—Mehar called me.

20 And you took up your cooking duties for the first time ?—No. Ever since I was a very young lad I was doing cooking in European bungalows.

What did you talk to Jaimal about ?—A conversation in connection with my work. About his food affairs and all that.

What did he eat ?—Porridge, milk, half milk and half tea. That is what he used to have in the morning for breakfast.

What would you talk about—this food ?—No ; my job was to take the food to him, place it before him.

So you would only say " Good morning " and " Good afternoon " to him, would you ?—Yes, but I would ask him at feeding time, " Do you want your food now ? " and he would say " Yes " or " No."

30 Now when the will was made you took no interest in those proceedings ?—No, I wasn't there.

You weren't interested to go and see what was happening ?—No.

Did you speak to Jaimal on the Tuesday morning after the will was made ?—I took tea in the morning to him.

And his condition was all right then ?—Very weak and delicate ; and he was speaking very low—in a low voice.

I put it to you, Sukhu, that you were never a cook at this place and were never near it ?—I was there.

40 I put it to you that you were never in this house as a cook during that fortnight ?—No. I worked there.

RE-EXAMINED.

Did you speak to Jaimal about his health prior to the day he signed his will ?—I used to see him.

Did you speak to him ?—Yes.

Would he describe his condition to you at all ?—Yes. He would talk and he would say, " Look, I feel pain here and here," and tell me places on his body where it pained him.

Who paid your wages ?—Mehar.

4 p.m.—Adjourned.

*In the
Supreme
Court of
Fiji.*

No. 23.
Sukhu,
17th
January
1945,
Cross-
examina-
tion,
continued.

Re-examin-
ation,

*In the
Supreme
Court of
Fiji.* Thursday, 18th January, 1945.
2.30 p.m.

SEVENTH DAY.

*Defendants'
Evidence.*

MUNRO : That concludes the case of the first-named defendants.

MACFARLANE : I wish to make a legal submission on behalf of the plaintiffs. At the outset of the case—

The COURT : Before you do that I would remind you that in Chambers this morning I saw you and suggested that this was a case in which it might be desirable that the parties should arrive at a settlement.

MACFARLANE : I thought the Registrar had informed Your Honour. 10
I saw him just before 2 o'clock and informed him that the parties had not made a settlement.

The COURT : Well, I can only say that I have by no means changed the view I expressed to you in Chambers—in fact, on considering the case further, I feel a little more strongly than I did then that this is a case in which settlement is desirable.

MACFARLANE : I appreciate Your Honour's suggestion, and it has been thrashed out very lengthily with my clients. We put Your Honour's suggestion to our clients and they have considered it at length, and a suggestion was made from the other side as to what terms were to be 20
accepted, and it was thrashed out and no arrangement could be arrived at. Counsel, Mr. Morley and Mr. Chalmers and I, have advised and thrashed it out both here and in Chambers later, and I have instructions to proceed with the case. I have discussed it fully with Mr. Munro, Mr. Rice and Mr. Patel, and have their views, and my clients definitely instruct me that they cannot accept the terms of settlement suggested by the other side and they wish to continue the case.

The COURT : Very well.

MACFARLANE : I had intended, even before Your Honour intimated that you thought it was a case for settlement, to put a short legal sub- 30
mission to Your Honour on the case already before the Court. It is this, briefly. At the commencement of the case I intimated that there were suspicions in reference to the second will—the will drawn up by Mr. Davidson—and the burden of proof lay on the first defendants, and after authority was quoted Your Honour intimated to counsel that the burden of proof in the first instance lay on them and that they should begin. Now I submit that the onus is not only on the defendants to propound the will but also to remove the suspicion which existed at the beginning of the case. The onus on the first defendants is to remove those suspicions and doubts by affirmative evidence before the plaintiffs are called upon to 40
give any evidence at all or to prove anything. If the defendants do not remove the suspicion and/or do not prove, firstly, that the testator was of sound mind, memory and understanding, secondly, that the testator knew and approved of the contents of the will, then the will of the 3rd April, 1944, cannot be propounded and must be pronounced invalid. And I submit that the onus still exists with the defendants : the first defendants have not removed the suspicions but such suspicions have been intensified

No. 23.
Sukhu,
17th
January
1945,
continued.

and additional grounds for suspicion have appeared from the defendants' evidence and the evidence of their witnesses. And Your Honour must be judicially satisfied before the will of the 3rd April, 1944, can be pronounced, that Jaimal knew and approved the contents and understood he was excluding his nephews from all his property of every kind in Fiji and elsewhere.

Finney v. Govett. 25 T.L.R. 187.

T. & C. 14 Ed. 415 Clare v. Clare.

10 The COURT: You are asking me to decide in your favour without hearing your evidence?

MACFARLANE: That is so, at this stage, if it is possible.

The COURT: I will tell you at once I am not prepared to do that.

MACFARLANE: If your Honour rules that the burden has shifted or that the suspicion has been removed, and you wish to hear the evidence for those who oppose the will, then, of course, we proceed, but I felt it my duty to put that before Your Honour and to get Your Honour's ruling on it in a formal way.

The COURT: Let us carry on with the case.

1st Witness for Plaintiffs:

20

No. 24.

EVIDENCE of Walter Lawrence Wallace.

WALTER LAWRENCE WALLACE, *sworn*.

CHALMERS: I think you are at present on leave pending retirement from the C.S.R. Company's service as hospital superintendent?—Yes.

How long have you been employed as a hospital superintendent?—34 years.

And for how many years have you been superintendent in charge of the Rarawai Company's hospital?—8½ years.

As superintendent of that hospital you are completely in charge of that hospital under a medical officer?—Yes.

30 And it is an extensive hospital, is it not?—Latterly, it has been fairly big.

Apart from Company's employees, you also treat outside Indians?—In the absence of a doctor.

Not only Company's people are treated but also outside Indians?—Yes.

Do you remember seeing an old Indian by the name of Jaimal?—On the 29th February 1944 I saw him.

Was he brought to the Rarawai Hospital?—Yes, in the afternoon.

40 And how did he arrive, do you know, Mr. Wallace?—I can't quite remember, but a number of Punjabis brought him in a motor car.

And how did they bring him?—They helped him in. He couldn't walk.

Into where?—Into the dispensary verandah. And they asked me to extract a couple of teeth for him.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 23.

Sukhu,

17th

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1945,

continued.

*Plaintiffs'
Evidence.*

No. 24.

Walter

Lawrence

Wallace,

18th

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1945.

Examina-
tion.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 24.
Walter
Lawrence
Wallace,
18th
January
1945,
Examina-
tion,
continued.

Did you examine him?—Only for the teeth.

Did you extract any teeth?—Two.

Can you describe this man at all, as to his condition?—I had never seen him before: I have never seen him since; but I remember him as being very senile and very feeble.

Did you talk to him?—He wasn't able to talk very much; he was very weak and exhausted.

When you extracted his teeth, did you notice anything about his breathing?—No. I didn't notice anything but his extreme weakness.

Was he able to sit in a chair alone while you took the teeth out?— 10
No.

In connection with the question of payment of the costs of extraction, did anybody mention to you about what sort of man this was as regards financial position?—One of the men—I don't know who it was—told me he was a rich man from Suva.

These people who brought him were Punjabis?—Yes, as far as I know.

You have had a great deal of experience with tubercular cases in your hospital?—Yes.

Can you tell us what happens to a man when he is in a very bad state 20
of T.B. and is nearing his end?—

RICE: Can we have this evidence. Is it not a question of this man's condition?

The COURT: Yes, I think so. No general evidence about the effects of T.B. can possibly be material.

CHALMERS: His experience in other cases: would that not be relevant?

The COURT: We have had the direct evidence of the witness as to what his actual physical condition was, and for any witness, however experienced, to give us a general statement on the effects of T.B. seems to 30
me to be immaterial.

CROSS-EXAMINED.

Cross-
examina-
tion.

RICE: You did take his teeth out, as you have told us?—Yes.

And I think you are very familiar indeed with the Ba district. You know Yalalevu there?—Yes.

Indar Singh's house in Yalalevu—do you know it?—No.

Well I am in a position to tell you this. It is very close to where the late Mr. Clapcott lived. From there to your hospital would be about 2½ miles?—Yes.

And the last 1½ miles is on very rough road indeed?—Yes. 40

Now, assuming for a moment that that old Punjabi, Jaimal, were suffering from T.B., and as you say he was very senile, going over that road in a motor car would shake him up, wouldn't it, very badly?—Yes.

And if we take it back a bit further still, and I were to tell you that either the day before you saw that man or the day before that—that is to say, either on the 27th or 28th February—that man made a journey all the way from Suva. I accept my friend Mr. Morley's correction. If I were to tell you that on the 26th, 27th or 28th February that man made a journey all the way from Suva, that would greatly retard his condition, wouldn't it?—Very much so. 50

No. 25.

EVIDENCE of Dalel Singh.

DALEL SINGH, *sworn*.

*In the
Supreme
Court of
Fiji.*

*Plaintiff's
Evidence.*

No. 25.
Dalel Singh,
18th
January
and
28th May
1945.
Examina-
tion.

CHALMERS : Your father's name ?—Kan Singh.

And where do you live ?—Votua, Ba.

Did you originally come from India ?—Yes.

What was your village ?—Bahaduar.

Did you know the deceased, Jaimal ?—Yes.

What village did he come from in India ?—The same village.

10 How long had you known Jaimal before he died ?—His brother told me that Jaimal had left for Fiji. That was in India. When I came to Fiji I knew him for the last 20 years before he died.

And what was your relationship with him ?—Quite good. When I first landed in this Colony I went to him.

And since then ?—Then later I left for the Ba district and he stayed back in Suva.

Did he visit Ba at all ?—Yes.

Where would he stay at Ba ?—He lived in different places—Amirchand's or Gurdayal's or Dewar's, and sometimes at my home.

20 Would you see him or stay with him when you went to Suva ?—Yes, I would.

Now coming to the beginning of 1944. Do you remember Jaimal was sick then ?—Yes.

Did you come to Suva in February 1944 ?—Yes.

And where did you stay ?—At the Sikh Temple.

Did you see Jaimal ?—Yes.

Where ?—At the Government hospital, Toorak.

Did you go with anybody to the hospital, or did you go alone ?—Amirchand, myself and Gokul went.

30 Did Jaimal ultimately go to the temple at Samabula ?—Yes.

And I think you were present there when a will was made ?—Yes.

And it has been proved that Jaimal went over just after that—I think on the 26th February—to Ba ?—Yes.

Do you know the reason for his going to Ba, or that side of the island ?—When Amirchand and I made arrangements to go back home to Ba Jaimal said, "Take me also, I wish to go to the Lautoka Hospital."

And did you go by special bus to Ba ?—That is right.

Who paid for the bus ?—I paid for the bus.

How much, do you remember ?—£6-16-0.

40 Well, you went over to Ba. Do you know where Jaimal went to ?—I got off in town : Amirchand took him to Mehar's house at Yalalevu.

Did you see Jaimal at Mehar's house ?—The next day I saw him there.

Do you know about how many days he stayed there ?—Roughly, about two or three days, or four.

Whereabouts was he at Mehar's place ?—In the stable—the stable where the horses are kept. Some bulls in there, too.

There were horses and bulls in the stable at the time Jaimal was there ?—Yes.

50 Was that place closed in or open ?—One end of it is closed and the rest of it is quite open, and where Jaimal had his cot there was an open space.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 25.
Dalel Singh,
18th
January
and
28th May
1945,
Examina-
tion,
continued.

One end was closed ?—One end was closed where there was a room, and the rest was open, and where Jaimal had his cot there was an open space.

Jaimal left the stable after two or three days. Where did he go to ? —Amirchand informed me in Ba town that he had taken Jaimal to the Lautoka Hospital and left him there.

Did Amirchand ask you to do anything ?—Yes, he did. He said, “ You had better go to Lautoka as I have come away.”

And what was the purpose of your going to Lautoka ?—He said, “ You go over there to Lautoka since I have to attend to my own work. I have 10 ploughing and other cane work to do.”

MUNRO : That was never put to Amirchand and therefore it should not be adduced from this witness.

MACFARLANE : It is admitted that he was over there.

MUNRO : But what the witness goes on to say was never put to Amirchand.

MACFARLANE : Amirchand admitted that Dalel was looking after Jaimal while he was in Suva, and this is the time. The witness himself said Amirchand said, “ I am going away.”

MUNRO : The witness went on to say that Amirchand said, “ You 20 look after him : I have to go away as I have work to do.”

The COURT : I don't think you can object on the ground that it contradicts something that Amirchand said. Amirchand said he went away and that he spoke to this witness because he (Amirchand) was going to Suva. I think this is all right.

MACFARLANE : I am not concerned with Amirchand's reasons why he left. It is just to establish the fact that he did in fact look after him. And that can be established by other evidence as well.

Did you go to Lautoka ?—Yes.

Where did you stay ?—Sikh Temple. 30

From the day you went to the Sikh Temple how long was Jaimal in hospital ?—Roughly, about a week.

From the day you went to the temple ?—Yes, approximately a week. Did you do anything for Jaimal during that period ?—I took his food for him.

Where did you do that ?—I used to take it from the temple to the hospital.

Who cooked it ?—I cooked it.

At the temple ?—Yes.

Apart from you visiting Jaimal, did you see anybody else visiting at 40 that time ?—Yes, Debichand Sirdar, Dewa and others were visiting Jaimal.

Now he stayed at the hospital a week. Where did he go from there ? —He came to the temple.

How long did he stay at the temple ?—Roughly, for one week after being released from the hospital.

And who cooked his meals ?—I did.

What was his condition then ?—Very weak.

Could he walk about ?—Assisted, yes.

Did Amirchand come back to the temple at any time?—Yes.

In relation to the time when Jaimal arrived at the temple, when did Amirchand come back?—A week after he came to the temple Amirchand arrived.

What happened then, after Amirchand arrived?—The day he arrived, we stayed that night at the temple. Amirchand told me that he had arranged for Jaimal to stay at Indar Singh's house, so the following morning we left.

For Indar Singh's house?—Yes.

10 And Jaimal went with you?—Yes.

Did you receive any payment for looking after Jaimal at the hospital or at the Gurdwara?—No.

Why did Jaimal go to Indar Singh's house, do you know, and not to yours?—Amirchand suggested that to him. He said, "You stay in Indar Singh's house," and he agreed.

Why didn't you take him to your house?—My house is not spacious enough. It is very small. I do casual labour here and there. It is just enough for one man—a single man.

You are a single man?—Yes, not married.

20 And your house that you refer to is on Siubaran Singh's land?—Yes; he is Basu's agent—it is Basu's land.

Well, who went to Indar Singh's with Jaimal?—The day we had brought him down to Lautoka, myself and Amirchand, both of us.

And is it a big house or a small house?—Neither a very big house nor a very small one.

How many rooms?—Two rooms, one kitchen.

Where did Jaimal sleep?—The room facing the main government road.

30 And where did you sleep?—The first night I slept with Amirchand in the other room, but after, when Jaimal became very weak, I slept close to him, spreading a mat on the floor near Jaimal.

Did Amirchand also sleep on the floor near Jaimal sometimes?—Occasionally, yes.

Where did Jaimal sleep?—On a bed.

Was there a chair there as well?—Yes. There was a small table there, too.

What arrangements were made about cooking?—The usual Indian food. Amirchand brought a fowl and gave him soup and all that, and he would make dhall and rice—cook it together—called kejerree.

40 What did Jaimal principally eat?—He would have kejerree—that is, dhall and rice cooked together—and sago, and chicken soup.

Did he eat it?—A little.

Who cooked the food?—If I happened to be there I would do the cooking. If I wasn't there Amirchand would do the cooking.

Was there anybody else there doing the cooking?—No one.

Now how long was Jaimal at Indar Singh's house?—Roughly, two weeks.

What was his condition when he arrived at Indar Singh's?—Day by day he was growing weaker and weaker.

50 Was he attended by any medical man during those two weeks?—No. No one treated him medically.

Not while you were there?—Only on Tuesday, the day he died. The N.M.P. saw him.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 25.
Dalel Singh,
18th
January
and
28th May
1945,
Examina-
tion,
continued.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 25.
Dalel Singh,
18th
January
and
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1945,
Examina-
tion,
continued.

Before that, during the two weeks, did he see any doctor?—I didn't see one.

Did you stay there every night and every day, or did you go away?—Sometimes I would leave the place and go away. I wouldn't be there.

And who would stay there?—Amirchand : sometimes Dewa.

Now, would Amirchand go away sometimes?—Surely. He would also go away occasionally to his own family—to see his wife and children.

Who did the washing?—You mean Jaimal's washing?

Yes.—I did his washing. If I happened to be there I did the washing. If I had gone away Amirchand would do the washing. 10

Now did Jaimal have visitors?—Yes.

What would they be principally? What class of men?—Punjabis and others with whom he had business dealings—money dealings. Debichand Sirdar was one; Pratap Singh; Gurdayal Singh; Siubaran Singh; Dewa; and several others used to pay him visits.

Did you see Mehar at all?—Occasionally, yes, he would pay him a visit.

How did Jaimal eat? In what manner did Jaimal eat his food?—He had to be spoon-fed : he would lie in his cot and someone would spoon-feed him. 20

Was that all the time?—When he became weaker then he would lie down in bed and be spoon-fed.

Now Jaimal died on the Tuesday : can you tell us if the week before he died you left the place?—I had gone away on the Thursday to see to my own work.

Thursday, at what time?—Morning—8 or 9 o'clock. I had gone away to attend to my work.

When did you come back?—Next day—following Friday.

Were you there all day Friday?—Yes.

Friday night?—I was there. 30

Saturday?—I was there Saturday.

Saturday night?—Slept Saturday night there in the same house, and on Sunday I was there.

Sunday night?—I slept there.

Monday?—About 8 o'clock I left on Monday.

And when did you return?—The following day.

Tuesday?—Yes.

About what time?—8 or 9 o'clock.

That covers Friday to Tuesday morning. Now on the Friday do you remember any particular visitor coming to see Jaimal?—People were 40 coming and going all the time.

On the Friday, do you know if a man called Hari Charan came in?—I wouldn't know Hari Charan.

You don't know Hari Charan?—I don't.

This is Hari Charan (*Hari Charan indicated*). Do you recognise him? Did that man come on the Friday?—No, he didn't. I may have seen this man in Ba town, but apart from that I don't know him and have never seen him at Indar Singh's place.

Did he ever come to visit Jaimal when you were at Indar Singh's?—

RICE : Never at any stage of Hari Charan's cross-examination was 50 it suggested to him that he didn't go to that house on the Friday and that he was lying about it. Not once.

MACFARLANE : The whole cross-examination was about it. We asked him who were there and he named the people who were there.

RICE : But you never suggested that he wasn't there.

MACFARLANE : It was the whole purpose of the cross-examination.

The COURT : I am bound to say it comes as a fresh point to me. I didn't know that it was part of your case that Hari Charan wasn't there on the Friday.

MACFARLANE : On the Saturday what was the condition of Jaimal ? —He was very, very weak, and he wasn't able to talk.

10 How do you know that ?—He was trying to speak to me, but he couldn't utter a word.

How did he tell you if he wanted anything ?—He would only do this (*demonstrates, tapping left forefinger against lips*).

And at night time ?—He was in the same condition at night.

Who looked after him ?—I did.

In what manner ?—I would watch him. I would sit down in the chair beside him.

Was his condition improved or just the same on the Sunday ?—No, it became worse and worse.

20 On the Monday morning when you left what was his condition ?—Altogether too far gone.

Did people come there on the Sunday ?—Yes.

Do you remember who some of them were ?—Gurdayal Singh ; Debichand ; Pratap Singh ; and others who came and went, especially Punjabis.

On this Saturday and Sunday what did Jaimal look like, can you describe it ?—He appeared that he would pass away.

What was the condition of his breathing ?—Difficult (*demonstrates*).

30 And where was he when you left on the Monday morning ?—On the bed.

On the Tuesday morning when you came back, what was his condition ?—Just about to die.

What time of the day was it, do you remember ?—Approximately 8 or 9 o'clock.

Did you go to the funeral ?—Yes.

That was on the Wednesday ?—Yes.

Did you learn anything after the funeral ? Did you hear anything ? —I said, " Inform the Gurdwara Committee, the Sikh Committee, at Suva about Jaimal's death."

40 What did you hear ?—I am coming to that. He said—Amirchand said—in reply, " They have nothing to do with the matter, since Jaimal has left a will in our favour."

You heard Jaimal had left a will in their favour. What happened after that ?—I was very much surprised and taken aback at that, and immediately I sent a wire to these people here.

Whom do you mean ?—

MUNRO : This is hardly evidence.

The COURT : I shouldn't think so. I can't see how this is material.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 25.
Dalel Singh,
18th
January
and
28th May
1945,
Examina-
tion,
continued.

CROSS-EXAMINED.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 25.
Dalel Singh,
18th
January
and
28th May
1945,
continued.
Cross-
examina-
tion.

PATEL : Did you go with Amirchand to Suva to see Jaimal when he was in the hospital ?—No, not together from Ba.

Where did you meet Amirchand ?—In Suva.

So he was already here when you arrived, was he ?—Yes.

And was it because Amirchand had left word for you and Dewa and Gurdayal Singh that he had received a wire that Jaimal was seriously ill and that you should follow him ?—No.

How did you come to know that Jaimal was seriously ill ?—The lorry driver told me, “ The man from your own village is very ill ; aren't you going to see him ? ” 10

So you came ?—Yes.

Now Dewa and Gurdayal Singh also came from the same village, didn't they ?—Yes.

And they also came to the hospital at Suva ?—No. They are agriculturists, farmers, looking after their own farms.

There are only 11 people from your village in this Colony ?—Yes.

And out of the 11 the only two people that turned up to see Jaimal at the hospital were Amirchand and yourself ?—Yes.

And you said Gurdayal Singh and Dewa were very busy men because they were farmers ?—Yes. 20

And Amirchand also is a busy man, and he is also a farmer ?—But he had labourers to do his work in his place. He left labourers to do his work while he came away.

So he employed labourers on his place to look after the cultivation, and he came to Suva ?—Yes.

Now you are a labourer you have already told us ?—Yes.

And as a matter of fact you have no fixed abode : for a few months you will be in one place, for a few months in another, and so on like that ?—I have lived for the last 15 years at Mataniqara. 30

Now you said when Jaimal went to the other side with you and Amirchand you paid the lorry hire ?—Yes.

Had you had any financial dealings with Jaimal at any time ?—No.

Did Jaimal ever lend you any money ?—No.

Not a penny at any time ?—Not a penny at any time.

Did you know that Jaimal had given £80 to Amirchand to meet with the expenses while you people were at the Sikh Gurudwara, Samabula ?—I knew a little about that, yes.

And you knew, of course, that Jaimal was one of the wealthiest Indians in the Colony ?—Yes. 40

And did you ask either Jaimal or Amirchand to pay the lorry fare ?—Jaimal, when paying the money to Amirchand, instructed me to arrange the bus, and I did the arranging but I wasn't paid.

Did you ask either Jaimal or Amirchand to pay for the bus ?—He was a sick man and a very good friend of mine. Why should I bother him in his sickness ? I didn't ask him.

Did you ask Amirchand ?—Yes. Amirchand said, “ When Jaimal recovers it will be all fixed up.”

So, as a matter of fact, what you mean to say is you were advancing £6 16s. towards the fare ?—The man was sick. He was ill, and what was the use of asking a sick man ? And I understood that when he recovered he would pay me but if he didn't recover, well, where Jaimal went the money has gone. 50

But you say you——

The COURT: Has this anything to do with the case?

PATEL: All right, Sir.

Now you say you got Jaimal to Ba?—Yes.

Now you have to pass Mataniqara before you reach Ba town?—Yes but I had something to do in the town. Some business.

And you would also be passing Tagi Tagi where Gurdayal and Dewa live?—Gurdayal lives at Sigawe, at Mataniqara.

What about Dewa?—He lives at Tagi Tagi.

10 And you passed Tagi Tagi without stopping at Dewa's?—We went straight on.

You passed Mataniqara where Gurdayal Singh lives?—We didn't take the lorry to Gurdayal's: we went straight on to the town.

And went straight to Mehar's?—Yes.

And Debichand: he also lives in Mataniqara, doesn't he?—Yes.

And Debichand has got a very big house, hasn't he?—Yes.

Far better than Mehar's?—Mehar's house is better than Debichand's.

And you went straight to Mehar's house?—Yes.

Now you are a labourer?—Yes.

20 And consequently you have to look after your work?—Well, I am a casual labourer; when I get work I work, when I don't, I don't.

During that part of the year did you get very much work?—At that time I wasn't working.

Why? Because there was no work to be had?—I wasn't well; I was sick, and therefore I wasn't working.

You were sick, and that is why you were not working?—That's right.

30 And in 1944, during those months, planters were neither ploughing nor planting cane. You remember that, don't you?—Well, lots of them were ploughing.

One thing, the weather wouldn't permit, and another thing, they didn't want to until the cane dispute was settled?—I don't know about that. Quite a number of people were planting cane at the time.

Did you know about Amirchand?—He——

The COURT: This has something to do with it?

40 PATEL: Only on this point. He tries to make out Amirchand told he had got to plant cane, while Amirchand says he had to come here and fix up income tax at Jaimal's request—that is why he came. And when that piece of evidence was objected to my learned friend submitted to the Court that that was to contradict what Amirchand had said.

MACFARLANE: I think my learned friend is mistaken. I have never questioned that Amirchand came to Suva or that he came to look after Jaimal's income tax, or that he got a telegram.

The COURT: It will have no effect on my mind whatever.

PATEL: Very well, sir.

Now, you said Jaimal was at the temple for how long?—For a week, roughly.

And you know it is a sort of caravanserai—a rest house—for people who haven't anywhere to stay?—Yes, that is correct.

50 The COURT:

4 p.m. Adjourned.

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Court of
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*Plaintiff's
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No. 25.
Dalel Singh,
18th
January
and
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1945,
Cross-
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*In the
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Friday, 19th January 1945.

EIGHTH DAY.

MUNRO : We have agreed to an adjournment with a view to settlement.

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CHALMERS : There is a matter I would like to bring up. I put a question to this witness, Dalel Singh, as to whether he had seen Hari Charan there, and learned Counsel, in objecting, said we had never asked Hari Charan whether Dalel Singh was there. I wish to refer Your Honour to the actual evidence on that point.

RICE : That was not the basis of my objection. The basis was that it had never been put to Hari Charan that he, Hari Charan, was not there. 10

The COURT : If we have to go on with the case we will take that up.

Adjourned to Monday, 29th January.

Monday, 28th May 1945.

DEOKI : I have been instructed by Grahame & Company to appear on behalf of the nephews of Jaimal, as Mr. Morley, who previously appeared, has had to leave the Colony on medical advice.

MACFARLANE : I have instructions from my clients to proceed with the case. No compromise has been arranged. I think one of the plaintiffs' witnesses, Dalel Singh, was in the box when we last adjourned. 20

DALEL SINGH (*continued.*)

PATEL : You have told us that you used to sleep at Indar Singh's house with Jaimal ?—Yes.

How many days did you sleep with Jaimal during his stay at Indar Singh's house. Only for two nights I didn't sleep there, but for the rest of the nights I slept with him.

Roughly for how long ?—About two weeks.

And were you there all the time during the day, too ?—Yes. Only two nights I wasn't there.

And all the days you were there ?—Yes.

You said you were sitting with Jaimal and sleeping with Jaimal ?— 30
Yes.

All the time—you wouldn't let Jaimal alone—is that so ?—If I felt like going away from there for a while I would.

So you used to go away at times, isn't that the position ?—Yes.

And while you were there you said visitors used to come ?—When I was there I have seen visitors come.

Now you said sometimes Dewa used to stay there ?—Yes.

And about how many days did Dewa stay ?—Roughly for about one or two nights. He comes during the day and goes away. 40

What nights ?—I don't remember now what nights he stayed there.

Can you give us an idea as to how many days he came there ?—Well, I am just giving you a rough guess. He came two or three times.

And when were these one or two days that Dewa paid his visits ?—During this two weeks of his stay at Indar Singh's house this man visited him two or three times. I can't say exactly now what days he came.

Can you give us an idea as to how long before he died ?—He came within that two weeks.

And he visited when he pleased and left the house when he pleased ?—Yes.

And would be seeing Jaimal freely ?—Yes.

Now there are several houses round about Indar Singh's place ?—One house only.

Whose house ?—Said Ali.

Is there a house opposite to Indar Singh's, across the road ?—Yes. 10 Said Ali's is opposite to Indar Singh's.

And Nur Mohammed ?—I don't know.

Apart from Said Ali's you didn't see any house in that locality, is that it ?—I didn't see anybody else's.

And you know very well that Yalalevu is a very thickly populated settlement ?—All those things do not concern me. I just went there. I used to visit Jaimal and that is all.

You didn't notice anything else ?—No.

You didn't even notice such a large house as Nur Mohammed's, just off the road ?—May be. I didn't notice any of the houses.

20 You didn't notice it ?—I don't know his house. I may have seen it but I don't know it.

You didn't see, for instance, another house on the adjoining block—a big house again : Harnam Singh's ?—It is further on, yes.

Imam Din's house ?—I don't know.

I put it to you that you didn't notice all these houses because you weren't sitting there, as you say, regularly ?—I have no connection with these people.

Now you said you were there on Friday ?—Yes.

30 On that day did any people visit there ?—Well, I wasn't keeping record of the people that were coming.

To the Court : The answer is yes or no. Did anybody come ?—Yes, there were visitors.

PATEL : And you talked to Jaimal that day ?—No.

You didn't ?—Well about his meal and one thing and another. I might have talked to him about his food.

And he was talking all right ?—He was speaking softly. Very, very slowly.

Did you talk about other matters with him that day ?—No, just asked him about his food, what he would like, and so on.

40 Where was Amirchand ?—He would sometimes go away to the town, but other times he would be there.

Will you give a description of Indar Singh's house ?—There was a room facing the main government road, in which Jaimal was. There is another small room immediately behind that, then the kitchen after that.

And there is a passage from the front room to the kitchen ?—Yes.

And there are a lot of windows in the front room ?—Yes.

And it is facing the road ?—Yes.

Of course people in the neighbourhood will know that a man named Jaimal is staying there ?—That I don't know.

50 You told us about Mehar paying occasional visits ?—Yes.

What do you mean by occasional visits—how many times ?—About five or six times.

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tion,
continued.

Did Mehar stay there?—He would remain for a short time and then go away. He wouldn't sleep there.

Did he ever sleep there?—Not to my knowledge.

Now you said you were there from Friday until Monday morning?—

Yes, and on the Monday morning at 8 o'clock I left.

Where did you go at 8 o'clock?—Votua.

Your place, is it?—Yes. I hadn't had any sleep for the previous two or three nights, so I went home to have a bit of a sleep and change my clothes.

Because you couldn't sleep in that house, is that it?—Yes. 10

And why couldn't you sleep and dress in that house?—Jaimal was delirious: he was making a lot of noise—

INTERPRETER: I beg your pardon.

—Amirchand used to get drunk: he used to drink liquor and make a lot of noise.

Not Jaimal?—No, not Jaimal.

And for two days you couldn't get sleep because Amirchand was delirious?—Yes, he would drink liquor.

And so you left Jaimal there dying so you could go and sleep in your house at Votua?—Well, Amirchand was there. 20

You considered it was sufficient?—Yes.

Wasn't Amirchand delirious and drunk that day?—No, not that day.

That day he was all right?—He was all right that day.

And why couldn't you rest at Indar Singh's that day?—Well, I couldn't really sleep there because visitors would be coming in, and this man would be relieving himself inside the house and they would have to clean him. And visitors would come in and wake me up if I slept there. And I knew I couldn't get any rest there, so I went home.

You said that on Monday morning Jaimal was "too far gone." What did you mean when you said "too far gone"?—He wasn't able to eat: 30 he went off food from Saturday. He wouldn't do anything from Saturday: he wouldn't speak and he wouldn't eat from Saturday.

And still you went home on Monday?—I myself was in difficulties; that is why I went away.

Now, according to your story, the position was that one sick man was looking after another sick man?—Well, owing to my not sleeping for two or three days, I had to go and have a rest.

But you were sick and you couldn't work, so you decided to stay with Jaimal.

MACFARLANE: I think that is an unfair question. He didn't say 40 he couldn't work.

PATEL: In my previous cross-examination he gave the reason for not working that he was sick.

MACFARLANE: That was referring to the earlier period—not the Monday. It was referring to an earlier period of time.

PATEL: During your stay at Jaimal's you have told us already that you were not working as a labourer?—That's right; I was not working.

And you told us you were not working because you were sick?—Well I was looking after Jaimal. I wasn't sick. He was related to me as 50 a brother.

He was related to you as a brother?—Yes.

So when you told us you were sick, that wasn't true?—I took medicine and I was all right; it was only one day or two that I wasn't feeling well.

I put it to you that there was a cook specially employed there?—No, there was no cook.

And that cook was Sukhu?—No Punjabi to this day in the whole of the Colony has kept a cook, and Jaimal wouldn't keep one.

I am asking you, was there a cook or not?—No.

You know the man, do you?—No.

10 Never seen him?—Never seen him.

Never saw him even in Yalalevu?—Had he lived there I would have seen him, but I have not seen him.

As no Punjabi ever keeps a cook, I take it you have never worked as a cook?—Well, when I say I helped Jaimal, that is because of this regard I had for him as a brother. It is the affection.

You have never worked as a cook in this Colony?—I cook my own meals.

But never cooked for anybody else?—No.

This house was specially taken for Jaimal?—Yes.

20 You mean to say that no cook was employed?—That's right.

I put it to you that a cook was employed, and a cook who knew how to do the work—who had worked as a cook before. That was Sukhu?—No.

You said that Debichand and others visited him?—Yes.

And what day was that?—I don't know the day. I saw him on a Sunday.

And you don't know which Sunday it was?—The Sunday on which Jaimal was in difficulties.

RE-EXAMINED.

30 MACFARLANE: You remember Mr. Patel asked you about your occupation, and you said you were a labourer?—Yes. Re-examination.

I think you also have money invested in securities?—Yes.

About how much money have you invested and lent out?—

MUNRO: Does this help the Court, or does it arise out of the cross-examination?

MACFARLANE: The inference was that he was a man of straw—the inference from my learned friend's cross-examination.

The COURT: I didn't draw that inference.

40 MACFARLANE: They said he was a labourer and as such that he was doing nothing.

The COURT: The fact that he was not working, I think, was the question.

MACFARLANE: If the Court is not concerned with that I won't bother.

You left on the Monday morning, Dalel. During the last two nights who was attending Jaimal?—I was looking after him.

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ation,
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To the Court: Saturday and Sunday ?—Saturday night and Sunday night.

PATEL: Where did you sleep those nights ?—Well, I didn't sleep, I was watching Jaimal. I was beside him: I was sitting down.

You say your rest was disturbed ?—Well at nights Amirchand would be disturbing: no one else. He was drunk too that day.

On what day ?—On Sunday.

And did he sleep there Sunday night ?—He was in the other room: not in the room Jaimal and I were in.

Was he all right on Monday morning when you left ?—Yes, he was 10 all right when I left.

And when you left on Monday you left Amirchand in charge of Jaimal ? —Yes.

The COURT: There is one question, the answer to which would interest me. According to this witness, he himself did more for Jaimal than anybody except perhaps Amirchand—certainly more than Mehar. Has he any reason to suggest why his name doesn't appear in the will and Mehar's does ?

MACFARLANE: Will Your Honour put the question ?

The COURT: I can't. This is a civil action. It is for you if you 20 think fit.

MACFARLANE: I will put it now. I thought that would be more of a comment from the whole of the evidence.

You said that you looked after Jaimal a little more than Amirchand.

The COURT: No. More than Mehar.

MACFARLANE: Actually his evidence amounts to this: that he did look after him more than Amirchand in the beginning.

The COURT: Suppose we put it this way. He looked after him more than anyone else except Amirchand.

MACFARLANE: You looked after Jaimal more than anyone else 30 except Amirchand ?—Yes, that is so. Whatever I was able to do I did. Myself and Amirchand: we both did our best.

Can you suggest any reason to the Court why Jaimal should give all his money to Mehar and Amirchand and not give anything to you at all ? —I cannot give any reason.

No. 26.
Dewa,
28th May
1945.
Examina-
tion.

No. 26.

EVIDENCE of Dewa.

DEWA F/N ALA, *sworn.*

MACFARLANE: Where do you live, Dewa ?—Tagi Tagi.

And you are a cultivator ?—Yes.

What village did you come from in India ?—Bahadua.

Is that the same village as Jaimal ?—Yes.

What clan do you belong to ?—Bolai.

And Jaimal ?—He belongs to the same clan.

How long have you known Jaimal ?—About 16 or 17 years.

40

And what was your relationship with him—on what terms were you with him?—On quite friendly terms—visiting terms. I would visit him and he would visit me.

Were you in debt to him?—No.

Now do you know Indar Singh's house at Yalalevu?—Yes.

How far do you live away from that?—About 12 or 13 miles away.

Are you a married man?—I haven't a wife now, but my son is married.

And you live with them?—Yes.

10 —Yes. Do you remember when Jaimal was sick in the Ba district last year?

When did you first see him over there?—In Mehar's stable. That was the first occasion.

The second occasion?—At the hospital at Lautoka.

How many times did you see him at the Lautoka Hospital?—Once.

Do you know if any other person than yourself saw him at the Lautoka Hospital?—When I went Dalel Singh was with him.

Where did you next see Jaimal?—At the Sikh temple at Lautoka.

Was there anyone else with Jaimal besides yourself at the temple?—There was Dalel Singh: there was the priest Harnam Singh.

20 That is the priest from the temple?—Yes, that is the priest of the Sikh temple at Lautoka.

Where was the next time you saw Jaimal?—In Indar Singh's house.

Can you tell us about how many times you went to Indar Singh's house?—Four times.

When was the last time you visited there, in relation to his death?—The Sunday.

And who was in the house besides Jaimal generally when you went there?—Dalel Singh and Amirchand have been there with Jaimal when I visited him.

30 What were they doing in the house?—They were attending to Jaimal, making his meals for him, and looking after him generally.

Was there any other person attending to Jaimal or his meals?—No other person attending him or preparing his meals for him.

Did you stay at the house long when you went there?—Yes.

What did you do?—Sit down, chit-chat.

What was your longest stay there?—Well I slept there two nights, or rather remained there two nights.

Two nights following each other or two nights separated?—Two separate nights.

40 Why did you stay there two nights?—On one occasion I relieved Amirchand because he said that he wanted to change his clothes, and on another occasion Dalel Singh, for the same reason.

What was Jaimal's condition when you saw him for the first time at Indar Singh's house?—He was slightly ill: he was sick.

Could he walk about then?—No.

Did you ever see him fed?—Yes.

How did he eat his meals?—Another person would feed him with a spoon.

50 Where was Jaimal during the day and night? Where did he usually stay?—In that house.

On what—how?—On a cot.

Now did visitors come to the house?—Yes.

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No. 26.
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tion,
continued.

Can you name any of them ?—Yes, quite a number of persons : I can give you the names.

What race were they ?—What days are you talking about ?

Not days. Generally ?—Mostly Punjabis ; but Indians, too.

Mostly Punjabis ?—Yes.

Well, name some ?—Gurdayal Singh ; Sarbans Singh.

Anybody else ?—Well, while I was there I saw these two. Others may have come after I left.

Now how long would you normally stay there ?—Quite a long time.

Now take the last time you were there—on the Sunday ?—I went 10 about 10 o'clock and remained there until 4 p.m.

When was this ?—On the Sunday. That was the last time.

What was Jaimal's condition then ?—He was speechless : he couldn't speak at all.

Why do you say that ?—Well, he couldn't talk.

Why do you say he couldn't talk ?—He was unconscious : he wasn't in his senses.

Did you speak to him ?—No.

Did you greet him ?—I greeted him. I said, " Sat siri kal " to him, and he didn't reply. 20

Is that the usual greeting ?—Yes.

Did he reply ?—No, he didn't reply.

Did he speak to anybody while you were there that day ?—No.

What did he look like ?—He was just about to die. He looked like a dying person.

When you left the house about four, did you go away with anybody ?—I went away with Amirchand.

During that day did you talk with Amirchand, on the Sunday ?—Yes.

Did he say anything about Jaimal at all ?—Yes, we were discussing Jaimal. 30

What was the discussion ?—Amirchand was telling me, " This man can't talk now."

MUNRO : I have no recollection of any question being put to Amirchand that he had any conversation with this man.

MACFARLANE : We put it to him that he was there.

MUNRO : But not conversing. Not a word.

And you left with Amirchand ?—Yes. We came to the town about 4 o'clock.

And who did you leave with Jaimal ?—Dalel Singh.

CROSS-EXAMINED. 40

Cross-
examina-
tion.

MUNRO : Did you have any meals in Indar Singh's house ?—I had tea.

And did Sukhu prepare that tea ?—No, Dalel Singh made it.

Who prepared the meals which were given to Jaimal when you were there ?—Dalel Singh. Jaimal didn't have any.

Who ate meals : did you ?—Yes, I had tea.

And those meals were prepared, you say, by Dalel Singh ?—Yes.

The two nights that you spent with Jaimal : were you there alone with him ?—One night Amirchand was with me and the other night Dalel Singh was with me. 50

And the night that you and Amirchand were with Jaimal : how many nights was that before the Tuesday, the day he died ?—One is about six or seven days previous to his death.

I am talking about this particular night—the night that you were with Amirchand, alone with Jaimal ?—That is the second time : that would be the Thursday.

The Thursday before Jaimal died ?—Yes.

And no doubt you spoke to Jaimal during that night ?—One had to go very close to him and speak, and he would reply in a very low tone.

10 Did you speak to him ?—Yes, I spoke to him and he would reply in a very low tone.

And sometimes, no doubt, Amirchand left the room and you were left there alone with Jaimal ?—Yes, that is so.

And did Jaimal speak to you then ?—No.

That was the Thursday night. Now what was the night you and Dalel spent there ?—That is before the Thursday : I can't remember now what night it was.

You just try and remember ?—I didn't make a record or write it down.

20 You have got to do your best to remember, because you have told the Court that you were only there on two nights ?—I can't remember.

Is that what you wish the Court to believe ?—I can't recollect. If I did remember it I would tell you.

I suggest to you that you can't remember because you just weren't there : in other words, you are lying ?—No. I was there for sure. I slept that night there.

How long roughly was it then before Jaimal died ?—It would be about six or seven days previous to his death.

30 That would be about the Tuesday—two days before you and Amirchand were there. Was it the night before Amirchand was there or two nights before ?—About three or four nights—I can't say for certain.

During that night I suppose you and Dalel Singh spoke to Jaimal together or separately ?—At night while attending to him if he wanted a drink or anything he would just ask for water in a very low tone and he would be attended to by either of us.

And did either of you two speak with him ?—We talked to him all right but he wouldn't be able to reply. He would talk in a very small soft voice.

40 He could and did speak to you in a very small, soft voice ?—Slowly, yes, very, very slowly.

And was his condition any worse on the Sunday before he died ?—Yes, he wasn't able to talk even on Sunday. He was very much worse then.

He was worse on the Sunday, then—on the night he was with Dalel Singh ?—Yes, he was very much worse on the night he was with Dalel Singh.

Did Jaimal take food on that Sunday ?—The whole of the day, no.

Did you think he should have seen a doctor that day ?—That I didn't worry about because there were two others there besides myself.

50 As an old friend of his, you didn't think it necessary to bring a doctor ?—They were saying he was shown to the doctor and the doctor said there was no hope for him to live.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 26.
Dewa,
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You were not prevented from visiting this house, were you? You could come and go as you pleased?—I was quite free to come and see him. Did you ever visit Jaimal in his house here in Suva?—Yes, I visited him.

*Plaintiffs'
Evidence.*

And his house here at Samabula had an iron roof and iron walls?—Yes, I have seen the house.

No. 26.
Dewa,
28th May
1945,
Cross-
examina-
tion,
continued.

And I think I can suggest to you that Indar Singh's house is a better house than Jaimal's here in Suva?—Yes, Indar Singh's house is a far better house than this one. The one at Samabula is a very small one.

RE-EXAMINATION.

10

None.

No. 27.

EVIDENCE of Harnam Singh.

No. 27.
Harnam
Singh,
28th May
1945.
Examina-
tion.

HARNAM SINGH, *sworn.*

Priest, Sikh Temple.

MACFARLANE: You are at the Sikh Gurdwara Temple at Namoli, Lautoka?—Yes.

And you knew Jaimal?—Yes.

How long have you known him?—About 14 or 15 years.

Do you know Dalel, Amirchand and Mehar?—Are you acquainted 20 with those men?—Yes, I know of them.

Do you remember last year when Jaimal was sick?—Yes.

What was your first knowledge of him being sick?—After he was admitted to the Lautoka Hospital—two or three days after—I came to know that he was sick.

Do you know who was going to see him at the Lautoka Hospital?—Yes.

Who was it?—Dalel Singh.

Do you know if Dalel Singh took food to the hospital?—Yes, he was taking food to Jaimal. 30

Where was Dalel staying at that time?—At the temple.

At your temple?—Yes, at the Sikh Temple, Lautoka.

Was any food supplied to Jaimal?—Temple food was being taken to Jaimal.

By whom?—Dalel Singh would take the food from the temple to Jaimal.

Who cooked the food?—Dalel Singh.

How long did that go on for?—For about a week.

Did you see Amirchand during that time?—I didn't see him at the temple. 40

Did you see him anywhere else during that week?—I saw him in Namoli, Lautoka.

More than once?—Only once.

Did Jaimal come out of the hospital?—Yes, he came to the temple.

Did you see him when he arrived at the temple?—Yes.

Well, could you tell the Court what happened on his arrival?—When he arrived there the motor driver was with him. I was just going about

there near the temple : the driver called out to me : he said, " There is a Punjabi here in the car : take him."

What did you do ?—When I went to the car I saw Jaimal in the car. I knew the man : I recognised him. I carried him, he being in a very weak condition. I lifted him up and carried him to the temple door.

And then what did you do ?—When I took him to the door of the temple he said, " Put me down here." He said, " I have some tobacco on my person : let me remove the tobacco before I go into the house." This was at the entrance.

10 And then what ?—And when I put him down and he removed the tobacco and things from himself, in the meantime Dalel Singh appeared from the kitchen and I told him to take Jaimal away.

How long did Jaimal stay there at the temple ?—Five or six days.

And who looked after him during that time ?—Dalel Singh.

Was Amirchand there during that time ?—Not at that time, no.

Did he arrive later ?—Yes.

That is, after five or six days ?—Yes.

Do you know why he came there ?—When he came to know that Jaimal was ill and was at this temple he came there.

20 What happened when he came ?—He came and took Jaimal away. Himself and Dalel Singh.

The same night ?—No. Amirchand remained a night there.

Stayed one night and took Jaimal away the next day ?—Yes.

Did anyone pay you for the food supplied while Jaimal was there at the temple ?—We didn't accept or receive any money for food or shelter given to people at the Sikh temple.

Does the temple accept donations ?—Yes, we would accept donations.

Did Jaimal make any donation ?—Not at that time or since that time.

30 This attention that was being paid to him, that is giving him shelter there while he was sick and looking after him in that condition, we didn't expect anything, nor did they give us anything.

Well, Jaimal stayed at the temple for five or six days. Did you see Mehar there ?—Yes, I saw him.

How many times ?—Once.

CROSS-EXAMINED.

Mr. RICE : Did you say that just before Jaimal entered the temple he took some tobacco out of his pocket ?—Yes.

His own tobacco ?—Yes, his own.

40 Well, at that time then he was smoking ? I mean, during that period he was a smoker ?—He may have smoked in the hospital, yes.

No. 28.

EVIDENCE of Debichand, Sirdar.

DEBICHAND, SIRDAR.

MACFARLANE : Which part of India do you come from ?—The north—Nepal.

You are not a Punjabi ?—No.

You are a landowner yourself ?—Yes.

And I think you worked for the C.S.R. Company for 25 years ?—Yes.

*In the
Supreme
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Fiji.*

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No. 27.
Harnam
Singh,
28th May
1945,
Examina-
tion,
continued.

Cross-
examina-
tion.

No. 28.
Debichand,
Sirdar,
28th May
1945.
Examina-
tion.

*In the
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*Plaintiffs'
Evidence.*

No. 28.
Debichand,
Sirdar,
28th May
1945,
Examina-
tion,
continued.

And you were finally a sirdar for the Company?—That is so.

Were you indebted to Jaimal?—Yes.

And he held security from you?—Yes.

How long had you known him?—Six or seven years.

Do you remember when he was sick during last year?—Yes.

Did you see him?—Yes.

What was the first occasion you saw him when he was sick?—I saw him in Suva.

Was that last year?—Yes.

Where did you see him again?—The second time I saw him at the 10 Lautoka Hospital.

After that?—Yalalevu, Ba.

Whereabouts?—In Indar Singh's house.

How many times?—Twice.

Do you remember the day he died?—Yes.

What day of the week was it?—Tuesday.

In relation to that day, what was the time immediately previous to that that you saw him?—The Sunday previous to his death.

And the other occasion that you saw him: how long would that be before the Sunday?—A week before that Sunday. 20

Who was looking after Jaimal at the house?—Dalel Singh and Amirchand.

Anybody else?—There may be others that were looking after him.

Who cooked the food?—Dalel Singh.

What was his condition when you saw him first at Indar Singh's house?—He was in an emaciated condition, and weak.

Whereabouts in the house was he when you first saw him?—He was lying down on a cot made of rope, woven rope.

Did you speak to him then?—Yes, I did.

And what did you say?—I greeted him. I said, "Sat siri kal, 30 Mahajan."

He was your Mahajan because you owed him money?—That is so.

And did he reply?—Yes, he replied.

How?—In a low tone he said, "Sat siri kal."

Did you carry on a conversation with him?—I asked him, "How are you feeling Mahajan?" He said, "Not very well."

Was the voice strong or weak?—Weak.

Now you went there on the Sunday—Yes.

How long were you there on the Sunday?—I was there roughly for about half an hour to one hour: I didn't have a watch or anything with 40 me to see the time.

To Court: That was on the Sunday two days before his death?—Yes.

MACFARLANE: What was his condition then?—Very bad.

Why do you say that?—Well, similar to the first occasion, I greeted him with "Sat siri kal" and he didn't reply.

Did he look at you?—No.

What did he look like—can you explain it?—(*Demonstrates breathing.*) And he was in a very weak condition, and it appeared to me he was a dying man and would probably die very soon. 50

Did he speak to anybody while you were there?—Didn't speak to anyone.

Who was there, apart from Jaimal?—Dalel Singh, Amirchand, Dewa.

Plaintiffs'
Evidence.

CROSS-EXAMINED.

MUNRO: On the first occasion you went to Indar Singh's house, what time of the day was that?—Roughly, about 11 o'clock before noon.

And you were there, I think you said, about half an hour?—About that.

10 And you didn't walk right through the house, you merely stood in the front room with Jaimal, did you?—Yes, that's right.

And, presumably, when you went on the second occasion, you stood in the front room and again didn't walk right through the house?—I didn't walk through the house.

And on both occasions when you went to Indar Singh's house you casually dropped in and left when you pleased?—That is so.

And you were not prevented from speaking to Jaimal?—No one stopped me.

20 And on the first day you were there were you actually alone with Jaimal for any short time?—I wasn't left alone with Jaimal. There was somebody there all the time.

And who was it?—At first when I went in Amirchand and Dalel were both there. Amirchand remained with Jaimal when Dalel went out to get some water or something.

And did Amirchand go out at all and leave you with Dalel?—No.

On either of those two days did you see Jaimal smoking?—No, I didn't.

The second day you went, the Sunday, did you think you should have called a doctor to see Jaimal?—Well, he was brought from the hospital.

30 You didn't think it necessary for a doctor to be called to him?—I thought to myself, "When the doctor comes and sees the man it will be all right." But that thought was never put into action.

In other words, you didn't think it was necessary for you to get a doctor?—That is so.

And when you spoke to him on that Sunday morning, he answered you quite sensibly?—

MACFARLANE: His evidence was he didn't speak on the Sunday. You are referring to the prior occasion.

MUNRO: That's right: I am sorry.

40

RE-EXAMINATION.

None.

No. 29.

EVIDENCE of Karam Singh.

KARAM SINGH, *sworn*

MACFARLANE: Do you live at Ba?—Yes.

Where is your land?—Yalalevu.

You have some freehold land at Yalalevu and do you work there?
—Yes.

No. 28.
Debichand,
Sirdar,
28th May
1945,
continued.
Cross-
examina-
tion.

No. 29.
Karam
Singh,
28th May
1945.
Examina-
tion.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 29.
Karam
Singh,
28th May
1945,
Examina-
tion,
continued.

Where is that land in relation to Indar Singh's house?—In relation to Indar Singh's house, towards Ba about 20 chains away—in the direction of Ba. That is my land.

How many pieces of land have you?—Two.

Where is the second one?—The second is close to the river: near the river's edge.

And when you go to your land do you pass Indar Singh's house?—Yes, when we leave Ba town to go to our land we pass Indar Singh's, and even when we leave our home and go back to town we pass Indar Singh's. 10

Did you know Jaimal?—Yes.

For how long?—For 15 or 16 years.

And are you indebted to him or not?—No. I don't owe him any money.

Are you a Punjabi?—Yes.

Do you remember when Jaimal was sick?—Yes.

Do you remember when he died?—He died on the 4th April, Tuesday.

Did you go to his cremation?—Yes.

Did you see him when he was in Ba district?—Yes.

Where?—In Indar Singh's house. 20

Why did you go there?—Having heard that he was sick and along there I went to pay him a visit.

How many times did you go there?—Twice.

When was the first time?—About six or seven days previous to his death.

How long did you stay there then?—About 10 or 15 minutes.

And what was his condition?—He was sick but he was able to talk very little.

Did you speak to him then?—I greeted him: he replied slowly, "Sat siri kal." 30

Did you carry on a conversation with him?—I just asked him how he felt and he said, "I am not very well."

And who was in the house when you got there?—Dalel Singh and Amirchand.

Did you see anybody else there?—I didn't see anybody else.

When was the next time?—On the Monday, the day before he died.

And when was that?—Early in the morning, about 7.30—7 or 7.30.

Why did you go at that time of the morning?—I was going to my work on the land.

As you were going to your work?—Yes. 40

What sort of work?—I was to harvest some cane.

When you went in on this Monday morning, whom did you see?—I saw Dalel Singh.

Anybody else?—Amirchand was there too: he was at the rear of the house near the kitchen.

How long did you stay then?—Five or six minutes.

What did you do?—I greeted Jaimal, "Sat siri kal," and he did not reply.

What did he look like then?—He was in difficulties and appeared to be very, very ill. He was very sick. 50

Why did you think he was in difficulties?—The way he was breathing made me think he was suffering.

How was he breathing ?——

The COURT : Does it matter very much ? He appeared to be very ill.

MACFARLANE : Did he speak to you at all ?—No. Nothing whatsoever.

Did you speak to either of the other two men in the house ?—Yes, I spoke to Dalel Singh.

And then what did you do ?—I left the place and went away.

None

CROSS-EXAMINATION

10

No. 30.

EVIDENCE of Siubaran Singh.

SIUBARAN SINGH, *sworn*.

MACFARLANE : You live at Votua, Ba ?—Yes.

And you are a landowner ?—Yes.

And how long have you known Jaimal ?—About 14 or 15 years.

Are you a Punjabi ?—Yes.

Well now, do you remember when Jaimal was sick ?—Yes.

Where was he ?—Yalalevu.

Did you see him ?—Yes.

20

At what place ?—In Indar Singh's house.

On how many occasions ?—Twice.

Do you remember the day he died ?—Yes.

What day of the week ?—Tuesday.

Do you remember about how long before his death it was when you first saw him ?—The Friday before his death. I am guessing this.

Was that the first or second time ?—The first time.

When was the second time you saw him ?—Saturday.

About how many days before he died did you see him the first time ?—Friday, the first time.

30

When was the second time ?—The Saturday.

Were those two days following each other ?—No, a week after.

You saw him on the Friday and then on the Saturday week ?—Yes, not the next Saturday but the Saturday following.

So you saw him on the Saturday before he died ?—Yes.

And the time before that was over a week before ?—Yes.

Now who was looking after Jaimal in this house ?—Dalel Singh.

And who else ?—Amirchand.

Did you see anybody else working round the place ?—On both occasions that I visited him I saw these two men only.

40

Now did you speak to Jaimal the first time you went to Indar Singh's house ?—Yes, I spoke to him and he replied in a very low voice.

And when you went there the second time what was his condition ? He wasn't very well then : he didn't appear well.

Did you speak to him ?—Yes, I spoke to him, but he didn't reply.

How did he look ?—Well to me he appeared as a person who is not able to speak, and he was suffering.

How long did you sit there ?—About 10 or 15 minutes.

Did Jaimal speak to anybody while you were there ?—No.

50 On either occasion when you were there did you see Mehar ?—I didn't see Mehar.

CROSS-EXAMINATION.

None.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 29.

Karam
Singh,
28th May
1945,
Examina-
tion,
continued.

No. 30.
Siubaran
Singh,
28th May
1945.
Examina-
tion.

MACFARLANE: What is your occupation?—Dairyman—selling milk.

And you live at Yalalevu?—Yes.

Do you know Indar Singh's house?—Yes.

Do you know Amirchand?—Yes.

Did you deliver milk there last year?—Yes.

For how long?—For two weeks.

Who was in the house?—Sometimes Dalel Singh, sometimes Amirchand. 10

Who else?—No one else.

Did you go into the house?—Yes, I went into Indar Singh's house.

Who did you see in the house?—Dalel Singh and Amirchand.

What were they doing in the house?—When I went there these people would be preparing meals or something.

For whom?—For themselves and for Jaimal.

Did you see Jaimal there?—I saw him only once.

Where was he?—He was inside the house. 20

What was he doing?—Lying down.

To whom did you deliver the milk when you went there?—To Dalel Singh.

Where? What part of the house?—In the kitchen.

MUNRO: It was never suggested to the first defendants' witnesses that this witness did deliver the milk to the house, and now he is being led along those lines.

MACFARLANE: When Amirchand and Mehar gave evidence they said there was a cook there, to my great surprise and that of all my witnesses, and it was during the course of the trial that this evidence was obtained, and Your Honour will remember that when Sukhu, the cook, was in the box, I put it to him that he was never there and that he was lying. I am entitled to draw evidence in rebuttal. Obviously I didn't know the cook was there until Amirchand and Mehar had given their evidence. 30

The COURT: You didn't put it to Amirchand that the milk was delivered to Dalel.

MACFARLANE: I didn't know when I cross-examined that the milk was delivered.

MUNRO: That is not the fault of the first defendants. And here 40 we are met with a set of circumstances of which we have had no forewarning.

MACFARLANE: He said the cook was there, and they brought the cook and I put it to the cook that he was lying.

MUNRO: There was a point previous to that, if Your Honour will remember: Mehar, when he was being cross-examined by Mr. Chalmers, said at one stage, "I didn't go because there was no one at home: Sukhu had gone for the milk."

MACFARLANE: When he said that I realised that the cook was there, but at that stage I hadn't started my case, and I couldn't have every witness that was available—it was during the course of the trial that it came up.

The COURT: You couldn't then know what the witnesses would say?

MACFARLANE: I didn't know then that there was a cook at the house. My instructions were that there were only two men working in the house, Dalel Singh and Amirchand. Dalel Singh swore there was no one else cooking or working in the house, and it came as a surprise to me to know there was a third man there. I knew I was going to call this man when Sukhu was in the box, but it wasn't until Amirchand and Mehar said there was a cook there that I even knew there was a third man. When Mehar mentioned the cook's name it came as a surprise to me that there was a cook.

The COURT: The point Mr. Munro is taking is that you never put this witness's evidence. You never put to anybody the existence of this witness.

MACFARLANE: I didn't know of the existence of this witness. I wouldn't have asked this witness to give evidence at that stage because I didn't know there was any cook there. There was no point in calling him to say "I deliver milk at the premises." He couldn't speak about Jaimal's health. If my friend is taken by surprise he has a right to recall Sukhu: if there is anything that takes the defence by surprise then they can recall witnesses. I put it to Sukhu that he was lying, and he said, "No, I was there."

MUNRO: While I sympathise with the manner in which my friend got his instructions, I submit that is no excuse; but even if it were to be the excuse as regards Amirchand and Mehar, it certainly couldn't be the excuse as regards Sukhu. He knew perfectly well this evidence was going to be called, yet he never put to Sukhu how the milk came, or said anything at all to suggest that a milkman was going to be called. Indeed, one can carry that a bit further and say that it was never asked of Sukhu whether any of the witnesses with the exception of Dalel Singh and Siubaran Singh were ever present. But my friend could and should have put this evidence in detail to Sukhu if he were going to rely upon it. There is just one further observation there. If it is to be admitted, my friend concedes, of course, that we have the right to rebut it. He mentioned a right to rebut it by recalling Sukhu, but I suggest that our evidence would certainly not be limited to Sukhu.

The COURT: I think it is admissible; and, as Mr. MacFarlane has said, you have the right to recall witnesses if taken by surprise.

MACFARLANE: I mentioned Sukhu—I leave it to my learned friend to recall any witnesses he likes.

MACFARLANE: What time did you go there—in the morning or afternoon?—5 or 5.30 a.m.

Would the time vary from day to day?—Every day between 5 and 5.30.

Would you always find somebody there to get the milk at that hour?
50 —Yes.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 31.
Shib Singh,
28th May
1945,
Examina-
tion,
continued.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 31.
Shib Singh,
28th May
1945.
Examina-
tion,
continued.

And who would you find there ?—Dalel Singh : sometimes Amirchand.
Whereabouts ?—Near the kitchen.

Did you ever give the milk to anybody else there ?—No one else in
the house.

And do you know a man named Sukhu ?—Yes, I know a man named
Sukhu.

And did you see him there on any occasion ?—No, I didn't see him
there.

Who asked you to deliver milk there ?—Amirchand.

Did you deliver the milk going or coming from Ba ?—Sometimes I 10
would deliver the milk on my way to Ba, if they were awake : if they were
asleep I would deliver it on my return from Ba.

How would you give it—what in ?—A saucepan—billycan. They
had a billycan.

What time did you return from Ba ?—7, 7.30 on some days. It might
be 8 o'clock when I returned from Ba.

CROSS-EXAMINED.

Cross-
examina-
tion.

MUNRO : You always delivered on your way into town, at about
5 or 5.30, did you ?—Yes.

And there was never an occasion when you delivered after that ?— 20
Yes, I have given milk on my return from Ba town.

On how many occasions ?—About five or six times I think, roughly.

And about what time would that be ?—7.30, or on some days it might
have been 8 o'clock.

And were those occasions during the fortnight before Jaimal's death
or were they before that ?—The last Sunday was the Sunday I had given
milk on my return from Ba. It was during those days he was at Indar
Singh's house I was supplying milk.

And it was on those days during the week prior to his death that you
delivered at 7.30 or 8 o'clock ?—On some days I would deliver at 5 or 5.30, 30
and at other times, if I didn't find them awake, I would come on my return
at 7.30 or 8.

During the fortnight prior to Jaimal's death, did you deliver milk at
that house at 7.30 or 8 o'clock ?—Sometimes, yes.

How many times ?—Four or five times.

Did you deliver milk there before Jaimal lived at Indar Singh's house ?
—There was no one there to deliver the milk to.

Do you always deliver milk personally, or does your son help you ?—
During those two weeks that I was delivering milk at Indar Singh's house 40
only twice my son sent, and the rest was supplied by me personally.

I want you to think very carefully. During the last week prior to
Jaimal's death did you or your son deliver at 7.30 or 8 ?—I supplied.

Do you remember the witnesses coming over from Ba at the beginning
of this year ?—Yes.

When were you asked to give evidence ?—When this case was started.
Now or at the beginning of the year ?—At Ba.

At Christmas time or before Christmas ?—When these people came
away from Ba I was at Ba. When I was wanted they sent a telegram to
me from here.

When was that ?—4th April.

50

Can you tell me what they said in that telegram ?—In the telegram was mentioned that myself and the priest were required here to give our evidence in this Court.

And that was last month, the 4th April ?—I don't recollect very well.

MACFARLANE : I don't know whether Mr. Munro doubts my word : my assurance——

MUNRO : I am entitled to ask when Mr. MacFarlane's clients first approached this man to give evidence.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 31.
Shib Singh,
28th May
1945,
Cross-
examina-
tion,
continued.

No. 32.

10

EVIDENCE of Gurdayal Singh.

GURDAYAL SINGH, *sworn.*

MACFARLANE : You live at Ba, and are you a cultivator ?—Yes.

You knew Jaimal ?—Yes, I knew him.

Did you come from the same village as he did ?—That is my village,
yes : the same as Jaimal's.

How long did you know him ?—14 or 15 years.

In Fiji ?—When I came to Fiji I came to know him.

Was he an old man ?—Yes, he was older than myself.

Do you owe Jaimal's estate any money ?—Yes.

20 How much is it—a large or small sum ?—Only a small amount—£10.

Did you ever visit Jaimal when you came to Suva ?—Yes.

When he was in Ba last year, do you remember seeing him over there ?
—Yes, I saw him there.

Where did you see him ?—At Indar Singh's house.

How many times did you go there to see him ?—Twice.

And when was the last time you went there to see him ?—On the
Sunday.

Do you remember when he died ?—On Tuesday, the following Tuesday.

Who was looking after Jaimal at that house, as far as you know ?—
30 Amirchand and Dalel Singh.

Did you see Mehar on either occasion when you were there ?—No, I
didn't see Mehar there.

Did you see anyone else on Sunday besides Dalel and Amirchand ?—
Yes, Dewa was there.

To Court : On the Sunday ?—Yes.

MACFARLANE : Well, do you know how long you stayed there on
the Sunday ?—About 15 or 20 minutes.

Well, what did you do when you went into the house ?—This is what I
did. I went in and raised my hand : I said, " Sat siri kal " to him and he
40 would not reply.

You spoke to Jaimal ?—I spoke to him but he wouldn't reply.

Did he appear to know you ?—He wasn't able to recognise me.

And did he talk at all while you were there ?—Not a word while I was
there. Didn't speak at all.

And how did he look ?—To all appearances he was very, very sick.

No. 32.
Gurdayal
Singh,
28th May
1945.
Examina-
tion.

CROSS-EXAMINED.

RICE : That was on the Sunday ?—Yes.

And you say he was very, very sick ?—Yes.

Who else was there, did you say ?—Dewa, Dalel Singh, Amirchand :
no one else.

You didn't see a doctor there ?—I didn't see him.

And you say you knew the deceased Jaimal 14 or 15 years and that he
came from your village ?—Yes.

Don't you think that the least you could have done for a fellow villager
—one of your own countrymen who was dreadfully sick—was to call a 10
doctor ?—Well, there was Amirchand and Dalel Singh there.

You didn't call a doctor, did you ?—I didn't—why should I ?

Why not, with him as sick as you say ?—Well, there were people there
to attend to him from the very beginning.

He was receiving attention then, was he, to your knowledge ?—Yes,
Amirchand and Dalel Singh were there attending to him.

And you were quite satisfied that in that particular instance he didn't
need a doctor ?—Well, I said to myself, " I will go and look after my own
cattle and my own work : there are two of them there to look after him."

Where do you live in Ba ?—Near Mr. Easton's estate. 20

At Mataniqara ?—Yes.

Which is on the other side of the river from Indar Singh's house ?—
The other side of the Ba River.

And by road perhaps some 4 or 5 miles away ?—Yes.

What took you to this place on this Sunday ?—I had gone to pay a visit.

To Jaimal ?—Yes.

Especially to Jaimal ?—Yes.

Why ?—He is a man from the same village where I come from, and
I hadn't very much to do on that Sunday, and I thought of paying him a
friendly visit. 30

I want it particularly because you had only visited him twice since
he came there. Why did you specially select that Sunday ?—I am single-
handed. I have got to manage my own affairs single-handed. I look
after my own cattle. There were two others there, Amirchand and
Dalel, to look after him.

And your only other visit prior to this one was how long before ?—
Three, four or five days before this Sunday.

The same week ?—Yes, roughly.

Who did you see there that day ?—I saw Amirchand and Dalel Singh,
both. 40

Anybody else ?—No one else.

What time did you arrive ?—10 or 11.

In the morning ?—Yes.

What time did you leave ?—I was there for about half an hour only
and then I left the house.

Did you speak to Jaimal in that time ?—A little, yes.

And he spoke to you ?—No, he didn't talk.

What did you say to him ?—I said, " How are you Mahajan ? " and
he didn't reply, so I came away.

And that is absolutely all you said ?—Yes, that is all I said, and I sat 50
down and began conversing with Amirchand and Dalel, and after sitting
for a while I left the house.

And did anybody else talk to him in your presence?—No.

To Jaimal, I mean. Did you hear Jaimal say a single word to anybody the whole time you were there?—Not a word.

And did you think that was because he wasn't able to speak or because he didn't want to, which?—Maybe he didn't feel well enough to talk; I can't say—I don't know.

You don't know which it was?—I don't know.

The same on the Sunday?—He was more sick on the Sunday.

10 He may perhaps have been just the same?—No, he was worse than the day I last saw him.

The point was whether he didn't answer you because he couldn't or because he didn't choose to. You can't answer me about the first occasion, so how can you about the second?—The first occasion he raised his hand to me. The second occasion he wouldn't even do that.

The second occasion was worse than the first?—The first time he only raised his hand, and on the Sunday he wouldn't even do that.

RE-EXAMINATION.

None.

CASE FOR PLAINTIFFS.

DEOKI: I am not calling any evidence.

20 MUNRO: I propose to call the two first-named defendants in rebuttal of Shib Singh's evidence.

No. 33.

EVIDENCE of Amirchand.

Defendant AMIRCHAND—*Recalled—Re-sworn.*

MUNRO: You have heard the evidence given by one Shib Singh?
—Yes.

He said he used to deliver milk to Indar Singh's house daily?
That is a lie.

30 Did you or Mehar have milk delivered to that house?—Yes, we used to get milk delivered to that house.

And who used to deliver it?—Shib Singh's son would come with the milk and fill the billycan that we would hang in the porch of the house. He would come early in the morning and fill the billycan on his way.

And that was Shib Singh's son?—Yes. Because Shib Singh was ill, sick.

PATEL: Shib Singh was ill?—Shib Singh's wife.

MUNRO: And during the week prior to Jaimal's death did Shib Singh's son ever come back and leave the milk at 7.30 or 8 o'clock?—Never.

40 Now when the milk was left in the billy, what time would that be?—5 or 5.30. I would be inside the house. The days when it rained it would be a bit later.

Would Sukhu have arrived by then?—On some occasions Sukhu would be there before the milk arrived, and on other occasions after—that is, on the days when it rained.

*In the
Supreme
Court of
Fiji.*

*Plaintiffs'
Evidence.*

No. 32.
Gurdayal
Singh,
28th May
1945,
Cross-
examina-
tion,
continued.

*Defendants'
Evidence.*

No. 33.
Amirchand
(recalled),
28th May
1945.
Examina-
tion.

CROSS-EXAMINED.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 33.

Amirchand
(recalled),
28th May
1945,
continued.
Cross-
examina-
tion.

MACFARLANE: What time did you get up in the morning?—On the days when Jaimal felt a bit better I would get up a bit late; other times I would be early, very early.

What do you call early?—5, 5.30, 6. When Jaimal would wake up and say “How about getting me a hot cup of tea?” I would get up and make it.

And did you see the milkman come?—Sometimes I would and other times I wouldn't, because that door would be closed—the door to the porch. 10

On the mornings when you wouldn't see him come how did you know who came?—Shib Singh wasn't coming for certain, because I knew that his wife was ill in the hospital for three or four weeks.

So Shib Singh would go to the hospital?—He would send his son with the milk: he himself would attend to the cows and calves and then go and see his wife.

How do you know this?—I was living beside his house for two or three weeks.

Beside his house?—Well about 6 or 7 chains away.

During the two weeks Jaimal was there?—Yes. 20

How far is this house from Shib Singh's house?—About 8 or 9 chains away.

Did you go down to Shib Singh's house?—Sometimes I had to go to Mehar's house to get the milk and when I passed the place I would pass this man Shib Singh coming back.

You would go to Mehar's to get milk?—Yes. In the evenings on some occasions there would be a lot of visitors, and to give tea to the visitors we would have extra milk from Mehar's house.

Between the hours of 5 in the morning and 8 in the morning I put it to you, you didn't see Shib Singh at all on his land?—That is true: 30 I didn't see him between 5 and 8.

And you would be working around Indar Singh's house between those hours?—Yes.

And if you slept in some morning until 6 or 7 o'clock and didn't get up, you wouldn't know who delivered the milk?—Well, the milk was never given inside the house: it was always poured in the billycan in the porch.

Assuming that is correct, how would you see who put it in the billycan?—How we know is when we get up round about 7 or 7.30 and were brushing our teeth and washing our face outside the house we would see his son returning from Ba after delivering the milk, riding a bicycle. 40

With a milk can?—Yes, sometimes on a bicycle, sometimes he would walk.

And, I suppose Shib Singh went every day to the hospital to see his wife, did he?—Every day, or sometimes every other day.

And that prevented him from delivering your milk?—That's right.

Doesn't Shib Singh normally deliver the milk?—He would, yes, but his son, while his mother was ill, was doing the delivering of the milk.

Didn't the two of them go together?—No, they haven't got so much milk as to both go out.

They took it in turn, didn't they?—That is so, but particularly at that 50 time the cook was very sick and the boy was going out while the father was at home.

Did Sukhu ever go for the milk?—No. The milk would arrive at the house before Sukhu came to work, or after Sukhu arrived on some occasions.

It would come sometimes after Sukhu arrived?—Sometimes, yes.

And you are sure that Sukhu would never go for the milk?—No.

And what time did the cook usually arrive?—In those days it was raining very heavily. Sometimes he would come at six and other times he would come at seven. It all depended on the weather.

And who got the milk off the front porch?—Sometimes I would take it away, and other times Mehar would take it away.

10 Who else?—No one else.

RE-EXAMINATION.

None.

No. 34.

EVIDENCE of Mehar.

Defendant MEHAR, *Recalled—Re-sworn.*

RICE: You heard the evidence of Shib Singh given to-day?—Yes.

You have heard him say that he in person delivered the milk to that house of Indar Singh's during the fortnight that Jaimal was there?—Yes, I heard that.

20 What have you got to say about that?—I didn't see Shib Singh delivering milk there at that house.

I suppose milk for the house was procured?—Yes.

Tell us where it came from?—Shib Singh's son would bring the milk.

What time?—5, 6, sometimes slightly after 6.

Morning or evening?—In the morning.

And how would he leave it: would he give it to anybody or leave it outside?—In the front porch of the house just about that high from the floor (*indicates*) we would hang a billycan, and he would fill the billycan as he passed.

30 Now you heard Shib Singh say that sometimes the milk would be delivered later when he was returning from Ba, about 7 or 8. Was that ever the case, to your knowledge?—Not to my knowledge. At 8 o'clock on some days I would go home myself and get extra milk.

CROSS-EXAMINED.

MACFARLANE: Did Sukhu ever go for the milk?—Well, if I didn't go Sukhu would go and get the milk.

Where?—At my house. That is if I wasn't free to go. If I had to go and inform someone or if I went away on some business he would go to my house and bring it.

40 Sukhu had already got milk at 7 o'clock?—That wasn't sufficient. We used to get very little.

Why didn't you get more from Shib Singh?—Why should we pay him when we can get milk from our own house. The trouble is my house is very far and I can't get it at that hour of the morning. That is why we used to get it from Shib Singh.

Your house is very far?—Yes, and it was raining in those days every day.

Every day?—Yes.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 33.
Amirchand,
(recalled)
28th May
1945,
Cross-
examina-
tion,
continued.

No. 34.
Mehar
(recalled),
28th May
1945.
Examina-
tion.

Cross-
examina-
tion.

*In the
Supreme
Court of
Fiji.*

*Defendants'
Evidence.*

No. 34.
Mehtar
(recalled),
28th May
1945,
Cross-
examina-
tion,
continued.

When I asked Amirchand if the cook ever went for the milk, he said "No" ?—No, that is when I wasn't available : then he would go.

Who got up and got the milk in the morning ?—Myself.

Every morning ?—The days I slept at Indar Singh's I would get up in the morning, go to my house and fetch the milk, and on other days when I slept at my own house I would take the milk and go to Indar Singh's house.

You didn't stay all the time at Indar Singh's house ?—No, not every night.

Well, just to clear it up, how often during the fortnight were you there ?—That fortnight I think once or twice I stayed at home.

RICE : We are straying somewhat from the limits to which my friend is tied down. The cross-examination must relate to this one point only, just as the evidence-in-chief must.

The COURT : Yes, it is rather a by-pass. After all, it is purely a question of this witness's credibility, I understand.

MACFARLANE : Of course, the question whether he was there all the time is a matter for comment. I am not proceeding with that any further.

In the morning when you were at Indar's house who got up and got the milk from the billycan ?—Occasionally I would : at other times Amirchand would bring it in.

Just you two ?—Yes.

Anybody else ?—No one else.

Who asked Shib Singh to deliver milk at that house for you ?—Both Amirchand and I : Amirchand had told him and I told him, too.

What time would you normally get up in the morning at Indar's house ?—I have a cough. I have no particular time for getting up.

Did you see the boy coming with the milk every morning, or not ?—Not always. All he did was come along the government road, fill the milk into the billycan and go away.

Some mornings you didn't see who put it there because you were sleeping ?—A person who has asthma like myself can't sleep very well : that is, I am not sleeping all the time.

But early in the morning when you were sleeping in bed. Did you see someone come and put the milk in the billycan every day or did you miss some mornings ?—I wouldn't see him every day, no.

So some mornings you wouldn't know who had brought the milk ?—That's right. But one thing I do know : at that particular time Shib Singh's wife was very, very sick. She has very small children and the other big boy looks after the cows.

There are two boys, are there ?—No, one boy. When they come back from school they graze the cattle.

What prevented Shib Singh from delivering the milk as usual ?—The wife was very sick—seriously ill—and who was to light the fire and look after the children. They keep saying "Papa" to him and he has to do everything.

And you have seen him in his house lighting the fire instead of delivering the milk ?—I have seen him on two or three occasions. I have gone to pay a visit to his wife when she was ill.

RE-EXAMINATION.

None.

50

JUDGE'S NOTES ON FINAL ADDRESSES OF COUNSEL.

Tuesday, 29th May 1945.

ELEVENTH DAY.

MACFARLANE : Defendants must prove :—

(1) Testator of sound mind, memory and understanding.
34 Hails. 37, para. 31.

(2) That Testator could comprehend the extent of his property
and the nature of the claim of those others he was excluding from
his will.

(3) Otherwise testator has not a sound disposing mind.
14 Hails., p. 224, para. 388.
Belliss-Polson v. Parrott, 45 T.L.R. 452 at 454.

(4) Testator knew and approved of contents of will.
14 Hails., p. 229.
T. & C. Prob., 14 ed., pp. 404-422 (omitted in last edn.).
Finny v. Govett, 25 T.L.R. 186, at 187.

Defendants must establish affirmatively that testator knew.

Baker v. Batt, 23 Dig. 130.

Brown v. Fisher, 23 Dig. 133, c. 1318.

Tyrrell v. Painton, 23 Dig. 132, c. 1304.

Fulton v. A., 23 Dig. 133, c. 1317.

Defendants allege that Testator had spent considerable sums on
nephews and had given them £1,700. Sahu Khan : p/a to deal with
property in India : *Not* on the face of it a gift.

Nur Ahmed.

Harnam Singh, priest.

Amirchand : Says he went daily to hospital : says he went to Suva
re. income tax.

30 Requests for making will.

Hari Charan's instructions.

Mr. Davidson's instructions.

Typing.

Mehar's lack of knowledge.

Execution.

Contents of will.

Nature of Testator's business.

Contradictions as to instructions to Hari Charan.

40 Mr. Davidson did not make any inquiries as to nature of Testator's
property.

" No relations in Fiji or elsewhere " :

either (1) deliberately untrue,

or (2) Jaimal had forgotten : owing to state of mind.

*In the
Supreme
Court of
Fiji.*

No. 35.
Judge's
Notes on
final
addresses of
Counsel,
29th May
and
1st June
1945.

*In the
Supreme
Court of
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No. 35.
Judge's
Notes on
final
addresses of
Counsel,
29th May
and
1st June
1945,
continued.

Conflict as to whether nephews were mentioned.

It is for Defendants to prove affirmatively that Jaimal knew and had not forgotten his nephews. Court must be free from doubt. As to fraud and undue influence: I say that from the evidence the Court may infer undue influence: not fraud.

RICE: *Onus of proof.*

17 Tristram & Coote, 530-1.

Guardhouse v. Blackburn, 1 P. & D. 109, at 118.

Fulton v. Andrew, 7 H.L. 448, Ld. Cairns.

Gregson v. Taylor [1917] P. 256.

10

Lack of testamentary capacity.

At time of execution (*see* plea).

That is insufficient plea.

It must be shown that testator was not of full testamentary capacity on 31st March when he gave instructions for the will.

Defence, para. 7.

Pereira v. Pereira (1901) A.C. 354.

Parker v. Felgate, 8 P.D. 171 (comatose testatrix).

Evidence of Hari Charan: "he said he had relations in India" on Friday 31st March.

20

No undue haste.

Jaimal's mind was sound on Monday.

Davidson's evidence.

Adjourned.

Resumed.

N.M.P.'s evidence.

Amirchand: gifts to brother.

No cross-examination by Morley.

Khursayed Khan.

Balwant Singh.

30

Imam Din.

Sukhu.

Dalel Singh, if he were there, should have been able to testify as to Jaimal's mind and as to undue influence.

Banks v. Goodfellow (1871), 11 Eq. 472.

39 L.J. K.B. 237 at 244, 245-6.

To amount to undue influence there must be coercion.

Parfitt v. Lawler (1872), 2 P. & D. 462: at 471: 475.

Craig v. Lamoureux [1920] A.C. 349, at 357.

Wingrove v. Wingrove (1886) 11 P.D. 81.

40

23 Dig. 131 C. 1296. *Chambers v. Wolfe.*

Non-recollection of nephews.

There should have been a plea as to date when instructions were given : 31st March.

There should have been evidence as to 31st March.

Hari Charan.

Nur Ahmed.

Monday.

Davidson.

Mahomed Rasul.

10 Mehar.

The meaning was " there is no one who matters to me."

The words of the will were inserted by Mr. Davidson by mistake.

Collins v. Tuffley [1893] P. 1.

Guardhouse v. Blackburn.

Judgment Reserved.

Friday, 1st June, 1945.

TWELFTH DAY.

Judgment delivered.

Plaintiffs' claim dismissed.

*In the
Supreme
Court of
Fiji.*

No. 35.
Judge's
Notes on
final
addresses of
Counsel,
29th May
and
1st June
1945,
continued.

20

**No. 36.
JUDGMENT.**

IN THE SUPREME COURT OF FIJI.

Probate Jurisdiction.

3 44.

IN THE MATTER of the Will of JAIMAL deceased.

Between BATTAN SINGH, WALAITI RAM and
KHAZAN SINGH, being the President,
Secretary and Treasurer of the Sikh
Gurudwara Committee at Samabula as
Executors of the Will of Jaimal deceased - Plaintiffs

30

and

AMIRCHAND (Father's name Utham) and
MEHAR (Father's name Saudi) both of Yala
Levu Ba - - - - - Defendants

and

WARYAMA, BANTA, SONDHI and MUNSHI
(all sons of Nagina) all of the village of
Barhwal Post Office Banga in the district of
Jullundur, Punjab, India Defendants.

40

JUDGMENT.

The Plaintiffs, Battan Singh, Walaiti Ram and Khazan Singh, were the President, Secretary and Treasurer of the Sikh Gurudwara Committee at Samabula, Suva holding office on the 4th April 1944, and as such they

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Judgment,
1st June
1945.

*In the
Supreme
Court of
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Judgment,
1st June
1945,
continued.

are the executors appointed under the will dated the 25th February 1944, of Jaimal (the son of Nihalla) of Samabula, Suva.

On the 3rd April 1944 Jaimal made another will under which the Defendants Amirchand and Mehar are the executors and the sole beneficiaries as tenants in common in equal shares.

Jaimal died on the 4th April 1944.

The Defendants Waryama, Banta, Sondhi and Munshi (all the sons of Nagina) are the sole next of kin of Jaimal. They are also the sole beneficiaries under the will dated the 25th February 1944.

The Plaintiffs' Claim is that the Court shall pronounce against the will 10 dated 3rd April 1944 and shall decree probate of the will dated 25th February 1944.

The grounds upon which the Plaintiffs base their claim are as follows :—

(A) That the will dated 3rd April 1944, was not duly executed according to the provisions of the Wills Act 1837 ;

(B) That at the time the will purported to have been executed, Jaimal was not of sound mind, memory or understanding ;

(C) That execution of the will was obtained by the undue influence of the Defendants Amirchand and Mehar ; and 20

(D) That Jaimal, at the time the will purported to have been executed, did not know or approve of the contents thereof.

With regard to claims (A) and (D), I am satisfied on the evidence that the will was duly executed, and that Jaimal did know and did approve of its contents.

With regard to claim (C), I find no evidence of undue influence having been exercised by either of the Defendants Amirchand or Mehar.

There only remains, therefore, the allegation under paragraph (B). On the evidence, this reduces itself to an allegation that, at the time of executing this will on the 3rd April 1944, Jaimal was suffering from a 30 partial loss of memory, in that he did not at that time recollect that he had in fact nephews residing in India.

The will executed on the 3rd April 1944 was prepared by Mr. Leslie Davidson, it was executed in his presence and he was one of the attesting witnesses ; and the case for the Plaintiffs rests upon the answers that Jaimal gave to questions put to him by Mr. Davidson before the execution of the will.

According to Mr. Davidson's own evidence, he asked Jaimal to whom he wished to leave his property and whom he wished to appoint as executors. The conversation ran as follows : Mr. Davidson said : " Do you wish to 40 give all your property to these men, each half ? " Jaimal said " Yes." Mr. Davidson then said : " " They would be your heirs ; " and Jaimal said : " Yes." The evidence continues : " There was an interruption : he had a spasm of coughing : I then continued : I asked : ' What persons do you want for executors ? ' He touched the same two men, Amirchand and Mehar. I said : ' Have you any blood relations in Fiji ? ' He answered : ' No, sir.' I said : ' Have you any relations anywhere else ? ' He answered : ' I do not know.' That confirmed what I had of my own accord put in the will. Hari Charan had told me that Jaimal had no family 50 in Fiji. I then said : ' Why are you giving all your property to these people ? They are not your relations.' He said : ' These are the only people who helped me in my sickness.' "

It is clear that Mr. Davidson took the answer which has been translated "I don't know" as meaning "I don't know of any," as he says that corroborates the statement that he had inserted in the will "of his own volition," namely: "I declare that I have no next of kin nor blood relations in Fiji nor elsewhere who are known to me."

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continued.

Of the other persons who were present at the time, Mr. Davidson's clerk, Mohammed Rasul, who was the other attesting witness to the will, said: "Jaimal's answer was 'Apart from me there is no one else: I have no one left.' Mr. Davidson asked: 'Have you anyone else, blood
10 relations?' Jaimal said: 'The ones that I have now are these two, Mehar and Amirchand. Whatever property I have after my death left over I desire that it should be given equally to these two, Mehar and Amirchand.'"

The Defendant Amirchand, giving evidence-in-chief, said: "Mr. Davidson then read the will. He asked if Jaimal had any close relations. Jaimal said he had no one at the time: the only ones at this particular time were those who were looking after him." In cross-examination he said that when Mr. Davidson asked "Have you any next of kin or blood
20 relations?" Jaimal said "No." It is to be noted that Amirchand then said: "I said immediately, 'He has nephews in India.' Mr. Davidson then asked Jaimal, 'Is that true?' and Jaimal answered, 'Yes, it is true: I have nephews in India, but at this hour of need they are of no use to me, so I say I have no one.' Mr. Davidson said 'All right, if you say there is no one.' and then he went on reading the will."

It is to be doubted, however, whether any reliance is to be placed upon this evidence, in view of the fact that Mr. Davidson states that nephews were never mentioned.

The Defendant Mehar gives the following account of the same conversation: "When Mr. Davidson read the will he asked Jaimal if he
30 had any wife, children or 'anyone belonging to you.' Jaimal answered 'I have no one' Mr. Davidson did ask: 'Have you any blood relations?' Jaimal said: 'I have no one.'" The Defendant added: "I understood that to mean that because these two people had helped him in his time of need his affection was for them. I did not see any reason to interrupt."

The only other evidence of what was said is that of Khurshed Khan. According to him, Mr. Davidson's question was whether Jaimal had any blood relations "here": and the reply was: "No there is no one here: whatever I have here belonging to me are these two."

In cross-examination, he said that Mr. Davidson did not ask about
40 blood relations "elsewhere," only "here."

In reliance upon that evidence, and upon the evidence of the Native Medical Practitioner, Villiam Boko Tavai, to the effect that, when he saw Jaimal after 1 o'clock on the day on which he signed his will of the 3rd April and asked him "Have you any pain?" Jaimal did not speak but pointed to the region of his heart and neck, the Plaintiffs argue that it is to be inferred that on the 3rd April Jaimal's health was rapidly getting worse; and that at the time when he signed his will he was suffering from such a loss of memory that he had forgotten the existence of nephews in India, in whom he, when in full health, took sufficient interest to have made, a
50 few weeks before, a will in their favour.

In view of the authorities, however, that have been cited to me, it is unnecessary that I should decide precisely what was the condition of

*In the
Supreme
Court of
Fiji.*

No. 36.
Judgment,
1st June
1945,
continued.

Jaimal's memory on Monday, the 3rd April. This is clear on the authority of *Parker v. Felgate*, 8 P.D., p. 171. In that case Sir J. Hannen, President, said :—

“ . . . the law applicable to the case is this : If a person has given instructions to a solicitor to make a will, and the solicitor prepares it in accordance with those instructions, all that is necessary to make it a good will, if executed by the testator, is that he should be able to think thus far, ‘ I gave my solicitor instructions to prepare a will making a certain disposition of my property. I have no doubt that he has given effect to my intention, and I 10 accept the document which is put before me as carrying it out ’.”

This judgment was cited with approval in the case of *Perara v. Perara* [1901] A.C., p. 354, at p. 361. After quoting the passage from Sir James Hannen's judgment which has just been cited, the Court observed, “ Their Lordships think that the ruling of Sir James Hannen is good law and good sense.”

The instructions for the preparation of Jaimal's will were given by him to the witness Hari Charan on Friday 31st March 1944 ; that is to say three days before the execution of the will. I see nothing in the evidence from which I am prepared to infer that Jaimal's memory was defective 20 upon that day. If Hari Charan's evidence is to be relied upon—and it is uncontradicted—he then asked Jaimal if he had made a will already ; “ Jaimal said : ‘ Yes, I have made two wills already, but I am not worrying about them : I wish to make my last will in favour of these people.’ He did not say in whose favour the earlier wills had been. He mentioned that he had relations in India : he did not say what the relationship was. I asked if he had wife or children : he said, ‘ No ’ : he then said : ‘ I have given sufficient property to these people in India ’.”

I hold that at the time when he gave instructions for his will, Jaimal was of sound mind, memory and understanding. So far as his condition 30 at the time of execution of his will is concerned, it is clear that he was in a far better state of health than the testatrix whose will gave rise to the judgment in *Parker v. Felgate* which has been cited. At the time of execution, Jaimal clearly understood the provisions of the will he was executing, and made it clear that they were in accordance with his wishes.

It follows that the Plaintiffs' claim fails. The Court decrees probate of the will dated the 3rd day of April 1944.

O. C. K. CORRIE,
Chief Justice.

Suva, Fiji.

1st June, 1945.

40

ORDER granting leave to Appeal to His Majesty in Council.

*In the
Supreme
Court of
Fiji.*

IN THE SUPREME COURT OF FIJI.
Probate Jurisdiction.

No. 3 of 1944.

No. 37.
Order
granting
leave to
appeal to
His
Majesty in
Council,
7th June
1945.

IN THE MATTER of the will of JAIMAL deceased.

Between BATTAN SINGH, WALAITI RAM and
KHAZAN SINGH - Plaintiffs

10

and
AMIRCHAND and MEHAR Defendants

and
WARYAMA, BANTA SONDHI and MUNSHI Defendants.

Before His Honour THE CHIEF JUSTICE in Chambers.

Thursday the 7th day of June 1945.

UPON HEARING the notice of motion herein and UPON HEARING
Mr. D. M. N. MacFarlane of Counsel for the Plaintiffs AND UPON
HEARING Mr. R. L. Munro of Counsel for the defendants Amirchand and
Mehtar IT IS ORDERED that the Plaintiffs be at liberty to appeal to
20 His Majesty in Council from the judgment of this Honourable Court dated
the 1st day of June, 1945 UPON CONDITION that the appellants within
fourteen days from the date of this order enter into good and sufficient
security to the satisfaction of this Honourable Court in the sum of
£500 : 0 : 0 sterling for the due prosecution of the appeal and the payment
of all such costs as may become payable to the respondents in the event of
the appellants not obtaining an order granting final leave to appeal or the
appeal being dismissed for non prosecution or in the event of His Majesty
in Council ordering the appellants to pay the respondents' costs of the
appeal AND UPON CONDITION that the appellants within three
30 months from the date of this order shall take the necessary steps for the
purpose of procuring the preparation of the record and despatch the same
to England.

By the Court.

B L. GREGG, L.S.
Registrar.

Exhibits.

O.
Part of
letter,
Banta and
others to
Jaimal,
16th May
1942.

EXHIBITS.

Exhibit "O."

PART OF LETTER, Banta and others to Jaimal.

TRANSLATION

From Banta, Varyama, Dasaundhi, Munshi. 16.5.42.
(Uncle Mahajan Jaimal)

After SATSKRIAKAL (Salutation) may it be known that all is well here and we wish well with you (from) God.

The news is : Your letter came. News was learnt. Of the money in the Jallundhur Imperial Bank, Rs.18,000 were uplifted. Rs.234 interest were received. Total amount Rs.18,234 including interest was received. The Government deducted Rs.2,500.7 annas for Income Tax. Rs.20 were paid to lawyer. Total expenditure was Rs.2,520.7 annas.

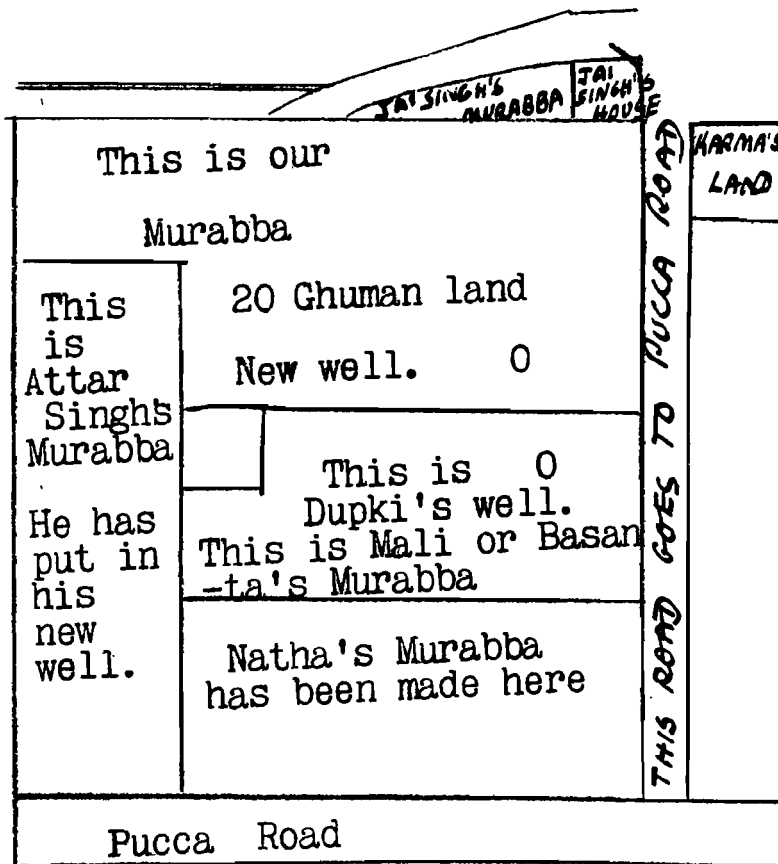
Received	Rs.18,234
Expenses	Rs. 2,520
On deposit	Rs.15,714

Rs.15,714 are now with us in Bank Jullundhur. Out of this amount Rs.2,000 now remains and the former Rs.100 are lying. This amount kept at our pleasure. The day there is a land deal this will also be uplifted. All this account is given to you. And the Murabba (allotment) has not been transmitted yet. And until this transmission is completed Bhulla Nambardar's land cannot be sold. The day the transmission is finalized will let you know. Now all the moneys are lying with us. The day the Murabba is entered we will do it immediately. There is also fear for the moneys at home. We are more anxious about purchasing Bhulla Nambardar's land than you are. No one has been informed of the upliftment of the money up to present. This matter you bear in mind.

And our Murabba is at the new Well. In every letter you have been written. From a certain place to another place it has been made ; so understand. A straight road has been made in between Karma's and Jai Singh's house, 4 paces to the " pucca " road. Listen to the lands which have come within our Murabba. A road has been made from the top

side of Jai Singh's house to the pucca road. This is a sketch of the Murabba and these are the people whose lands come in.

Exhibits.



This is Karma's which we have kept for cultivation. These are the people whose lands come within our Murabba. Jowalla Singh which has been bought anew which was mortgaged to us. Jai Singh's newly bought—whole and half of the one on which he has his house. Kesar Singh's half—newly bought. Out of Dewa Singh's newly bought, 2 Kanals. Natha Singh's whole newly bought. On the other side of Gohar—old road, the whole is in our Murabba. Nihal Singh's whole newly bought, the land of which we had mortgage—up to it, ends. The one belonging to Natha—half land. The whole of Ram Singh's land. Bujha's and Banta's—the whole. Mangli Ram Singh's whole. Banta's 2 kanal. Sahji's 3 kanal—all these lands have come within our Murabba.

O.
Part of
letter,
Banta and
others to
Jaimal,
16th May
1942,
continued.

(page ends)

(new page)

Bujha's land that was under mortgage to us, the whole is our Murabba. Chuhra's, Birri's—3 kanal. Our homestead one, Bisri's 5 kanal. Asheer's land 5 kanals, the land that was mortgaged to us. Attar Singh's (banana land) 9 kanal—the whole. Uttam's land—the whole newly bought. Bhulla Nambardar's both lands are near the well for us. Our (Goharwali) 10 both newly bought. Chohar's—all these in our Murabba. The 4 kanals of Jai Singh, the one that was under mortgage to us, the whole of that also. Our 12 kanal, near the well, all are ours. Nanha's, the whole in our Murabba—which was under mortgage to us. Sundar's land—the whole. Mali's, near the well, 7 kanals are in ours. The lands of these people have come in our Murabba. You may understand all.

Samay's 3 kanal newly bought, that which was mortgaged to us—the whole of that in the Murabba. Jai Singh's 5 kanal, near the well—that which was mortgaged to us—the whole of it in our Murabba also. And of another Jai Singh's, near the well, 6 kanal—the whole in our Murabba. 20 Of Bhulla Nambardar's 2 kanal—the one that was mortgaged—out of that, one Kanal is in our Murabba. All the purchases of these people's land, has made our Murabba a golden brick, by reliance on you. If there was no

Exhibits.
 O.
 Part of
 letter,
 Banta and
 others to
 Jaimal,
 16th May
 1942,
continued.

reliance on you, we would never have got land near the well. We are afraid in regard to your cash. The one in Kiyari Shishya's, it has come in Gurdatt Singh's Murabba. He has also put in a well. Attar Singh, Jiwan Singh—they have also put in well. We have Rs.200 worth of bricks. And Resham Singh has also got it. Varyama says that when coming do bring some memento for the children.

Varyama, Banta, Dasaundhi, Munshi, Johra, Fatta, Nand, Dalipa, Sundar, Jiwan, Natha, Dayaram, Mangal Singh, Gurdatt Singh, Basanta, Zaildar, Sarbat, from all these Satsriakal to you. Of your health and happiness please keep us informed. Sawarn Singh by his pen.

10

SAWARN SINGH.

(page ends)

(half page)

Sardar Jaimal Mahajanji.

From Sawarn Singh son of Jaimal Kajla.

News is that your letter came and got news. Heartily pleased. If there is no difficulty, come and meet us as soon as possible and see your Murabba and put in a well. We are all well and you keep sending us your letters of well being. Bellu says that Muhammad Ali of Hawan should be told to come if he is ready to come. If he does not come with you, 20 arrive at some settlement with him anyhow. It will be acceptable to me. Swarna, Bellu, Jaimal, from all these Satsriakal to Jaimal. Your Murabba near the village has become the best. On your reliance the Murabba has been made.

(page ends)

(over half page)

Mahajan Jaimal

From Varyam Singh of Malpura. The news is this. Whatever Hazara of Nagra gives, take it. You are reminded of it. Satsriakal from Varyam Singh.

30

Sawarn Singh's Satsriakal to Babaji (father—term of respect).

SAWARN SINGH by his own pen.

Translator's note : Some of the names of persons are indistinct. The nearest word decipherable has been inserted. "Murabba" and "kanal" are land measurements or areas.

E.
 Instructions
 for will of
 3rd April
 1944.

Exhibit "E."

INSTRUCTIONS FOR WILL of 3rd April, 1944.

Testator—Jaimal F. N. Nehala

Father's Name

Executors—Mahar F. N. Saudi

Amarchand F. N. Utham

Father's name

Beneficiaries—Mehtar

Amarchand

Fathers' name—

40

Exhibit " F. "

Exhibits.

LETTER, Leslie Davidson to Grahame & Co.

Leslie Davidson
Barrister & Solicitor.

Varoka, Ba

12th April 1944.

Messrs. Grahame & Co.,
Barristers & Solicitors,
Suva.

F.
Letter,
Leslie
Davidson
to Grahame
and Co.,
12th April
1944.

10 Dear Sirs,

re Jaimal deceased.

Your Mr. McFarlane's telegram to me of the 11th was delivered at my residence at about 9 p.m. of same date. I think that the capture of "Odessa" by the Russians had something to do with the late delivery.

However, I replied this morning, "Sending you copy Will dated 3rd Inst." And I now have pleasure in confirming my wire and enclose herewith a copy of the Will of the deceased which he executed with every necessary formality as appears thereon.

I may mention that I have never had any business with the deceased
20 before making his will and it was not until later that I learned that he was a man of considerable means. After making the "Last" Will I was somewhat concerned with the condition of the Testator and asked when he had last been visited by a medical man. To my surprise I was informed that he had not been so visited for over a week. I immediately wrote to my friend Dr. Clunie asking him to visit Jaimal, and gave to a messenger my letter. Dr. Clunie, however, was a Witness at the Criminal Circuit at Lautoka, so the messenger gave the letter to the "N.M.P." at Nailaga Hospital who on perusal told the parties to bring the patient to the Nailaga Hospital, which was done. In my opinion this accelerated the death of
30 the "patient." The N.M.P. gave a "Certificate of Death" "Pulmonary Tuberculosis" and "Cardiac failure" and on this the body was cremated.

I shall be glad to co-operate with you in obtaining Probate of the Deceased's last Will and to enable me to prepare necessary Affidavits for "Probate" I would esteem it a favour if you could give me some idea of the value of the deceased's estate, as the Executors cannot help me.

Yours faithfully,

LESLIE DAVIDSON.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF FIJI.

BETWEEN

BATTAN SINGH and Others (Plaintiffs) - - - Appellants

AND

AMIRCHAND and Others (Defendants) - - - Respondents.

RECORD OF PROCEEDINGS.

H. S. L. POLAK & CO.,
DANES INN HOUSE,
265 STRAND, W.C.2,
*Solicitors for the Appellants
and for Respondents Nos. 3-6.*

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
VICTORIA STREET, S.W.1,
Solicitors for the Respondents Nos. 1 & 2.