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2001 CarswellBC 1103

Law Society (British Columbia) v. Gravelle

The Law Society of British Columbia (Petitioner / Respondent) and Marian B. Gravelle (Respondent / Appellant) and The Society of Notaries Public of British Columbia (Intervenor)

British Columbia Court of Appeal

Rowles, Donald, Hall JJ.A.

Heard: May 7, 2001
Judgment: May 30, 2001[FN*]
Docket: Vancouver CA025237

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Proceedings: affirming (1998), 57 B.C.L.R. (3d) 388 (B.C. S.C.)

Counsel: *J. Kenneth McEwan*, *Ludmila B. Herbst*, for Appellant, Intervenor

Elizabeth B. Lyall, for Respondent

Subject: Civil Practice and Procedure; Evidence

Evidence --- Legal proof -- Judicial notice -- Of law -- Miscellaneous issues

Law Society applied for declaration that notary public engaged in unauthorized practice of law by giving legal advice regarding probate of will in expectation of fee, gain or reward -- Intervenor society of notaries public maintained that notary was entitled to give advice regarding probate of will, on ground that at date of reception of English law into colony of British Columbia, English Law Ordinance 1867 permitted notaries to probate wills -- Law Society's application was granted -- Chambers judge found that s. 18 of Notaries Act was not exhaustive in defining lawful practice of notary in province and that it was necessary to go beyond statute and consider role of notaries at time of Ordinance -- Chambers judge found that notaries were not probating wills at time of Ordinance and held that conduct by notary constituted unauthorized practice of law pursuant to s. 1 of Legal Profession Act -- Notary appealed -- Appeal dismissed -- Chambers judge was entitled to treat historical texts put before him as evidence for purpose of determining factual issue of whether notaries in England were probating wills at time of

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Ordinance -- Although judge treated historical texts as evidence to be used to determine matter in issue rather than treating texts as foundation for taking judicial notice of fact, no dispute existed concerning whether texts were authoritative -- Judge did not commit reversible error on ground that affidavit from expert was required in order to introduce texts into evidence -- English Law Ordinance, 1867, S.B.C. 1867, No. 70 -- Legal Profession Act, R.S.B.C. 1996, c. 255, s. 1 -- Notaries Act, R.S.B.C. 1996, c. 334, s. 18.

Evidence --- Opinion evidence -- Expert evidence -- Weight of evidence -- General

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Cases considered by *Rowles J.A.*:

Calder v. British Columbia (Attorney General), [1973] S.C.R. 313, [1973] 4 W.W.R. 1, 34 D.L.R. (3d) 145 (S.C.C.) -- referred to

MacMillan Bloedel Ltd. v. Simpson, [1995] 4 S.C.R. 725, [1996] 2 W.W.R. 1, 14 B.C.L.R. (3d) 122, 44

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C.R. (4th) 277, 130 D.L.R. (4th) 385, 103 C.C.C. (3d) 225, 191 N.R. 260, 33 C.R.R. (2d) 123, 68 B.C.A.C. 161, 112 W.A.C. 161 (S.C.C.) -- considered

Ontario (Attorney General) v. Pembina Exploration Canada Ltd., [1989] 1 S.C.R. 206, 57 D.L.R. (4th) 710, *(*sub nom. *William Siddall & Sons Fisheries v. Pembina Exploration Can. Ltd.)* 92 N.R. 137, *(*sub nom. *William Siddall & Sons Fisheries v. Pembina Exploration Can. Ltd.)* 33 O.A.C. 321 (S.C.C.) -- considered

Read v. Bishop of Lincoln, [1892] A.C. 644, 62 L.J.P.C. 1 (England P.C.) -- considered

Reference re Notaries Public Society (British Columbia) (1969), 69 W.W.R. 475 (B.C. C.A.) -- considered

Sioui v. Quebec (Attorney General), *(*sub nom. *R. v. Sioui)* [1990] 1 S.C.R. 1025, 70 D.L.R. (4th) 427, 109 N.R. 22, *(*sub nom. *R. c. Sioui)* 30 Q.A.C. 280, 56 C.C.C. (3d) 225, [1990] 3 C.N.L.R. 127 (S.C.C.) -- considered

Sobeys Stores Ltd. v. Yeomans, 25 C.C.E.L. 162, 89 C.L.L.C. 14,017, 92 N.R. 179, [1989] 1 S.C.R. 238, 57 D.L.R. (4th) 1, 90 N.S.R. (2d) 271, 230 A.P.R. 271 (S.C.C.) -- considered

Statutes considered:

Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted R.S.C. 1985, App. II, No. 5

s. 96 -- referred to

Court of Probate Act, 1857 (20 & 21 Vict.), c. 77

Generally -- considered

English Law Ordinance, 1867, S.B.C. 1867, No. 70

Generally -- considered

Law and Equity Act, R.S.B.C. 1996, c. 253

s. 2 -- referred to

Legal Profession Act, R.S.B.C. 1996, c. 255

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s. 1 "practice of law" -- considered

s. 1 "practice of law" (b)(iii) -- considered

s. 1 "practice of law" (f) -- considered

s. 1 "practice of law" (g) -- considered

s. 1 "practice of law" (h) -- considered

s. 1 "practice of law" (j) -- considered

s. 26 -- pursuant to

Notaries Act, R.S.B.C. 1996, c. 334

s. 18 -- considered

Young Offenders Act, R.S.C. 1985, c. Y-1

Generally -- referred to

APPEAL by notary public from judgment reported at (1998), 57 B.C.L.R. (3d) 388, 166 D.L.R. (4th) 723, 24 E.T.R. (2d) 209 (B.C. S.C.), granting application by law society for declaration that notary public engaged in unauthorized practice of law.

The judgment of the court was delivered by *Rowles J.A.*:

1 This is an appeal from the order of Mr. Justice Bauman dated 9 October 1998, declaring that the appellant, by advising on and offering to assist in obtaining the probate of a will, for or in the expectation of a fee, had engaged in the unauthorized practice of law contrary to s. 26 of the *Legal Profession Act*, R.S.B.C. 1996, c. 255.

2 Mr. Justice Bauman's reasons are reported at(1998), 57 B.C.L.R. (3d) 388, 166 D.L.R. (4th) 723, 24 E.T.R. (2d) 209 (B.C. S.C.), and [1998] B.C.J. No. 2383 (Q.L.).

3 The central issue before the chambers judge was whether notaries were engaged in probating wills in England on 19 November 1858, the date of the reception of English law in the colony of British Columbia. If the law of England at that date permitted notaries to probate wills, it could then be said that the *English Law Ordinance 1867*

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authorized notaries to so act in this province. In that regard, the case is similar to *Reference re Notaries Public Society (British Columbia)* (1969), 69 W.W.R. 475 (B.C. C.A.) in which this Court considered whether notaries were engaged in incorporating companies in England prior to 19 November 1858.

4 The point taken on the appeal is a narrow one and was not raised in the court below. The appellant and the intervenor now assert that the learned chambers judge erred by relying on historical texts as evidence to resolve the disputed issue of whether notaries were probating wills in England on 19 November 1858.

II. Background

5 The Law Society of British Columbia brought proceedings against Ms. Marian Gravelle, a notary public, seeking a declaration that Ms. Gravelle had engaged in the unauthorized practice of law by giving legal advice to and offering to assist a member of the public with respect to the probate or letters of administration of the estate of a deceased person for or in the expectation of a fee, gain or reward. A permanent injunction enjoining Ms. Gravelle from engaging in the unauthorized practice of law was also sought.

6 Ms. Gravelle disputed the allegation against her but the position taken by the intervenor, the Society of Notaries Public, was that Ms. Gravelle was, in any event, fully entitled to do what she was alleged to have done.

7 The definition of "practice of law" in the *Legal Profession Act*, R.S.B.C. 1996, c. 255, s. 1, reads, in part:

> **"practice of law"** includes
>
> . . . . .
>
> (b) drawing, revising or settling
>
> . . . . .
>
> (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person,
>
> . . . . .
>
> (f) the making an offer to do anything referred to in paragraphs (a) to (e), and
>
> (g) the making of a representation by a person that the person is qualified or entitled to do anything referred to in paragraphs (a) to (e),
>
> but does not include
>
> (h) any of those acts if it is not done for or in the expectation of a fee, gain or reward, direct or indirect,

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from the person for whom the acts are performed,

. . . . .

(j) the lawful practice of a notary public, ...

8 Section 18 of the *Notaries Act*, R.S.B.C. 1996, c. 334 sets out the powers of notaries in this province:

18 A member enrolled and in good standing may do the following:

(a) draw instruments relating to property which are intended, permitted or required to be registered, recorded or filed in a registry or other public office, contracts, charter parties and other mercantile instruments in British Columbia;

(b) draw and supervise the execution of wills

(i) by which the testator directs the testator's estate to be distributed immediately on death,

(ii) that provide that if the beneficiaries named in the will predecease the testator, there is a gift over to alternative beneficiaries vesting immediately on the death of the testator, or

(iii) that provide for the assets of the deceased to vest in the beneficiary or beneficiaries as members of a class not later than the date when the beneficiary or beneficiaries or the youngest of the class attains majority;

(c) attest or protest all commercial or other instruments brought before the member for attestation or public protestation;

(d) draw affidavits, affirmations or statutory declarations that may or are required to be administered, sworn, affirmed or made by the law of British Columbia, another province of Canada, Canada or another country;

(e) administer oaths;

(f) perform the duties authorized by an Act.

9 The following issues were before the chambers judge:

(i) Did Marian Gravelle offer to advise or assist in the probate of a will?

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> (ii) Is s. 18 of the *Notaries Act*, R.S.B.C. 1996, c. 334 exhaustive of a notary's jurisdiction in British Columbia?
>
> (iii) If it is not, were notaries probating wills in England on 19 November 1858 such that the authorization to do so became part of the law in British Columbia, pursuant to *The English Law Ordinance, 1867*?

10 On the first issue, the chambers judge found that Ms. Gravelle had offered to advise or assist in the probate of a will. As no issue is taken with that finding on the appeal, the dispute is now essentially between the two professional societies.

11 On the second issue, the chambers judge concluded that s. 18 of the *Notaries Act* was not exhaustive in defining the lawful practice of a notary in British Columbia and that it was necessary to go beyond the statute and consider what notaries were doing in England on 19 November 1858, the effective date of *The English Law Ordinance, 1867*.

12 As a preliminary to his analysis on the third issue, the chambers judge set out the following brief history of estate administration in England about which there is no issue:

> [47] Until 1857 estates were administered in England through the ecclesiastical courts.
>
> . . . . .
>
> [49] In 1857 the *Court of Probate Act* was passed. Its recital stated:
>
> > Whereas it is expedient that all jurisdiction in relation to the grant and revocation of probates, wills, and letters of administration in England, should be exercised in the name of Her Majesty by one court.
>
> [50] The Court of Probate, thus established, assumed the testamentary jurisdiction of all other tribunals.
>
> [51] The Court of Probate was in turn transformed into the Probate Division of the Supreme Court by *The Judicature Act, 1873*.

13 As may be seen from the foregoing, there was only a very brief period between the time the Court of Probate was given exclusive jurisdiction in probate matters under the *Court of Probate Act* and the date of the reception of English law in the colony of British Columbia.

14 Following a careful analysis that need not be repeated here, Mr. Justice Bauman concluded that notaries were not probating wills in England on 19 November 1858.

III. Grounds of appeal

15 The appellant and intervenor have put forward the following grounds of appeal:

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The Learned Chambers Judge erred as follows:

(1) in relying on textual authority cited during argument as evidence on a disputed issue of fact to conclude

(a) that notaries were not involved in probate matters in England on November 19, 1858, and

(b) that, even if notaries practised in probate matters in the ecclesiastical courts, such jurisdiction was not received into British Columbia being from local circumstances inapplicable within the meaning of section 2 of the *Law and Equity Act*; and

(2) in acting on speculation in discounting the evidence filed by the Society of Notaries.

IV. Analysis

16 The main submission made by Mr. McEwan, counsel for the appellant and the intervenor, is that the chambers judge erred in relying on the historical texts in order to resolve a disputed historical fact, that is, whether notaries were probating wills in England prior to 19 November 1858.

17 It is Mr. McEwan's submission that in a case such as the present one, where the historical fact in issue is disputed, the issue must be determined by evidence. He argues that this case is distinguishable from the *Reference re Notaries Public Society (British Columbia)*, *supra*, for in that case, the issue of common law entitlement, while it remained a matter for proof by the Law Society, was readily settled. To support that submission, Mr. McEwan referred to the following passage in the judgment of Robertson J.A., at 477:

> Counsel for the law society submitted that the preparation of documents necessary for the incorporation of a company and the making of application therefor are not part of "the lawful practice of a Notary Public" (the phrase at the end of s. 111 quoted above) either by statute or at common law. So far as common law was concerned he referred us to the rights and powers that notaries had in England on the date when English law was declared to be in force in British Columbia and he cited a number of books to show that none of them mentioned incorporation of companies as one of the rights which notaries public exercised. The books which he cited were all three editions of ***Halsbury, Brooke's Notary***, C.E.D. (Western), and ***Russell on Canadian Notaries***. Counsel for the society of notaries public was not able to cite anything to the contrary. I am satisfied that, apart from statute, the functions of notaries public in England and in British Columbia have never included the incorporation of companies.

18 Mr. McEwan further argues that, as a general rule, texts and treatises cannot form part of the evidentiary record because the opinion of the author cannot be tested by cross-examination. He submits that historical treatises can be consulted when the court is taking judicial notice of historical facts but judicial notice cannot be taken of historical facts that are disputed. To support the latter proposition, Mr. McEwan referred us to the following paragraphs in Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 2d ed. (Toronto: Butterworths, 1999) which appear under the heading "Judicial Notice":

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> 19.13 Judicial notice is the acceptance by a court or judicial tribunal, in a civil or criminal proceeding, without the requirement of proof, of the truth of a particular fact or state of affairs. Facts which are (a) so notorious as not to be the subject of dispute among reasonable persons, or (b) capable of immediate and accurate demonstration by resorting to readily accessible sources of indisputable accuracy, may be noticed by the court without proof of them by any party....
>
> . . . . .
>
> 19.15 However, the power to accept, as facts, matters which have not been proven in evidence is one which must be exercised with care. If the facts could be reasonably questioned, then they cannot be the subject of judicial notice.

19 Under the sub-heading "Facts Capable of Immediate Accurate Demonstration", however, the following note about "Historical Facts" appears:

> 19.25 The court may rely on its own historical knowledge and may examine history texts to enable it to take judicial notice of the facts of ancient and modern history.

20 A footnote reference within 19.25 is to the following decisions: *Read v. Bishop of Lincoln*, [1892] A.C. 644 (England P.C.), at 652-54, and *Calder v. British Columbia (Attorney General)*, [1973] S.C.R. 313, 34 D.L.R. (3d) 145 (S.C.C.), at 169, *per* Hall J. dissenting.

21 Counsel for the Law Society argues that the approach the chambers judge took to the use of historical texts and treatises is in keeping with decisions of the Supreme Court of Canada, including *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725 (S.C.C.); *Sobeys Stores Ltd. v. Yeomans*, [1989] 1 S.C.R. 238 (S.C.C.); and *Ontario (Attorney General) v. Pembina Exploration Canada Ltd.*, [1989] 1 S.C.R. 206 (S.C.C.). In *MacMillan Bloedel Ltd. v. Simpson*, the Supreme Court reviewed a series of treatises on the historical treatment of contempt of court and the inherent jurisdiction of courts. That exercise was part of the Court's analysis as to whether parts of the *Young Offenders Act* offended s. 96 of the *Constitution Act, 1867*. In *Sobeys Stores Ltd.*, the Court relied on a 19th century text to determine which English courts entertained actions for wrongful dismissal at the time of Confederation, and in *Pembina Exploration*, the Court referred to a 19th century work in analyzing the historical jurisdiction of county courts.

22 Counsel for the Law Society also referred us to *Sioui v. Quebec (Attorney General)*, [1990] 1 S.C.R. 1025 (S.C.C.). In that case, one of the issues before the Supreme Court of Canada was whether a document of 1760 signed by General Murray was a treaty. In giving the judgment for the Court, Lamer J., as he then was, said at 1050:

> I should first mention that the admissibility of certain documents submitted by the intervenor the National Indian Brotherhood/Assembly of First Nations in support of its arguments was contested. The intervener was relying on documents that were not part of the record in the lower courts. The appellant agreed that certain of these documents, namely Murray's Journal, letters and instructions, should be included in the record provided this Court considered that their admissibility was justified by the concept of judicial notice. I am of the view that all the documents to which I will refer, whether my attention was drawn to them by the intervener or as a result of my personal research, are documents of a historical nature which I am entitled to rely on pursuant to the concept of judicial knowledge. As Norris J.A. said in *White and Bob* (at p. 629):

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> The Court is entitled "to take judicial notice of the facts of history whether past or contemporaneous" as Lord du Parcq said in *Monarch Steamship Co. Ltd. v. Karlshamns Oljefabriker (A/B)*, [1949] A.C. 196 at p. 234, [1949] 1 All E.R. 1 at p. 20, and it is entitled to rely on its own historical knowledge and researches, *Read v. Bishop of Lincoln*, [1892] A.C. 644, Lord Halsbury, L.C. at pp. 652-4.

The documents I cite all enable the Court, in my view, to identify more accurately the historical context essential to the resolution of this case.

23 In *Read v. Bishop of Lincoln*, *supra*, (referred to in the passage quoted above in *Sioui*), objection was taken to the Court of the Bishop of Canterbury having relied on ancient writers and historical works in arriving at a decision on whether a number of ecclesiastical offences had been committed by the Bishop of Lincoln. As to the objection, Lord Halsbury, L.C. said (at 652):

> It has been urged that upon such subjects as the practice of the Primitive Church, the ritual of the Eastern and Western Churches, the position of the Lord's table, the position of the celebrant at the table, and like questions, which are ex hypothesi beyond the reach of living memory, the archbishop has consulted ancient authors, historical and theological works, pictures, engravings, and a variety of documents, of which undoubtedly any careful and competent historian would avail himself, but which it is argued cannot legitimately be made use of in a court of justice, and upon which it is said no judge is justified in placing any reliance in forming his judgment.
>
> Where the objection is of so general a character, it is impossible to do more than apply to it a general treatment.
>
> The first observation that arises is, that if our law were to exclude all such historical investigation as is pointed to by the objection, and questions of ritual and ecclesiastical practice could only be investigated by the light of the words of an Act of Parliament some centuries old, and by the testimony of living witnesses, it would disclose a very unreasonable and unsatisfactory state of the law.
>
> Who can doubt that that contemporaneous usage would be of incalculable value in forming a judgment on such subjects as are indicated above? And if no historical investigation can be permitted as to what was the contemporaneous usage, one source of light upon doubtful questions would be excluded.
>
> . . . . .
>
> But their Lordships are of opinion that the objection is founded upon an erroneous view of the law. Where it is important to ascertain ancient facts of a public nature, the law does permit historical works to be referred to.

24 In the present case, the chambers judge, at the outset of that portion of his reasons in which he considered the question of English notarial practice before 1858, referred to the material before him:

> [43] On this issue I am indebted to the diligence of counsel. They have provided me with an extremely comprehensive review of the historical literature, including relevant extracts from all eleven editions of

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> Brooke's ***Treatise on the Office and Practice of a Notary of England***.
>
> [44] As well, I have reviewed affidavit material based upon court archives of estate documents from the 19th century in British Columbia and expert evidence of an English notary and solicitor who is a former president of the Notaries Society.

25 The historical literature to which the chambers judge referred in his reasons included Brooke's *Treatise on the Office and Practice of a Notary of England*, the first edition of which was published in 1838; *The Origin and Historical Development of the Profession of Notaries Public in England* (Cambridge: W. Hefler and Sons Ltd., 1926); W. John Dixon, Esq., B.A., LL.M. (CANTAB.), *Probate and Administration, Law and Practice*, (London: Reeves and Turner, 1880); the discussion of ecclesiastical notaries in *Halsbury* (1912 edition); Thomas Gwynne, *The Law Relating to the Duties on Probates and Letters of Administration in England*, 3rd ed., (London: Saunders and Benning, 1841); and Dr. Richard Burn's four volume treatise on *The Ecclesiastical Law*, 9th ed., (London: Sweet, Stevens and Norton, 1842).

26 In the trial court, no objection was taken by the appellant or the intervenor to the chambers judge using the extracts from the historical texts for the purpose of assisting him in arriving at a determination of the fact in issue. On the appeal there is no suggestion that the historical texts to which the chambers judge was referred are other than authoritative.

27 From the Supreme Court of Canada jurisprudence mentioned above, it appears to me that the chambers judge could treat the historical texts put before him by counsel as evidence for the purpose of determining the factual issue of whether notaries in England were probating wills on 19 November 1858.

28 As Mr. McEwan has argued, the use of historical texts and treatises to determine historical facts in relation to matters that are beyond the reach of living memory has generally been considered under the rubric of taking judicial notice of facts. In this case, however, the chambers judge appears to have treated the extracts from the historical texts as evidence to be used to determine the matter in issue before him rather than treating the texts as the foundation for taking judicial notice of an historical fact.

29 Whether an affidavit from an expert should always be required before historical texts may be treated as evidence of a disputed fact may be open to question but that is not an issue that needs to be determined on this appeal.

30 In the context of the present case, when there was no dispute that the historical texts counsel had put before the chambers judge were regarded as authoritative, I think no purpose would be served by allowing the appeal on the ground that an affidavit from an expert was required in order to introduce the extracts into evidence. For that reason, I would not accede to the first ground of appeal.

31 The contention of the appellant and the intervenor on the second ground is that the chambers judge erred by acting on speculation in discounting the evidence filed by the Society of Notaries.

32 The expert evidence to which Bauman J. referred in paragraph 44 of his reasons was contained in an affidavit of Peter John Lawson, a Public Notary and Solicitor of the Supreme Court of England and Wales, sworn 7 July 1998. In that affidavit, Mr. Lawson stated, in part:

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> 6. I have considered many English Statutes and authoritative text books. I have carried out research and made inquiries of the Public Record Office in London, various Probate Registries of the High Court of Justice, County Libraries and County Record Offices. I have enquired of colleges and other Notaries in the United Kingdom.
>
> . . . . .
>
> 22. From the matters set out in this Affidavit I am firmly of the opinion that continuously since early in the Middle Ages Public Notaries in England have been practising in what are now termed non-contentious Probate cases that is to say the preparation of Wills and applications to the appropriate Court for the proving of Wills and Granting of Letters of Administration and were so practising on the 19th November 1858.

33 The Law Society took objection to the admissibility of Mr. Lawson's affidavit on two grounds: (1) the sources of information to which Mr. Lawson referred in paragraph 18 of his affidavit, which were said to provide the foundation for his opinion, were lacking in specificity, and (2) the opinion expressed in paragraph 22 of Mr. Lawson's affidavit was on the very issue the court had to determine.

34 As a result of the objections, a second affidavit of Mr. Lawson's was filed although it was not filed until after the hearing of the Petition. In that affidavit, Mr. Lawson deposed:

> 1. I make this second Affidavit herein supplementary to my first Affidavit sworn on the 7 July 1998. I have been shown the argument of the Petitioner filed herein and note that objection is taken to the admissibility of my Affidavit in evidence. I can only say that I regard myself as an expert in this field. In my country expert evidence is admissible and experts are entitled to come to conclusions. The Court in its own wisdom attaches as much weight thereto as it thinks right and proper.
>
> 2. My attention has been drawn to the fact that in my first Affidavit at paragraph 18 there were no illustrations of the details set out. I have endeavoured to obtain evidence in support of those details with assistance from my good friend and colleague F.M. Pulvermacher. He has undertaken on my behalf research work in the South West of England which is some full day's travel from where I practice. The summary of that work is set out in the following Schedule and specifically by reference to paragraph 18 of my first Affidavit it shows that in part (a) John Symonds was involved on two occasions, in part (b) seven different Notaries carried out work, in part (c) three different Notaries worked with William Bouche handling two different estates and in part (d) Richard Bowerman acted in his capacity as a London Notary (ie Scrivener).

35 In relation to the expert opinion expressed by Mr. Lawson in paragraph 22 of his affidavit, the chambers judge said:

> [84] Assuming for the purpose of argument that that statement is admissible, it appears to run contrary to the historical facts as related by the various text writers.

36 I am of the view that it was within the province of the chambers judge to assess what weight, if any, was to be

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given to the evidence of the research done by Mr. Pulvermacher, using the authoritative historical texts with which he had been provided. Accordingly, I am unable to agree that the chambers judge improperly discounted Mr. Lawson's opinion evidence.

37 The intervenor also argues that the chambers judge erred in discounting the evidence contained in the affidavit of David Neil Thomson, a legal researcher assisting counsel for the intervenor. Mr. Thomson went to the British Columbia Provincial Archives in Victoria to examine the collection of files from the various probate registries in British Columbia. From those records, he extracted eight files years dated between 1882 to 1946. Of those extracts the chambers judge said:

> [98] There is no doubt that notaries appear to have been involved in the files, at least to the extent of attesting various estate documentation. Even assuming, however, that these notaries prepared the documents for gain, such anecdotal evidence is not proof that the notaries acted in accordance with the law.

38 The chambers judge, having concluded that notaries were not probating wills in England on 19 November 1858, apparently decided that little weight should be given to the anecdotal evidence found in the eight files extracted by Mr. Thomson from the provincial archives. Although some of the judge's additional comments may fall into the category of speculation, his primary reason for discounting the anecdotal evidence appears to me to be stated in paragraph 98, set out above. On that basis, I see no foundation for interfering with his judgment. I would not accede to the second ground.

39 I would dismiss the appeal.

Appeal dismissed.

FN*. A corrigendum dated July 26, 2001 has been incorporated herein.

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