J. A. WATSON, Brother of the Late HANNAH A. WARE, Appellant, v. **A. DONDO WARE**, Attorney-at-Law, for the Estate of his Wife, HANNAH W. WARE, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Argued March 28-31, 1949. Decided April 22, 1949.

1. It has always been the policy of the Government that insofar as native customary law and customs are not violative of the Constitution or of express provisions of the statutory law, they will be applied and upheld by the courts here.

2. Any form of expression in a devise which shows an intention to give the whole title will be held sufficient for that purpose and a devise in fee simple.

3. To establish fraud it is not necessary to prove it by direct and positive evidence.

4. Circumstances altogether inconclusive, if separately considered, may by their number and joint operation be sufficient to constitute conclusive proof.

5. In order to introduce secondary evidence of an instrument which is claimed to have been lost or destroyed, the proponent must show that he has in good faith exhausted, to a reasonable degree, all sources of information and means of discovery accessible to him.

Nete Sie Brownell for appellant. *A. B. Ricks,* assisted by *A. Dondo Ware,* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

The principal questions in this case to be settled are :

1. Whether appellant J. A. Watson is to be considered a legitimate son of Thomas J. Watson, or whether because of the peculiar circumstances of his birth, he is to be considered a bastard.

2. Whether or not Hannah A. Ware could devise and bequeath to her husband, A. Dondo Ware, the real property of which she was sole or part owner under the will of R. J. B. Watson, her grandfather, dated January 3o, 1906, and the codicil to said will

dated July 30, 1907?

3. Whether or not Hannah Ware could devise and bequeath to her husband, A. Dondo Ware, the real property of which she was sole or part owner under the Will, of her father Thomas J. Watson.

4. Whether the purported last will and testament of Hannah A. Ware is genuine and was executed by her, and therefore should be allowed to go to probate, or whether said document is fraudulent and a forgery.

In order to obtain and present a clear picture it is necessary to relate succinctly the case from its genesis until its present position.

Hannah A. Ware whose purported will is questioned as to its genuineness, died July 19, 1936 at Robertsport, Grand Cape Mount. The will in question was offered for probate with three other documents on October 6, 1936. The other three documents are: (1) the transfer of the right and title of one Catherine Hoff's property to him, A. D. Ware; (2) the adoption of Clarise Ware, on behalf of his deceased wife and himself; (3) the mortgage deed from A. Dondo Ware and wife to one Momolu A. Tamba of Grand Cape Mount County for lots Number one, two, six, and seven jointly owned by objector and his sister Hannah A. Ware. Said mortgage was assigned to the said A. Dondo Ware. Appellant being in Court because of a peculiarly worded note from A. Dondo Ware, which we shall quote hereafter, promptly objected to all of the documents offered because they affected his sister's estate and his own interests.

Some time after objections were filed charging proponent with fraud and forgery, the original will, said to have been deposited with the clerk of court, one Mr. P. J. Lewis, mysteriously disappeared from the clerk's office, according to a statement of Mr. Lewis; the clerk stated that prior to the misplacement or disappearance of the will he had issued a certified copy to each of the parties. Strangely enough, according to the records before us, he did not apply to proponent for a copy, but he is said to have written to Counsellor Ricks at Monrovia, the understood lawyer of A. Dondo Ware, and to the late Counsellor L. Garwo Freeman, offering to pay for a copy. But any connection Counsellor Freeman had with the case or the reason for Mr. Lewis' application to him for a certified copy has not been shown anywhere in the records. Mr. Lewis also applied to Attorney Caine, attorney for objector, for a copy, but Attorney Caine vociferously denied ever having a copy. Despite all these applications Mr. Lewis seemed to have been unsuccessful in obtaining a copy, certified or

otherwise.

Consequently, when the case was assigned for the first time in 1943, His Honor T. Gyibli Collins presiding, since there was no will or certified copy thereof upon which to proceed, Judge Collins dismissed the proceedings after a reading of the then records. From this ruling proponent appealed to this Court and, based on his information and his assurance that each side had been furnished a certified copy by the clerk of the Probate Court, which assertion has not then controverted by the counsel for the opposite side, we remanded the case, reversing the ruling of Judge Collins, and ordered the case to be heard upon the said certified copies. *Ware v. Watson,* 8 L.L.R. 335 (1944). In 1945 the case was again called in consonance with the instructions of the Supreme Court, but again no original or certified copy was produced in Court, notwithstanding the assurance to this Court of proponent that he had a certified copy of said will. This resulted in a verdict in favor of objector, but the trial judge was compelled to disband the jury and award a new trial because one of the jurymen, on being polled at the request of proponent, denied the verdict as being his, giving a frivolous reason therefor. He was consequently imprisoned.

The case was then again in 1946 assigned for hearing, His Honor W. O. Davies-Bright presiding. It is from this trial that appellant, being dissatisfied, has appealed to this Court for a review of his case.

Dealing with the first question, whether objector is the legitimate son of Thomas J. Watson or a bastard, since no exception was taken by the proponent to the verdict of the jury declaring objector legitimate, and since there was no cross appeal by appellee, there is no need for us to comment elaborately thereon, that question having in our opinion been settled in objector's favor.

We would like to point out, however, that along with the statutory and common law governing this country, there is a vast body of native law and custom applicable to the natives in their relations with each other, which body of law and custom in some cases is controlling, and regulates the legal relations of the natives with those who are not natives. This is administered by native courts as well as by the courts of the Republic. It has always been the policy of the government that insofar as native customary law and customs are not violative of the Constitution or of express provisions of statutory law, they will be applied by the courts here.

In the case *Manney v. Money,* 2 L.L.R. 618 (1927), Mr. Chief Justice Johnson in delivering the opinion of the Court, said *inter alia:*

"It is to be observed that unless contrary to plain rules of equity and justice, the native customs will be supported in our courts when the proper proceedings are instituted. . . ." *Id.* at 619.

Our statutes provide that "the legitimacy of every person is presumed," and that "marriage is presumed, whenever the parties have lived together as husband and wife."
Stat. of Liberia (Old Blue Book) ch. X, §§ 5, 6; 2 Hub. 1548.

In the case at bar it has been shown that at the time of the union between Thomas J. Watson and the mother of objector he had no civilized wife ; that he paid the dowry; that the woman lived with him at Wattsville as his wife in accordance with native customary law; that he acknowledged and recognized said child (objector) as his son ; and that that fact was generally known throughout the county, then Territory of Grand Cape Mount. In *Prout v. Cooper, 5* L.L.R. 412 (1937), cited by appellee, the facts were quite different. The child in question was the daughter of two civilized persons, and native customary law was not applicable.

We come now to the second and third questions, which we shall consider jointly: the power of Hannah A. Ware to dispose of property willed to her and her heirs and assigns forever. We reiterate a portion of our opinion in the case *Dossen* V. *Republic,* 2 L.L.R. 467 (1924) :

"It has been settled by numerous decisions of the English and American Courts, that any form of expression in a devise which shows an intention to give the whole title will be held sufficient for that purpose; as a devise in fee-simple ; or to one forever; or to one and his heirs and all similar expressions, showing an intention to have the devisee enjoy the property in feesimple, will have the effect to so convey it. (2 Jarman on Wills, 253, 254. . . .) The usual form is to give the property to the devisee, his heirs and assigns forever; this is all that is technically necessary." *Id.* at 468.

Ruling Case Law states the following:

"A tenant in fee simple is one who has lands or tenements to hold to him and his heirs forever. A fee, in general, signifies an estate of inheritance, and a fee simple is an absolute inheritance, clear of any condition, limitation, or restriction to particular heirs. It is the highest estate known to the law, and necessarily implies absolute dominion over the land. . . ." 10 *Id. 649 (1915)*

It is evident, therefore, that Hannah A. Ware did have the right to dispose of property willed to her, her heirs, and her assigns. For the purpose of this case there is no need to go further.

As to the fourth question of the genuineness of the will and the charge by objector of fraud and forgery in connection with the execution thereof, it is very seldom that such charges can be proved by direct evidence. In most instances circumstantial evidence will and must be the controlling factor in determining the genuineness or lack of genuineness of such documents.

"To establish fraud, it is not necessary to prove it by direct and positive evidence. Circumstantial evidence is not only sufficient, but in most cases it is the only proof that can be adduced. . . ." *Rea v. Missouri, 84 U.S.* (17 Wall.) 532, 543, 21 L. Ed. 707 (1873).

The circumstances surrounding the advent of the purported will and subsequent developments and undisputed facts in connection therewith will now be carefully considered so as to enable us to come to a definite conclusion about whether said circumstances and factual developments will prove or disprove the allegations of fraud and forgery charged by objector.

On July 19, 1936 in the city of Robertsport, Grand Cape Mount, Hannah A. Ware died unexpectedly at the hospital as a result of an operation. On July 31, 1936 proponent alleges that he was surprised to discover a will executed by his deceased wife when he was looking up her effects preparatory to his leaving for Monrovia for rest and abatement of his poignant grief over the loss of his dear wife, and concealed said discovery from the family and public until his return to Robertsport two and a half months later when on October 6th he wrote a note to appellant worded in such a peculiar and unprecedented manner as to arouse his suspicion and curiosity and cause him to attend the court to hear and see what he was about. The note read, "Dear brother Anthony, I have some documents to probate, so this for your information." To the surprise of objector he heard him offer four documents for probate already set out above, all of them in some way touching the estate of his late sister and his interests. He immediately therefore gave notice of his objections to each of them, and consequently filed strongly worded objections thereto, charging among other things fraud and forgery of his sister's signature.

Some time thereafter the clerk of court, Mr. Lewis, suddenly surprised the

community by announcing that the original will left in his office in accordance with practice had disappeared and could not be located. He, it is said, wrote to a friend to approach the late Counsellor L. Garwo Freeman for a copy if he had one. And application was also made to Counsellor A. B. Ricks, in Monrovia, for a copy as Dondo Ware's lawyer. Lewis also approached Attorney Caine, the lawyer for objector, in these words : "I come to you and Attorney Caine, if he has a copy of the Will of Mrs. Hannah A. Ware to hand me so I can get a copy from it." Attorney Caine became a bit irritated over the question; then he said to him, "P. J., I told you I have no copy and you seem not to believe me. Why will I keep the copy from you ?" (See testimony of witness Foley Sherman.)

Strangely enough, nowhere in the record does it appear that he approached proponent personally for a copy. It is to be noted in connection with this mysterious disappearance of the original will, that although proponent had already in his possession two certified copies, according to his admission during his argument before us, nevertheless when he arrived in Robertsport from Monrovia in 1938 and heard the rumor that the will he had propounded was missing from the clerk's office, he wrote the clerk for a certified copy. This he did, he said, to make sure that the said original will had actually disappeared. But although the clerk was unable to furnish the desired copy, yet proponent, being thereby assured that the original had been abstracted, did not voluntarily offer to hand the clerk one of his two certified copies for his files. It appears to us that as he was proponent of the will in question it was his duty to do so. Hence it is that in 1943 there was no will at the first trial, nor was there any at the trial in 1945 although in 1944 proponent before this Court had assured us that a, certified copy had been furnished by clerk Lewis to both parties prior to the loss of the will. At the 1946 trial a purported certified copy of the will mysteriously appeared when it was offered to a witness to identify P. J. Lewis' signature, the said P. J. Lewis having died in the year 1942.

The following will now be considered :

1. The alleged unexpected discovery of the will by proponent among his wife's effects. There is nothing in this to raise any doubts in the mind as to the possibility or probability of such a happening.

2. The unnatural concealment of the unexpected discovery of the will by proponent from all the relatives and friends of the deceased. This fact, not denied by him, opened up a vista of suspicion, for under the circumstances there has been put forward no reason, justifiable or otherwise, why he concealed his discovery of such

an important document for two and one-half months, at which time, without definite information at least to his brother-in-law whom he knew to be equally grieved over the death of his only sister, he submitted the will . for probate.

3. The silence of the two attesting witnesses, Sando Karndakai and C. M. Freeman, both allied with proponent.

4. The strongly worded objections filed by objector, charging fraud and forgery. This may be regarded as disclosing to proponent that all would not be plain sailing and that he should expect a heavy fight and probable exposure of the fraud and forgery were the original will to remain in existence for close scrutiny, study, and comparison.

"Not infrequently the attempt is made to hide the evidence of forgery in a fraudulent document by some alleged accident or condition by which the paper is partially defaced or torn, or it may be badly soiled or discolored so as to make it more difficult to show its real character. . . ." Osborne, Questioned Documents 8 (1st ed. 1910).

In this case the document was perhaps either totally abstracted or destroyed, thus rendering it impossible to be produced for a rigid test, by comparison and otherwise. How could this have happened? No one has been found or has come forward who typed the copies from the original, not even Sando Karndakai, one of the attesting witnesses who acknowledged that he typed the will for Mrs. Ware. He disclaims typing the certified copy of the will, although the record and his evidence show that he had been Mr. Ware's trusted and confidential clerk, that he could type, and that he was at the time of the offering of the will connected with Mr. Lewis' office and had access thereto as recorder.

The purported will was drawn up in legal form. Mrs. Ware was not a lawyer and it has not been shown that she had any legal training. No lawyer in Liberia has come forward to acknowledge having drawn up the will. The deceased's husband, proponent, disclaims any knowledge of it. Attesting witness Karndakai stated that he typed the will from a rough draft written with lead pencil, and the draft was in Mrs. Ware's handwriting and was her diction. In corroboration of the lead pencil story we have the evidence of Boimah Kenyeh who testified that about one month after the death of Mrs. Ware, he went to Tosor to visit his brother, the Chief.

He asked the news, as Africans usually do. His testimony continues :

"[My brother replied,] 'There is nothing else, except this morning I saw Mr. A. D.

Ware, C. M. Freeman and G. B. Ware, your relatives, who came and asked me for quarters, saying that they were going to do some writing.' I further asked the Chief where they were. He said they were in his round house. I got up to go through the door, but the Chief told me the big door was closed. I saw the window open in the house in which they were, and I passed around and entered by the back door. I complimented them, and they answered. I asked C. M. Freeman, who was the youngest relative there, the news. He said there was nothing else, except that A. D. Ware invited them to come and be witnesses to a certain document. I further asked, 'what sort of document?' He said, `The will of his late wife.' I asked Mr. Ware himself and he confirmed it. I said, 'What sort of a document?' Mr. Ware replied, 'The will of my late wife.' Then I said to Mr. Ware, 'Your wife has just died about a month ago and you have now come so early to write such a document.' Mr. Ware asked me as to my reason for replying or querying him. I said, 'Well, I felt that on the civilized side that it was just the second month since your wife died and that it was too early. This being your civilized palaver I got nothing to do with it.' When I got in the house I met Mr. Ware with a lead pencil and he was doing the writing."

It must be kept in mind that they were all relatives, even the witness himself.

"Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, . . . be sufficient to constitute conclusive proof. . . ." *Castle v. Bullard,* 64 U.S. (23 How.) 172, 187, 16 L. Ed. 424 (1859).

"Documents are attacked on many grounds and for various reasons, but the great majority of questioned papers are included in the following classes:

(1) Documents with questioned signatures.

(2) Documents containing alleged fraudulent alterations.

(3) Holograph documents questioned or disputed.

(4) Documents attacked on the question of their age or date.

(5) Documents attacked on the question of materials used in their production.

(6) Documents investigated on the question of typewriting. . . .

"The most common disputed document is that of the first class and may be any one

of the ordinary commercial or legal papers such as a check, note, receipt, draft, order, contract, assignment, will, deed, or similar paper the signature of which is under suspicion. . . . In such a document the signature only may at first be attacked, but many different things may show the fraudulent character of the instrument, and everything about it that in any way may throw light on the subject should as early as possible be carefully investigated." Osborne, Questioned Documents 6 (1st ed. 1910).

In addition to what has been expressed above, it is apparent to us on perusal and study of the records certified to this Court, that the original will was never clearly proved to have been lost and incapable of production, for although a subpoena duces tecum was issued and served on the clerk of the Probate Court to appear and bring with him the record book and the original will, yet on the witness stand he was never asked if he had brought said original will and, if so, to produce it. The propounding of such a question would have elicited the answer that it was lost or that upon diligent search it could not be found. That being so, the way would have legally been opened to introduce a certified copy. "A copy is not evidence, unless the original is proved to be lost, or to be in the possession of the opposite party, who has received notice to produce it, or unless it be a copy of some record or other public document." Stat. of Liberia (Old Blue Book) ch. X, § 9, at 52, 2 Hub. 1548.

"In order to introduce secondary evidence of an instrument which is claimed to have been lost or destroyed, the proponent of such secondary evidence must show that he has in good faith exhausted, in a reasonable degree, all sources of information and means of discovery which the nature of the case would naturally suggest and which were accessible to him. The court should be fully informed of the facts showing the diligence used in making the search. In many instances secondary evidence has been excluded because the details were not sufficiently proved. A general statement that diligence has been used or a mere perfunctory showing of some diligence will not suffice.

"If it is shown to have been in a particular place or in the custody of a particular person, that place should be searched or the person in whose custody it is shown to have been should be produced, or, if he is dead, his successor should be called." 20 Am. Jur. *Evidence § 441 (1939).*

Where no inquiry has been made in the place in which the drafts in question would most likely to be found, the proof as to their loss utterly fails. *Rogers v. Durant, 106 U.S. 644,* 27 L. Ed. 303 (1883).

In *Minor v. Tillotson, 324 U.S. (7* Peters) 99, 101, 8 L. Ed. 621 (1833) the Supreme Court of the United States stated that "if any suspicion hangs over the instrument, or that it is designedly withheld, a more rigid inquiry should be made into the reasons for its nonproduction." *Accord, 10* R.C.L. 917 (1915). On the contrary, the record shows that the clerk was only asked to give a history of the will :

"Q. Mr. Witness, can you give a brief history of the will of the late Hannah A. Ware, that is, the original of said will that on the 6th day of October 1936 was offered to your court for probation as appears on the 363rd page of the probate record book just offered and ordered by Court marked Exhibit 'A'?

"A. I have never seen the original will with my eyes. All that I know about is what I see in the records, that on the 6th day of October 1936 a will and other papers were offered by one A. Dondo Ware for probation. Further when I was in Monrovia in 1938 Mr. P. J. Lewis, the late clerk of the Probate Court of this county wrote me informing me of the loss of this will in question and that I should try to get in touch with the late Garwo Freeman to obtain a copy from him for him, the clerk. I did not get the copy. That is what I know."

In our opinion that answer was not a positive and definite showing that the will was lost and hence could not be produced in accordance with the subpoena. For although he might have in 1938 received such a letter from the late clerk, P. J. Lewis, yet between that time and the year 1946 there is a probability that it might have been found.

It was error, therefore, for the judge to have admitted said copy marked "B" over the objections to its admission, among which is (5), which reads :

"And further, it has not been proven by substantial witnesses by Respondent-Proponent that the purported original Will was ever filed in the Office of the late Probate Clerk, P. J. Lewis by any witness nor was it proven by any witness for the Respondent-Proponent that the purported original Will was ever lost from the Office of the said P. J. Lewis, then Probate Clerk, neither does it appear in the record book of the Probate Division of this Court that said Will in question was recorded to have been deposited with the late Probate Clerk, P. J. Lewis, but it was only offered for probation as appears on the face of the Probate records Exhibit marked 'A'. As to whether said purported Will remained in the Office of the late Probate Clerk, or whether it was taken away by Respondent who offered said Will for probation, that fact as far as the records are concerned in this case has not yet been established, nor

can a copy from an invalid original Will be admitted in evidence, when said original has not been legally probated and registered."

Objections so legally sound, pointed, and cogent should have been sustained and the purported certified copy rejected and not admitted in evidence.

And last but not least, where the signature to a document is in question, the case must fall within the exceptions mentioned by this Court in the case *Thomas v. Republic,* 2 L.L.R. p. *562* (1926). Mr. Chief Justice Johnson speaking for the court :

"Ordinarily, copies of documents that have been deposited in a public office are admitted in evidence, and the production of the original is dispensed with on account of the . . . [injury] which would result from the frequent removal of such documents. It has been held, however, that if a paper be on file in a public office and the paper is one that might be withdrawn from the files on application for that purpose ; such application should appear to have been made now [since] to strictly observe the rule laid down by counsel for appellant would work quite [an] injustice to suitors, as for instance if a merchant were to bring his books into court, to be used as evidence or where original wills or deeds are produced in court, the party forwarding them to the court [might] never regain possession of them, because such documents had become public property.

"It follows then that the contents of such documents may be proved by the production of the originals, or by certified copies. *It seems that in some cases the original must be procured." Id.* at 564. (Emphasis added.)

In the case at bar, the signature of testatrix to the purported will being challenged as to its genuineness, it was absolutely necessary that the original be produced. A certified copy not having the actual signature in handwriting would be ineffective and improper if admitted, since to do so would be thwarting and making abortive the proof of the forgery, if it existed, which is the very essence of the objections and the case.

Although in our opinion of 1944. we remanded the case to be tried on the alleged certified copies, yet it was to be understood that such a procedure should be in accordance with the law regarding proof of lost or destroyed wills, that it is to say, the establishment of the said lost will must be only upon *competent and sufflcient proof of its execution* unattended by any circumstances of a questionable or suspicious character indicating or suggestive of fraud or forgery.

"Generally, in the absence of statutory regulations, official or certified copies of deeds or other instruments required by law to be recorded, are, when admissible, prima facie evidence of everything necessary to the validity of the instruments. In some courts, however, such a copy is not admissible to prove the existence of the deed in behalf of the grantee claiming thereunder, although it may be read in evidence without proof of the execution, where the party offering the copy was not a party to the deed or did not claim thereunder as heir. In many jurisdictions the statutes by their express terms or by necessary implication make properly authenticated copies and transcripts of records of private instruments sufficient proof of their execution and delivery. In any case, the effect of such copy as evidence is destroyed when the opposite party files an affidavit alleging that the original deed under which the person producing the copy claims was a forgery." 20 Am. Jur. *Evidence* § 1041 (1939).

"Forgeries vary in perfection all the way from the clumsy effort which any one can see is spurious, up to the finished work of the adept which no one can detect. The perfect forgery would naturally be successful, and might not even be suspected, but experience shows that the work of the forger is not usually well done and in many cases is very clumsy indeed.

"A number of causes lead to this result, the chief of which is that fortunately the one who produces a criminal forgery is rarely the skillful one qualified to do it well, and also because a crime of any kind is an unnatural and unusual act. Forgers frequently do not exercise what would seem to be ordinary precaution, but no doubt overlook one part of the process because such intense attention is given to other parts, and it is probably true that they are sometimes more bold because in so many cases ineffective procedure and inadequate means have been provided for the detection and proof of forgery. . . ." Osborne, Questioned Documents XXI (1st ed. 1910).

On the other hand, it would seem that as Liberia becomes more opened up and known to the civilized world we must naturally expect modern scientific and more intricate and deceptive methods of committing crime and other unlawful acts, and it is necessary to counterbalance this by instituting and legalizing corresponding protective measures. For example, in the notable British trial of Dr. H. H. Crippen for the secretive murder of his wife, it was only through the modern invention and use of wireless telegraphy that he was apprehended disguised on a ship bound for Canada, and through modern medical science and aid that the crime was finally brought home to him, resulting in his conviction and execution.

In cases of the kind before us where the signature of a document is questioned as to its genuineness, photography could be used with great effect in obviating the hazard of loss or damage to the original.

"In the first place every questioned document should be promptly photographed in order that a correct and permanent record may be of it and its condition. The photographic record may be of great value in case of loss or mutilation of the original document or in the event of any fraudulent or accidental changes being made in it or of any changes due to natural causes.

"Photographs should also be made of disputed documents for the more important reason that they may be of great assistance in showing the fraudulent character of the papers, or on the contrary may be of distinct value in establishing the genuineness of documents wrongfully attacked." Osborne, *op. cit. supra,* 36.

Mr. Osborne goes on to show other reasons of benefit to both parties of photographic copies, such as enlargement of the writing in question so that every characteristic can be clearly and properly interpreted whether the facts so shown point to genuineness or to fraud. By it, also, any number of accurate reproductions can be made, affording unlimited opportunity for study, comparison, and investigation by any number of examiners, thus enabling court and jury to see, understand, and weigh testimony regarding a document as it is given. Were every document, as soon as a question arose as to its genuineness, promptly and immediately photographed and the original safely secured the unfortunate occurrence in this case unique in its nature with Mr. Lewis as clerk would not have happened.

Viewing the circumstances, act, evidence, and law and the apparent discomfiture of appellee before this Court in replying to questions propounded from the Bench whilst arguing his case, we are of opinion that the judgment of the court below should be reversed, the purported will declared invalid, void, and of no effect, and in every other respect to be in accordance with this opinion; costs against appellee. And it is hereby so ordered.

Reversed.