

TARPEH FREEMAN alias **MOMO GRAY, SEGBEE FREEMAN, NYAGBE FREEMAN**, Heirs of the Late THOMAS FREEMAN, representing the Heirs of the Late THOMAS FREEMAN, Appellants, v. **ANNA E. FREEMAN** and **NETE SIE BROWNELL**, Executors of the Will of the Late DAVID D. FREEMAN, Appellees.

APPEAL FROM PROBATE PROCEEDING.

Argued January 17, 18, 1944. Decided February 4, 1944.

1. The best evidence available must always be produced.
2. A witness who is called upon to identify the signature of a written document must be qualified and competent to be examined as to its contents.
3. Where the evidence supports the allegations set out in the pleadings and the verdict of the jury and final judgment are in accord therewith and in keeping with the law, the judgment of the lower court will not be disturbed.

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

H. Lafayette Harmon for appellants. *Charles T. O. King* for appellees.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

David D. Freeman of Krutown, Monrovia died in the month of August, 1937 and his estate, together with his father's estate which he, as head of the Freeman family, held in trust, was accordingly administered in keeping with the statutes governing intestate estates.

One calendar year and nine months after his death and after the administration of the two estates, that is, the estate of Thomas Freeman, their father, and David D. Freeman, their brother and husband, respectively, and after the dower of the widow was admeasured to her, the last will and testament of David D. Freeman, dated March 16, 1928, was found by Anna E. Freeman his widow, one of the respondents, now appellees, and offered for probate. The appellants in this case in their capacity as heirs to both estates immediately objected to the probate of said will and assigned the following as grounds for their objections :

"1. Because objectors say that the late David D. Freeman during his life time never owned in fee simple the properties sought to be devised by him in his purported will, but rather same were the *bona fide* properties of the late Thomas Freeman. The said Thomas Freeman having died intestate said properties under the law of inheritance descended to objectors and the said David D. Freeman now deceased. Said pieces of properties not having been partitioned by the heirs aforesaid an attempt to devise the said pieces of real properties is illegal and thereby renders said purported will null and void and of no legal effect in law. And this the objectors are ready to prove.

"2. And also because objectors further say that lot No. 10 having been registered as a Homestead under the provisions of the Homestead Exemption Act, as appears in Volume 23, page 78 of the Registry of Deeds for Montserrado County, by Thomas H. Freeman, the father of objectors, during his life time, the late David D. Freeman could not dispose of by devise or otherwise the aforesaid piece of real property so long as any of the heirs of the family were living. The said objectors being some of the surviving heirs occupying said Lot No. 10 of the late Thomas Freeman aforesaid, their father, the act of the late David D. Freeman in attempting to dispose of said property in his purported will is illegal, as will more fully appear by copy of Homestead Exemption Notice herewith made profert marked Exhibit "A" to form part of these objections. And this the objectors are ready to prove.

"3. And also because objectors further say that at the time the said purported will was executed, testator David D. Freeman was not of sound and disposing mind, as appears by his attempt to devise properties in his said purported will which were not his ; consequently the said purported will is of no legal effect. And this the objectors are ready to prove."

The Homestead Exemption Notice referred to in count two of above objections here follows:

"HOMESTEAD EXEMPTION NOTICE :

"(1) Mr. G. L. Watson, Registrar of Deeds in the County of Montserrado and Republic of Liberia, you are hereby notified that I now designate and intend to hold my town lot number ten located near Krootown in the Town (or City) of Monrovia, with all the appurtenances and outdwellings of the same, as and for the Homestead of myself and my family, according to the provisions of said Act.

"IN testimony whereof I have hereunto signed my name this first day of April in the

presence of the witnesses named below.

[Sgd.] THOMAS FREEMAN.

"WITNESSES :

[Sgd.] F. E. R. JOHNSON,

JNO. I. THORPE

Monrovia, April 1st, 1891."

The respondents denied the facts contained in objectors' objections, and set out the following in count one of their Answer :

"1. Because respondents say that they deny that the late David D. Freeman never owned in fee simple the properties devised by him in his last will and testament, in that the Homestead Exemptions referred to in count 2 of said objections was by the late Thomas Freeman, testator's father revoked on the 8th day of May A.D. 1913 and duly registered according to law in volume 34 of the Records of Montserrado County as will more fully appear from inspection of a copy of said Revocation herewith filed and marked as Exhibit "B" and made a part of this Answer, the original of which is in the hands of the objectors, and in full compliance with section 1097, volume 1 of the Revised Statutes of Liberia, and supported by the decision of the Honourable Supreme Court, November Term A.D. 1937, in the case : Maier and Jurgensmeyer vs. The heirs of the late Jeffrey B. Horace, Grand Bassa County. And this the respondents are ready to prove.

"2. And also because respondents say that counts 1 and 2 of said objections are further false and misleading, in that, the said late Thomas Freeman, father of the testator, David D. Freeman, did after the revocation of the Homestead Exemption of Lot No. 10, Krutown, Monrovia, execute a Warranty Deed dated 2nd of June 1913 conveying in fee simple the title of the said lot No. 10 to the said David D. Freeman, which said Deed was on the 2nd of June A.D., 1913 duly probated and registered according to law, as will more fully appear from a copy of said Deed herewith filed, marked exhibit "C" and made a part of this Answer. The original of which is in the hands of the objectors. And this the respondents are ready to prove.

"3. And also because the respondents say that they deny that the said David D. Freeman was not of sound and disposing mind at the execution of his last will and testament, the subject of these proceedings, in that, after the execution of his said will, he was appointed by President C. D. B. King, a District Commissioner for the Liberian Hinterland, and in which position he served with credit as a sane man for

some considerable period after the execution of said will, a duty which a man of unsound mind could not perform. And this the respondents are ready to prove."

From the records of this case it is not clear to us and it does not appear that the objectors made any serious attempt to support by evidence the allegations set up in their objections to the probate of said will of the late David D. Freeman, their brother, except that he was not of sound and disposing mind at the time he executed this will, the subject of these proceedings. In support of this allegation the objectors offered in evidence a doctor's certificate given by J. Abayomi Cole, M.D. The records show that during the trial of this case Dr. J. Abayomi Cole, who issued the medical certificate upon which the objectors predicated their averment as to the sanity of the testator, was in Monrovia and, had he been summoned to appear as a witness for the objectors and had he been examined and cross-examined, he would have given the medical certificate issued by him its legal validity to be accepted by the trial judge as written evidence of legal weight; but to the contrary, the objectors elected to produce Leo Sajous, M.D., to identify the signature of J. Abayomi Cole, M.D., attached to said certificate. In the case *Washington v. Lloyd*, 1 L.L.R. 83 (1875), in an action involving ejectment, this Court held that a witness who is called upon to identify the signature of a written document must be qualified and competent to be examined as to its contents.

Dr. Sajous, as an expert witness, in answering a question propounded by the objectors as to whether the disease neurasthenia, for which Dr. Cole certified that he had treated David Freeman, affected the mind, said :

"As a whole, neurasthenia attacks the physical and mental strength of the patient. That does not mean that the patient is insane but that his mental strength is so weak that he cannot keep his mind on something [*sic*]. More than that, he has not control of his will. It is on account of that that sometimes neurasthenic patients will commit murder but almost all the time suicide. And you can easily explain the two, because he has no hopes in life, because also he realizes his own weakness and he cannot confront any event, so that he gives up. The same reason causes him to commit murder and always he kills his own family because he does not see how he can support them. In resume, neurasthenic patients are not insane but his acts are not controlled by his will. He acts with a diminished will." See record, page 8, June 25, 1940, witness Dr. Leo Sajou's testimony.

If the testimony given by the objectors' expert witness which is intended to support their allegation as to the insanity of the late David D. Freeman at the time of the

execution of his aforesaid last will and testament is accepted, then the contention of the objectors has crumbled because it is of no legal foundation.

The respondents in support of the several issues raised in their answer and in their subsequent pleading offered in evidence a certificate of revocation of homestead exemption of lot Number 10, which was well fortified with all the legal requisites by being duly probated and registered. Respondents also offered in evidence a warranty deed from Thomas Freeman to the late David D. Freeman for lot Number 10, which is the core of contention in these proceedings.

It was quite surprising to us that the objectors, having said in their objections that lot Number 10 was not the *bona fide* property of the late David D. Freeman, sat supinely and, without raising any objections, permitted said document to be admitted in evidence in the case.

There are several other issues raised in the objections now under consideration but, as the respondents did not join issue with the objectors on said points by traversing them and the record does not show that there was any evidence either oral or written on these other issues adduced at the trial by said objectors, and since the said issues were not decided by the trial judge, we cannot review them as they are not properly before us for adjudication.

By careful inspection of the two pieces of written evidence, viz.: the certificate of revocation and the warranty deed from Thomas Freeman to David D. Freeman, we find that they are legally admitted in evidence by the trial judge. These submissions of evidence by the respondents of the revocation certificate and the transfer of title in fee to testator are so cogent that we cannot but come to the following conclusions: (1) The evidence adduced by the respondents supports their allegations set out in their pleadings; and (2) The verdict of the petit jury based on said evidence and the final judgment of the trial court are in keeping with the law and therefore ought not to be disturbed. The judgment of the lower court is therefore affirmed and the will ordered probated with costs against the objectors, now appellants; and it is hereby so ordered.

Affirmed.