

ROYLE & OTHERS v. HARRIS & OTHERS.

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Feb. 21;
March 1.

Probate—Practice—Will—Position of Signature of Testator—“At the foot or end thereof”—“Opposite to the end of the Will”—Wills Act Amendment Act, 1852 (15 & 16 Vict. c. 24), s. 1.

A testamentary document consisted of a sheet of paper containing on the first page a lithographed form of will. The form in the first page was filled in by the testatrix, and contained bequests to “my sisters and friends.” Her signature and those of the attesting witnesses were at the bottom of the first page. The second and third pages contained a list of bequests to persons, some of whom were the sisters and others friends of the testatrix. There was no direct evidence that the second and third pages had been written before the execution of the will:—

Held, that, assuming the second and third pages to have been written before the execution of the will, the signature of the testatrix was not so placed “opposite to” the writing contained in these pages as to bring the case within s. 1 of the Wills Act Amendment Act, 1852, and that, therefore, the first page alone could be admitted to probate.

In the Goods of Wotton (Law Rep. 3 P. & D. 159) explained.

By their statement of claim the plaintiffs, who were sisters and three of the next of kin of Sarah Akeroyd, claimed a grant of administration of her personal estate, with the first page of a testamentary paper annexed, or, in the alternative, in the event of the Court being of opinion that such paper contained no valid disposition of property, a general grant of administration. By their counter-claim, the defendants, three friends of the deceased, whose names were mentioned as legatees in the second and third pages, claimed that the whole testamentary paper constituted the will of the testatrix, and that administration should be granted to such person or persons as the Court might direct, with the whole testamentary paper annexed.

The first page contained a lithographed form of will, filled in in the handwriting of the testatrix, and was as follows: “This is the last Will and Testament of me *Sarah Akeroyd* (1), wife of *John Akeroyd* of *Brixton London*. Whereas I am possessed as my separate property, independently of my said husband, of certain personal estate, namely *Money Furniture House Linen Wearing Apparel and Jewellery* which I am entitled to dispose of by will Now in exercise of the said power vested in me I

(1) The words in italics were in the handwriting of the testatrix.

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hereby dispose of the same in the following manner, that is to say, I give and bequeath unto *my sisters and friends* to and for *their* own use absolutely and I nominate constitute appoint to be executors of this my will and hereby revoking all former or other wills made by me at any time heretofore I declare this to be my last will and testament. In witness whereof I the said *Sarah Akeroyd* have to this my last will and testament set my hand the day of in the year of Our Lord One thousand eight hundred and

Signed by the testatrix . . . in the *Sarah Akeroyd*
 presence of us present at the same
 time who have thereunto sub-
 scribed our names as witnesses
 in the presence of the said testa- Maurice Oram
 trix and of each other. Sarah Ann Brickley."

The second and third pages contained a list in the handwriting of the testatrix of legacies of "money, furniture, house linen, wearing apparel and jewellery" to the three plaintiffs, the three defendants, another sister, and some other friends.

Neither of the attesting witnesses recollected seeing the second and third pages; there was no direct evidence that any part of them was written before the execution of the will; and it was admitted at the trial that a part of each was not written before the execution of the will.

Searle, for the plaintiffs. The grant should be limited to the first page of the instrument. That page constitutes a will "signed at the foot or end thereof" by the testatrix, within the meaning of s. 1 of the Wills Act Amendment Act, 1852. (1) The second and third pages "are underneath or follow" the

(1) By the Wills Act Amendment Act, 1852 (15 & 16 Vict. c. 24), s. 1: "Where" by 1 Vict. c. 26 "it is enacted that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction: Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for

him as aforesaid, be deemed to be valid within the said enactment, as explained by this Act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall

signature, and are of no effect. *Sweetland v. Sweetland* (1), *In the Goods of Dilkes* (2), *Margary v. Robinson* (3), *Phipps v. Hale* (4), and *In the Goods of Hughes* (5), shew that there must be an attested signature at the real end of the will; and here the first page does not incorporate the second and third pages. In *In the Goods of Wotton* (6) the first page, that which was signed, was really the end of the will, which began on the second page.

Bayford, Q.C., and *Hextall*, for the defendants. The first page of the instrument was clearly not intended to be in itself the will of the testatrix. The second and third pages contain particulars of the bequests made in the first page; those parts of the pages, which were written before the execution of the will, should be included in the grant. The cases of *In the Goods of Coombs* (7) and *In the Goods of Wotton* (6) are sufficient authority for the proposition that, under the circumstances, the signature, though on the first page, may be regarded as "opposite to the end of the will," within the meaning of the section.

Cur. adv. vult.

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be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature,

or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made."

(1) 4 Sw. & Tr. 6.

(2) Law Rep. 3 P. & D. 164.

(3) 12 P. D. 8.

(4) Law Rep. 3 P. & D. 166.

(5) 12 P. D. 107.

(6) Law Rep. 3 P. & D. 159.

(7) Law Rep. 1 P. & D. 302.

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SIR F. JEUNE, PRESIDENT. In this case, there is produced a lithographed form of will on the first of four pages of foolscap paper. The form, as filled up in the handwriting of the testatrix, has the usual commencement of a will, with the name of the testatrix mentioned, and bequeaths several enumerated kinds of property to "my sisters and friends." It does not appoint any executors, but the lithographed words revoke former wills. At the bottom of this page, (I shall speak of it as the first page, and the two others with writing on them as the second and third,) there are the signature of the testatrix, Sarah Akeroyd, and the signatures of the witnesses opposite the testimonium clause. One of the witnesses proved the due execution of this document, but knew nothing of any writing on the pages of the document other than the first. It was admitted that the other attesting witness could prove no more. In fact, however, on the second and third pages of the document there is a list of bequests in the handwriting of the testatrix to persons, some of whom were the sisters and the others friends of the testatrix. At the very top of the second page is one of these bequests in these terms, "My sister, Emily Durrant, 200*l.*, or equally divided between her surviving children," and other gifts follow in terms of similar character.

Assuming, for the moment, that the second and third pages were written before the execution of the will of the testatrix, the question is whether their contents can be admitted to probate. It is clear, I think, that they cannot be treated as incorporated, or as interlineations, such, for example, as were admitted to probate in the case of *In the Goods of Birt* (1), because there is nothing on the face of the first page referring to them. Nor do I think it possible to contend that the signature is so placed "opposite to" the writing on the second and third pages as to bring the case within the language of s. 1 of the Wills Act Amendment Act, 1852.

The appearance of the place of the signature in relation to the contents of the document in this case is very different from that in the case of *In the Goods of Coombs*. (2) I have looked at that will, and the signatures of the testator and witnesses, which are

(1) Law Rep. 2 P. & D. 214.

(2) Law Rep. 1 P. & D. 302.

written across the second page and opposite the third, on which there is no space available for signatures, make it apparent, on the face of the will, that the testator "intended to give effect by such his signature to the writing signed as his will."

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But it is suggested that, as in the case of *In the Goods of Wotton* (1), the will may be considered to begin with what I have called the second and third pages, and to end with what I have called the first page, so that the dispositions on the second and third pages are not "underneath," and do not "follow" the signature, within the meaning of the section.

There are, no doubt, points of similarity between the document in this case and the document in the case of *In the Goods of Wotton*. (1) (2) In both instances there is a lithographed form partly filled up, with a properly attested signature at its foot on the first page, and the substance of the disposition on the second and third pages. But there is a marked difference in the form of the document in that case and this, as well as a difference in the evidence. In the case of *In the Goods of Wotton* (1) the second page begins with the ordinary commencement of a will, including the name and description of the testatrix, and the language which follows is that of a complete disposition of the property. The lithographed form on the first page, on the other hand, is not filled up with the name of the testatrix, so that it is a less natural commencement of the will than the second page. The second and third pages could not possibly have been intended to be inserted in the body of the first; they form with the first a consecutive document, and so considered can hardly fail to be deemed the real commencement of the will. Further, the affidavit of one of the subscribing witnesses contains the following passage: "And further referring to the said will, and particularly observing that the same has been written on a printed form, and that the signatures of the said testatrix and of the subscribing witnesses as aforesaid are placed and subscribed at the end of what is apparently the first page of the said will and not at the foot or end thereof, And further referring to the

(1) Law Rep. 3 P. & D. 159.

(2) The learned President had examined the will in question.

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words written on what are apparently the second and third pages of the paper on which the said will is written, the same beginning thus, 'This is the last will of Elizabeth Wotton, inmate of the Friendly Female Asylum, Gloucester Place, Albany Road, Camberwell; I bequeath to my relation, to my nephew Samuel Wotton;' and ending thus, 'to be sold to help pay expenses of which, a sofa, round table, a night ditto, washhand-stand, carpets, coal tub, coal scuttle, old deal table with two drawers, two white blinds,' I further make oath and say that the whole of such words comprised on such two sides were written thereon previously to the execution of the said will by the said deceased as aforesaid, and I verily believe and in my conscience am perfectly certain that the said deceased intended her said will to begin at the top of the said second side as aforesaid, and that, in signing the same, as above deposed, she considered the printed form as in effect the conclusion and attestation to her said will, and disregarded the printed endorsement thereon as of no consequence, and that she intended her said signature to the said will to be at the foot or end thereof, and in due and final execution of the same." It may be that the statement of belief of this witness is not strictly evidence, but it is at any rate clear that the second and third pages were in fact written before the execution of will, and, looking at the whole frame of the document, the inference is irresistible that they were written before the first page and intended to be the commencement of the will.

I should be glad if in this case I could come to a conclusion similar to that reached *In the Goods of Wotton* (1); but I cannot do so. I have no doubt that the fact is that the words on the second and third pages were not intended to commence the will, but were, whenever they were written, intended to expand and explain the bequest to "my sisters and friends" on the first page. Very probably they were written where they are because there was insufficient room for them after the words "my sisters and friends" on the first page.

I have assumed that the second and third pages were, in fact, written before the execution of the will. There is no direct evidence that they were, and I should, for several reasons, have

(1) Law Rep. 3 P. & D. 159.

found the question not easy to decide. But in the above view it is not necessary to consider it.

The result is that the second and third pages cannot be admitted to probate, but the first, I think, can. This is not a case such as *Margary v. Robinson* (1), where two crosses placed by a blunder in the middle of a document were held not to constitute an execution of any part of it, nor a case such as *Sweetland v. Sweetland* (2), *Phipps v. Hale* (3), or *In the Goods of Dilkes* (4), where signatures in the earlier parts of a document were considered to be signatures of authentication and not of execution. So far as it goes, the first page of the document in this case constitutes a properly executed will.

I pronounce, therefore, in favour of the will as contained in the first page of the document in question, costs of all parties to come out of the estate.

Solicitor for the plaintiffs: *John Hands, for Smith & Atkinson, Folkestone.*

Solicitor for the defendants: *John Greenfield.*

(1) 12 P. D. 8.

(3) Law Rep. 3 P. & D. 166.

(2) 4 Sw. & Tr. 6.

(4) Law Rep. 3 P. & D. 164.