CATHERINE R. ANDREWS, **F. O. THORNE**, **IDA C. ROBERTS-PARKER**, **F. O. ROBERTS**, **C. B. ROBERTS**, **J. W. S. THOMPSON**, **W. S. THOMPSON**, **A. B. THOMPSON**, and **LOTTIO A. THOMPSON-TAYLOR ET AL.**, kin of the Late WILMOT E. STEVENS, Appellants, v. **THEODORE M. GARDNER** and **CECILIA GARDNER**, relatives of the Late DEBORAH R. STEVENS-REID, Executrix of the Estate of the Late WILMOT E. STEVENS, Appellees.

APPEAL FROM JUDGMENT ALLOWING PROBATE OF A WILL.

Argued November 9, 13, 1950. Decided February 2, 1951.

1. The acceptance of anything of value from the winning party by the jurors after the verdict is against public policy and constitutes misconduct sufficient to disturb the verdict and warrant a new trial.

2. Bribery involves a promise to give, or an acceptance of, money or other thing of value. Almost anything may serve as a bribe as long as it is of sufficient value in the eyes of the person bribed to influence his official conduct.

3. Where the facts and circumstances tend to show that the will presented for probate is forged, it will be declared invalid and rejected.

On appeal from judgment admitting a will to probate, *judgment reversed.*

M. S. Cooper for appellants. *A. Dash Wilson,* Jr., for appellees.

MR. JUSTICE DAVIS delivered the opinion of the Court.

Because of his realization and convictions respecting the uncertainty of life and because of his desire to insure a safe transmission of his earthly possessions and accumulations to his posterity, man inaugurated the practice and custom of making wills. By this custom his property is, after flight from time to eternity, disposed of in harmony with his declaration of his last wish and desire during his lifetime. The right to dispose of property by will at death is of ancient origin. It existed in ancient Egypt, Babylon, and Assyria, and was known to the Hebrews, Greeks, and Romans of antiquity. Instruments resembling a modern will were evolved under the Justinian Code, which was promulgated during the later years of the Roman Empire. Courts have ever and anon found themselves faced with, and engaged in, the adjudication of causes arising from the exercise of this right, this old custom.

The genesis of those proceedings as disclosed by the records certified to us can be stated in the following manner. On the corner of Gregory and Mechlin Streets in the city of Harper, Maryland County, stood an imposing castle in which lived Alexander Boyde Stevens, Deborah Stevens, his wife, and Wilmot E. Stevens, their only son. During the evening-tide of his mortal existence, A. Boyde Stevens made and executed a last will and testament in which he declared that upon the death of his wife Deborah, should there be no heirs of his body by her, or of the body of his son Wilmot, then all his real property should revert to his nearest relatives. A. Boyde Stevens subsequently died, leaving his widow and his son Wilmot, the latter of whom became afflicted with the deadly malady known as leprosy. For many years prior to his death, he suffered dismemberment of certain members of his body, namely, his fingers, by this disease, and in 1927 finally succumbed and died, thus leaving his mother Deborah Stevens, maternal aunt of Theodore and Cecilia Gardiner, the appellees in these proceedings.

The records further disclose that after the death of Deborah Stevens in 1944, seventeen years after the death of Wilmot, her son, a will, purporting to be the last will and testament of Wilmot Stevens , was offered to court for proving and probate. In the said purported will, Deborah Stevens is named as sole executrix, and is the only beneficiary and legatee. Moreover, an inspection of the will reveals that the names of Theodore Gardiner, Cecelia Gardiner, and a George B. Stevens appear on the said purported will as attesting witnesses. Upon the offering of said Will for probate, objections were interposed by appellants, the most salient of which was an attack upon the genuineness of the will. In other words appellants contended that the will was a forgery and not the genuine will of Wilmot Stevens. Issue between the parties having been joined, the matter was duly tried, and on April 14, 1948, a verdict was returned by the trial jury declaring the said will to be genuine, true and correct, and authorizing its admission to probate. Following this verdict appellants filed a motion for new trial, which motion we deem it proper to quote word for word :

"And now come the objectors in the above entitled cause and respectfully move this Honourable Court for a New Trial on all the pleadings herein and specifically on the following grounds :

"1. That the verdict of the empanelled jury was manifestly against the law and the evidence adduced in this case, as was brought out by witnesses Thomson, Boston Williams, and A. G. Tubman on their direct statements that said signature on the Will was not that of Testator as they were intimately acquainted with Testator's

handwriting and also that the identical Will was shown him in 1943 by Deborah R. Stevens, the mother of W. E. Stevens, Testator, about 16 years after Testator's death and it was then not signed by Testator nor by any of the attesting witnesses, which evidence shows that said Will is definitely spurious and not genuine. See Court's records of witnesses' statements on direct and cross-examination. All which objectors are ready to prove.

"2. That the verdict of the empanelled jury was extremely against the weight of the evidence produced by objectors, in that A. B. Thomson principal witness and interested party also Boston Williams and A. G. Tubman not interested witnesses definitely stating the invalidity of the above mentioned Will which statements in keeping with law preponderate over that of the respondents who are parties to the suit, attesting witnesses to the Will and also interested parties. See court's records for evidence given by Thomson, Williams and Tubman both on the direct and cross-examination. All of which the objectors are ready to prove.

"3. That Massy Mombo and Richard McIntosh members of the empanelled jury bears relationship to the leading counsel of the respondents as clients and lawyer in matters now before this court, and which facts were not brought to the notice of objectors until said jury was empanelled and the trial almost completed, said cases being the Mombo's Estate and Cooper vs. McIntosh Action of Injunction. See court's records in the above named cases. All which objectors are ready to prove.

"4. That the father of D. A. Harris, Jr., one of the empanelled jury was seen by one of objectors, A. B. Thomson, discussing with one of the respondents Theodore M. Gardiner and thereafter immediately juryman D. A. Harris, Jr., came up and also had a private conversation with his father when respondent T. M. Gardiner had gone; this was at the time of the trial of said case when the court gave recess and the trial jury not being kept together. All which the objectors are ready to prove.

"5. The members of the empanelled jury received a bribe from the respondent in the above entitled cause after having been accepted as jurors, as will be seen from a statement made by the brother one Joe Moulton of one of the jurymen—E. Moulton, that certain jurymen were disputing among themselves as to the amount given them it not being sufficient and he having obtained a certificate from T. M. Gardiner one of respondents that the amount stated he received was not correct and that he had given him no money. All which the objectors are ready to prove.

"6. And also because objectors contend that the verdict was very unreasonable and

unfair to them and therefore move this court to grant them a New Trial of the above action because of the above stated reasons. All which the objectors are ready to prove."

The motion was duly heard, and after denying same the trial judge on April 26, 1948 rendered final judgment affirming the verdict of the jury and declaring the said will duly proved. It is from this judgment and other adverse rulings that appellants have fled to this forum of *dernier ressort* for a review of the matter and correction of what they consider errors in the trial.

We would like to observe that the records in this case are voluminous, but stripped of excesses we find only two questions necessary to be considered and passed upon. In our opinion these are the points upon which an impartial adjudication and determination rest.

The first is, whether or not the trial judge erred in overruling and denying appellants' motion for new trial. The second is whether the evidence adduced by respondents, the proponents of the will, in support of same and the circumstances surrounding its execution and production prove that the will was the genuine will of Wilmot Stevens, or, conversely, whether said evidence and circumstances proved that the will was a forgery as contended by appellants.

Passing upon the question of the legal propriety and correctness of the trial judge's ruling denying appellants' motion for new trial, we deem it proper to state that although the motion contains five counts, we consider only three of these counts to be worthy of our consideration, namely, counts 1, 2 and 5, *supra.*

Considering the foregoing counts in a reverse order, we now turn our attention to count five of appellants' motion, in which they moved the court below to set aside the verdict of the empanelled jury and award them a new trial on the ground that the jury had been bribed by Theodore M. Gardiner, one of the appellees in the case. Countering this, appellees denied the truthfulness of this allegation, and besides welcoming an investigation by the court into the charge made by appellants, they positively stated that "not a farthing was given to any of the jurors by appellee Theodore M. Gardiner or anyone else." The investigation was accordingly instituted by the court, and it is regrettable to state that the denial set up by appellees to the effect that "not a farthing was given to any of the jurors by appellee Theodore Gardiner" fatally crumbled when Samuel Tyler, one of the empanelled jurors, made the following statement during the course of the investigation :

"When we rendered the verdict, on the next morning I went to look [for] fish and on my return home, I passed by the way of Mr. Fred Gibson who hailed me from his veranda, and said, 'Hello,' and asked me, `What's doing?' I said nothing. He said, 'Come here, man,' and I went upstairs and took a seat. Then he said, 'How my friend lost his case?' I said, 'Well in anything of that kind one side bound to lose.' Then he said further, 'Yes, that's true.' He said, 'Man, I heard in town that you jurymen received a bribe.' I said, 'No, I have not heard that.' He said, 'You swear?' I said yes. Then I asked him to give me some of their names of those who received a bribe. He said, 'Man, you are right in town and have not heard that Leander Moulton and his brother or cousin came nigh having a fight?' I said, 'No.' He said, `Well, I am glad that you are not in it,' he said, 'because if it gets to the judge's ears, it will not be good for those who have received the money as a bribe.' In the meanwhile we changed our conversation, and after further discussion of about ten minutes or more, I left. Being a member of the jury I then became interested. I went home and on that evening while on my cycle, coming down town, I met Mr. Relle Harmon coming out of his yard. He said, 'Hello chap,' and asked me, 'What's doing?' I said, 'Nothing, but I was just coming to you to ask you if you had heard about my bribery.' He said, 'No, but I know this fact: after we brought in our verdict and the judge dismissed us, I went home and whilst sitting on my piazza with some of the jurymen, Mr. Theodore Gardiner sent us $2.50 for a refreshment; and they commenced contending over the amount, some saying I want to buy rum, and some said no, we want to buy fish ; and after the rum money was divided, then he thought of me saying, 'Gentlemen, we have not given Tyler anything; he is a member of the Jury also,' and with that he took a 25 cents and said to the crowd, 'This is for Tyler.' In the meanwhile Mr. David Johnson said, 'Give it to me and I will take care of it,' which Mr. Harmon said he did. I then said to him, 'I have not received any money, but never mind, I do not want it. You may have it.' He said, 'No, chap, it is not a bribe. But if money is received by a jury before or during the trial of a cause by that particular jury, it is a bribe; but if the verdict had been carried in, would it be regarded a verdict?' I answered him no. He said further that he was just from Senator's home [Wilson], and he agrees with us in this particular, then left. This is all that I know about this matter on this score."

Added to this was the statement of A. Relle Harmon, foreman of the empanelled jury, who testified as follows :

"As far as my knowledge goes, during the deliberation of the case, up to the rendition of the verdict, no bribe, coercion, persuasion [was] offered to the jury. But on the day upon which we submitted our verdict, after same was read and we were discharged

from further duties in said cause, the court adjourned about two hours after which some of the jurors came to my home there, waiting on a citizens meeting that was to be had. At this time Mr. T. M. Gardiner, sent to those who were present at my home $2.50 with his compliments. To be on the safe side, I then interviewed Wilson touching said money; and he said or asked me as to whether Mr. Gardiner approached me or the jury during our deliberation offering money to any of us thereby to persuade us to bring in a verdict in favour of the respondents. I told him, 'No, every juror was conscientious of his oath, and thereby arrived at a verdict according to evidence, upon which before retiring from our room of deliberation, I required each juror to sign his name in his own autograph, which they all did; after which when *[sic]* the verdict.' Counsellor Wilson then said. 'If . . . Mr. Gardiner sent this to you all after your verdict was submitted and read and you were discharged from further duties in the case, that was not a bribe but a compliment tendered you by Mr. Gardiner,' upon which we accepted."

The climax of this whole affair was reached when appellee Gardiner himself took the stand and testified as follows :

"After the submission of the verdict by the jury, and after they were discharged by the court, as customary, I sent juryman Harmon $2.50 as a compliment as I have seen done several instances. When a case has been determined the winning side always give a treat, which is termed as a `wash-off.' To reiterate what I said, the amount sent Juryman Harmon was after the verdict had been rendered and the empanelled jury duly discharged by the court."

From the foregoing uncontroverted statements there is no room for speculation or doubt, for it is crystal clear that the amount of two dollars and fifty cents was given to the jury by Theodore M. Gardiner who was one of the parties respondent in the case, and the jurors by their own confession in evidence did prove that they received said amount and shared it among themselves. Each juror, and even appellee Gardiner, tried to excuse himself by asserting that the money was not a bribe, because it was given after the rendition of verdict, and was therefore in the nature of what they styled a "wash-off," which Gardiner contended was customary.

The trial judge, in deciding this issue, obviously agreed with the contention of appellees, respondents below. In his ruling on this particular point in the motion for a new trial, although he agreed that the act of entertaining or extending favors to jurors after rendition of the verdict by parties to the suit is an act contrary to public policy and should be discouraged, he still maintained that because of the absence of what

he considered appropriate legislation the circumstances attending the giving and receiving of two dollars and fifty cents by Mr. Gardiner and the jurors did not "have the semblance or vestige of bribery."

Let us therefore, in the light of the foregoing theory, examine the evidence and see whether there were circumstances which tended to show that there was a prior corrupt understanding between appellee Gardiner and the jurors prior to the rendition of their verdict and prior to the receipt of the amount given them by him. One does not have to do much perusing of the records certified to us to discover that there were circumstances manifestly tending to show that a prior corrupt understanding had been reached between the jury and Gardiner when they brought down their verdict as well as when they accepted the gift from him which they termed a "wash-off." There is evidence in the record to show that Gardiner contacted Dash Harris through his father, Reuben Harris, who on becoming aware of witness Thompson's presence around the scene on Gardiner's approach to him, and his approach to his son, tried to excuse himself by asserting to Thompson that he was trying to contact his son to vote for Thompson in bringing their verdict.

It is obvious from the foregoing facts and circumstances that there existed some prior corrupt understanding between appellee Gardiner and members of the jury, and that as a result of such understanding their verdict was influenced in favor of appellees. Moreover the money sent to them by appellee Gardiner was illegal. Judge Bouvier declares that it is misconduct on the part of jurors to accept "refreshment at the charge of the prevailing party" to any litigation, and that such misconduct is sufficient to warrant the setting aside of the verdict and awarding of a new trial. 3 Bouvier, Law Dictionary 2341 (Rawle's 3d rev. 1914). The trial judge therefore erred in his ruling on this point because, for argument's sake, even if there had been no such circumstances to show a prior corrupt understanding, the giving by appellee Gardiner of two dollars and fifty cents and the acceptance of said amount by the jurors after the verdict constitute misconduct sufficient to disturb the verdict and warrant a new trial. In *Ruling Case Law* we have the following rule:

"While it would seem that as a rule entertaining or extending favors to jurors after the verdict has been rendered is not ground for a new trial because not having had any influence upon the verdict, yet it is contrary to public policy to permit such misconduct, and the circumstances may be such that actions of this character will throw suspicion upon the verdict, and a new trial may accordingly be granted. In some states the practice of treating jurors after the verdict has, by statute, been made a ground for the granting of a new trial." 20 R.C.L. 262 (1918).

Enlarging upon the question of the amount given as an alleged bribe, the trial judge in his ruling seemed to have the impression that two dollars and fifty cents was too small a sum of money to constitute a bribe. This is borne out by the following portion of his ruling:

"Then there is the sum involved. Had a substantial sum been given the jurors by the respondents, there would be no opportunity for doubt that the extension of the favour carried with it some ulterior motive. In this case the sum of $2.50 was given for the entire jury, which meant that each juror would receive twenty-five cents. Would this be the price of a juror suppressing his convictions to the extent of having acted contrary to his duty and the known rules of honesty and integrity? This court fears not."

We are unwilling as a court of *dernier ressort* to confirm this opinion of the trial judge, for an act may constitute bribery regardless of the amount involved. In *American Jurisprudence* we have the following rule :

"The crime of bribery must involve a promise to give, or an acceptance of, money or other thing of value. Almost anything may serve as a bribe so long as it is of sufficient value in the eyes of the person bribed to influence his official conduct; it is not even necessary that the thing have a value at the time when it is offered or promised. . . . The acceptance by a public officer of a promise to take money in the future for influencing his present official act constitutes bribery." 8 *Id.* 889 (1937).

The giving, therefore, of the amount in question by appellee Gardiner, and its acceptance by the jurors, this court declares illegal, and the ruling of the trial judge supporting said position of appellee is hereby declared erroneous.

Coming to the second question, whether or not the evidence and the circumstances at the trial tended to show that the will under review was the genuine will of Wilmot Stevens and was executed by him, we have to refer to certain happenings which arouse all of the suspicions the human mind could ever contain. For example, the will offered for probate and alleged to be the last will and testament of Wilmot Stevens appears on its face to have been executed on September 24, 1927. In this will Mrs. Deborah Stevens, mother of Wilmot Stevens, was named executrix. She lived seventeen years after the supposed execution of the will which named her as executrix, yet said will was never presented by her to court for probate so as to enable the execution of the provisions and the purported desires of the testator Wilmot

Stevens contained therein. It was not until after her death in 1944 that this document mysteriously found its way into court, for when asked in the court below how this document reached court and who had discovered it and presented it to court, appellees Theodore Gardiner and Cecelia Gardiner claimed not to know. Moreover at this bar counsel for appellees was asked the same question during the arguments, and explained that he had no knowledge on this point. While it is true that delay in presenting a will for proving and probate cannot ordinarily vitiate the document, nevertheless such delay should be explained and should not be accompanied by suspicious circumstances or circumstances tending to show that the will was forged by another.

Another weak point in the chain of appellees' evidence was the effort made by them to show that George Stevens, after coming to Monrovia with A. Boyde Stevens prior to 1927, returned to Cape Palmas after the death of the said A. Boyde Stevens. This position was taken by appellees in an effort to rebut the evidence of appellants that when George Stevens visited Monrovia along with A. Boyde Stevens some time prior to 1927, he never returned to Cape Palmas after A. Boyde Stevens' death, but went to Owensgrove and there died. Hence, appellants contended, it was a physical impossibility for George Stevens to have signed the purported will as an attesting witness when he was nowhere within the confines of Maryland County.

In proof of the allegations made by them that the will in question was not the genuine will of Wilmot Stevens but was forged, appellants, objectors below, put the following facts in evidence : (1) Wilmot Stevens prior to 1927 was afflicted with leprosy, and had lost joints of his fingers, and therefore could not write. Moreover, F. O'Connor Thorne, his first cousin, who is said to have done his writing for him from time to time, denied ever having written any will for Stevens, and was one of the objectors. (2) Witness A. Glen Tubman, stated among other things that he was shown this identical will by Mrs. Stevens after Wilmot's death, and that it was not signed at the time she showed it to him, and he therefore advised her not to take it to court because it was not signed by Wilmot whose will it purported to have been. These facts were of course denied by appellees Theodore and Cecelia Gardiner, and they took the stand themselves in an effort to rebut same, but when asked to state who discovered the will, which had remained in obscurity for seventeen years after the alleged testator's death, and after the death of the beneficiary and executrix, they were unable to do so. Ordinarily one may conclude that there is no suspicion attached to the withholding of a will for seventeen years after the alleged testator's death, and after the death of the executrix and beneficiary. However, a careful study of the situation produces a contrary impression, especially when the facts show that the pur-

ported will alleged to have been made by Wilmot Stevens gives all his property to his mother who was the maternal aunt of Theodore and Cecelia Gardiner. Since the mother died leaving no will or heirs except appellees and their sister, said property of Wilmot Stevens, if the purported will had been admitted to probate, would have descended to appellees according to the law of descent in our statutes. All of these facts and circumstances tend to prove that the will was not made by Wilmot Stevens, but was a forgery, the purpose of which was to have this property descend in the manner thus shown.

In view, therefore, of the foregoing conclusions, we declare the verdict illegal and the judgment rendered thereon also illegal and erroneous. Said judgment is therefore reversed and the will declared illegal and rejected; and the property sought to be devised shall be disposed of in the manner provided by our statutes. Costs of these proceedings are ruled against appellees ; and it is hereby so ordered.

Reversed.