37. 1952

In the Privy Council.

No. 22 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL

BETWEEN

SOCKNA MORMORDU ALLIE AND OTHERS (*Plaintiffs*) APPELLANTS.

AND

AHMED ALHADI (Official Administrator) ... ... RESPONDENT

CASE FOR THE APPELLANTS.

RECORD

1.—This is an Appeal from a Judgment of the West African Court of Appeal (Sir Henry W. B. Blackall, President, and Hallinan and Ragnar Hyne, JJ.) dated 1st December, 1950, which dismissed an Appeal from the Judgment of Beoku Betts, J. in the Supreme Court of Sierra Leone, dated 2nd March, 1950.

2.—The action was brought by the Appellants as Plaintiffs for probate in solemn form of a Will dated 20th August, 1939, made by one Mormordu Allie of Freetown, Sierra Leone and for revocation of a grant of letters of administration made on 10th March, 1948, in respect of an alleged Will dated 30th August, 1946, and a Codicil dated 19th July, 1947. Although the alleged 1946 Will and the 1947 Codicil were initially attacked on a number of grounds, the only ground which was persisted in, and with which this Appeal is concerned, was that the document propounded as the 1946 Will was not a Will executed by the deceased but was a document made that is to say forged, after the death of the deceased and substituted for the true Will made by the Testator. This allegation was confined to the alleged 1946 Will and was not made with regard to the 1947 Codicil the validity of which is therefore no longer in issue. p. 6 l. 30

3.—The deceased was a Mohammedan and owner of a substantial property in Freetown: the gross value of his estate was sworn at £65,000. p. 60, l. 33
He had two wives, the Plaintiff Sock-Na Mormordu Allie, who was his first Wife and one Haja Fatmatta Kata. He also had a number of children, including the Plaintiffs Alhaj Baba Allie and Kemoh Allie. By his Will Exhibit G, p. 80

RECORD

dated 20th August, 1939, he appointed the Plaintiffs executors, together with Haja Fatmatta Kata and one Alhadi Antumani, devised certain properties to his wife the Plaintiff Sock-Na for her life and others to his wife
p. 83, l. 20 Haja Fatmatta Kata, and gave his residue to all his children who should attain the age of 21 in equal shares.

Exhibit D, p. 71 By the alleged Will dated 30th August, 1946, he appointed his Wife Haja Fatmatta Kata and two of his sons as executors, made no devise or bequest whatsoever to his wife the Plaintiff Sock-Na, devised a considerable part of his properties to his wife Haja Fatmatta Kata either for life or
p. 76, l. 39 absolutely, and gave the residue of his estate to Haja Fatmatta Kata absolutely.

4.—The evidence with regard to the alleged 1946 Will was as follows.
p. 10, l. 13 In 1946 a Will was prepared for the Testator by one Dougan, a Solicitor's
p. 23, l. 11 clerk, who in preparing the Will was acting for his own personal benefit and not on behalf of his principal. Dougan prepared the Will on oral instructions of the Testator and went with it to the Testator's house where
p. 10, l. 28 there was present one Macauley, a clerk of the Testator. After the Will
p. 10, l. 33 had been read to the Testator he signed it, in the presence of Dougan and
p. 10, l. 35 Macauley, who then witnessed it. The Will was then placed in an envelope
p. 11, l. 42 which was sealed and deposited with the Registrar-General.

The Testator died on 22nd January, 1948, and the Will was delivered
p. 16, l. 27 by the Registrar-General to one Wurie on behalf of Haja Fatmatta Kata
p. 16, l. 19 on 5th February, 1948. Wurie took the Will, in its envelope, to Haja
p. 16, l. 30 Fatmatta Kata's house and in the presence of Ibrahim Allie, a son of the Testator, opened the envelope and read the Will. Wurie then handed the
p. 16, l. 33 Will to Haja Fatmatta Kata, who at a later date gave the propounded
p. 17, l. 9 document to the Respondent, the Official Administrator, for him to obtain letters of administration.

5.—The crucial question was therefore whether the document given by Haja Fatmatta Kata to the Official Administrator was the same document as that which had been handed to her by Wurie or whether it was a substituted document. As to this:

p. 10, l. 33
p. 11, l. 8
p. 11, l. 28
p. 12, l. 18
p. 13, l. 9

(A) The attesting witnesses Dougan and Macauley both swore that the witnesses' signatures on the document propounded were their signatures, and that they were not affixed after the Testator's death.

p. 16, l. 36
p. 16, l. 39

(B) Wuri swore that the document propounded was not the same document as that which he had delivered to Haja Fatmatta Kata. The latter had the Testator's signature on the last page only whereas the propounded document was signed on every page. Wurie was emphatic that if there had been a signature on every page on the document read by him on 5th February, 1948, he

would have noticed it. He also said that the Will read by him on 5th February, 1948, was typed on different paper—" thick " paper like the Codicil." p. 17, l. 2 p. 17, l. 13

(C) Ibrahim Allie—the other person present when the Will was read on 5th February, 1948—also said that the propounded document was not the same as that read on 5th February, 1948. In the latter, his name was mentioned and he was given the Testator's cattle and farms at " Devil Hole " and the residue was bequeathed to the children of the Testator. The signature on the propounded document was " similar to his father's signature and not like his signature." The witness swore that he asked Haja Fatmatta Kata to have the Will read out after the customary 40 days mourning period was over but that she refused and said that she had been advised not to read the Will as it was not good. p. 19, l. 7 p. 20, l. 1 p. 20, l. 10 p. 19, l. 16 p. 20, ll. 16-20

(D) The Plaintiff Sock-Na said that although she was living in the same house with Haja Fatmatta Kata the Will had never been read to her. She testified that Dougan and Macauley had called on Haja Fatmatta Kata three times after the Testator's death. p. 18, ll. 11-13 p. 18. l. 18

(E) An independent witness called as an expert in Arabic writing—one Salamah—pointed to differences between the various signatures on the propounded document and said in terms that the two handwritings in the propounded document on the one hand and a 1942 Will of the Testator were different. p. 22, l. 12

6.—The action was tried on 13th July, 1949, and following days and then adjourned to 3rd August, 1949. On 3rd August, 1949, the learned trial Judge decided to forward the record to the Attorney-General for him to consider whether a *prima facie* case existed for prosecution for forgery and to stay the proceedings pending the Attorney-General's reply. On 21st November, 1949, the reply was received that the Attorney-General considered that a *prima facie* case for prosecution did not exist. The learned trial Judge thereupon restored the case for argument and finally gave Judgment on 2nd March, 1950, dismissing the action. p. 25, l. 27 p. 26, l. 18 p. 26, l. 24

7.—The learned trial Judge first considered the question how far he was bound by the Attorney-General's ruling. He decided that he was not so bound and that he was bound to consider the whole of the evidence with a view to deciding whether the preponderance of evidence was in favour of the document or the contrary. He then examined the evidence in detail. Of the witness Dougan he said that p. 37, l. 20 p. 38, l. 22

" It was a matter for serious comment that clerks to Solicitors " are so disloyal to their employers that they undertake work " which should be undertaken by their employers." p. 43, l. 5

p. 43, l. 7 He considered that the fact that Dougan was the person who prepared the alleged Will might have been a matter for suspicion if it had not been proved that he made other admitted testamentary documents. He stated
p. 43, l. 14 however that subject to this, Dougan impressed him favourably as a witness
p. 43, l. 17 and that he appeared truthful.

Of the other attesting witness, Macauley, the learned Judge said that
p. 43, l. 22 " he was a very unsatisfactory witness," and that had he been the only attesting witness, he would have had no hestitation in saying that the
p. 43, l. 28 preponderance of evidence was against his statements.

The Judge did not consider that there was any reason why Wurie should give false evidence and considered that this evidence was most 10
p. 44, l. 3 important but did not think it reasonable to accept his statement that the
p. 44, l. 34 Will read out by him on 5th February, 1948, was signed only at the end. With regard to Ibrahim Allie, without expressly finding that he was a
p. 45, l. 12 disappointed or disgruntled man, the Judge largely discounted his evidence on that basis.

As to the evidence of the Plaintiff Sock-Na, the Judge said that the
p. 45, l. 19 fact that the Will was not read to her raised a question of grave suspicion as to the conduct of Haja Fatmatta Kata for which no explanation had
p. 45, l. 26 been given and that reasonable grounds existed for lingering suspicions as to the motive of the persons dealing with the Will. He thought it 20 unlikely however that, if Haja Fatmatta Kata and her associates had forged
p. 45, l. 33 the Will, they would have entrusted it to Wurie to obtain letters of administration.

Finally, with regard to the evidence of Salmah, the Arabic interpreter,
p. 46, l. 3 the learned Judge was of opinion that this did not help him to solve the question of forgery.

Accordingly he came to the conclusion that while there were some
p. 46, l. 38 circumstances which called for scrutiny and examination, on the probabilities of the case the propounded document was the true and last Will of the Testator and he pronounced that it be granted probate in solemn form. 30

8.—The Plaintiffs appealed to the West African Court of Appeal
p. 53, against the Judgment of the learned trial Judge and the Judgment of the
No. 33 Court was delivered on 1st December, 1950, dismissing the Appeal.

p. 54, l. 7 Sir Henry Blackall, P., held first that the learned Judge was wrong in staying the proceedings for reference to the Attorney-General since there was no allegation that the Official Administrator had forged the Will. He considered, however, contrary to the Appellants' submission, that no substantial wrong had been done to the Appellants because the Judge had 40 expressly stated that he was obliged for himself to decide the allegation of
p. 54, l. 31 forgery. From this he concluded that the Judge was in no way influenced by the opinion of the Attorney-General.

The learned President then briefly reviewed some aspects of the evidence. He did not accept the evidence of Wurie with regard to the
p. 55, l. 8 signature or signatures on the Will or as to the type of paper and disposed

of the evidence of Ibrahim Allie by saying that when the latter stated that the signature on the propounded document was " similar to " but not " like " his father's signature, the witness was making a distinction without a difference. The learned President considered that there was no reason to doubt the evidence of the attesting witnesses and said that generally the case depended largely on oral evidence and that there was sufficient evidence to justify the conclusions of the trial Judge.

RECORD

p. 55, l. 16

p. 55, l. 36

Hallinan, J. and Ragnar Hyne, J. concurred.

9.—The Appellants submit that the decision of the learned trial Judge was against the overwhelming weight of evidence which indicated that the document propounded was a forgery: that the learned trial Judge was himself strongly impressed with the suspicious nature of the actions of those who put the document forward and that he would have found in favour of the Appellants' contentions but for his decision (which the Appellants submit was a mistaken decision) to refer the issue of forgery to the Attorney General. Moreover, having, correctly, decided that the burden of proof was on the Respondent, who put the document forward, the learned trial Judge ought not, in the submission of the Appellants, to have found in favour of the document in the face of his own statement that he was left with a feeling of suspicion in his mind. The West African Court of Appeal did not, in the submission of the Appellants, do justice to the very considerable body of consistent evidence which pointed to the alleged Will being a forgery or sufficiently estimate the influence on the Judge's mind which the finding of the Attorney General must have had.

10.—The Appellants submit that the Judgment of the West African Court of Appeal and of the trial Judge ought to be reversed or alternatively that a new trial should be ordered for the following amongst other

REASONS

1. BECAUSE the decision of the trial Judge was against the weight of evidence.

2. BECAUSE the trial Judge was wrong in referring the question of forgery to the Attorney General and because the Appellants were prejudiced by such a reference being made in the course of the trial.

3. BECAUSE the burden of proving the alleged Will rested upon the Respondent and because the trial Judge himself was evidently not satisfied that this burden had been discharged, and consequently should not have pronounced in favour of the alleged Will.

R. O. WILBERFORCE.

In the Privy Council.

No. 22 of 1951.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL.

BETWEEN

'SOCKNA MORMORDU ALLIE and OTHERS ... (*Plaintiffs*) APPELLANTS

AND

AHMED ALHADI (Official Administrator) RESPONDENT.

CASE FOR THE APPELLANTS

LAWRENCE JONES & CO.,
Winchester House, E.C.2,
Solicitors for the Appellants.

GEO. BARBER & SON LTD., Printers, Furnival Street, Holborn, E.C.4, and Cursitor Street, Chancery Lane.
A58907)