

Privy Council Appeal No. 33 of 1926.

Thomas J. Harrison - - - - - *Appellant*

v.

Newton Carman Shaver and others - - - - - *Respondents*

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 27TH JULY, 1926.

Present at the Hearing :

VISCOUNT HALDANE.

LORD ATKINSON.

LORD DARLING.

LORD JUSTICE WARRINGTON.

CHIEF JUSTICE ANGLIN.

[*Delivered by* LORD DARLING.]

This is an appeal from the Appellate Division of the Supreme Court of Ontario, allowing an appeal from the judgment of the Hon. Mr. Justice Orde which refused the petition for probate by the plaintiffs—the present appellants—of the will of W. H. Hill deceased. The trial judge held that those propounding the will had failed to prove that it was duly executed by the deceased as the will of a free and capable testator, with full knowledge and understanding of the contents. On appeal to the Appellate Division this decision was reversed, and judgment pronouncing for the will was given by the full Court, unanimously. From that judgment this appeal was brought.

The testator William Henry Hill was a man over seventy years of age who had by hard work, and intelligent conduct of his affairs, amassed a considerable fortune. It appeared that he had made former wills, and in doing so had acquired some knowledge of the necessary technicalities in regard to the disposition of property. He had no very near relations, and he had not infrequently declared his intention of leaving nothing to such relatives as he had.

The will in question is in the following terms :—

“ This is the last will and testament of me, William Henry Hill, of the City of Toronto, in the County of York, of the Province of Ontario, Dominion of Canada, Esquire, made this sixteenth day of January, in the year of our Lord one thousand nine hundred and twenty-three.

“ I revoke all former wills or other Testamentary Dispositions by me at any time heretofore made and declare this only to be and contain my last will and testament.

“ I direct all my just debts, funeral and testamentary expenses to be paid and satisfied by my Executor hereinafter named as soon as conveniently may be after my decease.

“ I give, devise and bequeath all my real and personal estate of which I may die possessed in the manner following that is to say : I give, devise and bequeath all my property both real and personal unto Newton Carmen Shaver, as my Executor and Trustee, his heirs, executors and administrators, in Trust upon the following trusts, namely :—

“ Firstly : I direct my Executor and Trustee to sell, call in, and convert into money all or any part of my property, both real and personal, as shall not consist of money and I hereby give to my said Executor and Trustee full and effectual power to sell and convert the said property into money.

Secondly : I direct my Executor and Trustee to pay to Joseph Edwin Hunter, my chauffer, the sum of ten thousand dollars.

Thirdly : I direct my Executor and Trustee to pay to the Hospital for Sick Children, Carlton Street, Toronto, Ontario, the sum of five thousand dollars.

Fourthly : I direct my Executor and Trustee to pay to the Gravenhurst Sanatorium, Gravenhurst, Ontario, the sum of five thousand dollars.

Fifthly : I direct my Executor and Trustee to pay to Ross W. Ormerod, of the City of Toronto, in the County of York (my former solicitor and trusted friend), the sum of fifty thousand dollars.

Sixthly : I direct my Executor and Trustee to pay one hundred thousand dollars for the purpose of securing a hospital, east of the River Don, in the City of Toronto, in the County of York. The way in which the party or parties to whom and the time at which the said one hundred thousand dollars is to be paid, I hereby leave, absolutely, to the discretion of my Executor and Trustee and Dr. Kenneth Campbell, but it is my direction that the said one hundred thousand dollars is to be held in trust for the above purpose and paid over for the said purpose, as soon as my Executor and Trustee and Dr. Kenneth Campbell think is advisable so to do.

“ Seventhly : I direct that should any of the above specific gifts in any way fail the same shall fall in and form part of the rest and residue of my estate, for it is my clear intention that I shall not any way or manner die intestate.

“ Eighthly : I direct that it shall not be necessary or compulsory for my Executor and Trustee to pay any of the above specific gifts or the gift of the rest and residue of my estate which I shall hereafter herein give, until after a period of two years from the date of my death but I leave the said payments of the said gifts both specific and the said rest and residue wholly at the discretion, as to time, of my said Executor and Trustee, that is for the space of two years next following my decease, after which time the said gifts shall be paid as soon as convenient having regard to the benefit of my estate.

“ Ninthly : I direct, in order that there may be no trouble, in respect to any interest accruing on any of the above specific gifts, that the said interest shall not in any case form part or be added to the said specific gifts, but the same shall fall in and become part of the rest and residue of my estate.

"Tenthly : In order to make my intention unmistakably clear, I hereby declare that it is my clear intention that not a particle of parcel of my estate either real or personal shall in any way go to any of my blood relations.

" I, William Henry Hill, have very carefully read over all the above specific gifts word by word and weighed every clause very carefully and I hereby state that the same most clearly states and contains my will of all my property except the rest and residue of my property, which said rest and residue I shall hereunder give.

" All the rest and residue of my estate not hereinbefore disposed of, I give, devise and bequeath unto Dr. Kenneth Campbell, of the City of Toronto, in the County of York (my physician and dear friend), in order that he may the more efficiently carry on his profession of medical research and surgery, absolutely : and I direct my Executor and Trustee to pay over all the rest and residue of my estate unto Dr. Kenneth Campbell.

" And I nominate and appoint Newton Carmen Shaver, of the City of Toronto, in the County of York, my solicitor (his heirs, executors and administrators), to be executor of this my last will and testament and also the trustee of my last will and testament.

" I, William Henry Hill, hereby declare that I have read over the above gift, devise and bequest of all the rest and residue of my estate, and I hereby state that it is my clear intention to give the said rest and residue of my estate to the said Dr. Kenneth Campbell, as therein set out. I fully understand every portion of this my last will and testament, my intention has been fully satisfied and my mind is clear.

" In witness whereof I have hereunto set my hand the day and year first above written.

<p>"Signed, published and declared by } the said William Henry Hill the testator } as and for his last will and testament in } the presence of us who both present } together at the same time, in his presence } at his request and in the presence of each } other have hereunto subscribed our names } as witnesses. }</p>	} WILLIAM HENRY HILL.
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" NEWTON C. SHAVER.

57, Queen Street W., Toronto, Ont.

" WILLIAM MOGRIDGE,

96, Grenadier Road, Toronto, Ont."

On behalf of the appellant (defendant), it was contended that W. H. Hill did not execute the will propounded, and that he was procured to make a will by undue influence fraud and misrepresentation.

On the argument of this appeal counsel for appellants relied almost entirely on a contention that the will was a forgery in so far as the signature of the testator was concerned. No evidence had been given to show when or by whom this signature had been made, except that there was definite evidence that it was the work of the testator himself, his hand being supported by the executor N. C. Shaver. The whole case in favour of forgery was compounded of suggestion, suspicion, and the evidence of several experts in handwriting. On the other side were witnesses, apparently no less expert, who came to the conclusion that the signature was that of the testator made with his own hand. Numerous

examples of signatures, admittedly of the testator himself, were put in evidence—many of them magnified and photographed—and these were carefully compared and considered by their lordships, as they had been by the learned Judges of the Supreme Court.

In their lordships' opinion the evidence proved that the signature William Henry Hill at the foot of the will was written by the testator himself, with full knowledge of the contents of the will, and uninfluenced by fear, fraud, or otherwise.

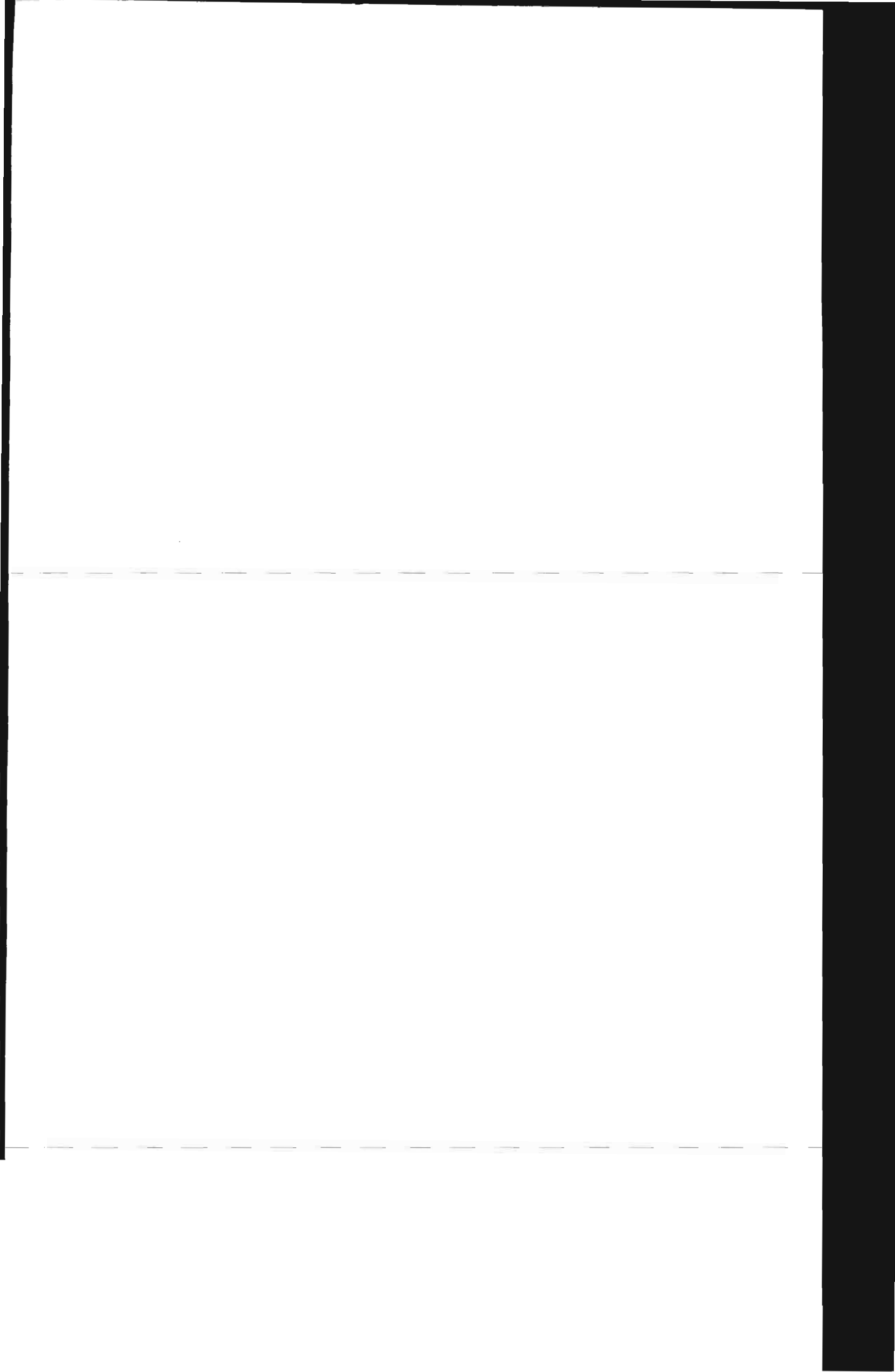
Their lordships desire to adopt the language of the Hon. Mr. Justice Hodgins for the expression of the reasons for their opinion, as follows :—

“(1) The signature of Mogridge is undoubtedly genuine ; (2) the fact that the testator is proved to have intended to sign a will ; and did sign one if Mogridge's signature is genuine ; (3) no adequate proof is given that Mogridge was misled or tricked into signing this will as a witness under the impression that he was putting his signature to some other kind of document ; (4) the impossibility of finding circumstances which afforded an opportunity to conspire or to carry out the conspiracy ; (5) the obvious danger in such a conspiracy from those called in to perform criminal acts, who gain no benefits thereby ; (6) the effect on opinion evidence regarding handwriting of the fact that the testator's hand was held, guided or grasped.”

Although a great deal of evidence was called at the trial, the issues were few, and plain. Therefore their lordships do not consider it necessary to discuss them at length, satisfied as they are that the conclusions at which the Judges of the Supreme Court arrived were well founded, and agreeing as they do with the reasons assigned for them.

Their lordships will humbly advise His Majesty that the appeal ought to be dismissed.

The appellant will pay the costs of the respondents who contested the appeal, and two sets, as the executor was separately represented from the other respondents. The executor will have such costs as he does not recover from the appellant, with his charges and expenses, out of the estate.



In the Privy Council.

THOMAS J. HARRISON

v.

NEWTON CARMAN SHAVER AND OTHERS.

DELIVERED BY LORD DARLING

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