Volume 46
Issue 4 *Dickinson Law Review - Volume 46, 1941-1942*

5-1-1942

Eccentricities and Testamentary Capacity

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Dickinson Law Review

Published October, January, March and May by Dickinson Law Students

VOL. XLVI MAY, 1942 NUMBER 4

Subscription Price $2.00 Per Annum 75 Cents Per Number

NOTES

ECCENTRICITIES AND TESTAMENTARY CAPACITY

The principal purpose of this note is to show the development of and tendencies in, the treatment of will contests in Pennsylvania on the grounds of alleged eccentricities of the testator. The profuse use of this attack is revealed readily by a study of the numerous will controversies in this jurisdiction.

The importance of a will lies primarily in the fact that it enables the testator to dispose of his property according to his desires, which may vary from the laws

of intestacy of the jurisdiction in which his property is located at the time of his death. A will is the accepted means of avoiding the ordinary rules of descent as they developed at common law, or as provided by statute. In the development of our present law on the subject, it is well to note in passing that the feudal system has had no effect upon questions of testamentary power in this country.[1] At ecclesiastical law a lunatic or an idiot could not make a will.[2] In England the first Wills Act of Henry VIII used the words "all and every person" without any qualification as to sanity. The failing was recognized and two years later it was provided that wills or testaments of lands, tenements, or hereditaments by an idiot or any person *de non sane* should not be taken to be good or effectual in law.[3] The power to dispose of both real and personal property is conferred by modern legislation upon persons of age and having sufficient capacity for that purpose. These statutes have been based largely upon English legislation, and generally our law of wills rests upon that of England, except in those jurisdictions which have followed the Civil Law. Pennsylvania, following the modern trend of legislation, enacted the Wills Act of 1917. Section one reads as follows:

> "Every person of sound mind and of the age of twenty-one years or upwards, whether married or single, may dispose by will of his or her real estate, whether such real estate is held in fee simple or for life or lives of any other person or persons, and whether in severalty, joint tenancy or common, and also of his or her personal estate."[4]

It is noteworthy that neither here nor elsewhere in the act is there any attempt to define what is meant by a "person of sound mind". Hence, it is in this lack of definition that the hopeful contestant finds his proverbial last straw; by his testimony he seeks to show all the eccentricities of the testator with the purpose of revealing a person not of sound mind, who thus lacked the capacity to make a will. However, a great error is committed in many will contests by the misconception that mere eccentricities are synonymous with the lack of a "sound mind", invalidating the will under the statutory requirements. This misconception will be revealed by a survey of the Pennsylvania cases on point.

One can obtain a clear view of this phase of the law only by looking into the development of the procedural law as well as the substantive law on the matter. Therefore we shall discuss the pertinent statutory and case law on procedure, before going into matters of substance. Whenever a contestant advances evidence of a testator's incapacity, or whenever a difficult or disputable matter arises before

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[1] GARDNER ON WILLS (1903) 12.
[2] 1 PAGE ON WILLS (3rd ed., 1941) 256.
[3] 35 Henry VIII, c. 5, § 14.
[4] Act of 1917, June 7, P.L. 403, § 1, 20 PS 181.

the Register of Wills under the Register of Wills Act,[5] the Register can certify the whole record relative thereto to the Orphans' Court. Whenever a dispute arises upon a matter of fact before the Orphans' Court (which before the adoption of the Constitution of 1874 would have been before the Register under the Act of 1832),[6] it becomes the duty of the court to direct a precept for an issue to the Court of Common Pleas for the trial of the disputed fact.[7] The Orphans' Court Act of 1917 provided:

> "Whenever a dispute upon a matter of fact arises before any Orphans' Court, on appeal from the Register of Wills, or on the removal from any Register of Wills by certification, the said court shall, at the request of either party, direct a precept for an issue to the Court of Common Pleas of the county for the trial thereof . . ."[8]

The amendment of 1937[9] to the above act made provision for the Orphans' Court to draw its own jury whenever it wished to do so; formerly all issues of fact were heard before the Court of Common Pleas. Under these acts the direction of the court for a precept depends upon the existence of a dispute upon a matter of fact:

> "The right to an issue under the statute depends on whether there is a substantial dispute upon a material fact, and unless there is, the proponent is not entitled to an issue on any of the questions raised."[10]

There is no attempt on the part of the Orphans' Court Act to explain when a dispute on such matter exists, which gives reasonable statutory flexibility. As a consequence of these three above-mentioned acts, there is a line of decisions from 1832 until the present time. Some states in their early decisions took an extreme view which required perfect sanity, and any type or degree of mental disorder was said to render the mind unsound for the purposes of testacy.[11] This extreme view was never adopted in Pennsylvania; our courts adopted a liberal view as manifested in the language of one of our early Pennsylvania cases:

> "A disposing mind and memory, in view of the law, is one in which the testator is shown to have had, at the making and execution of the last will, a full and intelligent consciousness of the nature and effect of the act he was engaged in; a full knowledge of the property he possessed; an understanding of the disposition he wished to make of

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[5]Act of 1917, June 7, P.L. 415, § 19, 20 PS 1982.
[6]Act of 1832, March 15, P.L. 146, § 41.
[7]Appeal of Knauss, 114 Pa. 10, 6 A. 394 (1886).
[8]Act of 1917, June 7, P.L. 363, § 21(b), 20 PS 2582.
[9]Act of 1937, July 1, P.L. 2665, 20 PS 2585.
[10]Lowe's Estate, 318 Pa. 497, 178 A. 820 (1935).
[11]Note (1935) 14 OREGON L. REV. 494.

> it by the will, and of the persons and objects he desired to participate in his bounty."[12]

In this case, it was said further, "Even the will of a maniac is good, provided it has been made during a lucid interval; during a time in which his mind has been restored to healthy though temporary action."

An issue *devisavit vel non* is said to be a matter of right where a substantial dispute on a material question exists.[13] Yet this matter of "right" is subject to the sound discretion of the court. It is difficult to say how far our courts may go in the refusal of an issue. Since discretion is a subjective thing, we must judge each case on its own merits, weighing the testimony on both sides, and yet attempting to stay within the boundaries established by prior cases. Although we have no similar case in this jurisdiction, that of *Bennett v. Hibberts*[14] will give an idea how far the courts can go in upholding the testamentary capacity of an individual. There was evidence that the testator let his dogs eat at the table with him; that he played the violin while his wife lay dead in the house; that he lay on the rough box in which her coffin was placed; that he made heartless expressions at her when she lay sick, and that at one time with handkerchief on his head he was planting corn, and without any apparent reason jumped and ran some twenty rods and hallooed very loudly. These facts, along with others, were held ". . . not to show testamentary incapacity, where the acts could be accounted for on a theory of the testator's natural inclinations, beliefs, and education."

The significance and importance of factual situations in each case becomes important if we are to decide what will and what will not be treated by the courts as acceptable as creating an issue of testamentary capacity. The hearing judge acts as chancellor in the determination of whether an issue exists, and his findings are entitled to the weight of a jury's verdict. Thus, where his findings are supported even by disputed evidence, they are controlling upon the appellate court.

> "It is his [the judge's] duty, after weighing the evidence impartially, to refuse to present the question to a jury, unless he feels the ends of justice call for a verdict against the will, or he is so uncertain on this point that he could conscionably sustain a finding either way on one or more of the controlling issues involved."[15]

The chancellor's decision will not be reversed unless an abuse of discretion on his part appears.[16] Actually the Orphans' Court is a fact finding body in the first

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[12]Leech v. Leech, 21 Pa. 67 (1853); see also Patti's Estate, 133 Pa. Super. Ct. 81, 1 A. (2d) 791 (1931); *Hutton on Wills* (1933) 19-21.

[13]In re Porter's Estate, 341 Pa. 476, 19 A. (2d) 731 (1941).

[14]88 Iowa 154, 55 N. W. 93 (1893).

[15]Mark's Estate, 298 Pa. 285, 286, 148 A. 297 (1929); see also DeLaurentii's Estate, 323 Pa 70, 186 A. 359 (1936); Patti's Estate, 133 Pa. Super Ct. 81, 1 A. (2d) 791 (1938).

[16]Dible's Estate, 316 Pa. 553, 175 A. 538 (1934).

instance. It can possibly dispose of the controversy at this stage, checked only by the limitation that there be no abuse of discretionary power. In *Appeal of Knauss*[17] it was shown by the contestant that the testator was an eccentric old man, immodest in his manners and conversation, and dirty even to filthiness in his habits; he was addicted to girdling a shade tree in front of the hotel where he boarded, using napkins for water closet purposes, and using towels and petticoats of servant girls to kindle fires. During the day he would be naked in his room, which was opposite the ladies' parlor, with his door open; and, on one or two occasions he exposed himself in the same condition in broad daylight on the front balcony of the hotel, which was located on a busy thoroughfare. Referring to these facts the court said, "It is clear if there were nothing more in the contestant's case than what is stated above, the case would fall through its inherent weakness." The court then proceeded to lay down the following principle for determining whether or not an issue should be submitted to the jury:

> "In rightly determining that question there is only one safe and reliable test. If the testimony is such that, after an impartial trial resulting in a verdict against the proponents of the alleged will, the trial judge, after a careful review of all the testimony, would feel constrained to set aside the verdict as contrary to the manifest weight of evidence, it cannot be said that a dispute within the meaning of the act has arisen. On the other hand, if the state of evidence is such that the judge would not feel constrained to set aside the verdict, the dispute should be considered substantial, and an issue to determine it should be directed."[18]

The definite tendency on the part of our courts is to uphold the testator's wishes. We can see an early manifestation of this policy in Justice Paxson's remark:

> "The growing disposition of the courts and juries to set aside last wills and testaments, and to substitute in lieu thereof their own notions as to what the testator should do with his property, is not to be encouraged."[19]

The mere existence of habits resulting from uncontrollable physical causes, or the indulgence in eccentricities arising from the contempt of conventionalities, is not inconsistent with a sound and disposing mind. In *Tallman's Estate*[20] the contestants revealed the filthy habits of the testatrix; they also showed that she was extremely vulgar at times, penurious, and miserly to the extent of depriving herself

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[17]114 Pa. 10, 6 A. 394 (1886).

[18]Appeal of Knauss, 114 Pa. 10, 20, 6 A. 394 (1886); see also Geist's Estate, 325 Pa. 401, 191 A. 29 (1937); DeLaurentii's Estate, *supra* note 15; Tetlow's Estate, 269 Pa. 487, 112 A. 758 (1921).

[19]Caufman v. Long, 82 Pa. 72, 77 (1876).

[20]Tallman's Estate, 148 Pa. 286, 293, 23 A. 986, 989 (1892).

of the comforts of life. The Supreme Court, in sustaining the decision of the Orphans' Court refusing an issue, said:

> "There was nothing in this case which ought to have been submitted to a jury to show that the testatrix did not possess testamentary capacity . . ."

In *Knight's Estate*[21] the testator was an old man, untidy in dress; he had a peculiar tendency of helping himself at the table with his fingers and eating in the same manner, laughing at his own jokes, and taking delight in the repetition of obscene and vulgar stories. In the summer he bought wool-lined shoes, several sizes too large, which he never laced, while in the spring he bought light colored shoes which he donned as would a Romeo. All this, coupled with a habit of purchasing old bottles, was not sufficient eccentricity in the eyes of the court to warrant an issue of testamentary incapacity. It does not avail the contestant of a will to show that the testator was filthy in his use of tobacco, drank excessively, carried bottles of liquor with him to bed, shook hands with people he did not know, and wept copiously upon witnessing a play at a theatre. In such a case an issue will be properly refused.[22] In the novel case of *Kish v. Bakaysa*[23] the contestants advanced all the eccentricities above mentioned with a combination of several others:

> "Looked at in the most favorable light, it shows the testator was addicted to alcohol, perhaps suffered from chronic alcoholism; that on occasions he was cruel to his invalid wife, threatened her once, and called her approbrious names; that his speech on other occasions was vulgar and profane, his voice broken and tremulous, and his gait faltering and unsteady; that he expressed thoughts that his family opposed him, and that his children and his church wished his death so that they might get his money; that on one occasion he struck his son John for no reason at all; that after his wife's death he reviled her and the undertaker, and at the time of her wake he abused the friends who came to the house to express their sympathy and asked why they were there and why they didn't go home."

In affirming the refusal of an issue by the Orphans' Court, the Supreme Court said, "We have specifically held that most of the particulars in this testimony are not enough to show incapacity."

In the case of *Eddey's Appeal*[24] the contestant advanced testimony to the effect that twenty years prior to the testator's death he underwent an entire change of mind, manners, and habits; from being a frank, genial man he became despondent and lived the life of a hermit, secluding himself in two rooms in a little frame shanty. Notwithstanding the fact that he was worth a substantial fortune, he lived there in vermin and dirt, doing his own housework, and hoarding and hiding his

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[21] Knight's Estate, 167 Pa. 453, 31 A. 682 (1895).
[22] Wright's Estate, 202 Pa. 395, 51 A. 1031 (1902).
[23] 330 Pa. 533, 199 A. 321 (1938).
[24] 109 Pa. 406, 1 A. 425 (1885).

wealth in holes about the place; he consistently bragged about being the first colored man to get a divorce. The Supreme Court, speaking through Justice Paxson, said:

> "Upon the whole, we are of the opinion that it would be a grievous wrong to allow any jury to set aside this will upon the evidence adduced, and for this reason we sustain the court below in denying the issue prayed for."[25]

The fact that one is flighty, has violent outbursts of temper, and is given to talking and gesticulating to himself, is not sufficient for the grant of an issue.[26] Nor is the fact that one is peculiar and has fits of despondency which were produced in whole or in part by domestic difficulties.[27] Nor is it sufficient for the granting of an issue that the testatrix was an old spinster living alone, whose conversations related to occurrences of long ago; that she had a strange look in her eyes and did not speak coherently nor connectedly; that she was eccentric, peculiar, and unusual, and unclean in her housekeeping and in the care of her body.[28]

A testamentary disposition will not be set aside because it is not "just", for a person of disposing mind may make an unjust will;[29] a man's prejudices are said to be part of his liberty. A testator may be eccentric, perverse, high tempered, morose, or ignorant, and he may have made a mistake in point of law in the disposition of his property, but those peculiarities will not render it impossible for him to make a will in accordance with his natural traits of character and attachments.[30] The testator may have been subject to a stroke of insanity with ensuing eccentricities; and even though this stroke may have brought about a complete change in his character, if such changes have no bearing on his testamentary capacity the will may not be set aside.[31]

The testator may be adjudged insane by a tribunal and still have the capacity to make a will:

> "It is a general rule that when the testamentary capacity of one who has been adjudged insane by a court, or has been in fact then insane without such adjudication, is challenged, if at the time the will was made the party had a lucid interval, the will stands."[32]

A prior adjudication of insanity is not conclusive of testamentary incapacity, but merely acts to shift the burden upon the proponents of proving capacity at the time of the execution of the will.[33]

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[25]109 Pa. 406, 422, 1 A. 425 (1885).
[26]2 Monag. 4, 17 A. 207 (1889).
[27]Green's Estate, 140 Pa. 137, 21 A. 250 (1891).
[28]Weber's Estate, 334 Pa. 216, 5 A. (2d) 550 (1939).
[29]Aggas v. Munnel, 302 Pa. 78, 87, 152 A. 840 (1930).
[30]In re Mintzer, 5 Phila. 206 (1863).
[31]Bitner v. Bitner, 65 Pa. 347 (1870).
[32]Mohler's Estate, 343 Pa. 299, 305, 22 A. (2d) 680 (1941).
[33]Hoopes' Estate, 174 Pa. 373, 34 A. 603 (1896); *Hutton on Wills* (1933) 38 ff.

The above cases have dealt principally with the problem of the granting an issue *devisavit vel non.* Once an issue is granted, a decision on the facts is not left to the full, unbridled mercy of the jury. In conducting the trial of an issue *devisavit vel non,* much must be left to the sound discretion of the trial judge who sits as chancellor, and it is his duty to direct a verdict in favor of validity of the will where the evidence to the contrary is in his opinion insufficient and inadequate.[34] Much must be left to his discretion in passing upon the relevancy of evidence, the order of its admission, and mode of examining witnesses.[35]

Where an issue has been granted and the case is at trial, the judge, when circumstances so warrant, may interfere to prevent the jury from unjustifiably setting aside the will.[36] In the case of *Tetlow's Estate*[37] it is said:

> "It is the established law in Pennsylvania, in cases of the character of the one now before us, the judge is vested with power to decide whether or not he shall submit oral evidence to the jury, even though it be conflicting."

In further explanation of the above, it was stated in the same case that:

> "This system constitutes no retraction of, or infringement upon, the institution of the common law jury; it merely represents a correct use of that institution, with limitations appropriate to the circumstances under which it is employed—that employment not being in a common law action, but in a special proceeding, having, as fully recognized by our cases, its historical roots in the ancient ecclesiastical courts to which the right of trial by jury did not extend."[38]

Thus, it will be noted that the broad powers of the court in the trial of the issue parallels its power in granting the issue itself. Justice Paxson's statement[39] would seem to have been fortified by every possible judicial method at the command of the court. In conclusion it may be said that if one is to question a testator's capacity to make a will on the basis of alleged eccentricities, he must not only convince the court he has an issue arising from a dispute of fact, but he must also keep convincing the court throughout the trial of the issue.

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[34]Kish v. Bakaysa, 330 Pa. 533, 199 A. 321 (1938).
[35]Plott's Estate, 325 Pa. 81, 5 A. (2d) 901 (1939).
[36]Caufman v. Long, 82 Pa. 72 (1876); Tetlow's Estate, 269 Pa. 487, 112 A. 758 (1921).
[37]Tetlow's Estate, *supra* note 36, at 494, 496; see also Fleming's Estate, 265 Pa. 399, 408, 109 A. 265 (1919); Caufman v. Long, 82 Pa. 72 (1876).
[38]*Supra* note 37.
[39]*Supra* note 24, at p. 422.