

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN PROBATE AND ADMINISTRATION

SUIT NO. P. ⁵⁴³~~307~~ of 1975

BETWEEN	VICTOR EDMUND JACKSON	PLAINTIFF
A N D	WILLIAM CHRISTIAN	DEFENDANT
A N D	ISOLA CHRISTIAN	DEFENDANT
A N D	ALICE EDWARDS	DEFENDANT

TRIED: NOVEMBER 21ST, 22ND, 23RD, 1977.

Mr. E. C. L. Parkinson, Q. C. for Plaintiff

Mr. Beresford Haye instructed by Mr. L. O. B. Williams for Defendants

JANUARY 27TH, 1978.

WILLKIE, J

The Plaintiff alleges that a Will dated 11th November, 1967, and admitted to Probate on 14th September, 1971, in the estate of James Figueroa Jackson, who died on 17th March, 1971, was a forgery and prays:

- (i) Revocation of the said Probate
- (ii) That the Court shall pronounce against the validity of the said alleged Will dated 11/11/67
- (iii) A grant of Letters of Administration of the Estate of the said deceased
- (iv) Further or other relief
- (v) Costs.

In support of the allegation, reliance was placed on the evidence of three witnesses - Victor Edmund Jackson, the Plaintiff and son of the Testator; his brother Nathaniel Jackson, a natural son of the Testator, and D/Supt. Arthur James Broomfield, Handwriting Expert.

In analysing the evidence it will be necessary to detail some aspects of it. Victor Jackson stated that he is the son of the Testator and that three weeks before his father died he received a message from his father through Mr. William Christian, his brother-in-law, and as a consequence, he visited his father's home. There he saw his father who was very sick; that his father told him that he was very glad to see him come, as he needed to see him; that he was getting weak, he can't manage anything so he must come up and take over his estate and look after it. That he would like him to take him to May Pen and get a sensible man to write his Will; that before doing so he must go to Bushy Park (where his property was situated) and reap his cane and when that was done he will fix the Will. That he told his father that he will go down and contact Teacher Brown, J. P. He further stated that he did not take his father to Teacher Brown as he died before he could do so.

That his sisters, Isola Christian and Alice Edwards (two of the defendants') and himself buried his father. It came out in the evidence that Plaintiff's mother, and wife of Testator, who was then living with Isola Christian, died the same day as her husband the Testator, and both were buried at the same time.

Plaintiff further stated that he knew nothing about an attempt by his father to make a Will in 1967, except his brother Nathaniel told him so. That about a week after his father's death, Isola Jackson and Alice Edwards asked him if his father had given him a Will and he replied no. That sometime after he got a book from Nathaniel and a photocopy of a Will filed at the Record Office in the estate of James Figueroa Jackson and he handed same over to his attorney-at-law, Mr. Parkinson. The photocopy Will was admitted in evidence as Ex. 1A. In relation to this Book the witness stated he knew nothing about it. He never knew it before it was handed to him by his brother. That he looked at the Book after he received it from his brother; that he saw writing on page 187. It is to be observed that the witness gave no evidence of what was "written" in the book; nor does he identify the "writings" in the Book,

We come now to the evidence of Nathaniel Jackson. His evidence concerned only the Book, Ex. 3. He stated that the Book entitled "Hope of the Race", was given to him by his father James Jackson. That he is able to identify the Book by the signatures and names on the front page and somewhere in the middle of the book. The book, having been shown to the witness, he pointed out the identifying marks, i.e. signature on the front page and at page 187 of the Book. The Book was admitted as Ex. 3.

He stated that after he had Ex. 3 he saw a Lawyer Elliott and handed the book over to him. That when he consulted Mr. Elliott, Victor Jackson accompanied him as he wanted to clarify the Will. That he saw part of the 1st page of the Book was cut off and that he had cut it out and brought it to Mr. Elliott, who said he wanted the whole book. This was the book that was subsequently handed by Victor Jackson to Mr. Parkinson. It should be noted, that this witness gave no evidence in relation to the signatures at the front of book and at page 187. He merely used them to identify the Book. He gave no evidence as to whose signatures they were, neither did he identify the writer of the signatures.

The evidence so far may be summarized thus:

- (1) Victor Jackson got a photocopy of the Will filed in the Record Office at Spanish Town, in the estate of James Jackson;
- (2) He received a Book "Hope of the Race" from Nathaniel Jackson, in which there are writings on the front page and at page 187.

- (3) He knew nothing about those writings, i.e.
 - (a) who had made them, or
 - (b) when they were made;
- (4) Nathaniel Jackson got this Book "Hope of the Race" from his father James Jackson;
- (5) He was able to identify the Book as the one he had received from his father, by the "writings" at the front and on page 187;
- (6) He gave no evidence as to -
 - (a) who had made those writings, or
 - (b) when they were made.

That is the state of the evidence when the following documents were handed to D/Supt. Arthur Broomfield, Handwriting Expert, on the 17th February, 1975:

- (a) Photocopy Will Ex.1A
- (b) Book - 'Hope of the Race' - Ex.3

Mr. Broomfield's evidence follows -

- (1) - He stated that he examined -
 - (a) The signature James Jackson on Photocopy Will, and
 - (b) Signature James F. Jackson on slip of paper (This was referred to in the evidence of Victor and Nathaniel Jackson as writing at the front of the book. It was this slip that Nathaniel Jackson had cut out of the book, took to Mr. Elliott who requested him to bring the book) and,
 - (c) Signature James F. Jackson at page 187 of the Book.
- (2) - He stated that he compared these signatures and -
 - (a) Is of the opinion that the two signatures in the Book were both written by one and the same person;
 - (b) He compared signature at front of book, (he refers to this as slip of paper) and signature at page 187 of the Book with the signature James Jackson on the photocopy Will and is of the opinion that the signature at page 2 of the photocopy Will was written by a different person from the person who wrote the signatures in the Book.
(i. e. at the front and on page 187).

Assuming that the evidence of Plaintiff and his witnesses are accepted,

Plaintiff would have established that the signature James Jackson on the photocopy Will (which is a photocopy of the original Will Ex.1) was written by a different hand from the hand that made the signatures in the Book. (at the front and at page 187). There is no evidence as to who made the signatures in the Book. Neither Victor nor Nathaniel Jackson gave evidence identifying these two signatures; indeed, neither of them gave evidence in connection with the signature James Jackson on the photocopy Will Ex. 1A or the original Will Ex.1.

The evidence merely establishes that the signatures in the Book, the authorship of which is unknown, was written by a different hand from the hand that wrote the signature on the Will. It is on this evidence that the Plaintiff seeks to say that the Will that was admitted to Probate is a forgery. The Plaintiff seems to have assumed that the signatures in the Book were made by the deceased, James Jackson. He called no evidence to establish this vital connection; and continuing with that assumption proceeds to say that since the handwriting expert's opinion is that these signatures in the Book were made by a different hand from the signature on the copy Will, then the signature on the copy Will is a forgery as also the original Will. The evidence, being in this unsatisfactory state, yet the defence called evidence on behalf of the Defendants. In my view at the end of the Plaintiff's case, there was no evidence raised on the Plaintiff's case to rebut the presumption that the Will admitted to probate was regular and properly executed by the Testator.

DEFENCE -

Mrs. Isola Christian gave evidence. She stated that she is the eldest daughter of the Testator and sister of Plaintiff and Nathaniel Jackson. That she got on well with her father, while Victor on the other hand, did not. That in 1967, her father told her he wanted to make a Will, and asked her to accompany him. They went to Mr. Keith March, Solicitor, of Spanish Town. Mr. March was not in, but his Secretary was there, and her father gave her the necessary particulars about the Will. She stated that while on the bus travelling to Mr. March's office, her father had intimated that he wanted to include one Retinella Bryan, with whom he had been having an affair in the Will; That she took strong objection to this proposal (The Will probated excludes this person). She stated that about a week after visiting Mr. March's office she saw Mr. March at his shop, which is across the road from the Old Harbour Court House, where Mr. March had gone to Court; That Mr. March had brought the draft Will. That she sent and called her father who

lived nearby. He came and Mr. March showed her father the draft Will, and her father paid him £6. That Mr. March gave her father instructions. That her father gave her the unexecuted Will to keep. That about two weeks later her father sent her niece Mary Jackson, who lived at ~~her~~ father's home for the Will and she gave it to Mary Jackson. That she later received the Will from Mary Jackson signed and witnessed. She identified Ex.1 as the original Will. She kept it and after her father's death had the Will probated.

This Will named her husband William Christian as one of the Executors. He knew nothing about this. His wife had not told him, neither did she tell him that her father had made a Will. Nathaniel Jackson, in his evidence stated that in 1967 he visited Isola Jackson's home and heard her telling her mother about a visit she had made with her father to Mr. March's office and that her father had proposed including Retinella Bryan in his proposed Will but she objected to this and Mr. March told them to go home and when they had settled the matter then they could return and he would settle the Will. Isola Christian denied having had such a conversation with her mother at any time. When asked if she had not had this conversation, how can she explain that Nathaniel Jackson knew about it. She stated that the Testator, James Jackson must have told him. I accept that she did have a conversation with her mother about her father's proposal, but I am not convinced that such conversation included an alleged response from Mr. March that they must go home and settle it and then return to his office. I further accept Isola Christian's evidence that it was to Mr. March's Secretary to whom her father spoke. I believe that on the objection of Isola Jackson to her father's proposal to include Bryan in his Will he changed his mind and gave his instructions to Mr. March's Secretary excluding Bryan from his Will. She also denied that Alice Edwards and herself asked Victor after her father's death if her father had made a Will. I accept her evidence in this regard. I do not believe the Plaintiff when he stated that his father spoke to him about making a Will.

The only evidence that connects the signatures in the Book with the Testator came from this witness, In xxn she was shown the Book Ex. 3. In relation to the signature on the front, she stated: "This is the signature of my father"; and in relation to the signature on page 187 of the Book she stated: "It look like my father's signature. I see James F. Jackson not

James Jackson."

In her evidence Ex. 1 (Will) was shown to the witness and she stated "I see signature James Jackson on the Will". In Re xxn she stated: "Book Ex. 3. Did say the signatures on it are my father's. I don't know the book. Did not see my father signed any of the signatures in the Book. I don't know the book. I said it is my father's signature because it looks like my father's signature. They look alike. The signature on the Will is my father's signature. It looks like his signature. My father had more than one way of signing his signature. He signed James Jackson, James F. Jackson and James Figuroe Jackson. Never see him sign either the Will or the signatures in the Book, but they all look like his signatures". It is only on her evidence that some nexus is made between the signatures in the Book and the signature on the Will. Mr. Parkinson having led no evidence as to who made the signatures in the Book Ex. 3, now places reliance on the evidence of Mrs. Isola Christian (one of the defendants and beneficiary under the Will) to prove -

- (a) that the two signatures in the Book Ex. 3 were made by the Testator;
- (b) that these signatures are genuine;
- (c) he then asks the Court to reject this same witness' evidence in relation to the signature on the Will, as being the signature of the Testator; and
- (d) suggests that she combined with the witness to the Will Mr. Fredrick Hunter, to forge the testators signature to the Will, after Testator's death.

The basis of this last contention is Mr. Froomfield's evidence, and his opinion that the signature in the Book were made by the same hand; but that a different hand made the signature on the Will which completely contradicts the evidence of Isola Christian that in her opinion all the signatures (i.e. Book and Will) look like her father's signature. D/Supt. Froomfield photographed the signatures in the Book (Ex.3) and the signature on the photocopy Will (Ex.1A) and enlarged and mounted them (Ex.2) to aid in his comparisons. He found the writings to be different in:

- (1) Formation of the letters
- (2) Slant in the writings
- (3) Connection of the letters
- (4) Alignment of the writings

(5) Spacing between the letters

(6) Position of the initial and terminal strokes,

and he stated that it is laid down by the International Scientific Police Organization that in comparing two sets of handwritings, if the two writings are found to be similar or different under any of five of these factors it is reasonable to conclude that the writings are similar or dis-similar as the case may be. His opinion is that on these base , the writings in the Book (Ex.3) are dis-similar to the signature on the photocopy Will (Ex.1A). He was cross-examined and stated that he is not in a position to say the time at which the writings in the book Ex. 3 or the photocopy Will were made; or the age of the person who wrote them, or the relevant time they were written; nor can he say the circumstance under which they were written. He agreed that illness can have an effect on a person's writing; also that a person's writing can vary with age, in that the line quality in the writing can deteriorate, the writing will lose that smoothe flow. He agreed that there is a difference in how a person's signature would look if he wrote slowly and if he wrote quickly. He stated that no two signatures by the same person are identical; that there are natural variations that the human hand is not an instrument of mathematical precision. He stated that he made his comparison of the signature on the photocopy Will and the two specimens from the Book and was asked:

Qs. Is it not desirable if the handwriting is legible that you should get at least one dozen specimens?

Ans. If one specimen is very good you need only that one. He further stated that a very good specimen is one where there is no attempt to disguise the true hand. He was asked:

Qs. How will you know this unless you had more than one specimen?

Ans. "A good specimen is one that is given in good faith". I would say that this is a remarkable answer. If a person who is bent on forgery and a specimen is requested of him and he sits down and deliberately writes, how does one judge from the specimen whether he is acting in good faith or otherwise? The criteria would seem to be based purely on assumption as to whether he is a suspect or otherwise. D/Supt. Broomfield continued and agreed that to be able to establish the variation in a persons handwriting one would need more than one specimen.

He also stated that if the question of a copy forgery came up, it is desirable for contemporary specimens to be obtained to make the comparison. It is to be observed that both these criteria are non-existent in this instance. The witness expressed familiarity with the work "Suspect Documents - 2nd Ed. by Wilson R. Harrison"; and the following passage was quoted to him:

"The minimum number of signatures which should be made available for comparison depends on many factors. If the handwriting of the Testator is good and the Will or Agreement was signed when in good health, then a dozen contemporary signatures should be sufficient in the majority of cases. If the handwriting of the Testator is of poor quality and variable, then the more signatures made available for comparison the better. It is one thing to say in evidence, 'I have examined six undoubted signatures of the Testator, but although they all showed considerable variation I failed to find in any one the combination of handwriting characteristics found in the questioned signature; consequently I consider it unlikely to be a genuine signature; but it is far better to be able to state that a considerable number of genuine signatures had been examined with the same result. The more signatures of a poor and variable writer available, the stronger is the opinion which can be expressed as to the authenticity of a questioned signature.'"

He was asked if he agreed with the quotation. He answered "I agree, the operative word there is if the signature of the Testator is good, all the factors to be considered in the portion just read, surrounds whether or not the signature of the Testator is poor or good. The signature in the photocopy Will is a good signature, also signatures in the Book. That on the basis of the passage quoted from the Book, if the signature were bad he would ask for more specimens. He can't say how many he would ask for but if it was bad, he would ask for just the two". Surely this last statement is a contradiction of what Mr. Broomfield said earlier; but he agreed with the criteria laid down in the passage quoted. There it is stipulated that if the handwriting is good and the Will or Agreement was signed when in good health, then a dozen contemporary signatures should be sufficient in the majority of cases. Surely implicit in this passage, is the inference that where the signature is 'bad or poor' more than one dozen specimens would be desirable, or where the signature is bad or poor and the signatory is in 'poor health' when the signature was made, more than the one dozen specimens would be desirable. Here

Mr. Broomfield/.....

is saying, if the signature were bad he would find the two specimen signatures submitted to him adequate to make his comparison. Again Mr. Broomfield gave evidence that age and illness would affect a person's writing. The evidence of Mrs. Isola Christian is that the Testator was sick around the time the Will was signed and I accept her evidence in this regard. It seems Mr. Broomfield had no knowledge of the Testator's age or physical condition at the time the Will was purported to be signed.

There is also the question of whether the signature on the photocopy Will is a 'good' or 'bad' signature. How could he say? He could not conclude this from the two specimens taken from the Book, as his opinion is that these were not made by the same hand as the signature on the copy Will. So, by what criteria was he able to opine that the signature on the photocopy Will was a 'good' signature. It seems to me that to be able to give any opinion of what was a 'good' or 'bad' signature of a particular person recourse must be had to a comparison between signatures made by the same person either on ~~the~~ the same or on different occasions. Mr. Broomfield in xxn finally stated: "I have given only an opinion that the signature on the slip of paper (Signature in Book) are different from signature on copy Will. I am not absolutely certain as I was not present when they were written, it is only my opinion." I am not satisfied that Mr. Broomfield had enough material before him to hazard the opinion he gave and I am of the view that much reliance cannot be placed on it. The onus placed on Plaintiff to prove forgery has not been discharged, and I so hold. In considering the casual nexus between the signatures elicited in the evidence of Mrs. Christian it must be borne in mind that Isola Christian had no knowledge of the Book Ex. 3. She did not see her father write the signatures. She does not know when they were written and under what circumstances. She was not present when the Will was signed. There was no evidence that she had ever seen her father write, although she stated that she knows her father's handwriting and apparently his signature. Her evidence of opinion as to the signatures in the Book and on the Will as looking like her father's, may have some merit. Her opinion seems to be based merely on the general appearance; in the visual examination of a signature with which she was familiar. I would assign more weight to her opinion than to ^{that} expressed by Mr. Broomfield.

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I find insupportable Mr. Parkinson's reliance on the opinion of Mrs. Isola Christian to prove that the signatures in the Book Ex. 3 are those of the Testator and then suggests the Court reject the evidence of this same witness that the signature on the Will Ex.1 was not made by the Testator and to accept instead D/Supt. Broomfield's opinion that the signatures in the book were made by one and the same but a different hand from that which made the signature on the Will. The opinion expressed by the witness ^{Isola Christian} in relation to all three signatures I accept to be an honest one of a person who stated she knew her father's handwriting and I reject Mr. Parkinson's contention. The Court's own observations of the signatures on Ex. 2 leaves it wholly undecided as to whether the signatures are similar or otherwise. There are differences in the formation of some of the letters, and how they are joined, but what appears beyond dispute was that the signatures from the Book appear firm, smoothe, fluid and seem to be written by a person with a firm hand, while the signature on the Will appears to be that of a person with an infirm hand caused either by age or illness or both. It is laboured and not smoothe and seem to me, by itself, to be unsuitable as a specimen upon which to base an opinion, weighty enough to establish a forgery.

Fredorick Hunter, one of the attesting witnesses to the Will, was called by the defence. He stated that he is a driver and that he knew the Testator from around 1937. That he used to drive the Testator wherever he wanted to go. That on 11th November, 1967, while at Old Harbour Square, between 11.00 a.m. and 1.00 p.m. one Mr. McCarthy spoke to him and he accompanied McCarthy to Testator's home. There he saw the Testator who told him he was sorry to worry him, he had to send and call him, he had a Will and he would like he and McCarthy to witness him sign the Will and he and McCarthy sign the Will for him. That the Testator, McCarthy and himself were all present at the same time. That Testator was quite all right at the time, quite hearty. He showed him the Will and said "this is the Will he want him and McCarthy to sign". That the Testator signed and dated the Will, passed it to him and he signed it. That he signed it in the wrong place. That Testator told him it is not here Mr. March said he Hunter should sign and he marked out where he had signed and signed underneath. McCarthy also signed. That Testator said the place he had crossed out he Testator don't like the cross out so he was asking him to take it to a Justice of the Peace and let him identify where he mark-out was the

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wrong place. That he took the Will and accompanied by McCarthy went to Teacher Campbell, J. P. at Old Harbour Bay, showed him where he had marked out. That Teacher Campbell initialled it and wrote something underneath the bottom and put his name and he carried the Will back to the Testator. He was cross-examined at length by Mr. Parkinson for Plaintiff, particularly with regard to the different ink used in the writings on the Will, and it was suggested to him that the Will was a forgery, i. e. that the Testator did not sign the Will and witnessed it. That it was after the Testator's death that the Will so called was made with his complicity and that of Isola Christian. He denied the Will was a forgery. The witness I found not to be too intelligent, and a little confused in his explanations about how many pens were used in the signing of the Will; but I find that he is a truthful witness and I accept him as such. The whole incident occurred in 1967 at a time when as the witness said, he did not contemplate that he would have had to attend Court, and he cannot now recall everything. I find that he did witness the Will and that it was properly executed by the Testator. I find nothing in the evidence which satisfies me that the Will of the Testator is anything but genuine, and I so hold.

There will therefore be judgment for the defendants, with costs. Such costs to be taxed or agreed.