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## HUMOR IN OR OF WILLS

ELMER M. MILLION\*

There have been so many wills having eccentric, fantastic, or malicious clauses that someone could write a book about them. Several people have.<sup>1</sup>

Wills are of great antiquity. According to Moslem tradition, Adam (the original, as distinguished from the Old) drafted a will which was handed down orally until reduced to writing in the time of Mahomet. Mediaeval scholars seriously debated whether this will existed.<sup>2</sup> However, "the authenticity of this will has not been established."<sup>3</sup> If written after Adam's eviction from the Garden of Eden for breach of a substantial condition of the tenancy,<sup>4</sup> it would presumably be a testament only, Adam no longer having any interest in land to transmit.

The oldest will known to have existed is that of Jacob (Israel), father of Joseph.<sup>5</sup>

Abram, sometimes suggested as the first testator, "gave all he had to Isaac,"<sup>6</sup> but this may have been a gift, rather than a will. Sarah urged that Ishmael not be an heir of Abram<sup>7</sup> and there is some indication this was accomplished,<sup>8</sup> but apparently by changing the course of descent, rather than by testation. "Seed" may have been used as a word of limitation, not purchase, but Isaac was probably named as

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\* Professor of Law, New York University.

1. JOSEPH E. BRIGHT, *TO WILL OR NOT TO WILL* (Buffalo, N.Y. Dennis & Co. 1939. Pp. 72) (hereinafter cited BRIGHT); MRS. JULIA CLARA BYRNE, *CURIOSITIES OF THE SEARCH ROOM* (London. Chapman & Hall. 1880. Pp. 407) (hereinafter cited as BYRNE); FRANK LEO GOLDEN, *LAUGHTER IS LEGAL* c. 15 (Frederick Fell. 1950; Pocket Book edition, 1953) (a collection of wills gags, many being taken from *Case & Comment*); E. VINE HALL, *THE ROMANCE OF WILLS AND TESTAMENTS* (London. 1912 Pp. 256); VIRGIL M. HARRIS, *ANCIENT CURIOUS AND FAMOUS WILLS* (Boston. Little Brown. 1911. Pp. 472) (hereinafter cited HARRIS); CROAKE JAMES (pseudonym of James Paterson), *CURIOSITIES OF LAW AND LAWYERS* (London. Sampson Low, & c. 1891. Pp. 790) (hereinafter cited CROAKE JAMES), c. 13; BELLAMY PARTRIDGE, *COUNTRY LAWYER* 102-09, 236-42 (New York. Whittlesey House. 1939. Pp. 317) (two will contests, and two whimsical wills); WILLIAM TEGG, *WILLS OF THEIR OWN: CURIOUS, ECCENTRIC AND BENEVOLENT* (London. 1876. Pp. 124) (not seen by this writer) excerpted in 120 L.T. 226 (Jan. 6, 1906); RENÉ A. WORMSER, *YOUR WILL AND WHAT NOT TO DO ABOUT IT* (New York. Simon & Schuster. 1937. Pp. 215) (a highly practical no-nonsense discussion of wills, but containing numerous whimsical cartoons with explanatory comments). See also, De Morgan, *Wills—Quaint, Curious and Otherwise*, 13 GREEN BAG 567 (1901); Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297 (1934).

2. *Items of Professional Interest*, 98 CENT. L.J. 268 (1925); 69 SOL. J. 535 (1925). Quære: will an earlier Russian will be claimed?

3. HARRIS 10.

4. Genesis 2:17; 3:6, 23, 24.

5. Genesis 48: especially verse 22.

6. Genesis 25:5.

7. Genesis 21:10.

8. Genesis 21:12; Galatians 4:22, 30.

remainderman rather than devisee.<sup>9</sup> The oldest known Egyptian will was executed in 2548 B.C.<sup>10</sup>

In addition to wills written in rhyme,<sup>11</sup> or on unusual materials,<sup>12</sup> or

9. Genesis 17:8-10, 21.

10. HARRIS 12 (reprinting the will as quoted in *Irish Law Times*); *The Oldest Will*, 8 VA. L. REG. (n.s.) 69 (1922) ("Will of Uah"). These sources agree on the date, but apparently differ as to testator's name. See also 54 CHR. LEG. N. 252 (Mar. 2, 1922); *The First Will*, 4 VA. L. REG. (n.s.) 957 (1919) (testator "Utah").

11. BRIGHT 23-25; BYRNE 94-96; HARRIS 62-72. One example:

"In the name of God, Amen:

My featherbed to my wife, Jen;

Also my carpenter's saw and hammer;

Until she marries; then, G—d d—n her!" HARRIS 68; Browne, *The Immoralities of Wills*, 2 ALBANY L.J. 227, 229 (1870).

Wm. Hunnis, Chapel Master to Elizabeth I, wrote this rhyming will:

"To God my soule I do bequeathe, because it is his owen,

My body to be layd in grave, where to my friends best knowne;

Executors I will none make, thereby great stryfe may grow,

Because the goods that I shall leave wyll not pay all I owe." HARRIS 70.

The text of another genuine will reads:

"To whom it may Concern:

To my wife Mary N. Smith

I bequeath all my possessions,

Great and small

Bills and all." From Policyholder, as reprinted in 39 CASE & COM. No.

1, p. 30 (Spring 1933). Cf. two lines beneath the 1731 will of Philadelphian Isaac Norris:

"He that perverts this will of mine

View well this lot, 'twill soon be thine." Quoted in Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297, 326 (1934). The rhymed wills of Wm. Hickington and John Hedges are reprinted in HARRIS 65-67; De Morgan, *Wills—Quaint, Curious and Otherwise*, 13 GREEN BAG 567-68 (1901). Friedman, *On Wills*, 23 GREEN BAG 574, 577 (1911) (reprinted in 3 AM. LAW SCH. REV. 69, 72 (Feb. 1912)) (Hickington); *Curiosities and Law of Wills*, 13 CAN. L.J. (n.s.) 155, 158 (Hedges, Widow Sweeney); CROAKE JAMES 495 (John Hodges). The sixteen-line rhyming will of Englishman Joseph Bell was duly proved. 44 CASE & COM. No. 6, p.42 (May 1939) (reprinted from A.B.A.J.). The four-line rhyming will of an English solicitor appears in *The Eccentricities of Testators* 15 GREEN BAG 583, 585 (1903); HARRIS 62. For an almost identical four-line rhyming will filed in New York City, see 2 ALBANY L.J. 353 (1870). BRIGHT 25, quotes virtually the same will as having been filed in Texas. Coincidence, "plagiarisin by will," or a newspaper hoax? Testator William Ruffels, apparently no better brother than poet, provided that his loving sister:

"my rump-bone may take,

And dip it with silver, a whistle to make." Hiibschman, *Whimsies of Will-Makers*, 66 U.S.L. REV. 362, 365 (1932). At first blush, Ruffels seems to be more free in verse than in prose but, if his estate was to supply the silver, perhaps his words and acts prove him more generous than at first he seems!

As poetic as most rhyming wills, are such prose fictional wills as "The Will of Charles Lounsbury", by Williston Fish, West Pointer and Illinois lawyer, who states, "I wrote A Last Will in 1897. It was published first in Harper's Weekly in 1898." Fish, *Last Will* (of Chas. Lounsbury), 5 GA. B. J. 60 (1943); HARRIS 207. It has been widely reprinted. See BRIGHT 21; 69 ALBANY L.J. 161 (1907); 52 CASE & COM. No. 3, p. 3 (May-June 1947); 9 TITLE NEWS: 10 (July 1930); 42 CASE & COM. 9 (Autumn, 1936); 10 MO. B.J. 232 (1939). Cf. "Last Will and Testament of a Dreamer," 44 CASE & COM., No. 2, p. 19 (Oct. 1938); Saunders, *Vagrant's Will*, 10 LAW. & BANK. 144 (1917) (poetry); Thomson, *Poet's Testament*, 5 CAN. B. REV. 193 (1927); *A Lawyer's Last Will*, 2 LAW SOC. J. 31 (Aug. 1930); "The Hangman's Last Will and Testament," WILLOCK, LEGAL FACETIAE, 53-56; *Will of A Simple Mountain Preacher*, 43 CASE & COM. No. 3, p. 26 (Jan. 1938).

The will of master mariner Obed Gardner (1841) used nautical language

in favor of animals,<sup>13</sup> or by jilted lovers,<sup>14</sup> and wills containing macabre provisions for the disposition of the testator's corpse,<sup>15</sup> romantic direc-

throughout. BRIGHT 44-47; 48 CASE & COM. No. 3, p. 10 (Winter 1942-43) (executed in 1841; found in testator's sea chest 41 years later, after his children had given the estate to their mother).

12. In *Mr. Meeson's Will*, Rider Haggard's shipwrecked testator has his will tattooed on the castaway [not cast off] heroine's back, then dies. She is rescued and the will probated, the requirement that the original will be filed being mercifully waived. Newmark, *Wills in Fiction*, 1 GREEN BAG 467, 469 (1889) (lengthy summary), reprinted in HARRIS 53; BRIGHT 54 (illustration). Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297, 300-02 (1934) mentions the wealthy California hospital patient who wrote a valid will on his nurse's petticoat, and Pennsylvania testators who used, respectively, a post card addressed to the executrix and delivered through the mail, the back of a dunning letter from a creditor of the insolvent testator, a prescription blank containing the physician-testator's office hours, and a female testator's recipe book in which a long recipe concluded with the words "Measure tomatoes when peeled. In case I die before my husband I leave everything to him." [signed]. De Morgan, *Wills—Quaint, Curious and Otherwise*, 13 GREEN BAG 567 (1901) states that an English court upheld a will that was crudely scratched on a plank of wood by a shipwrecked naval officer. A sailor's valid 75 word will, engraved on his brass identification disk was found on his body when the body was recovered at sea. 29 CASE & COM. No. 1, p. 28 (Feb. 1923). BRIGHT, c. 8 (reprinted in 43 CASE & COM., No. 3, pp. 12-13 (Jan. 1938) lists other unusual "parchments." WORMSER, YOUR WILL AND WHAT NOT TO DO ABOUT IT 28, (1937), shows one Climp chiseling his valid will on a gravestone, his witnesses chiseling their names beneath his own. See Elliott, *Wills—Writing Scratched on Tractor Fender—Granting of Probate*, 26 CAN. B. REV. 1242 (1948). Sellers, *Strange Wills*, 28 J. CRIM. L. 106 (1937), mentions numerous unsuccessful forged wills, including one written on a stepladder rung and one dated months before testator died but reciting that a named legatee "took care of me up to the time of my death," and both the California petticoat will of G. W. Hazeltine and the later unsuccessful suit by the attesting witnesses to recover \$10,000 promised them by the legatee if the will was upheld. See *Pelkey v. Hodge*, 112 Cal. App. 424, 296 Pac. 908 (1931). BRIGHT 56-57, mentions the petticoat will and a valid will in the form of testator's voice on a phonograph record. *Sed Quaere*. Also, did not George Arliss do this phonograph record will very effectively in the movies?

A Detroit lawyer executed and filed a phonographic will for himself, and at last report it had held up very well, but so had he. 26 CASE & COM. No. 5, p. 138 (Aug. 1920). In 1958 a tape recorded will, in the testator's voice, was played in court in a will contest waged by a disinherited son. N. Y. Times, Feb. 23, 1958, § 1, p. 20, col. 5. In this case, however, there probably was also a duly executed written will.

13. BYRNE 188-203; HARRIS 90-102. Cf. The children's song about the will of a pig, sung as early as the fourth century. HARRIS 20.

14. One testator left everything to three women "to whom I owe all my earthly happiness"—each had refused his proposal of marriage. *The Eccentricities of Testators*, 15 GREEN BAG 583, 585 (1903), reprinted in 117 L.T. 158 (1904); HARRIS 160. A Paris merchant, M. Colombies, used similar language in his generous bequest to a lady who had rejected his proposal twenty years before. *Eccentric Wills*, 5 GREEN BAG 188 (1893). Another jilted lover directed that his body be boiled down, its fat made into a candle and delivered after dark to his beloved so that she could read by its light a note in which he avowed his burning devotion. BYRNE 296; HARRIS 230.

15. Johann Ziska (d. 1424), a Hussite chief, requested that his skin be made into a drum-head, that its noise would scare away tribal enemies. BYRNE 301. Jeremy Bentham bequeathed his body to a friend who, after dissecting it for medical students, preserved the skeleton, padded it until it could wear Bentham's clothes, placed it in a mahogany case with a plate-glass front, and let it "preside" at subsequent discussions. BYRNE 51; HARRIS 138. John Reed, stage-struck gas-lighter in a Philadelphia theater, bequeathed his skull to be used in that theater as the skull of Yorick, whenever Hamlet was playing. BYRNE 50; HARRIS 136; BRIGHT 41; *Some Singular Wills*, 15 GREEN BAG 430,

tions for graveside shrubbery,<sup>16</sup> unusual funeral directions,<sup>17</sup> or refer-

431 (1903); *Eccentric Wills*, 11 VA. L. REG. (n.s.) 534 (1926). But see Gest, *Some Jolly Testators*, 8 TEMP. L. Q. 297, 299 (1934) that he could not find this will in the Register of Wills in Philadelphia. That an American testator left his body to Harvard for anatomical purposes, directing that his skin be made into drum heads on which "Yankee Doodle" was to be played at Bunker Hill each June 17th, see De Morgan, *Wills—Quaint, Curious and Otherwise*, 13 GREEN BAG 567-68 (1901), reprinted in 112 L.T. 216 (1902); *Some Singular Wills*, 15 GREEN BAG 430 (1903); BRIGHT 33; *The Eccentricities of Testators*, 15 GREEN BAG 583 (1903), reprinted in 117 L.T. 158 (1904).

A court, although characterizing the testator as having eccentricity to the point of monomania upheld his will although he devised his property to a stranger, disinheriting his heir, and directed that part of his body "be converted into fiddle strings." JOHN PROFFATT, *CURIOSITIES AND LAW OF WILLS* 77 (San Francisco: S. Whitney & Co. 1876. Pp. 216) (hereinafter cited PROFFATT); *Morgan v. Boys* (cited in TAYLOR, *MED. JUR. II*, p. 555 (2d ed.)); Buckler, *Notes on Wills of Lunatics*, 58 AM. J. INSANITY 267, 273 (1901); Browne, *The Immoralities of Wills* 2 ALBANY L.J. 227, 228 (1870). It is not stated whether this direction was carried out. In England a direction by the testator that he be cremated and his ashes placed in the garbage can was carried out. N. Y. Daily News, Feb. 11, 1958, p. 45, col. 5. The will of England's Richard I directed that different parts of his body be buried in three different localities. 106 L.T. 415 (1899).

The fears and mistrust of earlier days is mirrored in the provision of the will of Henry, Duke of Lancaster, (d. 1360) that his body not be buried until three weeks after his death. BYRNE 297; HARRIS 25. John of Gaunt, another Lancaster, (d. 1399) directed that his body be held forty days before burial, and that it not be embalmed during that time. BYRNE 297; HARRIS 25; *Ancient Royal Wills*, 12 GREEN BAG 64, 66 (1900); 106 L.T. 415 (1899). Gaunt may have feared his king's impatience to see him buried, (see SHAKESPEARE, *Richard II*, act. II, sc. 1), but may also have been seeking to protect his heir from an abator. 3 BLACKSTONE COMMENTARIES 167; cf. "By English 13th Century law, legal possession of real estate was thought to remain in a man not [unere]ly until he died, but until his body was borne forth to burial." 2 POLLOCK & MAITLAND, *HISTORY OF ENGLISH LAW* 61 (2d ed.).

The reasoning in *Williams v. Williams*, 20 Ch. D. 659 (1882), holding that a testator could not require cremation of his body because, there being no right of property in a dead body, it could not be disposed of by will, is properly labelled "ludicrous" by Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297, 304 (1934). Fear of premature burial is reflected in various American and foreign wills. BRIGHT 43; HARRIS 261 (Lord Bulwer-Lytton), 130 (Chicagoan), 143 (Englishman); *Curiosities and the Law of Wills*, 13 CAN. L.J. (n.s.) 155 (1877); *Curious Wills*, 2 GREEN BAG 444 (1890). A Vienna millionaire specified that an electric light be installed in his vault and another in his coffin. *Extraordinary Wills*, 10 GREEN BAG 162-63 (1898). It is not stated whether he took along some extra bulbs. Sooner or later a will should be reported providing for a coffin air conditioned or equipped with ticker tape, automatic sprinkler system, or similar conveniences.

16. A Kentucky girl directed that tobacco be planted over her grave, that the leaves, nourished by her dust, might be smoked by her sorrowing lovers. HARRIS 150; BRIGHT 16; *Curious Wills*, 2 GREEN BAG 444-45 (1890). If the lovers smoked them with their new loves, that would really make her burn. Her sentiment echoes the minstrel song, "Plant a Watermelon on my Grave," and Omar Khayyam's ancient request for grape vines on his grave. THE RUBAYAT, Quatrains xci, xcii (Fitzgerald transl. 5th ed.).

17. One breezy testator directed, "at my funeral have H. D. make a few dysentery remarks before cremation." BRIGHT 17. The will of Lodovico Cortusio, Jurisconsultus of Padua, forbade any of his relatives or friends to weep at his funeral, any found so weeping to be disinherited, and he who laughed most heartily to be the principal heir and universal legatee. BYRNE 115; HARRIS 140; CROAKE JAMES 768. Cf. "The laughing heir" (der lachende Erbe), the German term for the distant relative who laughs when he gets the inheritance." 1 ELY, *PROPERTY AND CONTRACT IN THEIR RELATION TO THE DISTRIBUTION OF WEALTH* 422 (1914), as quoted in MECHEM & ATKINSON, *CASES*

ences to testator's soul,<sup>18</sup> there are wills containing flashes of wit, innocent or malicious. The will of Philip, Fifth Earl of Pembroke, bequeathed:

"... [N]othing to my Lord Saye, and I do make him this legacy willingly, because I know that he will faithfully distribute it unto the poor."

"I give to Lieutenant-General Cromwell one of my words, the which he must want, seeing that he hath never kept any of his own."<sup>19</sup>

Rabelais provided in his will, "I have no available property, I owe a great deal; the rest I give to the poor."<sup>20</sup>

The will of a Canadian, Dr. Dunlop, devised to one sister "to console her for marrying a man she is obliged to henpeck," to another "because no one is likely to marry her," and bequeathed a punch bowl to a brother-in-law "because he will do credit to it."<sup>21</sup>

Gest<sup>22</sup> quotes Pennsylvania wills containing such insulting bequests as:

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ON WILLS 10 n.7 (4th ed. 1954); Cavers, *Change in the American Family and the "Laughing Heir"*, 20 IOWA L. REV. 203, 208 (1935).

An English testator had 400 intimate friends invited to his funeral at eight o'clock on a winter morning. The few who attended thereby qualified for handsome bequests. *The Eccentricities of Testators*, 15 GREEN BAG 583, 587 (1903). A Mr. Luke (d. 1812) left a penny to every child who attended his obsequies—over 700 attended and received pennies. *Some Singular Wills*, 15 GREEN BAG 430, 431 (1903). They certainly would not go as far today.

18. Formerly, testators usually commended or bequeathed their souls to God (see 106 L.T. 415 (1899); HARRIS 250, 252, 259), modern wills dropping these phrases in the interests of brevity. The deletion may be undesirable, and symptomatic of lessened spirituality among men, but it is also explainable as indicating the realization that wills are primarily concerned with only the things of this world. Gest facetiously suggested the deletion of bequests of the soul, because "There is always some danger that the bequest may not be accepted and besides the State might endeavor to collect the collateral inheritance tax although it would be so difficult to appraise the value in many cases that the maxim de minimis would apply." Gest, *Practical Suggestions for Drawing Wills*, 55 AM. L. REG. 465, 476 (1907).

19. BRIGHT 42; BRYNE 99; HARRIS 289; PROFFATT 17. Friedman, *On Wills*, 23 GREEN BAG 574, 577 (1911), reprinted in 3 AM. L. SCH. REV. 69 (1912). The wills of Edward Wortly Montague, and a Capuchin monk of Paris, each included similarly phrased insults. De Morgan, *Wills—Quaint, Curious and Otherwise*, 13 GREEN BAG 567, 571 (1901).

20. BYRNE 318; HARRIS 43. Cf. the decedent who specified that his creditors be his pall-bearers because "they have carried me so long already," and bequeathed his bank overdraft "to my wife—she can explain it." 37 CASE & COM., No. 4, p. 30 (Winter 1931); 40 CASE & COM., No. 1, p. 22 (Spring 1934); BRIGHT 15. Another man left to the orphan asylum everything he had—namely, two sons. 43 CASE & COM., No. 2, p. 44 (Nov. 1937).

21. BYRNE 103; HARRIS 179; *The Eccentricities of Testators*, 15 GREEN BAG 583, 587 (1903) reprinted in 117 L.T. 158 (1904). An unsigned article, *Eccentric Wills*, 5 GREEN BAG 188, 189 (1893) calls Dr. Dunlop "of Scotch origin but a onetime Senator of the United States." The same source emphasizes another clause in the will: "I would have left it [my silver tankard] to old John himself, but he would have melted it down to make temperance medals, and that would have been a sacrilege." The entire will, with testimonium and attestation clauses, is reprinted in 53 ALBANY L.J. 30 (1896), and shows the testator to be "William Dunlop of Gairbraid, township of Colburne, county and district of Huron, Western Canada," and the execution date August 31, 1842.

22. Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297, 310 (1934). The same

"to my son Eugene, five dollars and the world in which to make a living";  
 "to my husband, five dollars at the rate of ten cents a month. . .";  
 "to my daughter-in-law and her children one dollar each, and that is more than they are worth";  
 "fifty cents to my son-in-law to buy a good stout rope with which to hang himself and thus rid mankind of one of the most infamous scoundrels . . ."; (Another testator, either from prudence or a desire to give her enough rope, left his "tyrannical wife" a whole dollar for the same purpose.)

Another writer<sup>23</sup> cites two testators whose references to certain legatees were more subtle, although equally lethal. An Englishman left a man and wife "6d each, to buy for each a halter, for fear the sheriff should not be provided." A New York Chinese, though sorrowing that his son married an Irish girl, sought only to secure her support in bequeathing his son a dollar to buy rope.

Apocryphal parallel dispositions include the will which read "To my wife I leave her lover, and the knowledge that I was not the fool she thought me; to my son I leave the pleasure of earning a living. For twenty years he thought the pleasure mine. He was mistaken. . . ." (and similar insulting bequests to the valet, chauffeur, daughter, and partner).<sup>24</sup> One testator left a trust fund of \$1,000 to be invested for use in hiring lawyers to prosecute any civil matters that might arise against the testator's named son-in-law, and to assist in prosecuting any criminal complaint that ever arose against him and, if possible, help get him hanged.<sup>25</sup>

A hypothetical young Madame plying an old profession found her profitable establishment padlocked because of a reform group headed by the town banker. She sought to get even by dying, and bequeathing all her considerable property to the banker, describing him as "my most intimate and long-time friend, in memory of countless evenings spent together." She felt that news of the bequest would nearly kill him, but that he would be too greedy to lose the bequest.<sup>26</sup> She was

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writer quotes numerous wills having insulting or defamatory words. *Id.* at 310-16; see also, BRIGHT, 9-13. One published account has a family hearing the father's will being read, including a bequest "To my eldest son, Tom, a shilling to buy a rope to hang himself." Tom, overcome by filial affection, sobs, "God grant that my poor father had lived to enjoy it himself." 44 CASE & COM., No. 6, p. 48 (May 1939).

23. Hibschan. *Whims of Will Makers*, 66 U.S.L. REV. 362, 364 (1932). Cf. Hyman, *Wacky Wills*, 10 KY. ST. B. J. 185 (1946) (Massachusetts barber bequeathed his widow a dollar "to buy herself some poison").

24. 40 CASE & COM., No. 1, p. 22 (Spring 1934); BRIGHT 9; cf. HARRIS 251 (Marquis D'Aligre's posthumous taunt to his relatives and valet).

25. 42 CASE & COM. No. 1, p. 26 (Spring 1936); 44 CASE & COM. No. 5, p. 44 (March 1939).

26. Cf. BELLAMY PARTRIDGE, COUNTRY LAWYER 236-42 (New York. Whittlesey House 1939) (Woman of ill repute, whom Dan as Council President had vainly tried to run out of town, left her estate in trust for a female dog someone had cruelly named for her, with residue to Dan "who has long been my valued friend"; Dan spurned the bequest and an orphan asylum named

wrong. He spurned the bequest, sued her estate for testamentary libel, and acquired her assets as damages.<sup>27</sup>

In real life, one John Hylett Stow directed his executors to spend five guineas for a picture of a viper biting the benevolent hand of a person who had saved it from perishing, and to present the picture to a designated barrister. This caused a libel action,<sup>28</sup> as has more than one other testamentary *clause celebre*.<sup>29</sup>

The unbalanced testator is pathetic, yet some of his clauses bring smiles to strangers. One can understand an heir contesting an excessive bequest "to the nurse who kindly removed a pink monkey from my bed" or "to the hospital cook who removed snakes from my soup."<sup>30</sup> It is not stated whether anyone contested the will of the Irish-hating inhabitant of Ireland who bequeathed ten pounds annually in perpetuity to be used in exterminating the Irish in the following manner: to invite twenty Irishmen each year to the testator's grave, on a promise of free whisky, and there supply them with whisky, cudgels and knives, and let them just naturally kill each other off.<sup>31</sup> Another will was invalidated, however, where it stemmed from an irrational hatred of a prominent sex.<sup>32</sup> The rule that an insane delusion will

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as alternate residual legatee received it.). Cf. *Gallagher's Estate*, 10 Pa. Dist. Rep. 733, 737 (1901).

27. Cf. The plight of a temperance group bequeathed distillery stock, particularly where named cestui of a trust of such stock.

28. BYRNE 110; HARRIS 180; *Eccentric Wills*, 5 GREEN BAG 188 (1893); Gest, *Practical Suggestions for Drawing Wills*, 55 AM. L. REG. 465, 501 n.74 (1907).

29. That recovery may be had against the estate, see 1 HARPER & JAMES, LAW TORRES § 5.15 n.15 (1956) (approving the result); Freifield, *Libel by Will*, 19 A.B.A.J. 301 (1933); Comment, 48 MICH. L. REV. 220 (1949); Russell, *Testamentary Libel*, 16 TEX. B.J. 733 (1953) (English will read "All inspectors or taxes are sadistic and depraved"). Contra, *Citizens & Southern Nat'l. Bank v. Hendricks*, 176 Ga. 692, 168 S.E. 313 (1933); cf. "Men should not sin in their graves." Strange, M.R., in *Thomas v. Britnell*, 2 Ves. Sen. 313, 314, 28 Eng. Rep. 202 (1751). The latter judge was thinking, not of defamation, but of construing wills in a manner to avoid imputing to the testator an intention to produce unfair dispositions. Napoleon's estate was not sued for his testamentary assertion, "I die prematurely assassinated by the English oligarchy." See BRIGHT 49.

30. HARRIS 163; Hibsichman, *Whimsies of Will Makers*, 66 U.S.L. REV. 362, 366 (1932) (refers to testator as "gifted with the saving grace of humor"); Jones, *Eccentricities of Sane Testators*, 12 LAW NOTES 149 (1908) (numerous reported cases upholding wills of extremely peculiar persons); Phelps, *People Who Make Wills*, 7 KY. ST. B.J. No. 2, 10 (March, 1943).

31. BYRNE 106; HARRIS 182. Wham notes that the court held the testator's specific mechanism to be against public policy, so directed that the money go to an Irish Old People's Home. Wham, *Mr. Blaustein's Will*, 36 CHI. BAR RECORD 177, 180 (Jan. 1955). Fatalities would be higher in the latter, taking the long view. A softer nut was the German who bequeathed his effects to a poor man he disliked, on condition that the legatee always wear (scratchy) linen underclothes. BRIGHT 41; *Some Singular Wills*, 15 GREEN BAG 430, 431 (1903). HARRIS 159, has testator a crabbed German professor, the legatee his sole surviving relative.

32. In re *Strittmater's Estate*, 140 N.J. Eq. 94, 53 A.2d 205 (Ct. Err. & App. 1947) (testatrix, who longed for the day women could bear children without male help, after which all males would be killed at birth, left her entire estate to the National Women's Party); cf. 2 VAN WINKLE, SIXTY FAMOUS CASES 56 (1956), discussing the will of an Iowa lawyer who disinherited his wife and



not invalidate a will if the latter was unaffected by the delusion, has been illustrated in the words, "The will of a testator who habitually saw Indian squaws sitting on his fenceposts—but left nothing to them, and in fact disposed of his estate in a reasonable manner, was held valid."<sup>33</sup>

That Jarman, the great authority on wills, died intestate,<sup>34</sup> and that many famous lawyers and judges have had their wills invalidated or ruinously construed or litigated,<sup>35</sup> is sober truth, as is the fact that many persons postpone will-making just a moment too long.<sup>36</sup> Illustrative of the latter danger is the fate of a Treasury Department clerk in Washington whose deathbed scribble was illegible. His widow had him make a posthumous translation via a "slate-writing medium," but the court rejected the will.<sup>37</sup> The decision seems sound, particu-

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daughter and left his property to establish a "womanless library"; testator's daughter had will set aside for lack of testamentary capacity. In another will, set aside for insanity, testatrix thought herself the third Person of the Trinity, that a Dr. Smith (stranger and main legatee) was God The Father, and that her husband was the Devil. *Smith v. Tebbitt*, L.R. 1 P. & D. 398 (1865) (cited in Buckler, *Notes on the Wills of Lunatics*, 58 AM. J. INSANITY 267, 280 (1901)).

One Foster directed in his will that no woman be present at his funeral. *Curious Wills*, 2 GREEN BAG 444 (1890), reprinted in 26 CAN. L.J. 533 (1890); *Extraordinary Wills*, 10 GREEN BAG 162 (1898). A wealthy bachelor's will directed that he be buried where no woman lay either to the right or left and, if this proved impracticable, that three graves be purchased and that he be buried in the middle grave and the other two be kept unoccupied. *The Eccentricities of Testators*, 15 GREEN BAG 583, 586 (1903).

33. MEHEM & ATKINSON, *CASES ON WILLS* 109 (2d ed. 1939) (citing *Pendarvis v. Gibb*, 328 ILL. 282, 159 N.E. 353 (1927), 23 ILL. L. REV. 299 (1928)).

34. MEGARRY, *MISCELLANY-AT-LAW* 169-72 (1955).

35. BYRNE 2; MEGARRY, *MISCELLANY-AT-LAW* 169-72; *Curiosities and Law of Wills*, 13 CAN. L.J. (n.s.) 155, 156 (listing ten famous English lawyers and judges who bungled their own wills). The "Tilden Trust" provisions in the home-made will of Samuel J. Tilden were defeated by the four-to-three decision of *Tilden v. Green*, 130 N.Y. 29, 28 N.E. 880 (1891); RABY, *FIFTY FAMOUS TRIALS* 183-88 (1937) (Tilden will); 2 VAN WINKLE, *SIXTY FAMOUS CASES* 56 (1956) (invalid will of Iowa lawyer T. M. Zink). The will of Chief Justice Salmon P. Chase was brief but defective, purporting to devise land in the District of Columbia but having two witnesses instead of the required three. *Wills of Famous Americans*, 9 GREEN BAG 54, 56 (1897). Chief Justice Marshall, after directing the freeing of his body servant, cautiously added a proviso that "If such emancipation should not be consistent with law, Robin [the body slave] might select his future owner from the testator's sons and daughters." Friedman, *On Wills*, 23 GREEN BAG 574, 575 (1911). Serjeant Maynard, dying *temp. Wm. III*, supposedly left a will purposely worded in obscure terms, so as to give rise to litigation and settle some very fine moot points which had vexed Maynard in his lifetime. CROAKE JAMES 491. But was not this case compromised, thus again defeating a testator's intent?

36. The fatal defect in Tilden's will was pointed out to him by James C. Carter, and Tilden intended to rectify it, but died before getting around to having it done. Remsen, *The Post-Mortem Administration of Wealth*, 19 YALE L.J. 36, 37 (1909); cf. *Do Lawyers Neglect Own Wills?*, 28 OHIO BAR 1195 (1955) (reporting a sampling showing more than 25% of lawyers answering had no will).

37. HARRIS 172. In a happier ghost case, the testator's ghost merely kept worrying the desk drawers until his brother examined them and found the illiterately spelled but valid will the testator had executed during life. BRIGHT 38; cf. Hall, *Wills and Ghosts*, 21 CASE & COM. No. 6, p. 464 (Nov. 1914) (two helpful ghosts, one warning the living testator of an error in the latter's will as prepared by ghost during life); Hibschan, *Spooks and Wills*, 64 U.S.L.

larly since the translation concluded with a glowing description of Heaven as "better than the Sixth Auditor's office."

Laymen must be warned of the dangers of do-it-yourself methods in two fields: 1. Their wills; and 2. Brain surgery. The latter can also be disastrous; the danger of the former is disclosed in two classic pieces, "The Jolly Testator Who Makes His Own Will,"<sup>38</sup> and the Oberweiss Will ("That dam sure fix Oscar")<sup>39</sup> and in many less publicized examples.<sup>40</sup> A three-word will ("Everything is Lou's") was held invalid,<sup>41</sup> but a report of a valid eight-word will is bound to cause trouble.<sup>42</sup> On the other hand, the bound volume of 148 closely

REV. 471 (1930). A partly illegible will became readable after being compared with a version copied from a medium's slate pursuant to testator's posthumous dictation. Wham, *Mr. Blaustein's Will*, 36 CH. BAR RECORD 177 (Jan. 1956).

38. HARRIS 209-10; WILLIAM L. PROSSER, *THE JUDICIAL HUMORIST* 247 (Boston. Little, Brown, 1952) (hereinafter cited PROSSER); 45 CASE & COM., No. 6, p. 4 (May 1940); Gest, *Practical Suggestions for Drawing Wills*, 55 AM. L. REG. 465, 498 (1907) [citing as source: 11 AM. L. RECORD 125 (1882)]; Wham, *Mr. Blaustein's Will*, 36 CH. BAR RECORD 177 (1955); 14 OHIO L. REP. 301 (July 24, 1916).

39. BRIGHT 12; MORTENSON, *YOU BE THE JUDGE* 321 (1940); PROSSER 248.

40. In speaking of a layman's home-made will, Harman, J., said, "He signed the will and no doubt thought he had done a good day's work, as, for the legal profession, he had." Re Gare, (1951) WEEKLY NOTES 564. John Marshall Gest facetiously declared, "Every man who knows how to write thinks he knows how to write a will and long may this happy hallucination possess the minds of our lay brethren. . . ." Gest, *Practical Suggestions for Drawing Wills*, 55 AM. L. REG. 465 (1907).

Although odd, a Louisiana woman's holographic will was upheld although it read, "I want my nese Jenny Donan to hav muy portoy and perionn when I die. I point sole excytrix of muy estate." Other specimens of home-made wills are reprinted in 40 CASE & COM. No. 1, p. 24 (Spring 1934); 42 CASE & COM. No. 3, p. 29 (winter 1936-1937) Mortenson, *YOU BE THE JUDGE*, 314-18 (1940) (fifteen examples of different defects). Some testators err otherwise than in making their own wills, as witness the famous will case which came before the United States Supreme Court for attention on 13 occasions during 1839-1891: HARMON, *THE FAMOUS CASE OF MYRA CLARK GAINES* (1946. Pp. 481); KANE, *NEW ORLEANS WOMAN* (1946) (biographical novel of Myra Clark Gaines); Green, *The Most Remarkable Case in the Courts of America*, 19 TENN. L. REV. 815 (1947), condensed in 52 CASE & COM. No. 5, p. 8 (Sept.-Oct., 1947); Holden, *Three Generations of Romance and Litigation; The Celebrated Gaines Will Cases*, 11 ILL. L. REV. 464 (1917).

41. *Smith v. Smith*, 112 Va. 205, 70 S.E. 491 (1911); HARRIS 169. Another three-word will, "All for mother" was admitted to probate and held to designate testator's wife, to whom he customarily so referred. *Thorn v. Dickens*, (1906) WEEKLY NOTES 54. (Also cited in MEGARRY 165). *Hodson v. Barnes*, 43 T.L.R. 71 (1926), which rejected a sailor's dated and initialed four-word will written on an eggshell, is noted in 3 C.A.M.B. L.J. 103 (1927); 27 COLUM. L. REV. 478 (1927); 70 SOL. J. 1187 (1926). See also, 100 CENT L.J. 65 (1927); cf. The reply of Lord Alvanley at the Rolls Court, when told by counsel that it was the court's duty to find a meaning for the testator: "My duty to find a meaning! Suppose the will had contained only three words, *Fustum funnidos tantaraboo*, am I to find the meaning of this gibberish?" CROAKE JAMES 493.

42. BRYNE 26, 61. The book quotes the will as saying "Mrs. \_\_\_\_\_ to have all when I die." It not only fails to mention any signing by the testator; it leaves it to the reader to discover that a surname actually appeared and must be inserted to make out the eight words. After books published a picture of Chief Justice White's fifty-one word will in which he left everything to Mrs. White, [E.g., HOGAN, *THE WILLS OF THE JUSTICES* (1956) (microfilm), KLINKHAMER, *EDWARD DOUGLAS WHITE* 242 (Catholic Univ. Press. 1943); MORTENSON, *YOU BE THE JUDGE* 322-23 (1940); 8 A.B.A.J. 128 (1922) (quoted

written 10" x 18" pages comprising the home-made will of wealthy Seattle eccentric Joseph H. Melchoir was declared void. This illustrates the important difference in will-making between capacity and stamina. "Melody Choir", as Melchoir called himself, directed that his entire \$120,000 estate be used in erecting a huge mausoleum for himself and his dog. Whether the dog equally deserved so imposing a monument is not stated, but Melchoir, sobered by his approaching death, confessed that "The incontrovertible facts in my case are these—there never was a better, all round individual ever set foot upon the regions of this broad state than myself." He also excoriated lawyers and their "grasping machinations," a view his disgruntled relatives may not have shared after their lawyers successfully broke the will.<sup>43</sup>

Consider the famous and fictitious testator who bequeathed to his friend, "All my black and white horses." The testator had six black horses, six white horses, and six pyed (i.e., black and white) horses. Did all eighteen horses pass, or only twelve, or only six?<sup>44</sup> Here is an instance where "black and/or white" would seem an improvement, although many lawyers never use that hybrid. One lawyer went so far as to predict that someone would bequeath "to A, B, and C, and/or their heirs"<sup>45</sup>, but an English testator had already done it.<sup>46</sup>

without picture) ] some layman clipped out the picture, and penned and signed the words "My wishes are the same as Justice White's," although quite possibly not intending to benefit Mrs. White at all.

43. Hibschan, *Whimsies of Will-Makers*, 66 U.S.L. REV. 362, 366 (1932). Petersen, *Old Wills and Peculiar Testators*, 90 CENT. L.J. 59, 62 (1920), after reporting that Melchoir's will also declared, "I never was married or even engaged to be married. Nor ever gave to any female, old or young, married or single, maid or widow, white or any color, directly or indirectly, verbal or written, open or implied, any pledge, vow or promise of marriage whatsoever," adds that "the will was declared void for insanity." On other evidence, one assumes.

44. MEGARRY 298 [reprinting *Stradling v. Stiles*, as printed in Heard, *Oddities of the Law* 183 (1921)]; CROAKE JAMES 497; Gest, *Practical Suggestions for Drawing Wills*, 55 AM. L. REG. 465, 481 (1907); BROWNE, 1 ALBANY L.J. 70, 71 (1870) ("*Stradling v. Stiles*"; authorship attributed to Fortescue); cf. Areson v. Areson, 3 Denio (N.Y.) 458 (1846), holding that a will giving to testator's widow "all my real estate, one clock, and the interest of \$500 during her life-time" passed a life estate in lands, clock and money, the words "during her life-time" qualifying all three gifts. This eleven-to-ten reversal of the trial court decision that a fee in the land was devised, Areson v. Areson 5 Hill 410 (N.Y. 1842), is cited as ludicrous by BROWNE, HUMOROUS PHASES OF THE LAW p. 446-448 (1882). That courts, although preferring to look only to the testator's words, will not ignore his punctuation where the latter helps ascertain his intent, and will even supply an omitted comma in a proper case, see 22 LAW NOTES 138 (Oct., 1918).

45. Tidball, *And/or*, 2 Wyo. L.J. 60 (1948).

46. Note, 59 L.Q. REV. 21 (1943) (noting that the bequest "to A and/or B" could mean a gift to A and B jointly, or mean an absolute gift to A alone but if A failed to survive testator, then to B, or be wholly void; the court upheld the gift as intending A and B to be joint tenants but if A predeceased the testator, that B take as substituted legatee); cf. 21 AUSTR. L.J. 153 (1947) (bequest to C, G, and Ph as tenants in common, but if any predecease T and leave issue surviving T, such issue to take the share "their mother and/or father would have taken"; C and G were husband and wife, having no legitimate issue, but C having illegitimate issue, hence the court held the "and/or" to include the latter).

A bequest of "all my blood stock" was held not to include the stallion owned by a syndicate of which the testator was merely one of many members, but did pass his undivided half interest in a horse.<sup>47</sup>

Once effective, the will must last the testator all his death; he cannot rectify. Judges become the only authorized interpreters of his nonsense.<sup>48</sup>

Some clergymen leave testamentary instructions to publish their sermons;<sup>49</sup> others forbid it or direct that their sermons be burned, one of the latter explaining, "I feel convinced they will give more light out of the pulpit than they ever did in it."<sup>50</sup>

Two testators showed a refreshing conservatism. The first, after bequeathing "to my pious Presbyterian friend, Mr. \_\_\_\_\_, the sum of five dollars to buy two gallons of fair to middling whisky for the use of himself and sanctimonious brethren," gave to all his other friends and relatives "the assurance that I will do all I can for them up here, as soon as I find out 'where I am at.'"<sup>51</sup> The other testator, after leaving explicit directions as to the type of funeral he wanted

47. *Re Gillson; Ellis v. Leader* (1948) 2 All E.R. 990, 23 Aust. L.J. 12 (1949). Quære: Would the bequest have passed a quarter horse?

48. Lord Chancellor Cranworth, in *Cookson v. Bingham*, 3 De G.M. & G. 668, 674, 43 Eng. Rep. 263 (1953), attributing the phrase to Lord Mansfield. [Cited in Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297 (1934).]; cf. *Vaughan v. Marquis of Headfort*, 10 Sim. 639, 641, 59 Eng. Rep. 764, 765 (1840) ("By the laws of this country, every testator, in disposing of his property, is at liberty to adopt his own nonsense.")

49. Gest asks, "Is this a clerical error?" Elias Boudinot thriftily incorporated a complete sermon into his will which devised 4500 acres in trust to provide Bibles for the heathen. Hibschan, *Whimsies of Will-Makers*, 66 U.S.L. Rev. 362, 367 (1932). The will itself may have led to the conversion of any nearby heathen abstractors.

50. Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297, 322 (1934). A Frenchman (d. 1895), specifying that his body be placed in a retort of the Paris Gas Company, declared, "I have used my mental power to enlighten the public, and I desire that my body be used to enlighten the people after my death." *The Eccentricities of Testators*, 15 GREEN BAG 583, 586 (1903). Wm. Kinsett similarly left his body to Imperial Gas Co., London. 13 CAN. L.J. (n.s.) 185 (1877). Authors are not the best judges of their works. Virgil's will originally ordered the burning of his then unpublished Aeneid. Fortunately, friends persuaded him to alter his will. HARRIS 16. Others may, however, be as poor a judge. Thus Ann Essam left the bulk of her estate in trust "for printing and propagating the sacred writings of Joanna Southcote." Joanna, a maiden of sixty, after proclaiming she was about to bear a second Messiah, "died a raving idiot" before her expected delivery. Her "sacred writings" were incoherent but enthusiastic. Pollard, *Bequests of Eccentrics*, 22 LAW. & BANK. 203 (1929). The will and trust were unsuccessfully attacked as blasphemous and as not charitable, but the trust consisted of devises of land, hence failed under the Statute of Mortmain (9 GEO. II, c. 36). *Thornton v. Howe*, 31 Beav. 14, 54 Eng. Rep. 1042 (1862). Similarly, Girard's will, providing for a college for "poor white male orphans" and requiring that "no ecclesiastical missionary or minister . . . shall ever be admitted . . . within the premises" was vainly attacked as blasphemous and as having too *uncertain* a class of beneficiaries. *Vidal v. Girard's Ex'rs*, 43 U.S. (2 How.) 126 (1844). No objection was made to the restrictions "poor, white, male, orphan"; cf. *Pennsylvania v. Board of Directors of City Trusts*, 353 U.S. 230 (1957). *But see In re Girard College Trusteeship*, 138 A.2d 844 (Pa. 1958).

51. Gest, *Some Jolly Testators*, 8 TEMP. L.Q. 297, 321 (1934).

conducted, added "and if this be not done, I will come again . . . that is to say, if I can."<sup>52</sup>

A Utah millionaire who died in 1877 properly directed his estate to be divided into nineteen parts, each part going to a different wife and her children (or to the children of a deceased wife).<sup>53</sup> Far more unusual was the will of a Finn which contained a devise to the Devil. The devise failed,<sup>54</sup> possibly because of uncertainty as to the identity of the devisee, who did not appear. Presumably the testator hoped to obtain preferment thereunder.

A cautionary word might be given testators as to the lengths to which people may go to qualify for a legacy. In one instance a bequest of an annuity to a woman specified that it should continue "as long as she is above ground." After her death, her husband kept her in a glass case inside the house, thus continuing for thirty additional years to enjoy her presents.<sup>55</sup> Similarly unintended, a legacy of an annuity "as long as he shall attend college," was stretched into a lifetime sinecure by the legatee's insatiable thirst.<sup>56</sup>

Three feminine legatees were left a trust fund by their sister. For purposes of the legacy duty, they gave their ages as fifty-nine, forty-nine and forty-four years. As the testatrix had died at age eighty-six, an inquiry seemed proper. The legatees declared they would refuse any benefit rather than tolerate any "impertinent inquiry." In fact,

52. PROFFATT 10; 13 CAN. L.J. (n.s.) 157 (1877). An earlier clause stated that no one was "to attend my corpse to the grave," but the testator's desire to be inconspicuous would certainly not be served by his posthumous unattended stroll to the cemetery.

Dr. Ellery, a London quaker, bequeathed his heart, lungs and brain to certain friends, they to preserve them, and "if these gentlemen fail faithfully to execute these my last wishes, I will come—if it be by any means possible—and torment them until they comply." De Morgan, *Wills: Quaint, Curious and Otherwise*, 13 GREEN BAG 567, 569 (1901).

53. HARRIS 454 (Brigham Young's will).

54. BRIGHT 18 (nationality not stated); HARRIS 241; 10 GREEN BAG 162, 163 (1898); 2 GREEN BAG 444 (1890).

55. BYRNE 105; HARRIS 186. Cf. the recent fable of the elderly Britisher who parcelled out his land inter vivos to help his children escape confiscatory inheritance taxes, the hitch being that he died four months before completing the five years needed for his gifts to escape the tax. A helpful physician suggested that the children place the corpse in their large deep-freeze for the needed months, after which it could be thawed, placed in bed, and he issue a death certificate as of the later date. Unexpectedly, the physician died, but the children persisted in the plan, later calling in an innocent doctor to examine the thawed corpse. This doctor was puzzled by the oddity that, although apparently having died from natural causes, the stomach of the corpse showed in January traces of fresh strawberries. "How," he inquired more in amazement than in suspicion, "can you explain this?" "Easily," breathed the coolest head, "We have a deep-freeze." 63 CASE & COM., No. 1, p. 64 (Jan.-Feb. 1958) (attributing source to *Quote*).

56. A fantastic but similar situation was presented in *McKinney v. Clarke*, 32 Tenn. 320 (1852), where land and slaves were devised to testator's widow durante viduitate, remainder to his children. The widow successfully prevented her judgment creditors from reaching her property, by marrying a "degraded drunken sot," obviously not intending to cohabit with him. The creditors vainly sought to annul the marriage.

their ages were eighty, seventy-six, and seventy-four, and an understanding court managed to hold they had not renounced their legacies.<sup>57</sup>

One French testator directed that a new recipe be placed on his grave daily;<sup>58</sup> and a French lawyer devised 100,000 francs to a local mad-house, declaring that it was simply an act of restitution to his clients<sup>59</sup> (who had been crazy enough to engage him).<sup>60</sup>

Many testators are generous to their wives in death as in life,<sup>61</sup> or become more generous as death nears.<sup>62</sup> In addition to the testators who have vindictively cut off their wives with nothing but venomous words,<sup>63</sup> there are many testators who measure wifely offenses more discriminatingly.<sup>64</sup> Understandably, many husbands seek in their wills to prevent remarriage by their respective widows,<sup>65</sup>—sometimes with little success.<sup>66</sup> Other husbands are more understanding.<sup>67</sup> One man

57. MEGARRY 167, citing Anonymous, *The Times*, May 31, 1945.

58. HARRIS 156; Pollard, *The Bequests of Eccentrics*, 22 *LAW. & BANK.* 203, 209 (1929); *Curious Wills*, 2 *GREEN BAG* 444 (1890); 10 *GREEN BAG* 162 (1898).

59. CROAKE JAMES 496; *Eccentric Wills*, 5 *GREEN BAG* 188 (1893). In an unsigned article, *Curious Wills*, 2 *GREEN BAG* 444 (1890), the same bequest is stated to be \$10,000, and in *Extraordinary Wills*, 10 *GREEN BAG* 162 (1898) it is \$50,000.

60. HARRIS 156 (\$50,000). This seems an unwarranted gloss; testator had in mind only the folly of litigants in general, or of the litigious.

61. Such is the bequest by an Earl of Warwick (1296) to his wife, "all my silver vessels with the cross wherein is contained part of the very cross whereon our Saviour died." 120 *L. T.* 226 (1906); cf. HARRIS 184 (a hair of the Prophet's beard).

62. See 12 *GREEN BAG* 364 (1900) ("Old Harbottle's Will").

63. An Earl of Stafford's will referred to "the worst of women . . . unfortunately my wife." BYRNE 146; HARRIS 85; Friedman, *On Wills*, 23 *GREEN BAG* 574, 577 (1911), reprinted in 3 *AM. LAW SCH. REV.* 69 (1912); *Some Singular Wills*, 15 *GREEN BAG* 430, 431 (1903) (also recounts the bequest by a Col. Nash of an annuity to certain bell ringers, conditioned on their tolling a dirge from 8 A.M. to 8 P.M. on each anniversary of his wedding day and letting the bells peal on each anniversary of his being freed from matrimony by death); *Eccentricities of Testators*, 15 *GREEN BAG* 583 (1903), reprinted in 117 *L.T.* 158 (1904). See also 5 *GREEN BAG* 188, 190 (1893).

64. A jury verdict upheld against the widow the will of a Dubliner named Rogers who cut off his wife with one shilling, ostensibly because of her faults, of which one was her marrying the testator when he was a youth of eighty and she a woman of eighteen. 15 *GREEN BAG* 431 (1903). An Englishman left his widow £ 1000, saying it would have been £ 10,000 had she let him read his evening paper in peace. 15 *GREEN BAG* 583 (1903). A physician in Scotland bequeathed "to my wife, as a recompense for deserting me and leaving me in peace . . . ten shillings to buy a handkerchief to weep on after my decease." 15 *GREEN BAG* 583 (1903); HARRIS 88. A London saloon-keeper's will required his wife, as a condition to receiving a handsome legacy, to walk barefooted to the marketplace on each anniversary of his death, holding a candle and reading a confession that her unseemly behavior had probably shortened his life. 15 *GREEN BAG* 583, 588 (1903); HARRIS 89.

65. By refreshing contrast, a Mrs. Van Hennigh expressed in her will the hope that her "darling husband should marry, ere long, a nice, pretty girl," and a testator named Harcourt, evinced a correspondingly unselfish love. 13 *CAN. L.J.* (n.s.) 155, 157 (1877). Thomas Sackville, Earl of Dorset, couched his bequest to his wife in terms both tender and eloquent. CROAKE JAMES 762.

66. A testator left his widow £ 12,000, to be increased to £ 24,000 if she wore a widow's cap after his death. She took the larger sum, wore the cap six months, then took it off. She won the ensuing lawsuit, since the will had

left his large fortune to his only son on condition that the latter seek out and marry a young lady whom the father had done wrong. The son accepted the legacy, found the young girl (by then a willing fifty-five, the son being twenty-one) and married her.<sup>68</sup> Courts differ as to the effect of a devise to the testator's mistress "during widowhood."<sup>69</sup> Possibly the most interesting of these cases was one where the testator, having gone through a marriage ceremony with D.J. although knowing that she was already married to A.G., bequeathed his estate to "my wife, D.J." and two other persons, in trust to pay the income to "my said wife during her life if she so long continues my widow, and upon or after her decease or second marriage" to other beneficiaries. Both D.J. and A.G. survived the testator, and the court held D.J. was entitled to a life interest unless and until she married after the testator's death.<sup>70</sup>

Testators who make large bequests without bothering to have any appreciable assets are hardly humorists, nor do they amuse their disappointed legatees.<sup>71</sup> This was particularly true of one jokester whose

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not said "always," and remarried the next day. 15 GREEN BAG 583, 584 (1903); HARRIS 88; cf. Childs, *So Long as She Remains my Widow*, 23 CASE & COM. 29 (June 1916). One testator left everything to the widow in fee determinable, with gift over to the testator's cousin if the widow remarried. This attempt to prevent her remarriage failed. She married the cousin. 37 CASE & COM., No. 4, p. 30 (winter, 1931).

67. An Englishman directed that his will leave £ 100 to his wife. Being reminded that testators often provide for possible remarriage, he said, "Very well. £ 200 if she remarries." To his adviser's protests, the understanding husband said, "Aye, but him as gets her'll deserve it!" *Eccentric Wills*, 5 GREEN BAG 188 (1893); HARRIS 80.

A Boston testator left his wife penniless unless she married again within five years, the will explaining that this was so someone else could find out how hard she was to live with. *Extraordinary Wills*, 10 GREEN BAG 162, 163 (1898). Poet Heinrich Heine left his property to his widow on condition that she remarry, "Because there will then be at least one man to regret my death." Hyman, *Wacky Wills*, 10 Ky. Sr. B.J. 185 (1946). J. Withipol, an Englishman, devised his landed estates to his wife, "trusting, yea, I may say, assuring myself, that she will marry no man, for fear to meet with so evil a husband as I have been to her." HARRIS 81. Frenchman Paul Scarron, in a lengthy rhyming will, bequeathed to his widow permission to marry again, to the Academy power to alter the French language, and to one Corneille five hundred pounds weight of patience. *The Eccentricities of Testators*, 15 GREEN BAG 583, 586 (1903), reprinted in 117 L.T. 158 (1904); HARRIS 63; BYRNE 335. His widow apparently accepted the bequest, marrying, when fifty years old, King Louis XIV of France.

68. *Some Singular Wills*, 15 GREEN BAG 430, 432 (1903); HARRIS 89.

69. *Gale v. Gale*, (1941) 1 All E.R. 329, 191 L.T. 126 (1941), noted 191 L.T. 170 (1941), 17 AUSTR. L.J. 83 (1943) held that she took nothing, because the period could not exist. That devise did not say "wife," but where the devise read "to my wife during her widowhood," a mistress was awarded a life estate determinable. *Re Lynch* (1943) 1 All E.R. 168, 195 L.T. 32 (1943), noted 87 SOL. J. 48 (Feb. 6, 1943), 195 L.T. 50 (1943).

70. 2 JARMAN, WILLS (7th ed. 1930), 1253 (citing *Re Wagstaff*, [1907] 2 Ch. 35; [1908] 1 Ch. 162).

71. Friedman, *ON WILLS*, 23 GREEN BAG 574, 577 (1911) (Bostonian Cora Johnson; bequests of \$100,000, assets less than \$100); HARRIS 185. Well-intentioned testators who lose their fortunes after making wills, and penniless madmen whose fortunes existed only in their disordered minds, are tragic

large bequest to a fraternal order caused dissension which nearly divided the lodge into rival fratrisides—before they discovered that their benefactor died penniless.<sup>72</sup> Almost in a class with these, is the scholar whose will read “To my beloved nephew I bequeath ten thousand which he will find in a package in my safe.” The nephew found a packet of 10,000 chess problems, with a note promising that they would invaluable improve his mind. They probably did not even improve his disposition.<sup>73</sup> A more acceptable whimsy was that of an Englishman who bequeathed each of his daughters her weight in one pound bank-notes.<sup>74</sup> The younger daughter, being somewhat heavier, paradoxically became more buoyant.

One cannot catalog all the ways in which an alert lawyer may help the testator, legatee, or estate. O’Connell, attempting in a will case to prove the will a forgery, noticed that the subscribing witness swore that the testator had signed the will “while life was in him.” Although the quoted English words were commonly used, being a literal translation of a Gaelic phrase, O’Connell on cross-examination repeatedly asked the witness, “Was the testator then alive?” Again the answer was, “Upon my oath, the life was in him.” O’Connell then thundered at the witness, “In the presence of your Maker, answer me at your peril—was there not a live fly in the dead man’s mouth when his hand was placed on the will?” The witness paled, then confessed that this very stratagem had been utilized to accommodate his oath to his testimony.<sup>75</sup> In another instance, a dying miser, wishing to make a will but anguishing over his inability to say “I give,” died peacefully and testate after following his solicitor’s suggested phrasing, “I lend [so much, to so-and-so] to be repaid with interest on the last day.”<sup>76</sup> Again, an Aberdeen testator left a friend £ 2000 on condition that half of it be buried with the testator. The friend, having first consulted his solicitor, accepted the legacy, deposited the money, and turned over for burial with his donor, a half of £ 2000 in the form of a check drawn by the friend and payable to the testator.<sup>77</sup> A not dissimilar instance is the famous puzzle of the apocryphal Chinese testator who bequeathed one-half of his estate to his eldest son, one-third to his second son, and one-

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figures. Somber enough to the legatee, is the legacy lost by ademption. For an entertainingly written account of a specific legacy of corporate stock bequeathed by a corporation president to his loyal employee who, ignorant of the bequest and acting under a power of attorney, thereafter sells the stock as part of a brilliant rehabilitation of her dying employer’s finances, see FRED GROSS, *WHAT IS THE VERDICT?* 115-61 (New York. MacMillan. 1944).

72. PARTRIDGE, *COUNTRY LAWYER* 243 (1939).

73. De Morgan, *Whimsical Wills*, 21 *GREEN BAG* 152 (1909).

74. *Eccentric Wills*, 5 *GREEN BAG* 188, 190 (1893); 15 *GREEN BAG* 430, 432 (1903).

75. CROAKE *JAMES* 458.

76. CROAKE *JAMES* 496.

77. *Eccentric Wills*, 11 *VA. L. REG.* (n.s.) 534 (1926).



ninth to his youngest (third) son. After payment of all debts, the net estate proved to be precisely seventeen elephants. Each legatee wanted his share in kind if such partition could be had without undue hardship to any elephant. Their sage neighbor settled the problem by riding over on his own elephant, which he placed momentarily with the seventeen, constructively making it part of the herd *pro hac vice*. Then, he easily allotted the eldest son nine elephants and had him depart; the second son six elephants and had him withdraw; and the third son two whole elephants. As the third son disappeared, the sage mounted the sole remaining elephant—his own—and returned home.<sup>78</sup> Was the division fair, and if unfair, who may complain?<sup>79</sup>

“Croake James” reports that a French testator once left all his estate to a nearby Jesuit monastery on condition that on the return of testator’s son from abroad, the fathers should give him whatever they should choose. The son returned, asked for his share and, dissatisfied with what the fathers gave him, sued. His advocate argued that “the sum which the fathers shall choose” (the will’s words) was to go to the son, hence this meant the son should have the part the fathers had chosen (for themselves). The court accordingly ordered the bulk of the estate to be given to the son.<sup>80</sup> This somewhat resembles the ancient Levantine story of the slave, too ambitious to remain a slave but too unscrupulous to deserve freedom, who propounded a false will which purported to give the slave virtually the entire estate. The only son and heir of the putative testator was not completely disinherited; to lend plausibility to his fraud the slave had placed in the will a bequest to the heir of “any one chattel my son shall choose.” After taking counsel, the helpless heir bowed to the will and it was adjudged valid. Then he made his choice of one chattel—the slave. Under the law the property of the slave became the property of the master.

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78. 4 ALBANY L.J. 250 (1871), reprinted in 13 N.Y.U. INTRA. L. REV. 211 (1958).

79. Obviously improper, this partition gave each legatee more than the will gave him, hence it might seem that none of the legatees could object after accepting the benefit of the partition. The question is whether objection could be made by someone else, or other than by a legatee *qua* legatee. Assume each elephant to be of the same value, and the three sons to comprise the testator’s next of kin.

80. CROAKE JAMES 499.