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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
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LONDON, W.C.1.

Judgment
52/1964
78705

IN THE PRIVY COUNCIL No. 16 of 1958

ON APPEAL FROM THE SUPREME COURT OF BRITISH HONDURAS
IN THE ESTATE OF ROBERT SYDNEY TURTON, DECEASED.

B E T W E E N :

ROBERT SIDNEY ACOSTA
(Plaintiff) Appellant

- and -

ALFRED OWEN LONGSWORTH
AURA JONES and
MARGARET TURTON
(Defendants) Respondents

CASE FOR THE RESPONDENTS

Record

p.88 ll 33- 1. This is an appeal from the Interlocutory Order of
35 the Supreme Court of British Honduras (Cools - Lartigue
J.) made on the 30th day of August 1957 that the
Respondent Margaret Turton be permitted to re-open *her*
defence and call further evidence.

2. The action arose following the death, on the 15th
day of November 1955, of Robert Sydney Turton. On the
7th day of December 1955 a Will dated the 10th day of
May 1918 was admitted to probate and on the 5th day of
January 1956 letters of administration cum testamento
annexo in respect of the said Will were granted to
Lindsay Jeffery, Margaret Turton and Aura Jones.

pp.1-2 3. By a Writ dated the 24th day of February 1956 the
Appellant claimed as a beneficiary under a Will made on
the 12th day of November 1955 or thereabouts to have
the said Will established and to have the grant of
administration dated the 5th January 1956 revoked.

p.5 l 30 - 4. By a Statement of Claim dated the 5th day of June
p.6 l 43 1956 the Appellant, a natural grandson of the deceased,
claimed that the deceased had made a Will on the 12th
day of November 1955, under ^{which} the Appellant was a

beneficiary, in circumstances set out in an affidavit by one Doyle Prince dated the 27th day of February 1956 but that the Will could not be found

p.3 l 24 -
p.5 l 28

5. In the said affidavit Doyle Prince deposed that the deceased had, on the 12th day of November 1955, dictated to the deponent certain instructions in the form of a Will and that he signed it in the presence of the deponent and of one Rowland Dewg~~ard~~^{ard}, who had both signed as witnesses. Exhibited to the said affidavit was a document setting out as far as the deponent could remember the form and contents of the said Will.

p.7 l 26 -
p.8 l 29

6. The Respondent Margaret Turton, who actively defended the action, by her Defence denied that the deceased had revoked the Will of 10th day of May 1918 by a Will of the 12th day of November 195~~6~~⁶ or at all.

p.13 l 8 -
p.14 l 9
pp.107 - 118

7. Pursuant to an order of the Court the said Doyle Prince was, on the 1st day of October 1956 examined to perpetuate his testimony and in his evidence the witness told how he had informed the Registrar of the existence and contents of the alleged Will of the 12th day of November 1955 but gave no details as to how this was recorded by the Registrar.

8. At the trial, which commenced on the 20th day of November 1956 the only issue was the existence or not of the Will of the 12th day of November 1955 and this depended to a major extent on the reliability of the said Doyle Prince and Rowland Dewg~~ard~~^{ard}.

pp.15 - 28

9. On the 22nd day of November 1956, the said Doyle Prince was examined and cross-examined and in the course of his examination in chief he said :

p.19 ll 1 -
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"I told Registrar of this Will - that was Mr. Thompson I did so about the 6th February. I told him I had made a Will for deceased on the 12th November 1955 and gave him details of Will. Registrar wrote a note, handed it to me and told me to hand it to the Chief Justice. I took note to the Chief Justice. Mr. Thompson said he was sick. Registrar was then at his home. I saw the Chief Justice and he sent me back to the Registrar at his home. That was two days afterwards. I then gave a statement to the Registrar and he typed it. Details of Will I gave here are what I told the Registrar."

(3)

10. On the 26th November 1956 the said Rowland Dewg^{Ad} gave evidence for the Appellant and in cross examination said :-

pp30 - 35

"I was sent for by the Registrar and that is why I gave him a statement. I went to Registrar's home. It was in morning sometime between 9 a.m. and 12 noon I do not quite remember. Registrar asked me if I know Mr. Turton and if I did what I knew about the affair. I told him what I knew and he wrote it down and asked me to come back the following day. I went back the following day to his house and he handed me typewritten document already shown me. He asked me to read it over. I did so and signed it as being correct."

p.31 l 44 -
p.32 l 6

11. Also on the 26th day of November 1956 Alfred Owen Longsworth, Acting Registrar of Supreme Court and as such in charge of Court Records gave evidence as follows:-

"Before I took over one R.A. Pitts was Acting Registrar. He died in September last. Before him Registrar was W.P. Thompson who resigned on 14th September 1956 and has gone to Canada. I have searched the records for a document purporting to be the contents of Will dictated to Registrar by Doyle Prince. I have found no such document signed by Prince or the registrar. There is a typescript of such document amongst records. It was in an envelope marked "Confidential the Turton Estate". Above these words is written "W.P. Thompson - Eyre St." There were a number of other documents also in that envelope, There is a statement purporting to be signed by Dewg^{Ad} and letters and copies of letters. These were found by me in the safe when I took over from Mr. Pitts. Words "Confidential - Re Turton Estate" are in Mr. Pitt's handwriting. I am not certain in whose handwriting words "W. P. Thompson - Eyre St." is."

p.28 l 31 -
p.29 l 9

The statement in typescript purporting to be ^WWill dictated by Doyle Prince was put in marked Exhibit 8. In cross-examination Mr. Longsworth said "I have never seen original of Exhibit 8."

p.29 l 23

12. The defence called evidence to show that at the most, the deceased had been preparing to make a new Will but also called two witnesses who lived at the guest house in Eyre St. where Mr. Thompson had lived

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and who swore that they had never seen Mr. Thompson use a typewriter in the house nor seen one in his room although one witness did say "I have heard a typewriter being used in his room."

13. Evidence for the Defence was given on the 27th, 29th, 30th of November and 1st and 3rd of December 1956. Arguments by Counsel were from the 3rd to 6th December 1956.

p.45 1 33

14. Counsel for the Respondent Margaret Turton, Mr. Moore suggested that the whole story of the 1955 Will was "a wicked concoction" and that Doyle Prince was not telling the truth about his visit to the Registrar because of the non-appearance of the original signed document and the unlikelihood, in view of the evidence, of Mr. Thompson being able to type.

p.50 11 21
- 26

p.70 1 43
p.71

15. On the 6th December 1956 the learned trial Judge adjourned the hearing and took time to consider his judgment. On the 17th day of January 1957 notice was filed by the Solicitor for the Respondent, Margaret Turton, that the Court would be moved for leave to re-open the defence of the said Margaret Turton and call further evidence. The motion was fully heard and argued on the 29th and 30th days of August 1957.

pp.84 - 88

pp. 79 - 80

16. Before the Court, as indicating the evidence which the said Respondent wished to call, was a statutory declaration by Mr. W.P. Thompson the retired Registrar then living in Canada. This statutory declaration disclosed, inter alia.

(1) That he was unable to type

(2) That he did not at any time type out information given him by Doyle Prince as purporting to be the contents of the Will made by the deceased and

(3) That he did not take down any information from Rowland Dewg~~ed~~ whom he did not know.

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17. It was agreed that the said Mr. Thompson left British Honduras about the end of February or early in March 1956, returned in July 1956 and finally left on the 15th September 1956.

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18. After arguments Cools-Lartigue J. on the 30th day of August 1957 granted the application to re-open the case and call fresh evidence. On the 2nd day of September 1957 the learned Judge gave his oral judgment as follows :-

(5)

"I hold on the facts that the evidence could not have been reasonably obtained by due diligence on the part of the Defendant before her case was closed. Thompson was not in the Colony when Prince and Dewgeed gave their evidence, and the Defendant could not have foreseen that Prince's evidence about typing or Dewgeed's evidence (referring to the Registrar) would have been given. I hold also that the evidence must have an important influence on the result and in the interests of justice I feel I should grant this application."

p.91 ll 1 -
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19. No judgment in the case has been given.

20. Final leave to appeal to Her Majesty in Council from the said interlocutory order was granted, on the 3rd day of March 1958.

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21. The Respondents humbly submit that this Appeal should be dismissed with costs for the following among other

R E A S O N S

- (1) BECAUSE the said order was discretionary and the learned judge properly exercised his discretion.
- (2) BECAUSE the said order was proper in all the circumstances.
- (3) BECAUSE the said order was necessary in the interests of justice.
- (4) BECAUSE there are in this case no such special circumstances as would justify a departure from the general rule, enunciated by the Judicial Committee in Benay Krishna Mukherjee v. Satish Chandra Giri 54, I.A. 131, that the power of making interlocutory orders is one which is not a suitable subject for review by the Judicial Committee.

DINGLE FOOT

THOMAS O. KELLOCK.

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