REBECCA JONES, **PARNELLA NORTH**, **MARY E. PRITCHARD**, **VALENTINE BROWN**, and **JOHN W. PRITCHARD**, Appellants, v. **JAMES W. DENNIS**, Executor of the last Will and Testament of MARIA L. DENNIS of Careysburg, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued February 8-10, 15-17, 1944. Decided April, 1944.

Where the evidence in support of the genuineness of a will appears to be very cogent, convincing, pertinent, and conclusive, the verdict and judgment of the trial court will not be disturbed.

This case involves the objections to the probate of a will. Appellants are the objectors to, and the appellee is the executor of, the said will. This cause has been before this Court on two previous occasions. On February 4, 1938, this Court gave its first opinion in the case. *Jones v. Dennis,* 6 L.L.R. 22o (1938). After a second trial and an appeal to this Court, we rendered a second opinion on May 5, 1939. [Ed. note : case missing.] On appeal to this Court after a third trial and after a verdict admitting the will to probate, *judgment affirmed.*

H. Lafayette Harmon for appellants. *S. David Coleman, William E. Dennis,* and *Benjamin G. Freeman* for appellee.

MR. JUSTICE DAVID delivered the opinion of the Court.

Again, for the third time, this case has been before this Court. In each of the two former times it was remanded on some point of law.

It is necessary that some statement of the facts in the case be made here. During the year 1936 Maria L. Dennis, a resident of the city of Careysburg, died, and immediately thereafter an instrument purporting to be her last will and testament was offered for admission to probate. Appellants filed objections to the probate of the will, contending in essence that lot Number 106 in the city of Monrovia which testatrix had devised to James W. Dennis, her husband, and which testatrix had obtained from her uncle, the late Hilary W. Travis, by devise was, according to said devise, not held in fee simple but rather in fee tail and hence testatrix could not devise it in the manner attempted. This cardinal point as well as other points of the

objections of appellants, not having been sustained by the trial court, was brought to this Court on appeal. After a very careful review of the legal issues His Honor Chief Justice Grimes delivered the opinion of the Court on February 4, 1938. *Jones v. Dennis,* 6 L.L.R. 220. The Court decided that the last will and testament of the late Hilary W. Travis conferred a fee simple title in said lot Number 106 in the city of Monrovia upon his niece, Maria L. Simon, who afterwards became Maria L. Dennis by marriage, and she was accordingly vested with the legal right to devise same in the manner in which she was alleged to have devised same. However, inasmuch as the trial judge then presumed to try the contested will case without a jury and such a trial was considered to be contrary to the express provisions of the statutes, the judgment of the lower court, though apparently correctly arrived at in view of the facts in the matter, was reversed with an order of remand for the trial of the involved issues of fact by a jury in strict accordance with the principles of law enunciated in said opinion. His Honor Chief Justice Grimes disagreed with the majority of the Court on the issue of a remand and therefore dissented on this point.

Following the order of remand, the second trial came up before another circuit judge and a jury which, after hearing evidence pro *et con,* delivered and returned a verdict to the effect that said last will and testament was genuine and was duly executed by the said Maria L. Dennis as testatrix. Upon this verdict a second judgment was entered against the appellants in favor of the genuineness of the said last will and testament. The said appellants prayed an appeal to this Court from this judgment. When this second appeal came up for hearing, as the majority opinion of the Court, given on May *s,* 1939 [Ed. note : case missing], discloses and during the arguments,

"Counsellor S. David Coleman for appellee pointed out from his brief that the hearing of this cause in the court below was had upon no written objections filed by appellants, and this Court had in its Opinion given in the former appeal, at the November Term A.D. 1937, disposed of the objections filed by appellants; in which objections appellants did not attack the genuineness of the said Last Will and Testament of the late Maria L. Dennis."

This submission of Counsellor Coleman finding support from the records then certified to this Court, the majority of the members thereof found themselves in a peculiar position since they had ordered the case for a new trial upon the facts after overruling and dismissing the only objections that were in the case. Consequently they recalled that part of the former opinion wherein the conclusion above referred to was arrived at, declaring the last trial in the lower court upon the authority of said recalled portion of the opinion null and void, and ordered the said will probated, with

the provision, however, *"that if appellants desire to contest same for its ungenuineness [sic] they may be privileged to do so by filing written objections raising the question."* Accordingly, at the May term, 1939 of the Circuit Court for the First Judicial Circuit new objections were filed and the pleadings went as far as the rejoinder of the respondent, now appellee.

In June, 194.0, trial on these objections thus filed was commenced. It is necessary to state here that the court below seemed to have been correctly controlled by the principles laid down in the opinion of the Supreme Court directing or permitting the third trial in that the lower court confined the said trial strictly to the point of the genuineness or lack of authenticity of the last will and testament without consideration of or for the point raised in the seventh count of the objections which reads as follows :

"And also because the said purported will is illegal and invalid; and in that, the same attempts to bequeth and devise property to the husband of the testatrix, which descended from *[sic]* her to *[sic]* her ancestor the late Hilary W. Travis by will, in which property objectors being the next of kin and heirs of the testatrix, are from the definition of the limiting words and provisions of the last Will and testament of the late Hilary W. Travis, the holder of a remainder estate in said property; the said husband is by law and intent of the original testator, excluded from the definition of the limited words expressed in said Will and of the late Hilary W. Travis, as will more fully appear by copy of said last Will and testament of the late Hilary W. Travis herewith proferted and made a part of these objections."

The trial so correctly conducted again resulted in a verdict of the jury declaring said last will and testament of the said Maria L. Dennis genuine and true and recommending its admission to probate. Upon this verdict a judgment was rendered for the third time against the appellants who have also for the third time brought this case up for review.

According to the record certified to this Court, there are only two main and primary points raised by the objectors against the genuineness of the last will and testament. They are that (1) the testimony of witness S. M. Smith, one of the attesting witnesses to the said will, given at the previous trials was of such a nature as not to give a conclusive impression of the genuiness of said last will, and (2) from the appearance of the ink used or employed in making the signature of testatrix and the signatures of three attesting witnesses, there is an apparent difference in age between the signatures of Maria L. Dennis, Jerome W. Kennede and S. M. Smith and that of Edward C. Deputie, which, if true, would operate against the genuineness of said last

will.

It is significant, however, and worthy of note that the testimony of appellants' witnesses during this third trial as well as at the two former trials was not sufficiently conclusive or even convincing so as to have given appellants a verdict in any of the trials. What is worse, certain agents of the objectors, appellants herein, made efforts to unduly and unwarrantedly contaminate a juror who had sat on the case during the trial from which this appeal was taken by offering him cane juice to drink. Under its influence these agents secured a sworn statement from said juror to the effect that the verdict arrived at was not freely subscribed to by the said juror, but rather was given under circumstances not short of coercion or of undue persuasion. These efforts are actually reprehensible and cannot but leave impressions of intended chicanery and wicked machinations to effect an unlawful end. With respect to the conclusions arrived at by the trial judge during the investigation held whilst hearing the motion for a new trial because of this fact, this Court says that said conclusions were justified but that it simply regrets that the punitive action did not affect or reach those agents of the objectors, now appellants, whom the records disclose to have been very active.

The testimony of the several witnesses for the respondent in support of the genuineness of the will appears to be very cogent, convincing, pertinent, and conclusive, and, since in substance it is the same as had been given in evidence at the second trial, which found condensation in the minority opinion of His Honor Chief Justice Grimes at the hearing and determination of the case and second appeal above referred to, which said opinion was filed on May 5, 1939, it does not appear to us necessary to review said testimony in this opinion.

Facts are stubborn things. Whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and the evidence.

In view of the above, it is our opinion that the judgment of the court below should be affirmed and that the said last will and testament should be admitted to probate; that a mandate should be issued ordering the court below to resume jurisdiction over said cause and take such actions towards effecting the admission to probate of the last will and testament of the said Maria L. Dennis as are legally necessary and consistent; and it is hereby so ordered.

Affirmed.