

**KETURAH WEEKS**, Daughter of the Late **MOSES S. WEEKS**, and Niece of the Late **JUAH WEEKS**, and **B. R. WILLIAMS**, Appellants, v. **GABRIEL L. DENNIS** and **JAMES B. DENNIS**, nominated Executors of the Will of the Late **JUAH WEEKS**, Appellees.

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

Argued March 15, 19, 20, 1951. Decided May 11, 1951.

1. When fraud and undue influence are charged in the execution of a will, the court must pass upon such charges in order to determine the validity of the will.
2. Fraud and undue influence in the execution of a will may be deduced from all the facts and circumstances surrounding its execution, including the physical and mental state of the testator, the relationship between the testator and those alleged to have committed the fraud or unduly influenced the testator, and the reasonableness and fairness of the testamentary provisions.

Appellants objected to the probate of a will under which appellees-proponents were named executors. Upon trial by jury a verdict was found for proponents, and judgment was entered thereon. On appeal to this Court, *judgment reversed*.

*Nete Sie Brownell* and *William A. Johns* for appellants. *Momolu S. Cooper* for appellees.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

On August 29, 1949, Mrs. Juah Weeks, or Juah Weeks Wolo, an illiterate woman, died in Monrovia after a long illness.

A few days thereafter, Gabriel L. Dennis, one of the nominated executors, according to the records certified to us, was approached by one of the objectors, B. R. Williams, with reference to certain quantities of raw gold, money, and other valuables which the said Gabriel L. Dennis had tacitly acknowledged as being in his possession. The objector was abruptly told that Mrs. Weeks had left a will, and that he would with the other relatives be informed when it would be taken to court and read. This information was not given. The relatives learned, through street talk, that the will had been taken to court and read. They immediately obtained a copy from the clerk of court, and filed objections thereto.

In accordance with statute, after the pleadings were concluded, the case was forwarded to the Circuit Court of the Sixth Judicial Court, Montserrado County to be tried by a jury. A verdict in favor of proponents was followed by a motion for a new trial, which was denied. Judgment upholding the will was rendered. Exceptions were duly taken and the case brought before us for review.

The objections which shall claim our attention are : (1) that the execution of the will was not the act of testatrix; (2) that the will on its face is unnatural, unreasonable and unjust, in that no mention was made by testatrix of the raw gold, sum of money, and other property which she had in her possession for safekeeping for B. R. Williams and Moses Weeks, now deceased, and claimed by his daughter Keturah Weeks; but, instead, had willed to one Jacob Cisco, with Gabriel L. Dennis as substitute legatee in the event of Cisco's death either before or after her, practically all her property, and made him residuary legatee ; and (3) that the will, if at all executed, had been executed under undue influence and fraud.

Proponents, now respondents, submitted that the will was written at the request of testatrix, read to her, and executed by her voluntarily in the presence of subscribing witnesses, Rufus Simpson, Joseph Graham, and Attorney Kolli Tamba ; that no undue influence was brought to bear upon testatrix; that there was no unnaturalness, unreasonableness, or injustice, since objectors had no just claims against the estate ; and that if objectors had any such claims, they should have presented same to the nominated executors, who, if finding same genuine, would pay them.

Although we have held that the question of ownership by the testator of property claimed to belong to his estate is neither involved in, nor determined by, probate of a will; and that a judgment probating a will determines that the instrument is the last will of testator without reference to testator's right to dispose of the property which he undertakes to bequeath, nevertheless, where the issue of fraud and undue influence in the execution of the will is raised, the court must first find whether such fraud and undue influence can be established. If so, the will must be declared invalid.

"Wherever the motive or purpose of an act is material, any fact which tends to show that motive or purpose, or which in any way tends to explain or throw light upon the act, is competent." Abbott, on Facts ( 5th ed., 1937) p. 1073, § 764.

In reviewing the evidence, we find the name of Gabriel L. Dennis, one of the proponents, and nominated executor, mentioned from start to finish, either as

confidential friend, advisor, depository, guardian, agent, and lastly as executor and residuary legatee.

The evidence shows that Gabriel L. Dennis had so ingratiated himself into the mind, confidence, and good graces of testatrix that anything, or any advice or suggestion, he gave her, she accepted at face value without question. Apparently she was like wax in his hands, to be molded as he pleased. It was shown that, merely on his telling her that the Government of Liberia had taken over the bank; that the bank would cry bankrupt; and that he therefore advised her to remove all of her money, she gave it to him to keep, as he kept all his own money, at his home. She acquiesced even to the extent of not securing herself.

A witness testified that, when testatrix was queried by Mr. B. R. Williams as to why her money was not in the bank, testatrix made the above reply, and further said that she believed that Mr. Dennis was seeking both Mr. Williams' and her interest, for she felt that Mr. Dennis would never mislead her. It was then that the witness made the remark : "Job did not serve God for nothing."

Moreover, testatrix gave to Gabriel L. Dennis and his wife the right to withdraw funds from testatrix's thrift account at the bank without further authorization, since she also gave them her passbook, and her wedding ring, and instructed the manager that, upon presentation of said ring by anyone with the passbook the bank should permit withdrawals ; for example :

***[Please see pdf file for figures]***

When testatrix died on August 29, 1949, there was only left in the bank to her credit the sum of thirty-six dollars and fifty-five cents. The testimony of Mr. Williams that, when he arrived in Monrovia, and asked testatrix to let him have some of his money, she replied that all she had in the bank was less than fifty dollars, corroborates this bank report.

So great, evidently, was the influence exercised over testatrix, that she blindly deposited with Gabriel L. Dennis all of her own money, as well as that of B. R. Williams and Keturah Weeks ; all the raw gold which had not been changed ; and all her gold trinkets and important papers.

Even the last heavy consignment which Mr. Williams sent up by Hannah Davis of four hundred ounces of raw gold was sent to Gabriel L. Dennis without even

demanding a receipt. Swede testified that, when she took this gold over to Mr. Dennis, he said : "Is mother not afraid to trust me with all this gold?" Swede replied : "Ma has confidence in you, is why she gave you *these things* to keep."

As evidence of her acknowledgment of the raw gold sent up to her by Mr. Williams from time to time, and of her straightforwardness and honesty of purpose in making true reports to him, we shall quote excerpts from some of the letters which were admitted without objections into evidence :

Letter dated July 24, 1943

"You never stated the quantity of raw gold you sent, but they brought 392 ounces 12 dwt. The big cup is 332 ounces and the bottle 60 ounces 12 dwt. . . . I have changed all and now sending you the money which you want £150.0.0 and some provisions. As you stated in your letter I will keep your money the value of 200 ounces which is £1,050.00. Don't believe that I will use all the money for myself. I will always keep your part."

Letter dated June 20, 1946:

"What sort of money are you looking for? You have enough money here with me to keep until you die. Why should you stay away and say you are afraid of my people. I am here; no one will trouble you. I have got the ground for the house, the lumber and everything. So why should you delay? . . .

"The last time you asked me to let you know what amount you have with me and whether I put it in the bank. Now you must not worry about money. You must remember that you are my husband and you alone I know. I have no father. So even what I have belongs to you and Cisco. I have told you everything and you know all. So just try to come at your earliest. So far I believe it is about twenty-five thousand dollars."

Letter dated April 17, 1947

"I received the letter, gold and fish you sent by Hannah Davis. I was glad to receive your letter. The two letters you say you sent by the boys I never received till now. I understand all that you wrote in your letter by Hannah. You never mentioned what quantity of gold you sent, but the gold weighed 400 ounces 6 dwt. In your letter you asked me to keep this separate from your other amount. Why? Who is the owner of it, or are you now afraid that I will eat your money? . . .

"I was able to get \$25.00 per ounce and after I sold it I got \$10,000.00; the 6 dwt. went for wire. Let me know whether I must put this in the bank or will you come soon.

"I was able to get the land matter straight with Judge Russell but the deed is in my name until you come when I will transfer it over to you. The number is 358, a very fine spot which I am sure you will appreciate."

Several other letters of a similar nature were admitted in evidence without objections, but, for the purposes of this case, it is unnecessary to insert them; what has been done, so far, is to show some of the circumstances which have led us to our conclusion.

Hannah Davis testified :

"She told me all the gold and jewelry together with all documents and money belonging to B. R. Williams were with Gabriel L. Dennis for safekeeping. The second time she spoke these words in my presence Swede and B. R. Williams were also present. Before she died, Mr. Williams sent for Honorable Dennis. Honorable Dennis went to Juah Weeks's house where he was. Mr. Williams asked Mr. Dennis if Juah gave him any money and gold for him and her for safekeeping. Mr. Dennis replied : 'Yes.' "

Coming now to the question of making the will, the preponderance of evidence definitely points to Attorney Tamba going to the house of the testatrix. At that time he was not only seen by Hannah Davis and Samuel Weeks, but by Swede who was in the room with Juah at the time of the visit. But on July 15, the day when he states the will was signed by testatrix, although it was between the hours of nine and ten in the morning, the time he and Rufus Simpson are reported to have entered the house, they were not seen by any inmate of the house, except, as they state, Cisco, the principal beneficiary who was in the bedroom, one version being that he was not there; another version being that she called out to someone to send Cisco in.

According to their testimony they entered the house and remained in the bedroom about thirty minutes, at which time the draft will was read to testatrix. Simpson testified that he was sent by Tamba to call Joseph Graham from the State Department to witness the will. Graham testified that he went there of his own accord to assist Cisco in getting his travel papers ready, and met Attorney Tamba there, and that testatrix

sent him to the State Department to call Rufus Simpson to witness the will. He said that he met in the room a little girl eating, and a Mandingo man. The little girl was excused, but the Mandingo man remained throughout. None of the others mentioned the little girl and the Mandingo man being in the room. No one saw them enter, or saw Simpson or Graham leave to call the other and return to the house and bedroom, or saw them leave after the execution of the will.

The reason Attorney Tamba gives for sending to the State Department particularly to call Joseph Graham or Rufus Simpson to witness the will was that, when testatrix was told that a witness was needed, testatrix said that she did not want any of her Kru people to know about her business. Yet proponents brought to the witness stand George Mombo and J. G. B. Davis who both are Krus, and one a relative, to testify that, a few days after the signing of the will and the alleged expression by testatrix, she told them she made a will and, in the case of Mombo, discussed the contents with him. What then was the state of her mind if both statements are true?

It is significant that all the persons connected with the writing and signing of the purported will were employees of the State Department, of which Gabriel L. Dennis is head, and that Attorney Tamba was formerly employed there by Mr. Dennis and still looks after his private business. Hence Simpson could be deterred from going to his office by Attorney Tamba in order to follow Attorney Tamba to Juah's house without first obtaining an excuse ; and Graham could leave his office, during office hours, to assist Cisco in fixing his travel papers.

To crown these circumstances, Gabriel L. Dennis, notwithstanding all the clear and cogent evidence in which his name was mentioned in connection with the execution of the will, the money, raw gold, documents, and other effects of testatrix, never elected to take the witness stand in his own defense, by way of refuting or denying the allegations, or in explanation of his acts and conduct with reference to the affairs of the late Juah Weeks.

Moreover, the evidence shows that Gabriel L. Dennis admitted that he had in his possession money, gold, and documents belonging to Juah Weeks and B. R. Williams.

The other proponent, James B. Dennis, one of the nominated executors, also decided not to take the stand to refute the evidence given by B. R. Williams that, when he informed him of the will of Juah Weeks, and showed him a copy, he said he never knew that Mrs. Weeks made a will before, and it was a surprise to him that she should make a will without calling him or leaving something for him.

"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 (1860).

One of the principal grounds upon which documents are attacked is the invalidity of the signatures. "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* (1st ed., 1910), p. 7.

"A conclusion that the transfer was made with fraudulent intention may be arrived at by way of inference or presumption which is derived from the circumstances attending the transaction ; . . . Direct evidence of fraud is not essential." 24 Am. Jur. 170, *Fraudulent Conveyances*, § 12.

"The fact that a will is unnatural, unreasonable or unjust in its provisions is a circumstance to be considered in connection with other evidence bearing on the question, whether the will is the result of undue influence, but in the absence of statute, such fact, in itself, does not raise a presumption of undue influence. . . . But the circumstance of inequality or unfairness in the will, coupled with a confidential relation between the testator and a favored beneficiary, as a result of which the beneficiary had dominated and controlled the testator for some time; has been held sufficient to raise the presumption of undue influence and cast upon the proponent the burden of producing evidence to show that the will represented the uncontrolled act of the testator." 57 Am. Jur. 285-86, *Wills*, § 398.

". . . it may be found that a person exercised undue influence upon the testator by dominating his mind even though he was not present when the will was made. . . ." 57 Am. Jur. 260, *Wills*, § 353.

"Undue influence invalidates a will even though the person who employs it believes that he is acting thereby in a worthy cause. . . ." 57 Am. Jur. 261, *Wills*, § 355.

In the case at bar, testatrix had been ill for years, and her physical and mental condition was naturally impaired and weakened ; otherwise she never would have yielded to the suggestion of Gabriel L. Dennis to take all her money from the bank and deposit it with him at his house without even a receipt; nor would she have

deposited all her valuable and important papers, raw gold, and other important property without securing herself.

"And evidence in a will contest that the testator was of weak mind, though not sufficiently weak to destroy testamentary capacity, and that power had been exercised over him by a party standing in a confidential relation to him who received a considerable portion of his estate, raises a presumption of fraud which required more to rebut it than mere proof of the formal execution of the will in the presence of two witnesses; there must also be evidence that the disposition was the exercise of the testator's free will. *Boyd v. Boyd*, 66 Pa. 283 ; *Wilson v. Mitchell*, 101 Pa. 495." 36 L.R.A. 726, n. 2 (1897).

As to the right of objectors to contest the will :

"In order that a person may contest a will it is necessary that such person shall have some interest in the estate which may be affected by the probate of the proposed will. Furthermore such interest must be pecuniary and one detrimentally affected by the will." 28 R.C.L. 386, *Wills*, § 389.

Application of the settled principles of law summarized, *supra*, to the facts of this case can lead only to the conclusion that the judgment of the lower court should be reversed, the purported will declared of no effect and invalid, and not allowed to go to probate; costs against the estate ; and it is hereby so ordered.

*Reversed.*