

No 42 of 1940

IN THE HIGH COURT OF AUSTRALIA.

ORIGINAL

DAVIS

v.

HALL.

REASONS FOR JUDGMENT.

Judgment delivered at SYDNEY.

on THURSDAY THE 14th NOVEMBER, 1940.

no 42 of 1940 (9)

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY.

No. 42 of 1940.

ON APPEAL from the Supreme Court
of New South Wales in its Probate
Jurisdiction.

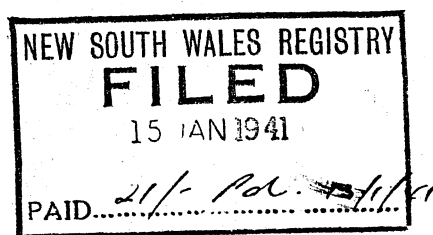
BETWEEN

HAROLD JERMYN DAVIS
(Defendant) APPELLANT

AND

BEATRICE ADA HALL
(Plaintiff) RESPONDENT

O R D E R.



MERVYN A. DOYLE,
Solicitor for Respondent,
Stanton House,
133 Pitt Street,
SYDNEY.
B.1054.

IN THE HIGH COURT OF AUSTRALIA)
)
NEW SOUTH WALES REGISTRY.)

No. 42 of 1940.

ON APPEAL from the Supreme Court of New
South Wales in its Probate Jurisdiction.

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HAROLD JERMYN DAVIS

(Defendant) APPELLANT.

AND

BEATRICE ADA HALL

(Plaintiff) RESPONDENT.

BEFORE THEIR HONOURS, THE ACTING CHIEF JUSTICE, MR. JUSTICE

STARKE, MR. JUSTICE McTIERNAN AND MR. JUSTICE WILLIAMS.

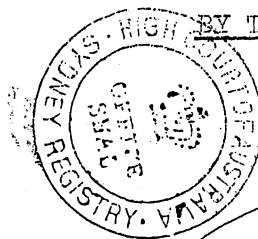
The Fourteenth day of November, One thousand nine
hundred and forty.



WHEREAS in a suit commenced on the Eighth day of May 1940

by the abovenamed Respondent by Statement of Claim in the
Supreme Court of New South Wales in its Probate Jurisdiction
before His Honour Judge Nicholas the said Supreme Court did
decree on the Second day of September 1940 that Letters of
Administration with the Will and Testament of the late
Edmund James Herbert Davis dated the Twenty Fifth day of
March 1940 annexed be granted to the Respondent AND WHEREAS
on the Twelfth day of September 1940 the Appellant filed a
Notice of Appeal in this Court against the Decree of the
said Supreme Court in its Probate Jurisdiction made on the
said Second day of September 1940 AND WHEREAS the Appeal
came on to be heard before this Court on the Thirteenth
day of November 1940 WHEREUPON AND UPON READING the said
Notice of Appeal and the transcript record of proceedings
transmitted to this Court by the Registrar in Probate of
the said Supreme Court AND UPON HEARING what was alleged

by Mr. G. Amsberg of Counsel for the Appellant and Mr. M. F. Hardie of Counsel with whom was Mr. Dawes of Counsel for the Respondent IT WAS ORDERED on the said Thirteenth day of November 1940 that the Appeal should stand for judgment and the same standing in the list this day for judgment accordingly THIS COURT DOTH ORDER that the Appeal be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper Officer of this Court to tax and certify the costs of the Respondent of and incidental to this Appeal and that such costs when so taxed and allowed be paid by the Appellant to the Respondent or to Mervyn A. Doyle her Solicitor after service of a copy of the Certificate of Taxation AND THIS COURT DOTH DECLARE that the costs of the Respondent should be paid out of the sum of Fifty Pounds (£50) paid into Court by the Appellant as security for the costs of this Appeal so far as the same shall extend and that the balance of the said sum if any should be paid out to the Appellant or to his Solicitor John H. Yeldham.



BY THE COURT,

J. Hendman
DISTRICT REGISTRAR.

On the evidence His Honour was justified in granting probate of the will of the 25th March 1940. At the time the Testator gave ²these instructions for the will to ¹Tate he was seriously ill and this made him unable to do business except for very short intervals. The instructions were therefore given with great difficulty and on several occasions, but their detailed nature and the fact that the testator was able to point out to ¹Tate that the first draft was unsatisfactory because it omitted ¹the bequest of the plan¹ of the business to his two sons shows that the testator was able to do business during these intervals and to appreciate the nature of his property. The will is a rational will, the devise of the cottage to the plaintiff being justified by his affection for her as a result of which he desired to marry her if he recovered, while the business and the rest of his property has been left to the two sons who were the only children provided for under his previous will. The evidence is sufficient to show the testator had testamentary capacity at the dates he gave ¹Tate the instructions, and that ¹Tate faithfully embodied these instructions in the will. On the 25th March the testator was able to write his signature on the will and to complete the amount of the legacy to ¹Tate in each case in the proper place and in a firm hand. The evidence is sufficient to show the testator knew he was executing the will which he had given instructions to ¹Tate to prepare ^{all that is required} and that is sufficient. Mr. Amsberg submitted that the doctrine in ¹Parker -v- Feldgate and ¹Perera -v- ¹Perera only applied where the instructions for the will had been given to a solicitor. We cannot agree. The doctrine applies in every case where the Court is satisfied that the will ~~which is prepared~~ is in accordance with the instructions; although the fact that instructions were given to a qualified person like a solicitor who then prepared the will would, of course, materially assist ^{such} proof.

appeal dismissed with costs.