STORY OF A FORGED WILL AS TOLD BY SUPREME COURT

Woman Tries All Kinds of Schemes to Get Hold of Property ---Supreme Court Says the Wills "Found" by Her, Some Two or Three of Them, Are Rank Forgeries---Strange Fatality That Made It Possible to Prove Where She Was on Every Date She Claimed to Be at Certain Places---Reads Like a Novel.

OREGON SUPREME COURT DECISIONS

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Contest of Will of James Young, Deceased, Umatilla County.

In the matter of the estate of James W. Young, deceased. Contest of will. Appeal from the circuit court for Umatilla county, Oregon. The Hon. H. J. Bean, judge. Argued and submitted May 3, 1911. Pendleton. Douglas W. Bailey, for respondent. Fee & Slater, and Frederick W. Steiwer for appellants. McBride, J. Reversed.

James W. Young, a resident of Weston, Umatilla county, Oregon, died on the 26th day of August, 1905, leaving real and personal property, approximately of the value of from thirty to forty thousand dollars. He left a will, bequeathing a farm in Umatilla county to Mrs. Nora Watts, a niece, making no disposition of his other property, which, in the absence of testamentary disposition, devolved upon certain nephews and nieces who were parties to this proceeding in the court below. The will was admitted to probate on September 19, 1905, and B. B. Hall was appointed administrator of the estate.

The proponent of the will now in controversy is a niece of deceased and also his step-daughter, being the daughter of his brother. Her mother was divorced from her first husband and subsequently married deceased, and in about the year 1891 she separated from him and secured a divorce. Mabel Warner, then Mabel Young, remained in the care of deceased, who paid for her care and education until 1893, when she went to stay with her mother, and later married one —— Cain, by whom she had four children and from whom she was subsequently divorced, thereafter marrying Warner, her present husband. Under circumstances which will be mentioned in the opinion, she professed to have found in the custody of Hall, the administrator of Young's estate, a will, purporting to give to Nora Watts, a niece of deceased, the sum of $300; to Fred Young, nephew of deceased, and brother of proponent, $500; to Grace Rogers, a niece, $300; and to proponent residue of the estate, with a request to pay to one Mrs. Picard the sum of $15 per month for life. This will purported to have been witnessed by Hon. John McCourt, now U. S. district attorney, and W. A. Larkins, and was dated October 8, 1903. It was placed in the hands of a firm of attorneys for probate but upon inquiry the alleged witnesses disclaimed any connection with it, and it was not probated. It is practically conceded to be a forgery.

Later another one of her attorneys received through the mail an instrument purporting to be the will of deceased, bequeathing to Fred Young, a nephew, $1,000; to Lile Young and Norman Young, nephews, $300 each; to Mrs. Picard, a friend, $500 and to proponent $10,000; and all the real and personal property of deceased. This will was also repudiated by the alleged witnesses, and it is practically conceded to be a forgery. Proponent was indicted for forgery but was not convicted. She thereafter commenced a suit in equity to recover the estate of deceased upon an alleged contract made by him to her mother, at the time of her divorce from him, wherein it was claimed that he agreed that, in consideration of the mother making no claim for alimony, he would bequeath all his property to proponent. She was defeated in this suit. On February 4, 1909, proponent presented to the county court for probate an instrument purporting to be the will of deceased which reads as follows:

"Weston, Nov. 21, 1893.

"I, J. W. Young, before God, make this my last will and testament. To my daughter, May Young, I give and bequeath all my property, in fulfillment of a solemn and binding contract made with her mother. I appoint I. E. Saling, my executor.

"J. W. YOUNG. (Seal)

"I acknowledge this my will and sign my name and set my seal in presence of the following witnesses.

"J. W. YOUNG. (Seal)"

"S. V. KNOX, Weston, Oregon.

"LOUIS RAGLE (X) his mark, Weston, Oregon."

Proponent claimed that this will was sent to her by mail in a sealed envelope together with an old memorandum book which she identified as one long used by deceased, and that the sender was unknown to her. This book with its entries was introduced for the purpose of comparison to identify the handwriting of the entries theren with the will in question. For the same purpose proponent also introduced two letters purporting to have been written by deceased; one to proponent, dated September 30, 1904, and known in this record as defendant's exhibit 51, and another purporting to be from deceased to Clara Young, the wife of proponent's brother, dated August 2, 1905, and designated as plaintiff's exhibit "E".

Other facts appear in the opinion. The county court found against the validity of the proposed will and proponent appealed to the circuit court which reversed the decision and admitted the instrument in probate. From this decree contestants have appealed to this court.

McBride, J.: We are forced to the conclusion that the alleged will is a forgery. And not only that it is a forgery, but that the letters and exhibits produced by proponent to sustain it are also forgeries.

It is practically conceded, and no reasonable person can doubt, that both the alleged wills previously produced, which purported to convey the bulk of the property of deceased to proponent, were bold, impudent forgeries. It is a fair presumption that they were made in the interest and at the instigation of the person who was to profit by them. They were discovered in the possession of proponent and there is nothing in the evidence indicatng that she had any friend so interested in her welfare as to forge wills in her favor. It is true that one of them came not directly to her but to her attorney who, as an honorable gentleman, declined to act upon it. But it would be an easy matter for proponent herself or some one in her behalf to mail it to her attorney. The wills were for her benefit. Who but she could have an interest in fabricating them. But there is direct and reliable testimony connecting her with the fabrication of the first alleged will in her favor. B. B. Hall, who was appointed administrator of Young's estate, testifies that he made exhaustive search for papers belonging to Young and found no will, except the first admitted to probate. He kept the papers of deceased at the bank in a private box that he had used during his lifetime and was thoroughly familiar with them and is positive that the pretended will was not among them.

In April, 1906, proponent called upon him at the bank and asked for permission to look over Young's papers. This was granted and proponent, in company with her brother, Fred Young, went with witness into the private room of the bank and the box was placed upon the table, proponent sitting on one side and witness on the other, with the box between them. While proponent was examining the contents of the box, Fred Young made some inquiry as to the location of a lot in Weston and proponent attracted the attention of witness for a moment to a plat of the town, which hung on the wall behind him. When he turned his attention to the box again he found the envelope containing the first alleged will in favor of proponent in the box. He took it up and proponent said: "Oh, this is what I have been looking for. It is the last will of Uncle Jim. How long has it been here?" To which qeustion witness answered, "Not to exceed a minute or two minutes, Madam; just since you dropped it in there." Hall swears that he knows that the alleged will had not been there previously and he is a reliable and disinterested witness. The theory of proponent that Hall was hiding or suppressing the document is absurd. If he knew the box contained a will he had only to refuse to permit her to exemaine it or to have first removed it from the box and then allowed an examination. The conclusion is irresistible that she placed the alleged will in the box while his attention was diverted to the map. Her connection with the will sent to Carter is not so clearly shown, though the letters in the signatures of J. W. Young, in all three of the alleged wills, are spaced so nearly alike that they might be superimposed one upon the other and practically coincide. It is a practical impossibility for a man to write his name three times exactly alike and this similarity is strong evidence that all three signatures were traced from a single genuine signature. Here we have evidence connecting proponent with the fabrication of two false wills and when she produces a third, its geuineness is at least open to suspicion. The interest of proponent to forge a will and her disposition to do so are established not only by the facts above stated but by other evidence as well. Thus on November 29, 1905, she wrote as a postscript to a letter to Phelps & McCourt, who at one time had been employed by her to ascertain whether she had been legally adopted by deceased, and who had told her she was "chasing a rainbow," the following: "Phelps, I thinks that rainbow I chased was quite brilliant. I will have a will for probate that will surprise you." This testimony was excluded on the trial as a privileged communication. But we think it was admissible, as the relation of attorney and client had terminated at the time the letter was written, and it also contained an indirect threat to commit forgery and such a communication is never privileged. The proponent, having voluntarily gone upon the stand as a witness upon the general subject, waived the right in any event to object to the examination of Judge Phelps: L. O. L. Sec. 731. She also told Mrs. Eastland that if she could not get the property one way she would another, and the testimony is abundant to indicate a disposition on her part to secure the property of deceased by any means, fair or foul.

We do not believe the testimony of S. V. Knox or Della Stacey. Many persons of high respectability, acquaintances and neighbors of Knox, who have ample opportunity to become aware of his reputation, say that it is bad. It seldom happens in a court of justice that a man' reputation is so thoroughly impeached by the testimony of disinterested persons whose opportunities of knowledge are the very best. It is true that some persons of respectability testify to his good reputation, but those who have known him best and longest speak otherwise and they are greatly in the majority.

The witness Della Stacey, daughter of Louis Ragle, one of the reputed witnesses of the will in question, is also shown to be a person of bad reputation and vicious habits. It is needless to dwell in detail on her life as a girl and woman. It is such as to entirely discredit any statement she might make on any disputed question of fact.

The will is dated November 21, 1893, and Knox testifies that he went into Young's hardware store to buy something, and that Young called him to sign as a witness. The evidence shows that Young did not purchase the store until early in December, rendering it very unlikely that he was there in charge at the date of the supposed will. Witness Stagg testifies that he sold the business to Young early in December. The testimony of Knox is vague and uncertain in many particulars. He stated to Hall and Watts that he knew nothing that would be of benefit to either side, which, if his present testimony is true, was an absolute falsehood. It is in evidence that Young disliked Knox and warned persons to have nothing to do with him, as he was a fool and dishonest. Ragle's name is written on the document by the same person who wrote the body of it, and what purports to be his mark appears on the instrument. He was an illiterate, unreliable drunkard. The evidence shows that Hall was constantly in the store until the spring of 1894, and it is inconceivable that Young, who was a careful, prudent business man would have passed him by to select men, one of whom he thought dishonest and a fool, and the other a drunken sot, who could not write his own name, to witness the most important document he had ever executed. There is usually some sentiment which comes to the surface when a man sits down to execute his last will. He generally calls on his nearest and closest friends to witness his signature and selects persons who are reliable members of the community and whose word will be received when his own voice is silenced in death. He deposits it in the custody of some reliable person and tries to make sure that it will be preserved. But proponent would have us believe that James W. Young did none of these things. In the light of the evidence we would be compelled, in order to sustain this document, to believe that, disregarding the care and attention that he devoted to the preparation of his first will—the one drawn up by Parks—he chose to write his own will with a pencil, upon a scrap of paper, and call in two of the most worthless characters in the community to witness it; and this in the face of the fact that the will regularly drawn up by Parkes was then in existence; that he deposited this document with some unknown person who had not the decency to declare its existence or to disclose him own name; that he made no mention of his prior will and did not destroy it, and told none of his intimate friends that he had made a second will. In view of his careful business habits this is incredible. Della Stacey's account of the execution of the will is full of improbabilities. She testifies that she, her father, Norman Young, Knox and J. W. Young were in the store of J. W. Young at Weston; that she was then about 17 years of age; that Young called her father and Knox to witness on paper and then they asked him what it was, he said, "Well, if you must know it is my will;" then he signed the paper and handed it to Knox who signed it; that Young then wrote something and handed it to Ragle who made his mark; that Young then folded it, put it in a black pocketbook and placed the book in his inside coat pocket. She carefully described the size and color of the pocketbook which corresponds very closely with the one which proponent claims to have received with the alleged will when it came to her through the mail. Witness testifies that she was standing about 12 feet from Young when all this took place, and yet she distinctly everything that was said and all that was done, after a lapse of 16 years. That a girl of 17 years, with no particular reason for noticing or being interested in the transaction, should attend to and remember all these details is not probable. It is absolutely certain that she was not in Weston on the 21st day of November, 1893, the date of the will. She was a witness in a criminal case in La Grande, 45 miles away, on the 20th. After this cause arose and it was known that she would be a witness it came to her knowledge that a detective was in La Grande looking up her record, and it would have been dangerous for her to swear that she was in Weston on the 21st, so she fixes a later date. Though she went by another route, she reached home as soon as possible, by claiming that she rode across the country on horseback. But she was not there on the 21st, so that to sustain her story it must be assumed that the date of the will is incorrect. The very last thing that a man is likely to date incorrectly is his will. She was an old time friend of proponent, and just the sort of a person she would naturally select to aid her in a scheme to manufacture evidence to fit her contention. The evidence does not show proponent's course of life to have been such as to entitle her to much credit as a witness. An associate and intimate friend of Della Stacey in girlhood, and after her marriage living apart from her husband and children, wandering around over the country with itinerant vaudeville shows, where she was engaged in "singing and dancing, rag dancing, Spanish dancing, Scottish dancing, and Buck and Wing dancing, she does not present an attractive picture of American motherhood and womanhood. There is some evidence tending to show that, during her early girlhood, deceased entertained a strong affection for her, but that later, probably from her own misconduct and disregard of his wishes and possibly from a mere whim this regard changed to indifference or positive dislike. Grace Rogers testifies that "Young was sulky with her and I have every reason to believe his dissatisfaction was about her association with Della Ragle." The same witness also testified that in the fall of 1893 Young referred to Mabel and her mother as that "damned outfit" and said that after she left she had stolen his ring, and that when he met her afterwards in Pendleton he refused to shake hands with her. She went away with her mother in the fall of 1893 and the mother subsequently sued Young for $62 as wages for Mabel while she was with him. Referring to this action in a conversation with Mrs. Meiners he said, "The devil would get mad. I thought I was done with them people but they have sued me again for wages." To Mrs. Phillips he said that this was the last he ever intended to do and he hoped he was through with the accursed family. It is worthy of notice that the will now in question bears date of November 21, 1893, the very day this suit for wages was settled in Pendleton. It seems very improbable that deceased would select this very time to write a will in favor of proponent and it is quite probable from the testimony that he was in Pendleton on that date, settling what he deemed an unjust action brought against him in proponent's behalf.

The will itself, and the letters and exhibits presented by proponent for comparison, while fairly skillful imitations of the handwriting of deceased, differ from it in many important particulars. Deceased was a poor penman and worse in his orthography, and while a fairly good business man was evidently a man of little education. In many instances, upon his books and checks, the name of I. H. Saling appears and he invariably spelled it incorrectly "Sailing." In the supposed will it is correctly spelled. It is hardly probably that he deviated in this one single instance from his invariable habit, both before and after, of spelling the name. Deceased had also an almost unchangeable habit of making a capital "I" approximately thus, "I" or "I," the stem being made first and the upper turn being completed by a separate stroke of the pen, and always touching or projecting beyond and to the right of the top of the stem. In several score of instances, occurring in his genuine writings, there appears only one where this manner of making the letter has not been followed. In the proposed will and alleged letters to Clara Young, and proponent, and in the memoranda in the pocketbook the prevailing type of capital "I" when viewed under a microscope appears approximately thus "I" or "I", the glass revealing a distinct space between the stem and the upper turn of the letter. In his true writings he has a characteristic and very unusual way of making a capital "N", thus "N" the upper turn and downward stroke at the last never being omitted. In the supposed will and in the letters and memoranda above alluded to the capital is made approximately thus "N" showing a fairly well made standard capital "N" not seen in any of his other writings and with the upper turn and shading at the end of the letter entirely omitted. Another common characteristic in the writing was when writing words containing "th" he would cross both the "t" and the "h", thus "th" or "th". In the alleged will and other documents referred to these letters are crossed approximately thus, "th" or "th" or "th", the "t" itself not being crossed. In the letters before referred to the words "letter" and "better" are properly spelled, and in other genuine letters they are mis-spelled "leter" and "beter."

There are many other marked differences between these exhibits and his genuine writings but it is useless to prolong this opinion by citing examples. There is a marked resemblance in these documents in some respects to the genuine writings of deceased, but such resemblance is the essence of forgery. The imitation is clever, but that it is forgery. It is a fact known to everybody that the hand-

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