Present: Jayewardene A.J.

KING *v.* PERERA.

61—D. C. (Crim.) Nuwara Eliya, 145.

Handwriting expert—Uncorroborated testimony of expert—Unsafe to convict.

It is not safe to base a conviction solely on the evidence of an expert in handwriting.

APPEAL from a conviction by the District Judge of Nuwara Eliya. The facts appear from the judgment.

R. L. Pereira, K.C. (with *R. C. Fonseka*), for accused appellant.

Crosette-Thambiah, C.C., for respondent.

July 9, 1930. JAYEWARDENE A.J.—

The accused was charged with dishonestly signing a false document, a pari-mutuel pay-out chit for Rs. 1,000, on February 13, 1929, at Nuwara Eliya with the intention of causing it to be believed that it was signed by one S. A. Perera, and also with abetting the commission of the offence of criminal breach of trust in respect of the said sum by some person unknown. The accused was convicted and sentenced to six months' rigorous imprisonment.

The Ceylon Turf Club employs about twenty pay-out clerks, two supervisors, and a cashier at Nuwara Eliya, who work inside one building. The pay-out clerks when they require funds fill up a requisition and sign it, obtain the initials of a supervisor, and present the chit to the cashier, who pays the amount to the clerk.

On February 13, it was discovered that a sum of Rs. 1,000 had been paid out on a forged chit (P1) to a pay-out clerk who signed himself " S. A. Perera " for race No. 1, window No. 3. There was no pay-out clerk bearing that name, and that window, it was found, was not working on that day. Suspicion rested on a pay-out clerk named E. W. Dep who worked at window No. 2. Mr. Hutchins, the supervisor, thought that the person who handed him the chit to be initialled was a dark person who resembled Dep. The figure " 3 " in the impugned document was also said to resemble the figure " 3 " in Dep's paying-out statement (P23).

The accused, K. G. Perera, was employed as a clerk in the 50-cent sweep. The Police Inspector noticed certain similarities in the accused's signature and the impugned one and skilfully obtained further specimens of his writing and prosecuted the accused. There is no direct evidence of any kind against the accused. No one has seen the accused write or sign the forged chit, and no one is able to identify him as the person who presented it or to whom the money was paid out, nor are there circumstances of any value that would

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serve to connect the accused with this forgery. The accused worked at the 50-cents sweep in another building, and would normally have no access to the supervisor who initialled the chit or to the cashier who paid the money. I think that it is clear that the chit (P1) was presented by a person working inside the building who knew the system of work. Dep in his evidence stated that he stayed at Nuwara Eliya during this meet with the accused and his brother. If Dep is innocent the circumstance is of no value at all, but if Dep was a party to the fraud, his evidence being that of an accomplice needs corroboration and would be viewed with suspicion. In any event the fact that Dep and the accused lived together does not lead us far, but it may show that he had opportunities of acquainting himself with the accused's writing and of imitating it if he wished. The whole case thus rests on the evidence afforded by a comparison of handwriting. On the one side we have several documents proved to be in the accused's writing, and on the other side only one document (P1) which contains the writing in question. Mr. Symons, the handwriting expert, was of opinion that the person who wrote the signature " S. A. Perera " on (P1) also wrote the signatures " K. J. Perera " on documents (P2), (P3), and (P6) to (P21). He had no doubt whatever on the point. He was also of opinion that the same person who wrote the body of (P1) also wrote the body of writings shown in (P4) and P5. It has been proved that (P4) and (P5) were written by the accused.

In *Soysa v. Sanmugam*,[1] Hutchinson C.J. observed that he had known too many instances in which experts' opinion as to identity of handwriting had been proved to be mistaken to accept them as anything more than a slight corroboration of a conclusion arrived at independently, never so strong enough as to turn the scale against a person charged with forgery, if the other evidence is not conclusive. He also expressed his belief that the comparisons of handwritings are a very untrustworthy guide, and pointed out that the Court should make up its mind first, entirely uninfluenced by the expert's opinion, and must be first satisfied that the evidence on the main points was true.

In *Cresswell v. Jackson*,[2] Cockburn C.J. thought that the evidence of professional witnesses is to be viewed with some degree of distrust, for it is generally with some bias, but within proper limits it was of very valuable assistance. The advantage is that the habits of handwriting as shown in minute points which escape common observation but are quite observable when pointed out and detected and disclosed by science, skill, and experience.

In *Wakeford v. Lincoln (Bishop)*,[3] decided by the Privy Council, the handwriting expert, Mitchell, had said that it was not possible

[1] *(1907) 10 N. L. R. 355, at p. 359.*
[2] *(1864) F. & F. I. N. P. 22 English & Empire Digest 202.*
[3] *(1921) 90 L. J. P. C. 174.*

for anyone to say definitely that anybody had written a particular thing and that all he could do was to point out the similarities and draw conclusions from them. Lord Birkenhead (Lord Chancellor) thought that he had given evidence with great candour and that was the manner in which expert evidence ought to be presented to the Court, who have to make up their minds with such assistance as can be furnished to them by those who have made a study of those matters, whether a particular writing is to be assigned to a particular person. Questions depending upon handwriting are in many cases doubtful and in the past have given and in the future will give cause for great anxiety in Courts of Justice. If that were the only piece of evidence, their Lordships, although without doubt in their own minds as to the authenticity of the writings, would not willingly rest their judgment on a single fact as to which error might be possible. They thought that the only alternative to the genuineness of the writing was the supposition that it was a carefully planned forgery of the appellant's name as an integral part of the alleged conspiracy, but that the hypothesis of such a conspiracy was utterly untenable.

In effect an expert in handwriting should not be asked to say definitely that a particular writing is to be assigned to a particular person; his function is to point out similarities between two specimens of handwriting, or differences, and leave the Court to draw its own conclusions.

In the present case Dep, who was at first suspected, had every opportunity on his own evidence to study the accused's handwriting and could well simulate his signature and writing. The supposition that he may have carefully planned the forgery of the accused's name is not too far fetched, nor is such a hypothesis utterly untenable where Dep stood to gain Rs. 2,000 and probably did draw Rs. 1,000 by presenting the forged chit.

It has been held in India that to base a conviction solely upon the testimony of a handwriting expert is, as a general rule, very unsafe,[1] and the Calcutta High Court has held that a Sessions Judge is bound to call the attention of the jury to the fact that the evidence of an expert should be approached with considerable care and caution.[2] Reasons have been given why expert evidence is generally not considered of high value. The expert is, though unwittingly, biased in favour of the side which calls him and has a tendency to regard harmless facts as confirming preconceived notions and evidence supporting or opposing given theories can be multiplied at will (*Tracy Peerage Case* [3]). After the discussion in the House of Commons of what is known as "The Cadet Case," Sir Edward Carson (afterwards Lord Carson) hoped that the result of the case

[1] *(1904) 2 All. L. J. R. 444 & 7 C. L. Review 183.*
[2] *(1905) 1 Cal. L. J. 385.*
[3] *10 C. & F. 191 & I. L. R. 11 Bom. 101.*

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would be to do something to discredit for ever this class of expert evidence.[1] The danger of implicit reliance on evidence of this kind was illustrated in the Beck Case in 1904. Being based on opinion and theory, such evidence should be very carefully weighed and principally used in corroboration of other modes of proof as in the Privy Council case, *Wakeford v. Lincoln* (*supra*).

It is asserted that in every person's manner of writing there is a certain distinct prevailing character, which as being the reflex of his nervous organization is independent of his own will and unconsciously forces the writer to stamp the writing as his own, and this distinctive character being once known can be afterwards applied as a standard to try other specimens of writing, the genuineness of which is disputed. Yet it is not impossible after sufficient study to simulate another's writing, however marked the characteristics may be, and thus baffle even the best experts. In this respect finger print impressions differ from handwriting, with which it has been compared. The skin is traversed in all directions by creases and ridges, which are ineradicable and do not change from childhood to extreme old age. The persistence of the markings of the finger tips has been proved beyond all question, and this universally accepted quality has been the basis of the present system of identification. The ridges appear in certain fixed patterns, from which an alphabet of signs or a system of notation has been arrived at. A four-fold scheme of classification has been evolved, the various types employed being styled arches, loops, whorls, and composites. There are seven sub-classes and all are perfectly distinguishable by an expert, who can describe each by its particular symbol with code arranged, so that the whole " print " can be read as a distinct and separate expression. It has been found that out of hundreds and thousands of instances no two persons have identical patterns. The identification by means of finger prints is now regarded as practically infallible and is used with great success in Europe and India—London alone having a register containing over 200,000 finger prints. Conclusions drawn by the comparison of disputed and authentic specimens of handwriting, whether by reason of similitude or dissimilitude, are on the other hand deceptive and may be dangerous. In the present case the disputed handwriting is contained in one document only, the pay-out chit (P). The figure " 3 " is said to resemble Dep's writing, and that evidence affords an additional difficulty in determining the authorship of the document. The initial " S " and the capital " P " in Perera strongly resemble the " S " and " P " in the accused's own signature and have the same characteristics, but they could have been imitated by any person who was practised to do so. The other characteristics mentioned by the expert are not so noticeable or convincing.

[1] *7 Ceylon Law Review 183.*

A person conspiring to imitate the accused's handwriting could easily have discovered those characteristics and simulated them. There is no other evidence of any kind connecting the accused and the crime.

In a very recent case which is still unreported (205—P. C. Badulla 23,757, S. C. M., June 17, 1930), Lyall Grant J. said—

> "It is clear that the Magistrate regards all the evidence in the case, with the exception of the expert's evidence, with extreme suspicion and he has in effect rejected it. In this I agree with him, but I think it is dangerous to convict on the evidence of the expert alone."

He also observed that one must not exclude the possibility of forgery, that is to say, of someone having imitated the name of the accused. He gave the accused the benefit of the doubt and acquitted him.

I am not satisfied after an examination of the various signatures and handwriting of the accused that the body of the pay-out chit or the signature on it is in the handwriting of the accused. After applying my mind to this case with great care, I have arrived at the conclusion that it would be dangerous to convict the accused.

I therefore set aside the conviction and acquit the accused.

Set aside.