THE GREAT MATLOCK WILL CASE, CRESSWELL V. JACKSON

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Trieste

"TRUTH IS STRANGER THAN FICTION."

THE GREAT

MATLOCK WILL CASE,

CRESSWELL *v.* JACKSON.

TRIED BEFORE THE LORD CHIEF JUSTICE OF ENGLAND, AND A SPECIAL JURY OF THE CITY OF LONDON, BY ORDER OF THE HOUSE OF LORDS.

REVISED AND CORRECTED WITH ADDITIONAL EVIDENCE NOW FOR THE FIRST TIME PRINTED, AND AN APPENDIX OF DOCUMENTS INCLUDING VERBATIM COPIES OF THE

WILL AND THREE DISPUTED CODICILS, &c., &c.

"The common saying that "Truth is stranger than fiction," is often illustrated by the disclosures of our law courts, but seldom in so remarkable and suggestive a manner as by the great Will case which terminated yesterday in a verdict for the Defendants."—*Times*, March 2nd, 1864.

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IN THE QUEEN'S BENCH.

BETWEEN

ROBERT CRESSWELL (since deceased)
JOHN MARRIOTT, & JOHN ELSE, } PLAINTIFFS.

and

CHARLES WAKEFIELD JACKSON
and GEORGE SHAW, } DEFENDANTS.

Counsel for the Plaintiffs :

Mr. KARSLAKE, Q.C , Mr. FIELD, Q.C., and Mr. HANNEN.

Attorneys for the Plaintiffs :

Messrs. UPTON, JOHNSON, & UPTON, Austin Friars, London.

Counsel for the Defendants :

Mr. Serjeant HAYES, Mr. Serjeant BALLANTINE, and Mr. WILLS.

Attorneys for the Defendants :

Messrs. DREW and WILKINSON, 151, Bermondsey Street, London, and Great Queen Street, Westminster, and MICHAEL JESSOP, Esq., of Crich, Derbyshire.

THE GREAT MATLOCK WILL CASE.

(Sitting at Nisi Prius, after Hilary Term, 1864, at Guildhall, before the LORD CHIEF JUSTICE *and a Special Jury.)*

CRESSWELL AND OTHERS V. JACKSON AND ANOTHER.

THIS, which will be known hereafter as the great Derbyshire will case, came on for its third trial by order of the House of Lords, and is certainly, whether with regard to its own circumstances or the litigation, both at law and equity, which it has involved, one of the most remarkable that ever has been known. It relates to the validity of certain alleged codicils to the will of a person named George Nuttall, who died at Matlock on the 7th of March, 1856. His will left most of his real estate to one John Nuttall, who died soon after him. These codicils, three of them, were said to have been afterwards found, one after the other, at different times, during the subsequent 18 months, and their effect was to give most of the real estate thus bestowed on John Nuttall and his children, to two other persons, chiefly one John Else and Catherine Marsden. The validity of the codicils was disputed, and a suit was instituted in Chancery to establish them. An issue was directed by the Master of the Rolls to determine their validity or invalidity by the verdict of a jury, and that issue came on to be tried in 1859, at the Summer Assizes for Derby, before Lord Chief Justice ERLE and a special jury. The case on the part of the opponents of the codicils—those who took the chief real estate under the will—was that they were forgeries. The jury, found however, in favour of those who set up the codicils. The Master of the Rolls, not satisfied, directed a second trial of the issue before the Lord Chief Baron at the Spring Assizes for Derby, 1860, and the jury then found a verdict against the validity of the codicils. With this verdict the Master of the Rolls was satisfied, and he refused a new trial. Then there was an appeal to the Lords Justices, who were equally divided. Then there was an appeal to the House of Lords, who ultimately decided in favour of a new trial, and appointed it to take place in London before the Lord Chief Justice of England and a special jury of the city of London. Thus the case came on for the third time for trial after years of previous litigation, both at law and in equity, and it may easily be conceived that the questions thus obstinately litigated, both

with regard to the amount of property at stake, and still more, with regard to the grave questions of a criminal character also involved in the case, are of no ordinary importance. A case of this kind always has a story, the knowledge of which is essential to anything like an understanding of the case as it proceeds through what probably may be a protracted trial, and the sooner that story is told to the reader the better, as it makes all that follows intelligible. Certainly, never was there a story more remarkable in all its circumstances.

The testator, George Nuttall, lived all his life at Matlock, and he died there in March, 1856, at the age of 54, a bachelor, and possessed of a considerable estate, both real and personal. He had, it would seem, a businesslike mind; he was a land surveyor, and had been for many years in good practice; he was very intelligent—a man, if not educated, at all events, by no means illiterate, and beyond all doubt, as was admitted on both sides, an excellent man of business. It was, on the other hand, admitted on both sides that he was somewhat close and reserved in his habits, and led a rather retired life. He had no near relations, and does not appear to have been on terms of much intimacy with such as he had. His nearest relations were cousins, and, of these, one (Catherine Marsden) had lived with him as housekeeper for many years, and was living with him in that capacity at the time of his death. One of her sisters was married to John Else (the principal plaintiff and appellant), who lived at Matlock, where he was assistant-overseer and also bailiff of the County Court. He was occasionally employed by the testator in copying accounts and collecting rents, and wrote a hand not unlike his, though distinguishable. A Mr. Newbold (now dead) was the testator's attorney, and was on friendly terms with him. Among his neighbours were one Job Knowles, a farmer, and a Mr. Adams, a surgeon (now dead), both of whom occasionally visited him. He had a cousin named John Nuttall, who was a foreman to a London contractor, and seems to have been a respectable person, with a family of several young children. At the time of the death of the testator his real estate was worth between 2000*l.* and 3000*l.* a year, part of which was a quarry, let to Job Knowles and Sir Joseph Paxton. His personalty was sworn under 10,000*l.* Such were his circumstances at the time of his will and of his death. His will (the validity of which, it will be observed, is not disputed, though it is said to have been revoked or altered by subsequent codicils) was made in September, 1854. It was prepared by Mr. Newbold, but copied in duplicate by the testator, and both copies were duly executed. Thus, there were two copies of his will, both entirely in his handwriting, and both in his possession, and one of them appears to have been kept in a cupboard in his bedroom. The effect of the will was to make his cousin John Nuttall residuary devisee of the bulk of the real estate. The furniture and effects were left to Catherine Marsden, and his dwelling-house, with an annuity, and also a house occupied by Else, were likewise left to her. An interest in certain tithes was left to Else. The right of working a quarry was given to Job Knowles for life, subject to a lease under which he already held it jointly with Sir Joseph Paxton. The residuary personalty was divided among a great many persons. The residuary real estate was left absolutely to Mr. John Nuttall. Such being the will, (which it must be borne in mind, was admitted to be

genuine), the testator, as already mentioned, does not appear to have mentioned to his attorney anything about any alteration of it, by codicils or otherwise, down to the time of his death. He died, as above stated, on the 7th of March, and had been ill some time before. On the Sunday before his death—*i. e.*, on the 2nd of March, occurred an incident on which both sides relied, and which affords a curious illustration of the different way in which the same thing may be made to look, according to the view taken of it. The undoubted fact is that on that day he had a conversation with his attorney, Mr. Newbold, and desired his attendance next day, and on that day (the Monday), when he was very much worse and in a state of unconsciousness with short intervals of reason, he showed a great anxiety to get at the cupboard in which his will was kept, but he was unable to speak; and when, in deference to his evident anxiety about it, he was lifted out of bed and taken to the cupboard, he was too weak to unlock it, or to do or say anything, and thus the object with which he went to the cupboard was left uncertain, and could only be surmised. The incident is pressed into the service of each side in this way:—On one side it is suggested that he was anxious to get at the will in order to cancel or alter it, or allude to the codicils. On the other side it is suggested that he desired to get it in order to acknowledge it as his last and unaltered will. Whatever his purpose was, it could never be made known by himself; for from that time he sunk into unconsciousness and remained in that state until his death, shortly after which the cupboard was opened and one copy of the will was found. Upon the will thus first found not the least suspicion rests. It is what is called a "holograph"—that is, wholly in the writing of the testator, and it was attested by two of the attorney's clerks. It should be stated that it contains several instances of mis-spelling—"debth" for "depth," "oweing" for owing," &c., and "surgion" for "surgeon." This is material, as a good deal is made of mis-spelling in the codicils. Between the days of the death and the funeral, Job Knowles was heard to say "there was something else," and a further search being made the other copy of the will was found in the same cupboard. This, likewise, was entirely in the handwriting of the testator, and duly executed and attested, and was, indeed, a duplicate of the other, but in the middle of a bequest of some property to a person named Elizabeth Sheldon (now Mrs. Ashworth) there was an interlineation (printed in brackets), thus:—The estate is given to Elizabeth Sheldon

"For life, for her own separate use and benefit [subject to the yearly payment of 100*l.* to the before-mentioned John Else, and 50*l.* yearly to my housekeeper, Cath. Marsden,] free from the debts, control, and engagements of her present or any future husband."

This interlineation is the first of the four forgeries imputed, but as it was not included in the inquiry directed by the Court of Chancery the opinion of the juries who have tried the case has not been taken upon it. On the day of the funeral, when this second copy of the will was found, John Nuttall, the principal devisee under it, was at the house, and he does not appear to have raised any objection to this interlineation in it; on the contrary, he carried to the house of Else a variety of papers, which appeared to be of no importance. It is a remarkable circumstance that he did not long survive his good fortune, and died on the 12th of April, 1856, by his

will devising his property, in trust for his infant children, to the principal defendants. On the 21st of April, 1856, less than a fortnight after his death, Else produced to Newbold the first of the three disputed codicils, dated the 27th of October, 1855, which he said he had found among the papers, along with an epitome or abstract of the will. This codicil purported to be attested by two labourers named Buxton and Gregory, and it was mainly in favour of Else and Catherine Marsden, making him also an executor. It revoked the devise of the properties bequeathed to Miss Sheldon, and devised them to Else. It purported to be holograph—that is, to be written throughout by the testator; but those who impugn it assert that the handwriting is different, and further that it betrays a habit of spelling, or rather of mis-spelling, quite unlike that of the testator. This will would be as to all the codicils a main feature in the case. It is urged against the genuineness of the codicils that they abound in gross blunders of orthography, whereas there are none such in the will, although there are, it is admitted, one or two minor inaccuracies even in that. Thus in the first codicil the following blunders are particularly insisted on:—"Codicel" for codicil (three times), "heare" for heirs, "doughter" for daughter, "executers" for executors, "conferm" for confirm. The Christian name Clifford, also, is spelt "Clifferd," and in the attestation clause the document is stated to have been executed "in the presences of us." But the main reliance on this part of the case is placed on the spelling of the word "daughter," as to which it is contended that whereas the testator never spelt it wrongly, in the codicils it is never spelt rightly; and other documents written by Else are relied on, in which there is the same habit of spelling as regards this word. In these, as in the codicils, it is said it is always spelt "doughter," except in one instance in which it was spelt "dughter." Evidence as to habit of spelling words is, it must be observed, altogether different from evidence of mere handwriting, although there will, no doubt, be a great deal of evidence also as to that. Such, however, being the nature of the case as to the first codicil (which, it will be noted, was produced a few days after the death of John Nuttall, the principal devisee under the will,) the second codicil was produced eight months afterwards. This also, like the former, was found by John Else, and was likewise, like the first, in his favour. He professed to have found it on the 16th of December, 1856, in a little penny account book which had belonged to the testator, pinned on to one of the leaves. This codicil was dated the 6th of January, 1856; it was attested by Adams and Knowles; it gave a large estate at Matlock—which, by the will, went to John Nuttall—to Else, subject to an annuity to Knowles's son, and it gave considerable other property to Else, with an annuity to Catherine Marsden's mother Except this annuity and another (both of which soon dropped) and the bequest to Knowles's son, the codicil was, in fact, entirely in favour of Else, the finder. The mis-spellings in this codicil relied upon by those who impugn it are the following:—"Contiguues" for contiguous, "annexd" for annexed, "immediatley" for immediately, "numbred" for numbered, "assignes" for assigns, "commuation" for commutation (twice,) "tith" for tithe, "prensence" for presence; all which words, it is said, are correctly spelt in the will. Suspicions were now excited in the minds of the trustees; but still they did not assume the responsibility of disputing these