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Popular Talks on Law

WILLS: BREAKABLE AND UNBREAKABLE

By WALTER K. TOWERS, A.B., J.D., of the Michigan Bar

Samuel Hendrix had a son—a fact he almost regretted, for he seemed thoroughly bad and the father had expended much of his property in keeping the boy out of jail. Naturally enough, Samuel desired that on his death his wife and daughter should receive all the remaining property and the son none. So he wrote the following: "When I die it is my will that all my property be equally divided between my wife, Esther, and my daughter, Sarah.

"(Signed) Samuel Hendrix."

Samuel had heard that witnesses are necessary to a will, so he called in his wife, Esther, and daughter, Sarah, and had them sign their names below his. The result was that neither the wife nor the daughter could take any property under the will, for it is a general rule of law that no one who witnesses a will may take any benefit or receive anything from that will. Had Samuel Hendrix possessed a bit more information of the law he would have called others as witnesses and his wishes could have been enforced.

This illustrates but one of the many pitfalls into which one may fall in the very important task of drafting his will. The preparation of a will is usually a task for an attorney, and a good one, but there are cases of emergency when a lawyer's services are not readily obtainable. If the estate is small and not scattered, and the disposition that is to be made of it is simple, direct and clearly understood it requires no great knowledge to draft an effective will. In any event some information of the laws governing the disposition of property on death is interesting, as well as decidedly useful.

A will is ever a fascinating instrument. The preparation of it is a serious matter and into it the maker puts his deliberate and well-considered thought. Thus it goes far toward revealing the real spirit of the maker. The words of a man desires to leave The words of the will are the words a man desires to leave when he has passed beyond; they display his true attitude toward friends and relatives.

Death is the great inevitable. Tax dodgers are famous, but death dodgers have thus far achieved no notoriety. The will is made in appreciation of the inevitable end and takes effect upon decease. It is thus that one may be assured that his wishes in regard to the disposition of his property will be regarded after death. The power to make a will has not always been recognized by law. The will is stated to be of Roman origin, but, be that as it may, the power to will is now firmly established and recognized by law.

To make a will requires mental capacity. We often hear of instruments drain as wills which are set aside by the courts because the maker was lacking in intellect. The mental capacity that is required to make a will may be enumerated as follows: 1. Ability to understand the nature of a will and that the maker is engaged in making his will. 2. Ability to know and keep in mind the various items of his property. 3. Ability to know and keep in mind the members of the family and others entitled to the maker's bounty.

In general, any person of full age possessing the mental capacity described above, and not subject to some special legal disability, may make a valid and binding will. In the majority of the states the full age of twenty-one years is required to both sexes before the power to make a will is granted.

Married women were formerly denied the right to will their property, but modern statutes quite generally give them that privilege. Of course, an insane person, lacking the required mental qualifications, cannot make a will, nor can infants under age, in most states.

The first great requisite of a will is that it shall be in writing. This does not mean that it need be written in long-hand, though that is the most desirable of all ways when the maker is preparing his own will. Typewritten wills and printed wills, with the blanks filled in, are common, and wills have been held valid when prepared in many unusual ways on strange substitutes for paper or parchment. The prudent attorney, in preparing a will, always sees to it that the entire instrument is fastened together. Thus if the will consists of several typewritten or printed sheets, the last of which alone is signed, another typewritten page might be substituted for an unsigned one and the whole character of the instrument altered. So, if the entire will cannot be written on a single sheet of paper, the various pages should be so attached that they cannot be separated without detection. The pages are usually stapled or pasted together at the top and a cord is run through them, tied and sealed. It is wise for the maker of the will, the testator as he is called, to initial each page in such cases.

Further, the will must be signed by the maker and witnessed in the manner required by the statutes of the state in which it is made. Nevada is the only state which requires a seal. The usual and proper method of signing is for the maker to write his name in full at the bottom of the will. Where the maker cannot write, his "mark" is sufficient. Wills have been held valid when signed with initials, or parts of the name, or by a stamp, but such methods are dangerous. If a person is for any reason incapable of writing he may authorize another to sign his name for him.

Not only must a will be signed, but it must also be witnessed, and that in the strictest form. Some states require but two witnesses; others three, but it is always best to have three witnesses. As was pointed out in the case of Samuel Hendrix, the witnesses must be persons who have no interest in the will, and it must be seen to that neither they nor their near relatives are to receive anything under the will.

The manner in which a careful attorney completes the necessary formalities, having written the will itself and secured the witnesses is somewhat as follows: All the persons—maker and witnesses—must be in the same room and all in sight of each other. The maker declares the will to be his and writes his signature, with all the witnesses watching him. Then each of the witnesses in turn signs his name, the entire party still remaining together. While a will is usually dated, this is not necessary. No registration is required. The original will is filed in a safe place, usually by the maker among his papers, and a copy put in another place. The copy is not a will, but is useful in proving the contents of the will if the instrument should be destroyed or altered.

Having made a will and wishing to change it, the maker has two general courses open. He may write another will, in which he expressly revokes the earlier one, or pen a revocation, either of which instruments must be signed and witnessed by tearing it up, burning it, or drawing lines through it, cause it to lose all effect as a will. In Iowa this act must be done in the presence of witnesses and in all cases it is best to do so.

On the death of the maker, those interested in the will usually secure the services of an attorney in having it probated and the estate administered. Of course, the person named in the will as executor may himself place it before the probate, or similar court, but he usually finds it simpler to have a lawyer arrange matters. If no executor has been named by the maker in his will, an administrator is appointed by the court. It is the duty of executor or administrator to care for the deceased's property and see that it is distributed according to the terms of the will under the direction of the court. Of course, the will and proof of the maker's death must first be placed before the court and the validity of the will established.

In determining the meaning of a will, the court is always guided by the cardinal principle that the intention of the maker of the will is to be determined as accurately as possible from the instrument and the effect given thereto.

The task of the person making a will is to realize its importance, weigh all the possibilities carefully and state them clearly. The task of the lawyer is to warn the maker of the various contingencies that may arise in the maker's peculiar circumstances to affect the disposition of his property and to see that all of the necessary formalities have been complied with. A will is not a thing to be made hastily, or without information. Consider thoroughly and then act carefully.

(Copyright, 1913, by W. K. Towers.)

Alfalfa Wilt Has Not Known Remedy.

That no remedy is known for plants attacked by alfalfa wilt, a common disease, is the conclusion of the Oregon Agricultural College Experiment station experts. On account of the nature of the plants upon which the disease lives, it is probable that no practical remedy will be developed. Where the disease has become serious, the college advises rotation of crops. The trouble seems more prevalent on heavy soils, particularly where the drainage is slow. Such soils should be avoided by alfalfa growers.

Wilt, or stem rot, was first described in Europe, but has been found in widely divided sections of this country. Both New York and California have reported it as serious, and recently it has been found to be common in Oregon also. Certain fields in the Willamette Valley were first found to be affected.

It is most abundant and spreads most rapidly in the fall when the surface soil is constantly wet. It is more serious, too, where the stand of alfalfa is heavy. It attacks clover almost as seriously, and it is thought it is probably one cause of the difficulty in obtaining and holding a stand of either in western Oregon.

Rot develops on the stems at the face of the ground or some distance above, causing wilt, and frequently killing the plant. Large areas may be found in fields where the plants have been entirely killed out. The roots are not always destroyed, and may throw out new sprouts.

A white cottony mold grows over the surface of the stems and leaves attacked by the rot and the ground around the base of the plant. In it are developed abundantly black, irregular shaped bodies of fungus tissue called sclerotia, sometimes as large as a pea. They are also found inside the stems of some of the plants killed.

The fungus is like that causing lettuce to drop. It develops no summer spores. Stalked fruiting bodies known as apothecia develop from the spring, but in Oregon in the fall.

Creswell Defeats Roseburg.

Roseburg, Ore., April 21.—In the opening game of the baseball season played here today, Creswell won from Roseburg by a score of 6 to 3, in 12 innings. The same might have been termed a pitchers' battle with Rankin in the box for Creswell and Bush on the mound for Roseburg.

Features of the game were a home run drive by Bargar and a sensational running catch by Himes, both of Roseburg.

Body of Cleo Doyle Found.

The body of Cleo Doyle, who, with Ralph Allen, George and Jim Myers, was drowned in the Siuslaw river near Mound some time ago, was found early Sunday morning and was brought to Eugene Sunday evening. From there it was taken to Leaburg where the funeral was held. The body of Cleo Doyle was the last of the four to be found.

Calling cards—The Sentinel.

Notice of Sale of Real Estate.

IN THE COUNTY COURT OF THE STATE OF OREGON FOR LANE COUNTY.

In the matter of the Estate of William H. Arne, Deceased.

Notice is hereby given, that in pursuance of an order of the County Court of Lane County, Oregon, made on the third day of April, A. D. 1913, in the matter of the Estate of William H. Arne, deceased, the undersigned, duly appointed, qualified and acting administrator of said estate will sell at private sale for cash in hand and according to law the following real property belonging to said estate and all of the right, title and interest of said deceased therein, towit:

Beginning in Sec. 28, Tp. 20 SR. 3 West, at a point whence corner No. 3, of county survey No. 1420 bears South, 24 degrees 10 min. West, 916.2 feet, and running thence South, 65 degrees and 50 min. East, 317 feet, thence North, 18 degrees and 40 min. East, 266.5 feet, thence North, 65 degrees and 50 min. West, 291½ feet, thence South 24 degrees and 10 feet West, 265 feet to place of beginning and containing 1.85 acres of land, in Lane County, Oregon.

Lot four (4) Block one (1) in James Henry McFarland's First Addition to the City of Cottage Grove, Lane County, State of Oregon.

Said sale will commence on Monday, the 26th day of May, 1913, at Cottage Grove, Oregon, and continue until said land is sold. RUFUS C. ARNE, Administrator.

IN THE COUNTY COURT OF THE STATE OF OREGON IN AND FOR LANE COUNTY.

In the matter of the estate of Alver H. Nowell, deceased.

Notice of Final Settlement.

Notice is hereby given, that the undersigned, administrator of the estate of Alver H. Nowell, deceased, has filed in the County Court of Lane County, State of Oregon, his final account as such administrator of said estate and that Tuesday, the 6th day of May, 1913, at the hour of 10 o'clock a. m., has been fixed by said court as the time for hearing of objections to said report, and the settlement thereof.

Dated this the 29th day of March, A. D. 1913.

WILLIAM LANE,
Administrator of the estate of
a3-m1 Alver H. Nowell, deceased.

Notice for Publication.

United States Land Office.
Roseburg, Oregon March 11, 1913.

Notice is hereby given that the Northern Pacific Railway Company whose post office address is St. Paul, Minnesota, on 29th day of July, 1909, filed in this office its application to select under the provisions of the Act of Congress, approved July 1, 1898 (30 Stat. 597, 620) as extended by the Act of Congress approved May 17, 1906, the NE¼ NW¼, SW¼ NW¼, NW¼ NE¼ Sec. 14, Tp. 23 S., R. 2 West, W. M.

Any and all persons claiming adversely the land described, or desiring to object because of the mineral character of the land, or for any other reason, to the disposal to applicant, should file their affidavits of protest in this office, on or before the 26th day of April, 1913. B. F. JONES,
M27-M1 Register.

Comparative Digestibility of Food

Made with different Baking Powders

From a Series of Elaborate Chemical Tests:

An equal quantity of bread (biscuit) was made with each of three different kinds of baking powder—cream of tartar, phosphate, and alum—and submitted separately to the action of the digestive fluid, each for the same length of time.

The relative percentage of the food digested is shown as follows:

Bread made with Royal Cream of Tartar Powder:
100 Per Cent. Digested

Bread made with phosphate powder:
68¼ Per Cent. Digested

Bread made with alum powder:
67¾ Per Cent. Digested

These tests, which are absolutely reliable and unprejudiced, make plain a fact of great importance to everyone: Food raised with Royal, a cream of tartar Baking Powder, is shown to be entirely digestible, while the alum and phosphate powders are found to largely retard the digestion of the food made from them.

Undigested food is not only wasted food, but it is the source of very many bodily ailments.

National Master Wilson of the Patrons of Husbandry will come to Oregon to attend the meetings of the state grange in May. He will probably visit the other northwest states on his trip to the coast.

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