

RECORD
p.37
lines 38 to 40

(iii) that there be no order for the refund of \$1,000 alleged deposit to the Second Appellant;

p. 38
lines 1 to 5

(iv) that the interim injunction of 3rd June 1977 restraining the Appellants or either of them from registering a transfer of lease number 68339 remain in force;

p.38
lines 6 to 7

(v) that the Appellants should pay the Respondent's costs.

2. The Question Raised in this Appeal

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The essential question raised in this Appeal is whether the property which the Second Appellant and the money which both Appellants obtained from the Respondent was obtained by an exercise on the part of the Second Appellant and both Appellants respectively of undue influence. In resolving this question it is necessary to determine whether the relationship that subsisted at the time of the said transactions between the Respondent and the Appellants and/or the nature of the transactions themselves gave rise to a presumption of undue influence. The Appellants withdrew from the Respondent's saving account a total of \$6,709 - though only \$5,459 was claimed by the Respondent in her pleadings. The Second Appellant procured from the Respondent a memorandum of transfer whereby the Respondent transferred to the Second Appellant her entire interest in a piece of Crown Land being No. 68339, Lot L16, Section 33 and situate at Waiyavi Lautoka City. A concrete house was built on that piece of land. The property was known as "Dravuni and Waiyavi".

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Page 61,
line 25.

The Facts

Page 40,
line 31 to 33

3. The Respondent who died on the 24th September 1978 was an old lady who in 1977 was aged about 90. On her death her son Subarmani Ponsami was joined as a party by a Court order dated 30th November 1978. He was joined to represent the Respondent. The First Appellant was the Respondent's daughter. The Second Appellant was the son of the First Appellant and thus the grandson of the Respondent. The First and Second Appellants lived together at Lomowai.

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lines 25 to 30

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- 10 4. Until 11th May 1977 the Respondent was the registered owner of a piece of Crown Land known as No. 68339 Lot 16 Section 43 at Waiyavi Nadroga. She held this land on a Crown Lease granted for a term of 39 years 9 months and 21 days calculated from the 1st March 1958. The Respondent paid a yearly rent of \$25. A concrete house was built on that piece of land. In March 1978 the entire property was worth not less than \$19,893. At all material times the house was occupied by an employee of the Government of Fiji who paid a monthly rental of \$190.
- 20 5. Until July 1975 the Respondent lived at Simla Lautoka with her son Subaramni Ponsomi. In that month the First Appellant visited the Respondent and invited her to stay for a few days. The Respondent accepted the invitation and went to live with the First Appellant on the 17th July 1975. The Respondent stayed with the First Appellant until May 1977.
- 30 6. When the Respondent went to stay with the First Appellant she brought with her some boxes containing gold sovereigns, bangles, a bank pass book and the document of title to the land referred to in paragraph 4. The bank pass book was the pass book to the savings account held by the Respondent with the Lautoka Branch of the First National City Bank and numbered 002289.
- 40 7. The Respondent stayed with the Appellants for one year and ten months. She then returned to live with her son Subarmani Ponsami.
8. In July 1975 the Respondent's account at the Lautoka Branch of the First National City Bank (account number 002289) was closed. A new account was then opened in the Plaintiff's name with the Nadi Branch of the First National City Bank (account number 001114). This Branch was closer to the Appellants' home. On September 9th, 1975 a sum of \$50 was withdrawn from the said account. Between December 1975 and January 1976 a total of \$3,200 was withdrawn from the account. During the period that the Respondent resided with the Appellants a total of \$6,709 was withdrawn from the account.

page 18, lines
12 to 14
page 61, line
21 to 24
page 18, lines
12 to 14.
page 62, lines
7 to 18.
page 25, lines
5 to 6.

page 23, lines
30 to 32.
page 18, lines
17 to 20 and
page 24 lines
8 to 9. Page 23,
line 32. Page
24, lines 28 to
44.

Page 18, lines
21 to 24.
Page 24, lines
15 to 19

Page 24, lines
18 to 19
Page 24, lines
28 to 41.

Page 11, lines
35 to 44

Page 11, lines
35 to 44
Page 60, line
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Page 60, lines
10 to 20

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Page 60.

Particulars of the account are set out in Exhibit P.3.

Page 10, line 41 to Page 11, line 6

Page 15, line 30 to 42

Page 62, line 18. Page 62, line 25. Page 25, line 6.

Page 19, line 32 to page 20, line 6.

9. On the 11th May 1977 the Second Appellant obtained a transfer to himself of the Plaintiff's entire interest in the property referred to in paragraph 4 hereof. The purchase price was expressed to be \$8,000. Of this sum, \$1,000 was paid by way of a down payment and the balance was secured by way of a mortgage. At the time of the transaction the value of the property was not less than \$19,893. The concrete house was producing a gross annual rent of \$2,360.

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10. Whilst the Respondent was staying with the Appellants a quantity of jewellery which the Respondent had brought with her when she went to stay with the Appellants disappeared.

The Respondent's Claim as set out in her Pleadings

Page 1 to page 3 line 10.

Page 3 line 24 to page 7 line 25. Page 9 line 36 to page 14 line 14.

11. On the 3rd June 1977 the Respondent commenced proceedings against the Appellants by issuing a Writ in the Supreme Court of Fiji (Western Division). The nature of the Plaintiff's claim was set out in the Statement of Claim which was endorsed on the Writ. On 29th June 1977 the Respondent filed an Amended Statement of Claim. The Amended Statement of Claim expanded the grounds on which the Respondent claimed relief and amended the claim contained in Clauses (e) and (f).

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By her Amended Statement of Claim the Plaintiff sought the following relief;

Page 13, lines 34 to 37.

Page 13, lines 38 to 40.

(a) a declaration that the memorandum of transfer whereby the Second Appellant purported to acquire the Respondent's interest in the property referred to in paragraph 4 above was fraudulent null and void;

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(b) an order directing the Appellants to deliver up to the Respondent the lease no. 68339;

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- (c) an injunction restraining the Appellants from proceeding to have the transfer registered; Page 13, lines 41 to 43
- (d) an order directing the Appellants to give an account of all monies received by them from the Respondent; Page 13 line 44 to page 14 line 2
- (e) an order directing the Appellants to refund \$5,459 to the Respondent; Page 14 lines 3 and 4
- 10 (f) an order directing the return of 11 large gold sovereigns, 3 gold bangles, 3 gold rings or alternatively full value thereof; Page 14, line 5 to 8
- (g) damages for causing the execution of the fraudulent transfer in the sum of \$2,000; Page 14, lines 9 to 11
- (h) such other relief as the Court might think just; Page 14, lines 12 to 30
- (i) costs of the action. Page 14, line 14.
- 20 12. The grounds on which the Plaintiff claimed the relief set out in clauses (a) to (c) inclusive and (g) of the Amended Statement of Claim were that the Respondent's execution of the said memorandum of transfer was procured by the Appellants fraudulently and by exercising undue influence. Page 13, lines 34 to 43.
Page 14, lines 9 to 11
Page 10, lines 31 to page 11 line 6.
- that: The particulars of fraud relied upon were that:
- (a) the Appellants advised and influenced the Respondent to believe that \$8,000 represented a true and proper market value for the said property; Page 11 line 15 to 18
- 30 (b) that the Appellants prohibited the Respondent from seeking independent valuation of the property; Page 11 lines 19 to 21
- (c) that the Appellants advised, influenced and made the Respondent wrongfully believe that it was in her best interest to sell the property. Page 11 lines 22 to 24

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Page 11 lines 10 to 14 In addition the Respondent contended that she had never executed the said transfer and that the consideration of \$8,000 provided for in the said memorandum of transfer was not paid by the Appellants to the Respondent.

13. The particulars of undue influence relied on were that:

Page 11 lines 25 to 30 (a) both the Appellants in their position as daughter and grandson of the Respondent assured the Respondent and made her to believe that what the Appellants were doing was for her own good; 10

Page 11 lines 31 to 34 (b) both the Appellants assured the Respondent that they would maintain support and generally look after her as long as she lived.

Page 13 lines 44 to page 14 line 4. 14. The grounds on which the Respondent claimed the relief set out in clauses (d) and (e) of the Amended Statement of Claim were that while the Respondent stayed with the Appellants in Lomawai Nadroga from July 1975 to May 1977 the Appellants fraudulently and by exercising undue influence obtained from the Respondent the sum of \$5,459 in cash by withdrawing the same from her savings account then held with the Nadi City Bank and numbered 001114. The particulars of fraud relied upon were: 20

Page 12, lines 36 to 39 (i) that the Appellants advised the Respondent to withdraw all money from the Bank as it was not a safe place to keep money; 30

Page 12 lines 40 to 42. (ii) the Appellants advised the Respondent that they would use the money so withdrawn for her own purpose.

Page 13, lines 1 to 5. The particulars of undue influence relied upon were that the First and Second Appellants told the Respondent that they were her daughter and grandson respectively and would always look after her property and herself.

Page 12, lines 32 to 35. The Respondent alleged that from the monies obtained by the Appellants, the Appellants paid 40

10 \$1,000 as the deposit on the purported sale of the Respondent's land.

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14. The grounds on which the Respondent claimed the relief set out in clause (f) of the Amended Statement of Claim were that while the Respondent stayed with the Appellants in Lomayai Nadroga from July 1975 to May 1977 the Appellants fraudulently and by exercising undue influence obtained from the Respondent 11 gold sovereigns, 3 bangles and 3 rings.

Page 14 lines 5 to 8

Page 13 lines 7 to 13

 The particulars of fraud relied upon were that the Appellants advised the Respondent to give them the said gold jewellery for safe keeping.

Page 13 lines 15 to 17

 The particulars of undue influence relied upon were that the First and Second Appellants told the Respondent that they were her daughter and grandson respectively and would always look after herself and her jewellery.

Page 13 lines 18 to 22

20 The Defence of the Appellants as set out in their Pleadings

15. On the 20th June 1977 the Appellants delivered their Defence. On the 1st February 1978 the Appellants delivered an Amended Defence.

Page 8 line 1 to page 9 line 15. Page 14 line 20 to page 16 line 30

30 16. As to the memorandum of transfer whereby the Second Appellant purportedly obtained an interest in the property referred to in paragraph 4 above, the Appellants admitted that the Respondent had executed a memorandum of transfer. The Appellants denied that they exercised any undue influence on the Respondent or were guilty of fraud. The Appellants averred that the transfer was made voluntarily and freely and that the Respondent was independently advised. The Appellants further stated that the Respondent executed the transfer and that in consideration thereof a sum of \$8,000 was paid as provided for in the transfer namely by the payment of \$1,000 upon consent being granted by the Director of Lands and the balance, namely \$7,000 being secured by a first mortgage over the lease and duly executed by the Second

Page 15 lines 16 to 27

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Page 15 lines
30 to 42

Appellant. The Appellants denied that they made any representations to the Respondent over the value of the property or in any way prevented the Respondent from seeking a valuation.

Page 15 line
43 to page
16 line 15.

17. As to the Respondent's allegation that the Appellants wrongfully withdrew from her account money to the value of \$5,459, the Appellants admitted and averred that the Respondent did withdraw certain sums from her savings account totally \$5,459 but asserted that those sums were withdrawn for the benefit of and on account of the Respondent. The Appellants denied that they acted fraudulently or exercised any undue influence on the Respondent. The Appellants further denied that they used any of the Respondent's money whether as alleged by her in the Amended Statement of Claim or at all.

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Page 16 lines
17 to 21

18. The Appellants further denied that any jewellery was left with them for safe-keeping or that they had ever asked the Respondent to give them any jewellery for the purposes of safe-keeping or that they exercised any undue influence or made any of the alleged promises.

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Page 16 lines
23 to 26

19. The Appellants asserted that the \$1,000 paid to the Respondent subsequent to the Second Appellant's acquisition of the land referred to in paragraph 4 hereof was obtained from their own resources.

The Respondent's Own Evidence

Page 17 lines
1 to 34

20 On the 17th February 1978 and on the application of the Respondent's lawyers and because of the Respondent's medical condition and age, Williams J. directed that the Respondent's evidence should be given prior to the hearing which was fixed for the 14th March 1980.

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Page 18 lines
1 to 7
Page 18 lines
12 to 16
Page 18 lines
17 to 20.

21. The Respondent gave evidence as to her age, background and her relationship to the Appellants. She told the Court that she owned the land referred to in paragraph 4 above. The Respondent stated that in July 1971 she went to live with the First Appellant and that whilst she was with them she was robbed of her possessions.

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10 She denied that she had sold her house to the Second Appellant. She said that "they cheated me" and she denied having received a penny for the property. Describing the way in which the instrument of transfer was executed, the Respondent said "They forcibly got me to fix my thumb print; I was yelling; I was crying. There was only one lawyer". Referring to her savings account the Respondent said that she had between \$10,000 and \$14,000 in her bank. She asserted that the money had been withdrawn but she denied knowing how the money had been used. She said that she never went to a bank and did not know what a bank was; she said she had money in a box. On being shown the bank book relevant to her savings account at the Nadi branch of the First National City Bank, the Respondent denied knowing anything about it. She said that during the preceding 2 years she had drawn a lot of money from the bank. She said that the First Appellant was asking for money; that there was other money remaining in the bank and her daughter had stolen it. Justifying this latter allegation the Respondent said that she knew it was stolen because the money "was used up". She said that the First Appellant had "bought lots of things from the shops". The Respondent described items of jewellery and gold sovereigns once in her possession. She said that these items were acquired many years previously and that the First Appellant was in possession of the gold sovereigns. The Respondent accused the Appellants of having stolen the jewellery.

Page 18 lines 27 to 29.

Page 18 lines 34 to 38.

Page 19 lines 5 to 6

Page 19 lines 7 to 8

Page 19 lines 12 and 13

Page 19 lines 19 to 23.

Page 19 lines 24 to 31

Page 19 line 32 to page 20 line 6.

40 22. Under cross-examination by Mr. Patel for the Appellants, the Respondent denied having asked the First Appellant to take her away from her son Subarmani. She denied having alleged that her son Subarmani had ill-treated her. The Respondent described how her thumb print came to be on the memorandum of transfer. She said "My daughter got hold of my hand. The clerk got me to put my thumb print on to documents they forced me to do it. I was crying." Speaking of the money allegedly withdrawn from her bank account, the Respondent denied that the money had been in the bank account and asserted that it was "in the box".

Page 20 lines 17 to 19. Page 20 lines 14 to 16. Page 20 lines 34 to 36. Page 21 line 6

Page 21 lines 8 to 9

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23. At the conclusion of the Respondent's evidence Williams J. made the following comment:

Page 21 lines
16 to 25

"The witness is obviously very old and very feeble-minded. She is chattering constantly and whispering. She is certainly very dependent and whatever may be needed to support her case will largely depend on third parties. It is obvious that she will be virtually at the mercy of any relative or person with whom she resides or who is looking after her. I have communicated the above comments to the advocates."

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The Hearing on 14th March 1980.

Page 22 lines
18 to 21.
Page 60 lines
1 to 20

24. With the consent of the Appellants' advocate an Exhibit P3 was put in showing the amount of money withdrawn from the account held in the Plaintiff's name at the Nadi branch of the First National City Bank and numbered 001114.

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Page 23 lines
1 to 20
Page 61 lines
1 to 43 and
Page 62 lines
1 to 22

25. A valuer, Mr. Param Anan Singh was called in order to prove the value of the property referred to in paragraph 4 above. He produced a written valuation P2. He valued the property at not less than \$19,893 and he described that valuation as being conservative.

Page 23 lines
26 to 32,
Page 24, Page
25 lines 1 to
20. Page 24
lines 1 to 7.
Page 24, lines
10 to 17.
Page 24 lines
17 to 18
Page 24 lines
28 to 42.

26. Subarmani Ponsami, the Respondent's son with whom she had been residing prior to 17th July 1975 was called to give evidence on behalf of the Respondent. Subarmani described how the First Appellant arranged for the Respondent to visit her. He said that the Respondent took away with her 2 suitcases made of wood which contained clothing, jewellery, soeverigns and three rings. He described how the Respondent kept the suitcases locked and had the key with her. Subarmani described a visit that he paid in 1976 and also how he visited the Appellants in May 1977 and arranged for her return to live with him. He described how the Respondent's bags were opened on her return to his house and how the jewellery was found to be missing.

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Page 24 line
45 to page 25
line 2.

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Evidence Called on Behalf of the Appellants

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27. The Appellants called no evidence in support of their case.

Page 25 line 25

Submissions Made on Behalf of the Appellants

28. Mr. Ramrakha made the following submissions on the Appellants' behalf:

10 (a) that the price for which the property referred to in paragraph 4 hereof was sold to the Second Appellant was not absurdly low and could not lead to the inference of fraud in a mother/daughter relationship;

Page 25 line 30 to 33

(b) that the evidence for the Respondent was very weak and that the Respondent's own evidence should be ignored;

Page 25 line 34
Page 25 lines 27 to 29

(c) that none of the relevant documents had been placed before the Court;

Page 26 lines 1 to 4

(d) that there was no presumption of undue influence.

Page 26 lines 5 & 6

Submissions made on Behalf of the Respondent

20 29. Mr. Singh on behalf of the Respondent made the following submissions;

(a) that the Respondent was an old woman incapable of looking after herself and was at the mercy of any who looked after her;

Page 26 lines 15 to 17

(b) that it had been proved that the Respondent had been swindled;

Page 26 lines 13 and 14

(c) that the purchase price of \$8,000 was manifestly low.

Page 26 line 20

The Judgment of Williams J.

30 30. On 30th March 1978 Williams, J. gave a reserved judgment. In the course of his judgment Williams, J. summarised:

Page 28 line 1 to page 36 line 24

(a) the relevant facts;

Page 28 line 12 to 31

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- Page 28 line 32 to page 29 line 18. (b) the contents of the pleadings;
- Page 29 line 19 to line 45 (c) the Respondent's own evidence (reminding himself of the comments that he made and which are set out in paragraph 23 hereof)
- Page 29 line 46 to page 30 line 8 (d) the other evidence adduced on the Respondent's behalf;
- Page 30 line 10 to line 18 (e) the submissions made by the Appellants' Counsel.
31. In the course of his judgment Williams, J. made certain findings of fact. These included the following: 10
- Page 33 lines 13 to 19 (a) that having seen the Respondent it was clear that she was obviously and clearly senile and dependent and uneducated. Her condition suggested at once that she could quite easily be victimised by those whom she trusted and upon whom she relied;
- Page 34 line 50 to page 35 line 2 (b) that the senility of the Respondent and the relationship that subsisted between herself and the Appellants was such as to show that the Appellants were in a position to victimise the Respondent by the exercise of undue influence; 20
- Page 33 lines 34 to 35 (c) that it was the prospects of obtaining access to the Respondent's money that caused the Appellants to invite the Respondents to reside with them;
- Page 34 lines 1 to 9. Page 34 line 22 to line 35. (d) that the Respondent had no need of any of the money in fact withdrawn from her account; the annual rent that she derived from her property was sufficient to meet her everyday requirements; 30
- Page 35 lines 35 to 38 (e) that the \$1,000 which the Second Appellant purported to pay to the Respondent following the execution of the memorandum of transfer was probably money withdrawn from the Respondent's own bank account;

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(f) that the Respondent did have jewellery in her baggage which disappeared whilst she was with the Appellants but there was no reliable evidence as to what that jewellery amounted to.

Page 35 lines
43 to 48

32. In the course of his judgment, Williams, J. set out his understanding of the law relating to undue influence. He referred to and quoted from the judgment of Ungood Thomas, J. in *Re Craig Deceased* (1970) 2 WLR 129. Williams, J. quoted that part of Ungood-Thomas' judgment at page 121 (d) in which Ungood-Thomas, J. said that there were two well-established classes of undue influence. The first being where the donee stands in such a fiduciary relation to the donor that a presumption of undue influence arises and prevails unless rebutted by the donee; and secondly where undue influence is established independently of such a presumption. Williams, J. also referred to the principles to be derived from the judgment of Lindley, L.J. in *Allcard v. Skinner* (1887) 36 Chancery Division 145 at 182. Williams, J. also referred to the judgment in *Billage v. Southee* (1852) 9 Hare 534, the decision in *Griffiths v. Robins* (1818) 3 Madd 191, and the decision in *Zamed v. Hyman* (1961) 1 WLR 1442 at 1446. Williams, J. also quoted with approval the passage at page 180 in Spry's 'Equitable' Remedies. Williams, J. held that once a presumption of undue influence had arisen, the onus of rebutting the same is on the donee who must prove that the transaction was completed by the other party after full free and informed thought about it. Williams, J. then posed the question whether there was anything in the evidence which raised the presumption that the two Appellants had exercised undue influence upon the Respondent in relation to the transactions complained of. Having examined the facts surrounding the withdrawal of money from the Respondent's account Williams, J. stated that the detail of the money withdrawn from the account during the Respondent's sojourn with the Appellants showing the promptness with which the withdrawal began once the Respondent had come under the Appellants' roof and the large amount of money actually withdrawn taken in conjunction with the senility of the Respondent and her

Page 30 lines
25 to 45.

Page 30 lines
42 to page 31
line 13.
Page 31 lines
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Page 31 lines
29 to 38
Page 32 line
13 to 18.

Page 32 lines
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Page 33 lines
20 to 23

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50 to page 35
line 12.

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21 to 25

relationship to the Appellants and that the Appellants were in a position to victimise the Respondent by an exercise of undue influence raised the presumption that undue influence was in fact exercised by the Appellants. In relation to the memorandum of transfer whereby the Second Appellant acquired the Respondent's interest in the property referred to in paragraph 4 hereof, Williams, J. after examination of the facts stated that the nature of the sale of the property which took place whilst the Respondent was under the Appellants' roof was such that in his opinion a presumption arose that the Second Appellant no doubt aided by the First Appellant exercised undue influence over the Respondent. Williams, J. then concluded that part of his judgment by observing that neither Appellant had given evidence and that no attempt had been made to rebut the presumption of undue influence which he found had arisen in the case.

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Page 35 lines
39 to 42

33. On the basis that by an exercise of undue influence the Appellants had acquired from the Respondent the sum of \$5,459 and that the Second Appellant had acquired from the Respondent her entire beneficial interest in the property referred to in paragraph 4 hereof, Williams, J. entered judgment for the Respondent. In particular he directed that the Appellants should refund to the Respondent the sum of \$5,459 drawn from the Respondent's bank account and that the Second Appellant should deliver up to the Respondent all documents of title relating to the property referred to in paragraph 4 hereof and should execute any documents which may be necessary so as to vest the legal title in the Respondent. The relevant mortgage document was also rescinded and set aside.

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Page 37 lines
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The Appeal

Page 38 line
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line 47

34. By a Notice dated 28th April 1978 the Appellants appealed to the Court of Appeal of Fiji against the decision of Williams, J. The grounds of appeal were fully set out in the Notice of Appeal. The principal grounds of appeal in fact advanced on behalf of the Appellants (and as summarised by Spring, J.A. in his judgment were that:

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(a) the learned Trial Judge erred in law and in fact in holding that there was a presumption of undue influence when the document transferring the house property were signed and further that he erred in presuming that at such time the Respondent did not receive proper independent legal advice.

Page 50 line
32 to 40

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(b) that the learned Trial Judge came to a premature conclusion regarding the trial as to the Respondent's mental condition and erred in law and in fact in concluding that the money withdrawn from the Respondent's savings bank account must have been used by the Defendants.

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41 to 48

Judgment was given in the Court of Appeal on the 3rd November 1978.

The Judgment of Marsack, J.A.

Page 42 line 1
to page 48 line
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35. Marsack, J.A. recited the facts; he concluded that Williams, J. was thoroughly justified in coming to the conclusion that he did with regard to the Respondent's susceptibility to victimisation by those whom she trusted. He further concluded that all the relevant factors and in particular the relationship that subsisted between the Appellants and the Respondent, the infirmities of the Respondent which caused her to be dependent upon the Appellants in practically all matters and the nature of the relevant transaction with which the Court was concerned, gave rise to the presumption that undue influence had been exercised. Marsack, J.A. thus proceeded on the basis that in respect of the Appellants' withdrawal of money from the Respondent's account and the Second Appellants acquisition of her interest in the property referred to in paragraph 4 hereof a presumption of undue influence would necessarily arise. Marsack, J.A. stated that once the presumption of undue influence had arisen, the onus is cast on the party presumed to have exercised such influence in order to satisfy the Court that the transaction in issue was not brought about by

page 42 line 18
to page 44 line
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Page 45 lines
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Page 46 line 25
to 32
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to 46

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Page 46 line
45 and 46

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2 to 8

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Page 47 line 9 to line 25	the exercise of undue influence. Marsack, J.A. referred to and cited the judgment of Lord Justice Cotton in Allcard v. Skinner 36 Ch.D. 145 at p.171 and to the judgment of Lord Hailsham L.C. in Inche Noriah v. Sheik Alli Bin Omar (PC) 1929 AC 127 at page 132 and Jenkins, L.J. in Tufton v. Sporni (1952) 2 TLR 516 at page 527, Zamet v. Hyman (1961) 1 WLR 1442 at page 1446. Marsack J.A. then applied the propositions to be extracted from the above cases to the facts of the Appeal. He reminded himself that Williams, J. found that a presumption of undue influence arose with regard both to the savings bank transactions and to the transfer of the Respondent's house property to the Second Appellant at a gross undervalue. He then stated that in accordance with the principles laid down in the authorities referred to above, the onus lay on the Appellants to rebut the presumption that the Trial Judge had found to be established.	10
Page 47 lines 26 to 33 Page 47 lines 41 to 45	Marsack, J.A. stated that the Appellants had made no attempt to rebut the presumption and in particular they had called no evidence. As a consequence the presumption of undue influence was not rebutted. Marsack, J.A. stated that in his opinion there were substantial grounds for holding that the presumption of undue influence had arisen. Having come to these conclusions Marsack, J. held that the judgment of Williams, J. was correct and therefore the Appeal of the Appellants should be dismissed with costs.	20
Page 47 line 45 to 48		
Page 47 lines 50 to 52		
Page 48 lines 1 to 11		
Page 48 lines 20 to page 59 line 26 Page 48 line 31 to page 50 line 27 Page 50 line 28 to 48	<u>The Judgment of Spring, J.A.</u> 36. Having recited the facts and summarised the pleadings, Spring, J. considered the two principal contentions advanced by the Appellants and summarised in paragraph 34 hereof. Spring, J.A. first considered the Appellants' submission that there was insufficient evidence to justify Williams, J. in concluding that there existed a close and confidential relationship between the Respondent and the Appellants. He also considered the Appellants' submission that no presumption of undue influence arose. Spring, J.A. stated that in his opinion Williams, J. had correctly stated the legal principles. Spring, J.A. also cited the words of Lord Chelmsford L.C. in Tate v. Williamson 2 Ch.App. 55 at page 6. He stated	30
Page 51, lines 9 to 17		
Page 51, lines 14 to 17		
Page 51 lines 1 8 to 43		

	that where the presumption of undue influence arises as a result of a close and confidential relationship shown to exist between the parties, it is incumbent upon the party presumed to have exercised such undue influence to support the validity of the transaction beneficial to him. Having stated these propositions of law Spring J.A. summarised the evidence relating to the transaction whereby the Second Appellant acquired from the Respondent her interest in the property referred to in paragraph 4 hereof. He noted that the task of a Court in deciding whether there is a free exercise of will by the transferor is obviously eased when the parties are seen and heard as witnesses. He quoted passages from the judgment of Williams, J. He stated that in his view there was ample evidence before Williams, J. for him to conclude that the presumption of undue influence had arisen in respect of the transfer of the house property to the Second Appellant. He then stated that such ground of appeal must fail. Spring, J.A. then turned to consider the Appellants' second contention and in particular the contention that Williams, J. was wrong in law and in fact in concluding that the money withdrawn from the Respondent's savings bank account must have been used by the Appellants. Having reviewed the evidence, Spring, J.A. concluded that Williams, J. was correct in drawing the inference that the monies withdrawn from the Respondent's bank account had been used by the Appellants. Spring, J. impliedly approved the finding by Williams, J. that a presumption of undue influence arose in respect of the Appellants' withdrawal of monies from the Respondent's bank account. No evidence having been adduced to rebut the presumption that had thus arisen, Spring J. held that the presumption in respect of the withdrawals from the Respondent's savings bank account remained unassailed. Spring, J. then dismissed the Appellants' appeal with costs.	<u>RECORD</u> Page 51 lines 44 to 49 Page 52 line 21 to page 53 line 20. Page 54 lines 1 to 4 Page 54 lines 22 to 50 Page 55 lines 9 to 15 Page 57 line 31 to 35 Page 57 lines 35 to 45 Page 57 lines 46 to 51
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The Judgment of Gould, V.P.

37. Gould, V.P. concurred in the judgment that had been delivered by Marsack, J.A. and Spring, J.A.	Page 41 lines 24 to 29
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Leave to Appeal

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33 to page
59 line 6

38. On the 26th January 1979 and having imposed terms, Marsack, J.A. gave the Appellants leave to appeal to Her Majesty in Council from the judgment of the Fiji Court of Appeal given on the 30th November 1978 under the provisions of the Fiji (Procedure in Appeal to Privy Council) Order, 1970 and further ordered that in the meantime all execution and proceedings should be stayed.

39. The Respondent submits that this Appeal should be dismissed with costs for the following amongst other

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R E A S O N S

(1) BECAUSE the judgment of both the Learned Judge and the Court of Appeal of Fiji was right.

(2) BECAUSE the relationship that subsisted between the Respondent and the Appellants and in particular the dependence that the Respondent placed upon the Appellants was such that a presumption of undue influence arose.

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(3) BECAUSE of the nature of the transactions whereby the Appellants obtained the Respondent's property and money and the facts surrounding those transactions a presumption of undue influence arose.

(4) BECAUSE the Appellants having called no evidence to rebut the presumption referred to in the two immediately preceding clauses, the presumption necessarily prevails.

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DOUGLAS HOGG

IN THE PRIVY COUNCIL

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

B E T W E E N :

- (1) RAJ KUMARI (d/o Lakhan Singh)
(2) YENKAIYA NAIDU (c/o Appana)

Appellants
(Defendants)

- and -

SUBARMANI (s/o Ponsami) representing
the estate of Ammai (d/o Nag Reddy)
deceased

Respondent
(Plaintiff)

CASE FOR THE RESPONDENT

A.L. Philips & Co.,
6 Holborn Viaduct,
London EC1A 2AH.

Solicitors for the Respondent

RECEIVED

- 7 APR 1980