

Case Brief

Evidence, Stensvag

Unit 9 hearsay

2/8/15

Identity of Case

Wright v. Doe d. Tatham, Exchequer Chamber 1837

Summary of Facts/Procedural History

Before Marsden died, he wrote and executed a will leaving his property to one of his servants. His Nephew, the only heir at law, challenges Marsden's competency to will (if Marsden is incompetent, his will is moot, and Nephew takes according to the laws of intestacy). During trial, Nephew testifies that everyone in the town calls him a fool, silly Marsden, etc. Servant attempts to enter two letters addressed to Marsden, where it appears that they treat/deal with him as if he were a competent person. The reputation testimony is let in although it is clearly hearsay, the letters are kept out as hearsay.

Statement of the Issue

Can out of court statements be admitted if to prove belief of the writer that Marsden was competent?

Holding

Under the common law, no.

Reasoning

Hearsay (out of court statements/actions) may be admitted to show that something is true only if interpreting that action does not require a trip through the actor's head to understand their belief. For example: a woman holding an umbrella believes it is raining. No objection. A woman writing a letter believes the receiver is competent. Problematic.

Note: this isn't even a problem under the FRE's, as long as the statement isn't offered for the statement's truth value, it would come in.

Evaluation

Why on earth did no one object to the other hearsay statements?