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INSTRUMENTS SIGNED "AT THE END THEREOF" AND THE REGISTER OF WILLS

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This article is intended to describe and evaluate one of the important aspects of the jurisdiction and functions of the Register of Wills: The determination whether writings offered for probate as wills have been properly signed "at the end thereof" in order to satisfy the requirements entitling them to probate as valid testamentary instruments.[1]

THE REGISTER OF WILLS AS A JUDGE

The Register of Wills is an elected official in each of the sixty-seven counties of the Commonwealth. His jurisdiction and duties are prescribed in various acts of the Legislature, notably the Fiduciaries Act of 1949,[2] the Register of Wills Act of 1951,[3] and the Orphans' Court Act of 1951.[4] The Register's jurisdiction and the scope of his duties emanate primarily from these statutory sources,[5] although they have been the subject of extensive construction and delineation by the Orphans' Courts of the various counties and by the Supreme Court of Pennsylvania.

The essentially statutory nature of the Register's functions and their scope has created, not only for the public, but also for the Bar, a general impression that the Register is a purely administra-

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1. Earlier articles by the authors which treat various aspects of the Register's jurisdiction and functions have been: *Lost Wills and the Register of Wills*, 111 U. PA. L. REV. 450 (1963); *Copy Fair and the Register of Wills*, 36 TEMP. L. Q. 311 (1963); *Dependent Relative Revocation*, 67 DICK. L. REV. 275 (1963); *Testamentary Intent and the Register of Wills*, 34 PA. B.A.Q. 688 (1963); *Testamentary Capacity and the Register of Wills*, 68 DICK. L. REV. 107 (1964); and *Non-Resident Personal Representatives and the Register of Wills*, 36 PA. B.A.Q. 267 (1965).

2. PA. STAT. ANN. tit. 20, §§ 320.101-.1401 (1950).

3. PA. STAT. ANN. tit. 20, §§ 1840.101-.601 (Supp. 1966).

4. PA. STAT. ANN. tit. 20, §§ 2080.101-.801 (Supp. 1966).

5. The most detailed and definitive of these acts is, quite naturally, the Register of Wills Act of 1951, of which section 201 provides:

> Register's Jurisdiction. Within the county for which he has been elected or appointed, the register shall have jurisdiction of the probate of wills, the grant of letters to a personal representative, and any other matter as provided by law.

PA. STAT. ANN. tit. 20, § 1840.201 (Supp. 1964).

tive official. In many respects it is correctly observed that the Register performs in a primarily administrative capacity; however, he also performs numerous and significant quasi-judicial functions. Prior to the enactment of the Register of Wills Act of 1951,[6] the Supreme Court of Pennsylvania held—with sufficient frequency and clarity that there could be no doubt as to the import of its words—that the Register of Wills, as to matters concerning probate, was a judge whose decisions were unimpeachable except on appeal.[7] This classic view has been reaffirmed in decisions handed down subsequent to the enactment of the statute.[8] The judicial role of the Register is limited, however, to the extent that he has been granted jurisdiction over matters of probate only. Nevertheless, his jurisdiction in this area is exclusive,[9] just as the authority to determine questions concerning distribution in the administration of decedents' estates is vested exclusively in the Orphans' Court.[10]

The subject of this article is one of those areas in which the function of the Register of Wills as a "judge" is the dominant factor. The determination of the Register whether an instrument offered for probate as the decedent's last will and testament has been executed in accordance with the statutory requirement, "at the end thereof," will affect from the outset the character and course of the entire estate administration—from the grant of letters to final distribution. Therefore, a complete comprehension of the questions to be resolved, as well as the considerations for their resolution, is indispensible if the Register is to perform this vital function soundly and if counsel are to be informed how to advise and proceed when confronted with questionable testamentary writings.

THE BASIC RULES OF LAW

1. *The Wills Act of 1947*

The statute provides in part:

> FORM AND EXECUTION OF A WILL.—
> Every will, except nuncupative wills but including wills of mariners and persons in the Armed Forces of the United States, shall be in writing and shall be signed by the testator at the end thereof, subject to the following rules and exceptions:

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6. PA. STAT. ANN. tit. 20, §§ 1840.101 - .601 (Supp. 1966).

7. Szmahl's Estate, 335 Pa. 89, 6 A.2d 267 (1939); West v. Young, 332 Pa. 248, 2 A.2d 745 (1938); Sebki's Estate, 300 Pa. 45, 150 Atl. 101 (1930); and McNichol's Estate, 282 Pa. 187, 127 Atl. 461 (1925).

8. Cole v. Wells, 406 Pa. 81, 90-91, 177 A.2d 77 (1962); Lennox v. Clark, 372 Pa. 355, 372, 93 A.2d 834 (1953); and Mangold v. Neuman, 371 Pa. 496, 498, 91 A.2d 904 (1952).

9. Martin's Estate, 349 Pa. 255, 36 A.2d 786 (1944).

10. Rockett's Estate, 348 Pa. 334, 35 A.2d 303 (1944); Carson's Estate, 241 Pa. 177, 88 Atl. 311 (1913); and Hegarty's Appeal, 75 Pa. 503 (1874).

(1) Words Following Signature. The presence of any writing after the signature to a will, whether written before or after its execution, shall not invalidate that which precedes the signature.[11]

The cases have explained *why* a will must be signed: the signature (1) identifies the testator, (2) evidences a complete and final intent, (3) verifies the accuracy of the preceding provisions,[12] and (4) frustrates unauthorized additions or interlineations.[13] The question is: What constitutes a signature sufficient to satisfy the statute?

(a) *What constitutes a signature?*

The test of the testamentary effectiveness of that which is offered as the testator's signature is whether it was intended by him to constitute his signature,[14] and whether the act of signing was completed.[15]

A review of the cases in Pennsylvania and in other jurisdictions[16] demonstrates that the determination of signatory intent and completeness is an elusive and troublesome pursuit. Signature may be in pencil.[17] Initials may suffice as a signature,[18] as may the affixing of testator's Christian name alone.[19] An illegible scribble satisfies the requirement if identified as the testator's,[20] and a married woman's use of her maiden name will suffice.[21] The words "Father"[22] and "Pop"[23] have been held to be proper signatures. However, the words "your miserable father" were held to be insufficient as a signature for lack of ascertainable signatory intent.[24] Signature by mark is valid so long as the appropriate requirements of the Wills Act are met.[25]

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11. PA. STAT. ANN. tit. 20, § 180.2 (Supp. 1964).
12. Churchill's Estate, 260 Pa. 94, 103 Atl. 533 (1918), wherein one of the mischiefs referred to was the probate of unfinished papers representing an "inchoate expression of intent."
13. Brown Estate, 347 Pa. 244, 32 A.2d 22 (1943); Hays v. Harden, 6 Pa. 409 (1847).
14. Emert Estate, 4 Fid. Rep. 221 (O.C. Clinton 1954); Shoemaker's Estate, 47 D. & C. 337 (O.C. Dauphin 1943).
15. Plate's Estate, 148 Pa. 55, 23 Atl. 1038 (1892).
16. See AKER, PROBATE AND INTERPRETATION OF WILLS, § 3.12-C (1963).
17. Gaston's Estate, 188 Pa. 374, 41 Atl. 529 (1898); Tomlinson's Estate, 133 Pa. 245, 19 Atl. 482 (1890); Myers v. Vanderbelt, 84 Pa. 510 (1877).
18. Kehr's Estate, 373 Pa. 473, 95 A.2d 647 (1953); Shoemaker's Estate, 47 D. & C. 337 (O.C. Dauphin 1943).
19. Knox's Estate, 131 Pa. 220, 18 Atl. 1083 (1890); Tylka Estate, 2 Fid. Rep. 649 (O.C. Lack. 1952).
20. Kris's Estate, 30 Dist. 166 (O.C. Phila. 1920); see generally, Knox's Estate, note 19 *supra*.
21. Jury Estate, 381 Pa. 169, 112 A.2d 634 (1955).
22. Kimmel's Estate, 278 Pa. 435, 123 Atl. 405 (1924).
23. Kling Will, 7 Fid. Rep. 44 (O.C. Montg. 1956).
24. Brennan's Estate, 244 Pa. 574, 91 Atl. 220 (1914).
25. Section 2(2) of the Wills Act, PA. STAT. ANN. tit. 20, § 180.2(2)

The question in each case is whether that which purports to be the testator's signature is sufficiently complete to identify the testator[26] and was clearly intended by him to identify the signed instrument as a testamentary writing.[27]

(b) *Words following signature*

Inasmuch as section 2 of the Wills Act of 1947[28] requires that a testamentary writing be signed "at the end thereof," the implication is that words following the signature are not admissable to probate. And it has been so held.[29] Section 2(1) of the Act,[30] however, expressly provides that the presence of words following the signature shall not invalidate that which precedes the signature.

A review of Pennsylvania legislation discloses that the Wills Act of 1833[31] raised the first legislative requirement that the validity of a will was predicated, *inter alia*, upon signature at the end. This requirement was interpreted to mean that any writing, testamentary in substance, which followed the signature invalidated the entire will.[32] The statutory rule was modified by the Wills Act of 1917[33] which embodied the preservatory proviso now set forth in the Act of 1947.

The question remains what may be deemed either to precede or to follow the signature; the correlative question is, of course, what (or where) is the "end" of the will?

2. *The Case Law*

As a general proposition, with reference to testamentary writings, it is said that the "end contemplated by the statute is the logical end of the language used by decedent in expressing his testamentary purpose" and not "the physical point which is spatially farthest removed from the beginning."[34] The foregoing criterion has presented problems difficult of application.

(Supp. 1964), provides:

> If the testator is unable to sign his name for any reason, a will to which he makes his mark and to which his name is subscribed in his presence before or after he makes his mark, shall be as valid as though he had signed his name thereto: Provided, he makes his mark in the presence of two witnesses who sign their names to the will in his presence.

26. Kling Will, 7 Fid. Rep. 44 (O.C. Montg. 1956).
27. Kauffman Will, 365 Pa. 555, 76 A.2d 414 (1950).
28. PA. STAT. ANN. tit. 20, § 180.2 (Supp. 1964).
29. Casto Estate, 1 Fid. Rep. 37 (O.C. Del. 1950).
30. PA. STAT. ANN. tit. 20, § 180.2(1) (Supp. 1964).
31. Act of 1833, April 8, P.L. 249.
32. Wineland's Appeal, 118 Pa. 37, 12 Atl. 301 (1888).
33. Act of 1917, June 7, P.L. 403.
34. Coyne Will, 349 Pa. 331, 37 A.2d 509 (1944).

(a) *The "end" of the will*

The distinction between the "logical" and the "physical" end of a will has been maintained with consistency in the cases.[35] *Friese's Estate*[36] involved a purported will wherein testator had signed his name in blank spaces at the top of the writing and in similar spaces in the testimonium and attestation clauses, but failed to execute the instrument thereafter. It was held that the mere filling in of blank spaces, without more, was not sufficient to constitute a signing at the "end" within the requirements of the statute. The cases have been in consistent accord,[37] and a few examples should suffice to illustrate the trend.

In *Dietterich's Estate*,[38] testator executed a printed form on the back. Held: the instrument had not been signed "at the end thereof." On the other hand, in *Morrow's Estate* (No. 1),[39] where the attestation clause had been written on the reverse side of the instrument, a signature following thereafter was held to conform to the statutory requirement. Similarly, in *Collins' Estate*,[40] where signature followed the attestation clause but was set off to the left side of the page, it was held that the instrument was valid as a will.

In the curious matter of *Brown Estate*,[41] a testamentary disposition had been typed onto a printed application form for a share account in a savings and loan association. The putative testatrix' signature had been affixed in the margin to the side of the testamentary provisions. It was observed that the intent of the testatrix was unquestionably testamentary, but the court held that signature in the manner described did not conform to the requirement that the writing offered for probate be signed "at the end thereof," inasmuch as the signature did not follow the dispositive provisions.

Shields Will[42] involved a three-page instrument of which testator had signed the bottom of each of the first two pages, but had not signed the third page. It was held that the requirements of the Wills Act had not been met with the result that the first two

35. *E.g.*, Maginn's Estate, 278 Pa. 89, 122 Atl. 264 (1923); Stinson's Estate, 228 Pa. 475, 77 Atl. 807 (1910); Swire's Estate, 225 Pa. 188, 73 Atl. 1110 (1909).

36. 336 Pa. 241, 9 A.2d 401 (1939).

37. *E.g.*, Glace Will, 413 Pa. 91, 196 A.2d 297 (1964); and Churchill's Estate, 260 Pa. 94, 103 Atl. 533 (1918), where signature in blank spaces was regarded merely as an insertion for purposes of identification; *but see* Miller Will, 414 Pa. 385, 200 A.2d 284 (1964), where such signature was viewed as an intended testamentary signature because appearing at the "textual and factual end" of the writing. Emert Estate, 4 Fid. Rep. 221 (O.C. Clinton 1954); Glover Estate, 1 Fid. Rep. 639 (O.C. Montg. 1951).

38. 127 Pa. Super. 315, 193 Atl. 158 (1937).

39. 204 Pa. 479, 54 Atl. 313 (1903).

40. 29 Dist. 814 (O.C. Lack. 1919).

41. 347 Pa. 244, 32 A.2d 22 (1943).

42. 12 Fid. Rep. 581 (O.C. Butler 1962).

pages of the instrument were admitted to probate, and the third page was refused.

It is apparent that the statute has been strictly construed and strictly applied.

(b) *Incorporation by reference and integration*

It is neither the purpose nor function of the instant writing to treat in detail problems outside the stated subject matter. Two considerations, generally regarded as separate and distinct aspects of probate law, are pertinent here insofar as they involve application of section 2 of the Wills Act: (1) Incorporation by reference, and (2) integration.

In *Baker's Appeal*,[43] incorporation by reference was the salvation of certain unsigned writings appearing on a page following the signature. The court held that the words in question had been incorporated by reference into the provisions preceding the signature and that, therefore, the signature had properly been affixed "at the end thereof." It is implicit from the foregoing cases that a document incorporated by reference need not itself be signed.[44] The principal requirements for incorporation by reference are that the testamentary writing specifically refer to and identify the document to be incorporated,[45] that the incorporated document be in existence,[46] and that testator's intent to incorporate appear in the incorporating instrument.[47]

While incorporation by reference involves the ingrafting of an extrinsic writing, integration addresses itself to the problem of what papers, when taken together, comprise the will. The components of the will may be connected either physically[48] or by internal sense.[49] In either case, the compendium of pages purporting to comprise a will must be signed "at the end thereof;" if it cannot be determined that the signature is unmistakably at the logical end of the writing, the instrument fails to comply with the requirements of the Wills Act and probate will be refused.[50] The determination

43. 107 Pa. 318 (1884) (the incorporating words, "see next page," had been inserted on the signature page prior to execution).

44. *E.g.*, Houser v. Moore, 31 Pa. 346 (1858).

45. Bright's Estate, 212 Pa. 363, 61 Atl. 941 (1905); Magoohan's Appeal, 117 Pa. 238, 14 Atl. 816 (1887).

46. Baker's Appeal, 107 Pa. 318 (1884).

47. *Ibid.*

48. *E.g.*, Ginder v. Farnum, 10 Pa. 98 (1848) (pages of will fastened together by tape); Sando Will, 362 Pa. 1, 66 A.2d 312 (1949) (pages connected by a movable paper clip).

49. *E.g.*, Covington Estate, 348 Pa. 1, 33 A.2d 235 (1943) (unconnected sheets in a sealed envelope); Grubb's Estate, 174 Pa. 187, 34 Atl. 573 (1896) (each of three unconnected pages had been signed, and each was independently probatable); *cf.* Davis' Estate, 344 Pa. 520, 26 A.2d 339 (1942) (unconnected pages in bundle held by rubber band).

50. Baldwin Will, 357 Pa. 432, 55 A.2d 263 (1947); Bryen's Estate,

of the order of the components to be integrated must appear from the face of the writing itself.[51]

Problems of Evidence

The determination whether an instrument has been signed "at the end thereof" is a matter of law, not of fact.[52] Consequently, it shall be demonstrated that the evidence upon which the Register is required to resolve the issue must be intrinsic—*i.e.*, be apparent from the instrument itself—and not extrinsic—*i.e.*, available only from sources outside the four corners of the writing.

It was observed heretofore that the mandate of the statute has been strictly construed and similarly applied. Consistently therewith, it is notable that this Register is aware of no presumptions which are operative with reference to the subject matter under discussion—undoubtedly a jurisprudential phenomenon, for it is indeed rare when a discussion of the evidentiary aspects of a subject so integrated with considerations of "intent" cannot proceed to enlargement from the springboard of presumption.

Certain aspects of the matter under consideration are susceptible to proof by extrinsic evidence. For example, extrinsic evidence is admissable to assist the Register in determining whether that which purports to be the signature of the testator was intended by him to be such.[53] Testator's signatory intent, furthermore, may be established by only one witness.[54] Inasmuch as an incomplete act of signing fails of the production of a valid signature, extrinsic evidence is also admissible in the determination of completeness.[55]

Whether the instrument before the Register has been signed "at the end thereof" is a determination of law for the Register.[56] Instruments signed otherwise than at the end are fatally defective regardless of oral evidence concerning the putative testator's actual intent,[57] or concerning the time and circumstances of signing.[58]

Where a writing separate from the will is purported to be incorporated by reference into the will, the intent to incorporate must be evident in the will itself, and extrinsic evidence cannot supply the requisite intent.[59] Extrinsic evidence is admissible, how-

328 Pa. 122, 195 A.2d 17 (1937); and see generally, Covington's Estate, 348 Pa. 1, 33 A.2d 235 (1943).

51. Seiter's Estate, 265 Pa. 202, 108 Atl. 614 (1919); Stinson's Estate, 228 Pa. 475, 77 Atl. 807 (1910).

52. Griffith Will, 358 Pa. 474, 57 A.2d 893 (1948).

53. Kehr Will, 373 Pa. 473, 95 A.2d 647 (1953).

54. See Knox's Estate, 131 Pa. 220, 18 Atl. 1083 (1890); Kris's Estate, 30 Dist. 166 (O.C. Phila. 1920).

55. See Plate's Estate, 148 Pa. 55, 23 Atl. 1038 (1892).

56. Griffith Will, 358 Pa. 474, 57 A.2d 893 (1948).

57. Friese's Estate, 336 Pa. 241, 9 A.2d 401 (1939); Churchill's Estate, 260 Pa. 94, 103 Atl. 533 (1918).

58. Brown Estate, 347 Pa. 244, 32 A.2d 22 (1943).

59. See Baker's Appeal, 107 Pa. 381 (1884); Hogue's Estate, 135 Pa. Super. 543, 6 A.2d 108 (1939).

ever, to establish that the incorporated document was in existence at the time of the execution of the incorporating instrument,[60] and that the instrument represented to the Register to be the incorporated writing was the one so intended by the testator.[61]

When the determination before the Register is one of integration, he may receive extrinsic evidence to explain the circumstances under which the compendium of proferred papers was executed[62] or under which they were found.[63] On the other hand, the will itself must disclose the order in which the papers are to be connected, and extrinsic evidence is inadmissible on this issue.[64] Probate will be refused where the papers themselves do not clearly disclose that signature occurred at the logical end of the writing.[65]

CONCLUSION

The purpose in requiring signature at the end of a purported will is to authenticate that which precedes it, and to finalize the testator's testamentary intent. In a few individual cases it may appear to be a harsh rule that transcribed afterthoughts should fail of effect for want of execution; however, in the main the rule is intended to frustrate fraudulent or non-testamentary additions. Of course, it is sound that writings following signature should not invalidate the entire will *ipso facto*, although the question arises as to the effect of an unsigned revocatory clause so placed.

The evidentiary rules precluding the use of extrinsic evidence in the determination where the end of the writing was intended to be, may, at first instance, seem harsh. On the other hand, the vast majority of instruments which are questioned are holographic in nature, so that the more important question may be, initially, whether the writing was *intended* to be a will at all.[66] In the final analysis, it is quite proper that the writing itself should embody testator's intent.

To the Register of Wills, then, is committed the task of determining whether a purported will was signed "at the end thereof." If, in his discretion, the instrument was not so executed, he must determine how much, if any, of the writing should be admitted to probate. The rules of law applicable are neither numerous nor complex, but their sound application requires an extraordinary exercise of judgment and discretion. And, so it is that the Register

60. *E.g.*, Magoohan's Appeal, 117 Pa. 238, 14 Atl. 816 (1887); Baker's Appeal, note 59 *supra*.
61. Baker's Appeal, 107 Pa. 381 (1884).
62. Bryen's Estate, 328 Pa. 122, 195 Atl. 17 (1937).
63. Baldwin Will, 357 Pa. 432, 55 A.2d 263 (1947).
64. Seiter's Estate, 265 Pa. 202, 108 Atl. 614 (1919); Stinson's Estate, 228 Pa. 475, 77 Atl. 807 (1910).
65. Bryen's Estate, 328 Pa. 122, 195 Atl. 17 (1937).
66. See Walsh, *Testamentary Intent and the Register of Wills*, 34 PA. B.A.Q. (June 1963).

of Wills must sit in judgment of a document which a perhaps careless, or perhaps short-sighted or uncounselled, decedent set down as his last will and testament, conducting himself in a way which, when it becomes important, he is no longer available to explain.

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