

Present: Bertram C.J. and De Sampayo J.

1920.

HERATH SINNO v. APPUHAMI.

69—D. C. Negombo, 1,806.

Handwriting—Forgery—Handwriting expert examined by Court of Appeal—Forgeries by tracings.

H. J. C. Pereira, for appellant.

E. W. Jayawardene (with him *Croos-Dabrera*), for respondent.

Cur. adv. vult.

November 25, 1920. BERTRAM C.J.—

This is a very remarkable case. It is the case of a will which is impugned as a forgery, and it is attested by no less than five witnesses. It was drawn by a notary's clerk living at a distance of five miles from the house in which the alleged testator died. There was a notary living within two miles of this house, but the proponent of the will explains that he was not on good terms with this notary, and, therefore, went further afield to the office of a notary who had, as a matter of fact, the right to practise at the place where the will was drawn. This notary being absent, the notary's clerk, who says he had drawn fifteen previous wills, went to the house, received instructions, so he alleges, and drew up the will on the spot. It was then executed in the presence of five witnesses. The learned District Judge who heard all the witnesses has delivered a very vigorous judgment upholding the will in very uncompromising terms. He examined the contention that the will was a forgery, and rejected it observing that he had no doubt about the genuineness of the will: There is one part of the case, however, which the learned Judge seems hardly sufficiently to have examined, and that is the signature of the will and its correspondence with an admittedly genuine signature of the supposed testator on another document. The other document was, in fact, in the house where

1920.

BERTRAM
C.J.*Herath Sinno
v. Appuhani*

the will was said to have been signed. It was a document executed by the propounder of the will transferring certain properties to the deceased, who was his son-in-law, in anticipation of the deceased's marriage with the propounder's daughter. It is a remarkable fact that the will which disposes of all the deceased's numerous properties specifies the same properties which are mentioned in this earlier document, but refers to all the rest of his properties without specification. It is suggested that this document being in the house it was made use of for the purpose of forging the will, and the signature to the will bears a very remarkable resemblance to the signature on the earlier document, so remarkable that it appears to be a tracing of the signature on that document. I have always taken it that when one signature is shown to be a tracing of another which is genuine, that of itself is almost conclusive evidence that the traced signature is a forgery. There may be some special explanation, but, at any rate, such a signature is open to the gravest suspicion. In view of the remarkable correspondence in these two signatures, we acceded to a request by Mr. H. J. C. Pereira that expert evidence should be called in this Court, and Mr. C. T. Symons, the Public Analyst, who is also a handwriting expert, has given us a very full and careful report on the subject of this signature, and he has also given evidence before us. Mr. Symons produced various text books to which he referred in his report, and I should like to cite them with reference to the general impression which I have formed, from other sources based partly on the well-known Piggot and partly on other cases within my experience, that traced signatures are *primâ facie* forgeries. Mr. Symons referred to Hardless on "Forgeries in India," where that principle was only admitted, subject to very great qualifications. The author of that book refers to signatures which are reproduced in his book, as to which he says that "there are examples of coincidences and superimposing occurring among genuine signatures." It does not appear to me on examining these reproductions that they are so apparently tracings as to come within the principle. There are certain correspondences of measurement referred to, but I am not clear, at any rate, in regard to some of them, that the signatures referred to can be described as having the appearance of tracings. Another author referred to by Mr. Symons, "Ames on Forgeries," has this passage at page 69: "Forgeries by tracings usually present a close resemblance in general form to the genuine, and are therefore most sure to deceive the unfamiliar or casual observer. It sometimes happens that the original writing from which the tracings were made is discovered, in which case the closely duplicated forms will be positive evidence of forgery."

The author points out that traced forgeries are not exact duplicates, since it is very easy to move the paper by accident or design while the tracing is being made as appears to have been done in the

1920.

 BERTRAM
 C.J.

*Herath Sinno
 v. Appuhami.*

present case. Another author cited by Mr. Symons, "Blackburn on the Detection of Forgery," published in 1909, has this passage: "There is a well-known case of forgery being brought home to the perpetrator through the accuracy of the tracing. It is a fact easily proved that no man can write a word twice so exactly, that if the two are overlaid they fit. If two such signatures be produced, it is safe to assume that one has been traced or otherwise mechanically produced," and he refers to a case in which, as in the present case, the original document used for the purpose of the forgery had been in the possession of the supposed forger. Mr. Symons said that it is possible that one genuine signature may be so like another as to have the appearance of being a tracing, but he makes the acute observation that this only happens when a man's signature follow a regular form. It cannot happen where, as in the present circumstances, a man's signature do not show any marked uniformity.

I am very much struck with the report of Mr. Symons, and I think that his evidence confirms very strongly the impression we had formed. There are two points in his report which greatly impress me. There are certain characteristic features in all the genuine signatures of the deceased which do not re-appear in the forged signature. Mr. Symons says that there is a marked spur at the commencement of certain letters in the genuine signature, and gives several examples of it. This spur disappears in the tracing, a result which might well happen owing to the difficulty of tracing one signature from another over paper. Small peculiarities like this would not be visible through the paper. There is also the fact which he pointed out that the signature has obviously been touched up in certain places. I observe, too, in one letter the mute symbol is made in such a way that it does not correspond to the manner in which the same mute symbol is regularly made in all the genuine signatures. I do not believe that the testator could have made this mute symbol in this peculiar way, but it is a deviation which might well occur in tracing. There is also this striking fact. The signature is very carefully and firmly made. Now, there is definite evidence that the supposed testator was extremely ill. It was because he was so ill that a notary was sent for to make his will. The pro-pounders of the will are in this dilemma. If he was very ill, it is not likely that he would make so firm and clear a signature. If he was not ill, there is no reason why he should not have waited until the services of the notary himself were available. I am unable to resist the report of Mr. Symons and the effect of the circumstances which he points out.

In spite of the impression that the witnesses made upon the learned Judge, it seems to me that there can be no doubt that the signature of this supposed will was a very deliberate forgery, and a forgery of a very gross and scandalous character.

1920.

BERTRAM
C.J.

Herath Sinno
v. Appuhami

. I would, therefore, allow the appeal, and in view of the circumstances that have come to light, I think that the record, after being transmitted to the District Court, should be returned to this Court with all the documents and the report and papers prepared by Mr. Symons, and should be sent to the Attorney-General for such action as he may seem fit to take in the matter.

DE SAMPAYO J.—I entirely agree.

Set aside.

