

TOBIE J. SMART for his Children, EMMA DELNOTT SMART, P. F. SMART, J. W. SMART, and G. T. R. STEVENS for his Wife, MAIE SMART-STEVENS, Appellants, v. H. C. DANIELS and T. J. R. FAULKNER, Administrators of the Estate of the late M. K. DANIELS of Barnersville, Appellees.

APPEAL FROM PROBATE PROCEEDING.

Decided January 22, 1937.

Whenever a person claims title to land upon a deed shown to have been forged, the court, upon proof thereof, will order the cancellation of said deed.

In proceeding to probate property of M. K. Daniels, deceased, appellants were awarded certain property. On proceeding to reopen and cancel their deed, appellees' petition was granted. *Affirmed* on appeal.

*A. B. Ricks* for appellants. No appearance for appellees.

MR. JUSTICE DIXON delivered the opinion of the Court.

The history of these proceedings is as follows:

On the death of the late M. K. Daniels of Barnersville which took place during the first part of the year 1934, H. C. Daniels and T. J. R. Faulkner were appointed administrators of the estate of the deceased, and an inventory was by them taken when certain tracts of land, No. 1 and No. 4, reputed to be the property of the deceased during his lifetime, were included in the said inventory with other blocks of land. The said two blocks of land, numbered one and four, as aforesaid, were supposed to have been conveyed to Tobie J. Smart in one deed produced to the court by said Tobie J. Smart acting for himself and for his children, Emma Delnott Smart, P. F.

Smart and Ida Maie Smart-Stevens, wife of G. T. R. Stevens, who claimed the said pieces of land by virtue of the aforesaid deed. They set up in their petition laying claim to the property that said tracts of land were the bona fide property of the late Louise E. Daniels, the deceased wife of the late M. K. Daniels, who, they claimed, was a relative of the children of Tobie J. Smart from whom they legally derived title by descent and that the said pieces of land had been transferred first from M. K. Daniels and his wife, Louise E. Daniels, of Barnersville, Montserrado County, to the late B. J. K. Anderson and that the said B. J. K. Anderson had retransferred same to Louise E. Daniels, the wife of M. K. Daniels, in fee simple, a copy of which deed they filed with the petition, and prayed the court to have same struck from the inventory of the estate of the late M. K. Daniels, as they claimed that they were next of kin to his late wife who, they alleged, had died seized in fee simple of said premises. As to the said claims of theirs, apart from the mere copy of the purported transfer, there is no record of any evidence before this Court. Yet it appears from the petition of the administrators of the estate, that the court in the first instance granted the petition of Messrs. Smart and Stevens.

The administrators thereupon filed another petition which is the subject matter of these proceedings, asking the court to reconsider its former ruling, and to cancel the purported deed of the respondents now appellants for the two pieces of land, as the signature of M. K. Daniels and Louise E. Daniels thereto attached were by them averred to have been forged.

When the court met to hear the case, Judge Brownell presiding, the petitioners were present and were also represented by their lawyers, E. G. Freeman and Charles T. O. King. The respondents having failed to file any answer or other resistance to the petition of the petitioners and not having appeared at court in person or by counsel,

the petitioners asked for judgment by default, which request the court granted, and they proceeded to submit evidence, synopsis of which we intend giving hereunder; and as there was no rebutting evidence on part of the respondents, there was no issue of law raised in the trial in the court below nor in the bill of exceptions now before us.

Notwithstanding these circumstances, Counsellor A. B. Ricks appeared before this Court in behalf of the appellants, and filed a brief which was not supported by the records in the case, as he himself was compelled to admit. Such practices by some lawyers affect the reputation of the profession and may have a tendency to make the courts of the country appear in a bad light if not promptly checked. But, for good and sufficient reasons, we have decided at this time only to make this reference as a warning to all whom it may concern.

Witness H. C. Daniels took the stand and stated in substance: that he was the nephew of the deceased M. K. Daniels, and was familiar with his home. He knew that at the time when the purported deed of the respondent was issued, the said M. K. Daniels had been working on his house, doing some carpentry work, had had a fall and hurt himself severely, and his wife had asked him to come to Monrovia and get a doctor. He went to Dr. Payne, who demanded written authority from Mrs. Louise E. Daniels for his expected professional visit. The witness returned to Barbersville, and delivered the message from the doctor, whereupon Mrs. Louise E. Daniels said to him, "Henry, you know I cannot write," so she asked him to write her name and she made her cross on the letter. Dr. Payne then went and, having given the necessary treatment, M. K. Daniels recovered from his illness. He further testified that in the month of May of that year, 1913, M. K. Daniels did not come to Monrovia, nor did the late B. J. K. Anderson visit Barbersville; and that the last time the late Mr. Anderson had

been in Barnersville was in 1903. That James W. Cooper, one of the supposed subscribing witnesses to the purported deed, did not go to Barnersville until 1919, which was his first trip. "I know this, because I was living there, and he told me so." The witness Jacob Dennis had never been to Barnersville. He the said H. C. Daniels said further that once he had been a registrar, and that then the said M. K. Daniels had registered himself on the same ten acre block of land. "The only piece of land assessed in the name of Louise E. Daniels, at that time, was a twenty-five acre block as an immigrant allotment."

T. J. R. Faulkner, one of the administrators called as a witness, testified that when he was appointed administrator, the deed for these pieces of land was in the possession of Tobie J. Smart, but he withheld it; and when he came before the court, he said he had no other deed of the estate than those which he had handed in to them, the said administrators, as he, Smart, had taken in custody the property of the deceased at his death.

The administrators thereupon went to the State Department, and having searched the records succeeded in locating the registration of this property in the name of M. K. Daniels in the form of two deeds, one for twenty acres, and one for ten acres. "We were then ordered," said he, "to take the survey of the property and to hand over all the deeds that were in the name of Louise E. Daniels to Mr. Smart. When the surveyor struck the line, we found that the two pieces of property that were upon the deed from the State Department and the thirty acres transferred to Mrs. Louise E. Daniels by the late B. J. K. Anderson were the same corners and bearings. Then we brought the matter into court and represented it to set one deed aside, as they both called for the same places. It was not until then that Mr. Smart brought into court the deed in question showing that the land had been transferred from Mr. and Mrs. Daniels to the late

B. J. K. Anderson and that the deed in favor of Mrs. Daniels was a retransfer of the same property back to Mrs. Daniels. We then questioned the authenticity of the signature, and that has brought this case." Mr. Faulkner said also, that after many years' experience and contact with Mr. Daniels, he did not recognize this signature as being genuine, or in any way a facsimile of any of those he had been accustomed to, or acquainted with, and besides he understood that Mrs. Daniels could not write, and he saw no cross of hers duly witnessed, that had been affixed to the deed. He was asked if he knew the handwriting of Mr. Daniels and he answered in the affirmative. Some memoranda of Mr. Daniels were shown him which he acknowledged were all in Mr. Daniels' handwriting; and the signature was that of Mr. Daniels. But the signature on these memoranda did not correspond with that on the supposed deed.

Witness W. L. Shaw on the stand said that he knew the deceased well; that he was very familiar with his writing. He identified the signature on the document marked "A," which was a book, the writings on pages 117 and 147 of which witness Faulkner stated to be the genuine handwriting and signature of Mr. Daniels, signed by himself, and he also averred that according to his certain knowledge Mrs. Daniels was not able to write. Moses Daniels whilst on the stand averred that Mrs. Daniels could not write. A statement from the Bureau of Internal Revenue setting out the full statement of Mrs. Daniels' land on the assessment list was presented in court.

This Court says that the judgment of the court below appears to us to have been substantially supported by the evidence, and hence should be affirmed. And moreover, inasmuch as the record tends further to show that the deed upon which Tobie J. Smart was claiming title to blocks Nos. 1 and 4 in behalf of his children was a false deed, a copy of this opinion should be sent to the Honorable the Attorney General with a request that he cause an investi-

gation to be made into that phase of the evidence presented so that if evidence can be procured to show that the deed which brought this dispute was forged by Tobie J. Smart, as the record suggests, or by any other person, the appropriate criminal prosecution may be instituted; and it is hereby so ordered.

*Affirmed.*