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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN PROBATE AND ADMINISTRATION

SUIT NO. P811 of 1974

BETWEEN	Herman Emanuel Ricketts Harold Ivanhoe Allan	Plaintiffs
A N D	Jephtha Ford Vinroy Ford	Defendants

Dr. Lloyd Barnett instructed by R. Fraser of Gaynair & Fraser for plaintiffs
Messrs K.C. Burke, A.G. Gillman and Mrs. M. MacCawley for the defendants

Heard: 26th, 27th, 28th January, 1981 and 22nd, 23rd, 24th June 1981

JUDGMENT

Morgan J:

The plaintiffs, Herman Emanuel Ricketts and Harold Ivanhoe Allan filed an action for Proof in Solemn Form that they be granted Probate of the Will of Kelbert Vanalgray Ford bearing date July 5, 1974, he having died on July 27, 1974. No question has been raised by the defendants Jephtha Ford and Vinroy Ford, two of his sons who have entered a Caveat, against this Estate, as to the validity of the Will so far as formalities are concerned. What is contended is that the testator was not capable of understanding at the time of the execution of the Will as he had up to the time of its execution been administered a sufficiency of the drug "pethidine" which in view of his particular illness would have had the effect of causing him to be incapable of giving any instructions or of understanding that he was disposing of his property or how he was dealing with it, that is to say, he did not know or approve of the contents of this Will produced and dated July 5, 1974.

The testator was married to Gwendolyn Ford who bore him four children. Vinroy 1947, Andrea 1949, Jephtha and Japheth twin sons in 1952.

He was separated from, but never divorced this wife who died on the 27th June, 1980, before this matter came to trial.

In addition to these four children he had four other children, Irving, Kathleen, Elaine and Keslin. There was also Wendel who was known as his child but whom Jephthah says was his wife's child.

The testator was in his lifetime a Superintendent of Police and a Director of the Police Credit Union and Police Federation. At the time of his death aged sixty-three (63) he had retired from these positions, was living at 29 Wellington Drive and was a member of the firm of Expol Security Limited. He was described as a quiet spoken person, very reserved, one who never shouted, never discussed his business, who had good friends as colleagues but never invited them to his home. He spoke often fondly of his children but they were not known to these friends. This was the nature of the man. His son Vinroy spoke of him as intelligent, meticulous and brillant. He had a close friend a Mr. Joscelyn Thompson, a retired Sergeant of Police, who knew him for over thirty-two (32) years, was a visitor to his house at Witney Drive, Kingston, knew some of his children and his relationship with a Miss Cochrane but did not know his home at Wellington Drive.

The testator met Miss Geraldine Cochrane in 1955 and they became friends. She left Jamaica to England, qualified as a Registered Nurse and returned home in June 1962. She lived and co-habited with him for eleven years and up to the time of his death. In 1967 she bore him a child named Kinsley, his ninth child. They lived together at various addresses and Jephtha , Japheth, Andrea, Vinroy visited regularly for holidays. Andrea lived with them for five years. In 1973 Wellington Drive was bought and

the twins lived with them there. Miss Cochrane was in charge of the household and, as Jephtha says, his father was very kind to her and the children treated her as a stepmother. But the testator was not a healthy man. Illness dogged him since 1965 and Miss Cochrane, who was then a Nursing Sister at the University Hospital, looked after him and saw that he received medical treatment for his ailments. His diagnosis then was excess sugar in the blood.

On the 2nd July, 1974 about 4.30 p.m. he came down with his ailment and as time progressed his condition worsened, and at about 1.00 a.m. of the 3rd July, 1974 he was taken to the University Hospital where in the course of his treatment the drug pethidine was administered. He died on the 27th July, 1974. On 5th July, 1974, between 1.00 p.m. and 2.30 p.m. his Last Will and Testament was made and signed. The signature is not in issue but his ability to have given the instructions contained therein is in dispute.

Two issues call for determination in order to arrive at a conclusion:

1. Was the testator of sound mind and understanding or was his mind impaired by the administering of the drug pethidine?

2. Does the distribution of his property in his Will reflect his true intention as to how he wished to dispose of it to the extent that I am able to conclude that he knew and approved of its contents?

Mr. Thompson his lifelong friend said he received a message from a Mr. Robby Stewart, also an ex-Officer of the Force and a Co-Director of Expol, as a result of which he spoke to and took Mr. Herman Ricketts, an Assistant Commissioner of Police, and Mr. Harold Allan, a Superintendent of Police, both of whom were, along with the testator, once Co-Directors of the Credit Union, to the University Hospital at 12.15 to 12.45 p.m. on the 5th. Allan and Ricketts put the time as at about 1.00 p.m. I accept it

to be within the region of 12.45 to 1.00 p.m.

Miss Cochrane and a doctor were by the bedside. After they left, greetings were exchanged with the deceased and Allan and Ricketts enquired why he had sent for them. He indicated that he wanted them to be his Executors and wished them to write his Will. Mr. Ricketts said he sought permission of a doctor who was on the Ward. The Will Form was taken from a locker by his bedside. He handed it to Mr. Thompson who handed it to Mr. Allan and then he dictated the contents which were taken down in writing by Mr. Allan, read over and signed by the testator and witnessed in the presence of Mr. Thompson and a Dr. Holness, who appeared then to be the doctor on duty in the Ward and who had been by his bedside when the plaintiffs came. This exercise took about one hour; they remained about half hour talking and finally left at 3.00 p.m. Mr. Allan was instructed by the testator to take the Will to the Credit Union Office, lock it away and "if anything happened" he should take it to Mr. Huntley Munroe, a known Attorney-at-Law. All three witnesses Ricketts, Allan, and Thompson substantially corroborate each other on all these matters. Mr. Allan said the testator did not appear to be in any pain or agony, he talked in a jovial manner, laughed and smiled and read over the Will aloud that they could hear. Mr. Ricketts said he never appeared to be in pains but he could tell that he was sick. As the visit progressed he was constant, stable and never appeared weak. He later said:

> "On 5th July, 1974 at time deceased made his Will he was ill. Not correct that he was confused he did not appear so - we got medical opinion that he was in a state to conduct business. At time I got permission the doctor said he was in a state to make a Will. He did not appear to me to be in a state of drowsiness."

When asked about seeking the doctor's permission he said:

> "It is a matter of training why I went to the doctor that is why I sought permission. In a General Hospital it is difficult to find out who the person's doctor is. This is police training you don't go to a hospital and ask patients questions without permission from the doctor."

Mr. Thompson said the testator was/not in a confused state, he was sober and in good spirits. Dr. Holness F.R.C.S. one of the attesting witnesses was not called. From the evidence it was elicited that he is no longer in the Island. Seven years has elapsed between the making of this Will and the hearing of this action and the migration of Dr. Holness is consistent with the movement of doctors out of the Island during that period. It is true that his presence could have been extremely helpful and of great assistance to the Court not only in his capacity as a witness but also as a medical personnel who was with Sister Cochrane by the testator's bedside immediately before the Will was written and ought to have been aware of his state of health at the time of the making of the Will. I find it reasonable to assume that on the basis of known professional standards it is extremely unlikely that a doctor would sign a Will as an attesting witness where he knows a patient is ill to the extent that he does not possess the capacity to make or dictate a Will; and his presence at the bedside immediately before gives some weight to this issue. It could be diminished if evidence was adduced to suggest that he was in collusion with Miss Cochrane. There was no such proof neither was any such suggestion made.

None of these witnesses could recall the presence of a "drip" at the testator's bed or a "nasal tube" in his nose and Miss Cochrane, though she recalled a drip after he was admitted in hospital, could not recall the nasal tube until her memory was refreshed from the Medical History Docket.

The defence made great import of this issue but I do not consider this of any significance for this reason. The evidence is that these men saw him for approximately two hours only. It is now seven years since that event; it is not unlikely that the lapse of time has made it difficult to recall. Neither do I consider Miss Cochrane's negative answer as trying to hide the fact - though as a nurse and intimately connected she ought to have been more readily able to recall than the police officers. In any event the evidence is, and I think it is common knowledge, that a nasal tube, that is, a "naso-gastric" tube does not prevent a patient from talking, and audibly at that, depending on his condition otherwise. In fact the defendant witness Jephathah says that the testator was talking at 11.00 a.m. and Vinroy said he spoke with him for twenty minutes at 3.00 p.m. Jephthah also read from the Docket in Court that this tube was removed for a brief period on the 5th and small amounts of clear fluids were given to him. The hour of removal is not stated in the Docket so the probability exists that its removal could have been at the time when the makers of the Will were present, hence their inability to recall.

Adverting to his apparent state on the 5th July, the account of the plaintiffs and their witnesses as to his condition and behaviour differ considerably from the defendants and their witnesses. In addition to Messrs Allan, Ricketts and Thompson, Miss Cochrane said that from the 2nd onwards she regarded the 5th as his best day. She saw him first between 6.00 - 7.30 that morning in the Ward and spoke with him. At about 9.00 a.m. she went with him to the X-ray Department and it was while he was there that he complained of pain and 50 mllgs of pethidine was administered to him. When he came out he was neither confused or drowsy but thinking clearly,

of sound mind and very alert. She returned to the Ward with him about 12.30, put him in bed and spoke with him. He said he was feeling O.K. and that the pains were easier then, he had a drip attached to one of his hands and a naso-gastric tube in his nose which did not affect his speech. It was shortly after that the plaintiffs arrived and the testator told her that she could go if she had anything to do as the gentlemen were there to see him so she took advantage of the opportunity and went home. She returned about 3.00 p.m., about 10.00 p.m. he appeared disoriented, drowsy and confused and the doctor was called. She left at 11.00 p.m.

For the defendant, however, Jephtha said he saw the testator at 11.00 a.m. before he went for his X-ray. He remained with him ten minutes along with Miss Cochrane and they both spoke of how quickly he was deteriorating. He appeared weak, was drowsy and confused and he could not be understood as he was speaking disjointed statements. He saw him again at 3.00 p.m. for ten minutes when he was still drowsy, confused and dazed and did not recognize him. He next saw him at 7.00 p.m. for half hour when his condition had worsened.

Vinroy's account is that he saw him for the first time that day just after the group of men left about 3.00 p.m. and was with him for half hour. He spoke to the testator "the usual questions to whih he mumbled answers which were barely audible" and he appeared dazed. He replied to him but he had difficulty answering the questions which were nothing significant but merely 'father to son talk.' He was saying things "that were not himself, not a brillant conversation." At 10.00 p.m. when he next saw him he was 'really confused' talking stupidly.

Japheth said he saw him at 10.00 a.m. and spoke with him in the presence of Miss Cochrane. He was not understanding and she told him that

the testator's condition was serious and that they had scheduled an angiography later that day. He next saw him near to 4.00 p.m., he was drowsy and confused.

There is great conflict in this evidence which has to be resolved as the plaintiffs on the one hand make the testator out as a sick man but coherent retaining all his faculties while the defendants make him out as a confused, incoherent person.

No note of confusion appears on the Docket until 10.00 p.m. when all parties agree he was confused. The absence of such a conclusion of confusion on the Docket produced, tends to agree medically with the evidence of the plaintiffs. Jephtha agrees that as soon as it was apparent it ought to have been noted on the Docket as it is an important indication of the patient's condition. Of significance is the fact that Vinroy said at 3.00 p.m. they had a "father to son" talk.

However, the defendants contend that supportive of their evidence is the effect of the drug pethidine and its use in relation to his illness.

The medical history of the deceased so far as it might have affected his capacity as a testator, revolves around his ailment, and the use of the drug pethidine. Doctor Rao, Miss Cochrane his lady friend, and Jephtha his son, all gave evidence as to this drug and its effect.

Doctor Rao is a Senior Lecturer in Surgery at the University Hospital, Fellow of the Royal College of Surgeons, of England, Fellow of American College of Surgeons and was a member of a team of surgeons who attended the deceased.

Miss Geraldine Cochrane is a Nursing Supervisor at the University Hospital who has had the opportunity of observing the reaction of patients on the Ward to the drug and has studied the nursing implications of drugs

administered to patients.

Dr. Jephtha Ford, a young man is a medical intern attached to the Kingston Public Hospital in the Gynaecology Department and was trained at the Univeristy Hospital, Mona, Jamaica.

What emerges from their collective evidence is that pethidine is a narcotic analgesia, that is, an agent that relieves pain without causing loss of consciousness. It is stronger than valium but not as strong as morphine, and is given to patients to allay anxiety, sedate and ease pain. It also induces a state of drowsiness and can induce euphoria - a feeling of well being, or disphoria, depending on the patient. Ten to twenty per-cent of patients suffer euphoria and a few only develop disphoria. It can also produce a cloudy state of mind. The maximum dose is 100 milligrams and repeated every six hours which can be reduced to four hourly if the pain persists. For this drug to act when taken intravenous the time would be five minutes, if intramuscular ten minutes, if oral fifteen minutes. In each case it reaches its peak after one hour and has a duration of two to four hours during which it gradually loses potency. Its effect on each patient is different depending on the patient's tolerance to the drug, the quantity administered and his weight - the heavier the person the lesser would be the effect and duration and the rapidity with which it "slides down" from its peak. Doctor Ford though agreeing that the effect varies from patient to patient said that the patient's weight has no effect on the excretion of the drug and conceeded that 50 mllgs is a therapeutic dose for a fat person. Nurse Cochrane opined that 50 mllgs may not help one person at all and yet may relax another who if he falls asleep and is awakened would be quite alert.

The testator arrived at Casualty, University Hospital at about 1.30 a.m. of the 3rd July, 1974, when he was administered 100 mllgs of pethidine intramuscularly. He was seen by Doctor Rao at 4.00 a.m. on the Ward who ordered 75 mllgs of the drug pethidine every six hours as he complained of pain. He spoke with him on that day, a comprehensive interview.

On the 4th July, 1974 his condition was the same and he was seen by Dr. Atkinson the Urologist. He got no pethidine. His condition remained the same.

On the morning of the 5th July, 1974, the night nurse records 75 mllgs pethidine administered at 1.10 a.m. with good effect and that he had had a satisfactory night. At 8.00 a.m. Dr. Rao saw and examined him, spoke with him "the usual questions all medical" and he answered rationally. He did not notice anything unusual as far as his behaviour was concerned. At 11.30 a.m. he was taken to X-ray, Miss Cochrane was present. There he got 50 mllgs of pethidine called a therapuetic dose to allay his anxiety. It was then ten hours and forty minutes since his last dose. Miss Cochrane took him back and put him in bed by 12.30 p.m. and was there with a doctor when the gentlemen arrived. The dictation of his Will to them commenced at approximately 1.00 p.m. Up to this point there is no note of confusion on the records and there had been long hours between doses which were admitted as being fairly low. It follows that at the time of the making of the Will 1.00 p.m. to 2.00 p.m. and the visit of Messrs Allan, Ricketts and Thompson the effect of the pethidine would no doubt have left him in a comfortable state, free of pain and anxiety taking into account that on the 3rd Dr. Rao did comprehensive examination after 100 mllgs was administered.

The defendants, however, contend that because of his condition the pethidine would not have had this effect on him but would instead leave him drowsy, confused and in a cloudy state of mind. Doctor Rao said that a malfunction of the kidneys can cause the body not to excrete the amount of fluid it ought to and if the patient does not pass out enough fluid it clogs up in the chest and he gets "uremia", that is, a drowsy state.

His fluid intake, that is, "drip" commenced 8.30 a.m. and on the 3rd was 3,500 c.c. on the 4th 3.500 c.c. and on the 5th 2,000c.c. If the kidneys are not working the drip could result in fast accumulation of fluids, and the patient's state is tested, when on the drip by twice daily blood tests. But blood is taken only once per day unless there is a sign to cause worry. If there is a build up then a diuretic, that is, an agent that promotes urine secretion would be given to pass the accumulation of fluids. As pethidine is excreted through fluids, a build up of fluids would mean a build up of pethidine. On the 3rd, 4th and 5th blood tests were taken once per day and the probabilities are that it was because there was no sign to cause worry. The blood test revealed:

3rd Urea 30 Creatine 1.8

4th Urea 96 Creatine 5.2

This Dr. Rao said was a change in his condition (deterioration) but not too bad. On the 5th, in the morning Urea was 145, Creatine 5.1 but Dr. Rao said this blood was haemolysed, that is, slightly spoiled and not suitable for perfect recording as it does not give 100% interpretation. He said that where the blood is haemolysed the figures are not relied on being an undesirable figure. Dr. Jephtha Ford does not agree with Dr. Rao. He contradicts this statement and says that in haemolysed blood serum,

urea and cretine concentration are not affected and the reading of the morning of the 5th is totally reliable as it is only the potassium value that would be affected.

On the night of the 5th the reading was Urea 165 and Creatine 5.4. At 10.20 p.m. on the 5th both his legs were observed to be swollen, indication, Dr. Rao said, that he now had an accumulation of fluid and it was then he was given a diuretic to pass the accumulation of fluid.

Dr. Jephtha Ford said that the progressive rise in the values of Urea and Creatine indicated significant renal impairment, that is, failing of the kidneys hence the patient would be unable to pass fluids which by itself would set up drowsiness and confusion and the administering of pethidine would enhance the confusion. It is onthe basis of this and their observations that the defendants maintain that the testator was not capable of understanding what he did.

Jephtha , who was then not yet in medical school and at the time of giving evidence was a medical intern, contradicts Dr. Rao, F.R.C.S., F.A.C.S. and Senior Lecturer in Surgery at the University Hospital with several years of experience, as to the reliability of the values given for the morning of the 5th. It is not to be said that his evidence savours of brashness but it is obviously not evidence to be preferred to the evidence of one whose competence, experience and maturity is not otherwise in question. So where their evidence conflict I accept that of Dr. Rao. In respect, therefore, of the reading of the morning of the 5th I accept it as unreliable and one which cannot be taken into account. It would mean then that his urea was within a nine hour period, between 96 and 165 and creatine between 5.2 and 5.4; figures which represent the two last

readings that Dr. Rao regard as reliable and the figure of 165 Dr. Rao said he would not call a significant rise. Dr. Brown who Jephtha said is an eminent surgeon saw the testator on the 5th and wrote on his Docket that "patient remains moderately febrid (feverish) with onset of left testicular discomfort, otherwise feels no better or worse than yesterday." So apart from a pain in the left testicles he was no better or worse than the 4th, a day which Dr. Rao describes the reading of urea and creatine as showing a change but not too bad. He was fully conscious said Dr. Rao and the night nurse recorded that he had a satisfactory night, at 6.00 a.m. when she came off duty. Dr. Rao saw him every day until the weekend when Dr. Brown took over. Dr. Rao had a medical recollection of him as the exact cause of his problem was not known, it worried him quite a bit, as a result the testator was seen by many surgeons and even though an operation was performed the exact cause of his illness was never ascertained. He was, it appears, a patient on whom he ought to have kept a constant awareness of his condition and the fact that the patient's condition "worried him" seems a clear indication that he did. On the morning of the 5th he observed nothing unusual as far as his behaviour was concerned, a statement which I find consistent with Dr. Brown's note of "no better no worse than yesterday." Yesterday being day 4th when at 10.00 a.m. Japheth saw him for 45 minutes and said he was very coherent and had a full understanding of what was happening. Again at 10.00 p.m. he also was coherent but was unable to follow cash manipulations concerning purchase of feed and sale of eggs for his chicken business, a thing I find of no significance as a sick person at that hour of the night more probably would rather wish to sleep than bestir himself, wether deliberate or otherwise, about intricate financial business. Jephtha on the other

hand saw him at 10.00 a.m. he was drowsy, confused, rambling in his speech. A condition in direct contrast to Japheth who saw him four hours later at 10.00 p.m. and coherent.

I find that the testator's sons are not speaking with any accuracy about his condition, they contradict each other and their evidence as to his condition on the 5th amounted to exaggeration. Jephtha said of the 5th that at 3.00 p.m. his father did not recognise him, did not call him and did not communicate with him. This is in sharp contrast to Vinroy who saw him at 3.00 p.m. and had a "father and son talk." They are not speaking the truth, their evidence is not reliable and cannot be accepted.

I am satisfied that on the 4th the testator was coherent and on the 5th he was no better and no worse, that is, he was still coherent.

I am fortified in this finding from the findings that the 50 mllgs of pethidine which was administered to him on the 5th nine hours after the last dosage was admittedly a theraupetic dose given to allay his anxiety and ease his pain at X-ray and did not make him drowsy. The evidence is that pethidine reacts differently on each patient and much depends on the patient's tolerance to the drug and force of will. There is not sufficient evidence to indicate that there was any build up of fluids in his body to the extent that a reaction of drowsiness should or did set in. The only evidence of confusion was at 10.20 p.m. on the night of the 5th and this is borne out by the evidence of those who saw him then and the fact that a diuretic to pull out the fluid was prescribed. Additionally, Dr. Rao was his constant medical attendant, a person well qualified to identify an onset of confusion - a signifcant thing in a

patient's condition which would be noted on the Docket. Dr. Brown the eminent surgeon saw him, spoke with him and made notes in the Docket of signifcant things - fever, pain in the testicles, but no note of confusion appears.

The signature to the Will is not challenged and Dr. Holness F.R.C.S. a degree which carries with it some quality of medical knowledge signed as a witness who had seen the testator sign. The only reasonable inference I can draw from this is that he saw the testator and was satisfied that he was not confused and was capable of doing what he was doing.

I find, as far as the medical aspect of this case is concerned that there is no evidence from which any conclusion can be drawn as to any circumstances existing which excite the suspicion of the Court.

However, supportive of their case the plaintiffs speak of unequal dispositions and wrong spelling of names in the Will which ought to excite the Court's suspicion.

By this Will his property is devised as follows:.

Irvin Leopold (testator's child not of the marriage and Wendel Vandirk (wife's child not of the marriage)	40 acres of land at Marley, St. Mary
Kathleen Sinestra Elaine Joyetta (testator's children not of the marriage) and Andrea (child of the marriage) and	$\frac{1}{4}$ share each of 87 August Town Road St. Andrew

Keslin (testator's child not of the marriage)	¼ share 87 August Town Road St. Andrew
Jephtha (twin son of the marriage	Piece of land at Silvera Drive St. Andrew
Gwendolyn Ford (wife)	Lots 11 & 12 Rosemount, Montego Bay. Monies Bank of Nova Scotia
Jepheth (twin son of the marriage)	⅓ share 29 Wellington Drive, St. Andrew. Shares in Victoria Mutual Building Society, Ford Pick-up.
Lureza (sister)	Chevrolet Impala Motor Car
Kinsley (testator's child not of the marriage)	⅓ share 29 Wellington Drive, St. Andrew. ½ monies in Cuna Mutual Insurance Society.
Geraldine Cochrane (lady friend)	⅓ share 29 Wellington Drive, St. Andrew. Shares in VanFord Security Investigating Limited and VanFord Employment Limited. Shares in Expol Security. Monies in First National City Bank. Residue

Monies in the Jamaica Police Credit Union Limited was left to persons as named in the nomination papers.

The realty then consisted of:-

1. <u>40 acres of land in Marley, St. Mary</u>

Mr. Allan said that in his lifetime the testator had said he would sell this property for $40,000 - $50,000. Jephtha said it was semi-cultivated, heavily mortgaged and that he was informed by the Executors that it would be sold at public auction. Neither of the Executors was asked for any information in respect ofthis property. I am not aware of the present value

to the beneficaries. On the face of it, it is valuable property.

2. 87 August Town Road, St. Andrew

Mr. Allan said the Title for this property is with the Credit Union as collateral to monies borrowed. The land was empty at the time of his death but Jephtha said that it is in a depressed area and squatters who were then being made tenants had made houses on it. The value in money was not given.

3. Silvera Drive, August Town, St. Andrew

This property has not yet been properly identified on earth but the testator left a Title for premises on Mona Road which from observation is believed to be the property named in the Will as Silvera Drive. It is collateral to a loan from the Bank of Nova Scotia along with Lots 11 & 12 for an approximate total loan of $7,000. There is no evidence of its value.

4. Rosemount - Lots 11 and 12

In 1963 the testator was concerned about his family in Montego Bay and wanted to buy them a house in the housing scheme at Rosemount. They were duplex houses and he did not have enough money so Miss Cochrane bought one part of the duplex, he the other and he installed his family in both. On his retirement from the Police Force he received $13,000. The mortgage was paid off, she got her money back and signed a document transferring her portion to him. She said she had not considered herself having any interest in the property since then. It appears that the defendants were not aware of this until it was evidenced at the trial, and it did seem to me that this property was one of the chief areas of contention. No value is given for this property.

5. Wellington Drive

In 1973, 29 Wellington Drive was being sold for $35,000. The evidence as to the purchase of this property is that there was a balance left from his pension, he borrowed $4,000 and she supplied the balance from her Credit Union and Superannuation to make up a total of $20,000. They paid down on it. She assisted him at times with the mortgage payments to the vendor/mortgagor, Mr. Bird. The testator had told her that the Certificate of Title would be in their joint names but at the time of his death the closing cost of $2,000 had not been paid and the transfer had not been completed. Meanwhile extensive improvements by way of extensions at a cost of $17,000 - $18,000 were done by the deceased before his death and the property has now become much more valauble, and the mortgage payments since then are being met by her. Again no value is placed on this property.

As to the personalty, Jephtha says the money at the Bank of Nova Scotia is $20.00. Miss Cochrane says that monies at the First National City Bank amounts to $78.00. No evidence was led as to the state of the accounts at the Victoria Mutual Building Society, Cuna Mutual Insurance Cociety or the parties on the nomination papers on the Jamaica Police Co-operative Credit Union Limited, and the extent of the benefit to be derived from this source. The Van Ford Employment Limited was set to commence two months later at his chicken business and there was $100 in shares in the Expol Security and Investigation Limited. The Chevrolet Impala motor car was his own but no evidence was led as to its value.

As to the Ford Pick-up bequeathed to Jephtha, it was given to him but it was taken back by the Directors of Expol Security. It is evident that the testator at all times regarded this unit as his own - as Jephtha said "he could do anything he wished with it." The true situation, however, was that all the partners of Expol Security Company obtained a vehicle through the Company, the vehicles were licensed in the Company's name, then after a given time on the payment of a small fee the license would be transferred into the name of the user as his own property.

Some observations flow from this Will. Save and except Vinroy, the names of all the children are mentioned to receive some bequest; four of them being identified by first and middle names. His wife, his sister and lady friend are also to benefit. The bequests appear formidable but the Title of all the properties mentioned are lodged as collaterals to loans. His son called him "brillant" and indeed this brillance is shown in his ability to acquire other properties from loans on such properties as he owned. There was $20.00 lodged to his account in the Bank of Nova Scotia, nothing at the Victoria Mutual Building Society, and the Ford Pick-up turned out to be the Expol Company's car. Though also on mortgage, 29 Wellington Drive was the most valuable property. Mr. Burke for the defence had urged that the fact of some names being wrongly spelt, the omission of any bequest for Vinroy who was in likeness "the image of his father," and the fact that the largest share of his property being left for his lady friend, are matters that should excite the suspicion of the Court. Jephtha said that his father had always openly stated his intention that 29 Wellington Drive was for his children, that adequate provisions for the completion of the twins' and Kingsley's education

be made, that each of the twins would get a car and that his mother (testator's wife) would never want. Jephtha said his father was meticulous and knew the correct spelling of all names. The names complained of are "Irving" instead of "Ervin," "Kathlene" in place of "Kathleen," "Jepheth" twice spelt in place of "Japheth," "Geroldene" in place of "Geraldine," "Lureza" in place of "Lurezena". Mr. Allan said he spelt them all and did not know if they were correctly spelt. He asked the testator to spell Lureza as he had never heard it before. In respect of the first four I find the spellings are all phonetic and in respect of Lureza the probabilities are that Jephtha and his father had two different forms of spelling for that name.

The evidence is that the Will was dictated. No devise was made to Vinroy. His name was listed at two different points but was crossed out on the instructions of the testator and the names Jephtha and Jepheth substituted. Vinroy had at this time completed his studies abroad and was a qualified engineer, while neither boys had as yet been admitted to medical school. Jepheth went the September following his father's death and Jephtha the September of 1975. His father, at the time he got ill was clearly looking towards their training and would no doubt be considering their financing, so in substituting the gift to the twins, his father may well have considered that Vinroy had already qualified professionally as an Engineer, married and working at his profession and consistent with one of the intentions as stated by his son, contemplated making provision for the twins and the completion of their higher studies and for Kingsley who had not yet started high school. Bearing in mind that when the devises were made the testator considered all the properties as his own, the

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probabilities are that he did not take into account any mortgage or amounts due. **Geraldine** Cochrane on the face of it then has got no more and no less than Jepheth or even Mrs. Ford. She, Miss Cochrane, lived with him for the last eleven years of his life and it has never been suggested by anyone that she had been anything but good to him. She assisted in the down payment on Wellington Drive, in securing the premises at Rosemount for his wife's comfort, she kept his house and spent her own money in house-keeping, she entertained his children, caring to the extent that she was looked on as a step-mother; in sickness she was constantly with him and attending to him spending long hours with him in his illness. What gratitude would he not feel for her on his death bed - a man who called his wife's son his own, who cared for all his children to the extent that they speak of him in glowing terms, a man who in his life and in his death provided for his estranged wife, is it not reasonable to conclude that he was a compassionate/humane person who would seek to make this woman who cared him in his life and in his illness comfortable for life being conscious also of the fact that she contributed to the purchase price of and lived and kept his home as a "matrimonial home." I can find nothing inordinate in the devises to her. As to his intentions, he left 29 Wellington Drive to two of his children and his lady friend all of whom were living with him at the time of his death; he left a house and what he might have thought was monies in the Bank for his estranged wife and a motor car for one only of the twins. Basically his intentions as stated by his son is reflected in his Will, and the dispositions therein, in no way reveal the fact that he was lacking in knowledge and approval of the contents.

The signature of the testator on the Will is not in issue. I find it difficult to conceive that anyone who signed his name as it appears twice on the document with so much of the natural flourish and put his initials to the said document so many times was not aware of what he was doing. There is no evidence that any of the Executors were aware either of the extent and nature of his estate or of the persons of whom there were so many who might be expected to have a claim on his estate. Indeed they received no benefit from it and no motive can be ascertained or was imputed to them.

I shall cite Cockburn C.J. in Banks vs Goodfellow L.R. 5 Q.B. 549 at p.567 of his judgment where he quoted from Harrison vs Rowan 3 Washington p. 585:-

> "Most men at different periods of their lives have meditated upon the subject of the disposition of their property by Will and when called upon to have their intentions committed to writing they find much less difficulty in declaring their intentions than they could in comprehending business in some new measure."

I adopt these words as being apt to this situation. His sons said he was meticulous and brillant and he showed his brillance to the end. Albeit he was unable to assist in intricate financial manipulations in respect to his chicken business and money for the purchase of their feed.

I find that at the time of making the Will the testator's memory was unimpaired, and his understanding sufficiently sound for this transaction; that he was competent to direct the distribution of his property and capable of recollecting the property he was about to devise and bequeath; that the manner of disposing and distrubuting his property was in all probabilities well arranged in his mind beforehand and that his

Will expressed what was in his mind at the time. The conscience of the Court is satisfied that the instrument propounded is the Last Will of a free and capable person.

I feel bound, however, to express my regret at the course which this litigation has taken. From all the evidence, Miss Cochrane was a good mistress and step-mother and the family structure was one in which the testator included everybody; a separated wife, children of husband and wife, children of wife alone, children of husband alone and a mistress. It is clear that in this structure there was hardly anyone who had any greater claim than the other either to his affection of his goods. All were provided for in his Will in some measure except Vinroy who had been adequately provided for in the testator's lifetime. I can see no event which should have given rise to any controversy between the parties. The testator knew what he was doing when he signed the Will. If he had not made this Will he might have died intestate and would have defeated the very purpose which his son stated he had set out to do. I find that the defendants have failed to make out a case for upsetting the Will and the Court therefore decrees that Probate be granted in Solemn Form as prayed.

Costs of this action to be taxed or agreed and to paid out of the Estate.

M. Morgan
Judge