SAINT VINCENT & THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 7 of 1987

BETWEEN:

MANFRED MORGAN - Plaintiff/Appellant

and

JACOB LEACH - Defendant/Respondent
(Executor of the Estate of
Emmeline Antoinette Morgan)

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: Carlyle Dougan for the Appellant
O.R. Sylvester, Q.C. and Mark Williams for the Respondent

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1988; March 21,
July 18.

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JUDGMENT

SIR LASCELLES ROBOTHAM, Chief Justice

On 25 March 1986, the plaintiff/appellant herein Manfred Morgan, the only son of Emmeline Antoinette Morgan, filed an action seeking the revocation of the grant of Probate (No. 119/1982) in the estate of the said Emmeline Morgan, to Jacob Leach the sole Executor named therein.

Emmeline Morgan died on 17 October 1979 at the age of 88, and the Will bears the date 7 December 1972. Probate was granted to Jacob Leach on 18 August 1982.

The only ground on which it was sought to have the grant of Probate revoked, was contained in paragraph 4 of the statement of claim, which reads:

> "The plaintiff contends that the said purported Will is a forgery in that it was not signed by his mother the said Emmeline Antoinette Morgan."

Particulars were given alleging that whereas the deceased Emmeline Antoinette Morgan always signed the name Antoinette with an I and connected the letters, in the signature to the Will the I was omitted in the name Antoinette and some of the letters were disconnected, and all the letters in the name Morgan were disconnected.

The defendant denied that the Will was a forgery and further said that it was written by the Head Teacher of a school whose name was Westwick Williams, under the directions and on the instructions of the deceased.

At the trial, Teacher Williams gave evidence and it was at the very end of the case for the defendant that Counsel for the plaintiff indicated to the Court that he was not disputing that the Headmaster wrote the contents of the Will at the dictation of the deceased.

It was at this stage also that it was agreed that the affidavits and the death certificate filed along with the application for Probate, should be used as evidence in the action. The main reason for this was that neither of the two attesting witnesses could be found to give evidence at the trial, and the trial was concluded on this basis.

One such affidavit was that of Percy Sargeant who swore to his affidavit on 4 June 1980, before Kathleen I. Mason the Deputy Registrar of the Supreme Court to the effect that the Testatrix Emmeline Morgan executed her Will and Testament on 7 December 1972, by signing her name thereto in his presence and in the presence of the other witness Nathaniel Stewart and that they both affixed their signature as attesting witnesses in her presence. I will have more to say on this at a later stage.

On May 18, 1987, Singh J. dismissed the plaintiff's claim, refused the order sought, and ordered the defendant to pay the costs of the action to be taxed or agreed. It is from this Judgment that the plaintiff has now appealed to this Court.

From the pleadings and on the admission of Counsel, it will be seen that the only issue in the case was whether or not the signature of the Testatrix was a forgery.

In an endeavour to substantiate that it was a forgery the plaintiff called Felix Klein a questioned Document Examiner from the city of New York U.S.A. who stated that he had been engaged in the examination of questioned documents for 40 years.

He compared the disputed signature in the Will using as comparative documents (1) the signature Emmeline Antoinette Morgan on a conveyance made on 26 August 1965, (2) the signature A. Morgan on a shopping list bearing date 2 December 1978, (3) the signature on a page in a Bible (4) a letter written and signed by the Testatrix on 14 April 1975.

Having examined these documents 1 - 4, and compared the writings and signatures thereon with the disputed signature on the Will, he gave as his opinion that the signature on the Will was not done by the Testatrix Emmeline Morgan.

Manfred Morgan the plaintiff gave evidence to the same effect. It is worthy of note that he left Bequia for the United States of America in 1968. His next visit was in 1976, when he found his mother confined to the house, and he never returned until 1980, after her death.

/Ada Morgan.....

Ada Morgan the daughter of the plaintiff and grand-daughter of the Textatrix also gave evidence. She testified that she visited her grandmother quite often and had seen her write on many occasions. She heard a Will had been made by her grandmother but she never saw it.

Now there is one very important area in which this grand-daughter was in violent conflict with the expert Klein. It will be remembered that ~~out~~ one of the comparative documents given to Klein was the conveyance dated 26 August 1965; the signature on which was accepted by all as being that of the Testatrix. When however this document was shown to Ada Morgan she categorically denied in cross-examination that the signature thereon was that of her grandmother.

At the end of the day, the Judge came to the conclusion that he could not accept some of the conclusions reached by the expert as they lacked logic and common sense. On this basis he was of the view that the plaintiff had not discharged the onus placed on him to prove that the signature was a forgery as the findings of the expert clashed with his opinions and were not at all times logical.

The role of an expert in a Civil or Criminal trial is too well known to warrant in this Judgment any dissertation thereon. Suffice it to say that in the final analysis, it is still a matter for the Court or Jury to decide what weight and value is to be placed on his evidence.

In regard to the burden of proof the Judge applied the correct standard. Although the allegation is one of forgery, a criminal offence, the criminal standard of proof beyond reasonable doubt is not the one to be applied. In ordinary civil trials, proof on a balance of probability is what is required bearing in mind the statement of Lord Denning in Hornal v Neuberger Products 1956, 3 All E.R. 972 (a case of fraud) that the more serious the allegation the higher the degree of probability required. In a case of forgery, a high degree of proof is required.

If the evidence of the expert is found to be unreliable and/or unacceptable, then the Judge must of necessity look to see if there is any other evidence to assist him.

In this case there was the evidence contained in the affidavit of the attesting witness Sargeant. There was the evidence of the Headteacher Williams that he wrote the Will under the direction and dictation of the Testatrix. The defendant/respondent himself gave evidence that he called the Headteacher in 1972 at the request of the Testatrix with whom he had worked from when he was a boy. He left Bequia in 1977 for the United States and never returned until after the death of the Testatrix in 1979. It was then he saw the Will for the first time. He said "The signature on the Will is the way deceased wrote in 1972. She was not always well in 1972".

"Then on 3....."

There was also the evidence of Rudolph Leach, the brother of the defendant/respondent. He was present in 1972 at the deceased's home when she called him and requested him to call Sargeant and Stewart to sign a Will she had made. He did not see Teacher Williams make the Will, but he did as requested and summoned the two witnesses. They went into her bedroom and came out, but he did not see them sign as witnesses.

In 1979 he saw the Will for the first time. Deceased was then sick in bed being attended by his wife and himself. She called for the key for her wardrobe, directed that the Will be retrieved from the bottom of the wardrobe and handed it to him. He took the Will, called the defendant in the U.S.A. who told him to take it to Lawyer Sylvester.

He did just this, and when Mr. Sylvester read it out to him he got to know the names of Sargeant and Stewart were on it.

Speaking for myself, there was abundant evidence coming out of the defendant's case, which could have led the Judge to have found in favour of the due execution of the Will.

The appeal before us centered around the following grounds:-

1. The learned trial Judge erred in Law in failing to pay due regard to the opinion evidence of Manfred Morgan And Ada Morgan persons acquainted with the writing of the supposed writer.

2. The learned Judge erred in Law in failing to consider the specimen writings of the deceased Antoinette Morgan made prior to and after the year 1972 the date of the purported execution of the Will.

3. The decision is unreasonable and cannot be supported having regard to the evidence. In particular

   (a) the uncontradicted testimony of the expert witness that the writing of the Will was definately and most certainly not the writing of Antoinette Morgan;

   (b) clear and obvious indications from the writing on the said Will show that the writing was done by someone other than Antoinette Morgan;

   (c) the fact that when the purported Will was presented to a Solicitor (Sylvester) the latter retyped the contents thereof and asked the brother of the defendant/respondent (Rudolph Leach) to take same to Antoinette Morgan for execution thereof before a Justice of the Peace.

I can find no merit in any of these grounds and I do not think any

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useful purpose can be served by adding anything further to what I have already said, except as to 3(c).

On 3(c) the evidence of Rudolph Leach when he took the Will to the Lawyer was:

> "Sylvester took it and gave me a copy to take to deceased and to get a J.P. and let her sign it. At that time she was unable to sign so I brought it back to Sylvester. The signature Sylvester wanted was her signature before the attestation; she had signed after the witnesses."

There is no wrong doing here on the part of Mr. Sylvester. He obviously was dubious about the order in which the signatures appeared and required the typewritten copy to be signed in the usual manner, with the name of the Testatrix coming first. He was merely being cautious, but there was nothing wrong with the handwritten copy if that had been duly executed and witnessed in that manner as her last Will and Testament.

It is patently clear that there cannot be any valid complaint about the findings of the trial Judge on the evidence when considered as a whole.

Before parting with the appeal however, I must deal with an application made by Counsel for the appellant at the commencement of the hearing of this appeal. It amounted to an obsession on his part, and was the subject of a refrain throughout the hearing of the appeal. The application was for the Court of its own volition to exercise the powers conferred by section 34 of the West Indies Associated States Supreme Court Act 8/1970 and order that the witness Percy Sargeant one of the attesting witnesses to the alleged Will, be called before the Court to give evidence. The interest of justice he said demanded the calling of the witness, now that he has been located and is available.

Counsel admitted that he had not filed any application in accordance with the Court of Appeal Rules for fresh evidence to be heard. He admitted that he did not have a transcript of the evidence Sargeant would be in a position to give. He admitted that he did not know whether Sargeant's evidence could have advanced or further destroyed his case. He admitted that he had consented at the trial to the use of Sargeant's affidavit as an attesting witness. He admitted that he could offer no explanation as to why Sargeant could not be found in the tiny Island of Bequia to give evidence at the trial. In short he had done nothing nor had he any material to support an application to this Court to hear fresh evidence. This Court accordingly refused to accede to his request.

I am of the opinion that the appeal should be dismissed with costs to the respondent Jacob Leach.

/L.L....

L.L. ROBOTHAM,
Chief Justice

E.H.A. BISHOP,
Justice of Appeal

G.C.R. MOE,
Justice of Appeal.