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Summary of the Law of Testamentary Disposition

Hugh Clayton Smythe
Cornell Law School

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THESIS

SUMMARY OF THE LAW OF TESTAMENTARY DISPOSITION.

By

HUGH CLAYTON SMYTHE,

Cornell University Law School,
1892.
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ORIGIN AND HISTORY.

The origin and history of wills in the different countries are not infrequently involved in obscurity and surrounded by a mist of uncertainty through which historians are unable to penetrate. Historians and writers upon natural law have been led, by a study of the records of mankind, to the common conclusion that title to real property was first acquired by occupancy. The right, however, was only a temporary one and was determined by the death of the occupant. In the course of time "as man increased in number, craft and ambition, it became necessary to entertain conceptions of more permanent dominion; and to appropriate to individuals not the immediate use only but the very substance of the thing to be used." It was clearly equitable that he, who enhanced the value of property, by skill and labor during his life time should have the privilege of naming the person to succeed him in the enjoyment and possession. Full recognition of the right in an individual to dispose of his title
to property at pleasure and even in variance to usual rules of inheritance, soon followed, as the product of these conceptions. "In this last recognition by society lies the sanction." of a will." Nearly all nations have wisely enacted laws countenancing this instrument by which a person continues, as it were, his legal existence and direction over property after death.

A brief outline of the history of wills in England is here appropriate. It seems sufficiently clear that property was divisable by will in the time of the Saxons, and so continued until the introduction of the Feudal system by the Normans, A.D. 1066. Various reasons are given for the abandonment of testamentary dispositions which took place at that time. Blackstone says "It naturally followed as a branch of the feudal doctrine of non-alienation without the consent of the lord;" moreover it was urged that livery of seizin could not be had or the land might fall into the hands of enemies of the lord of the fee.

This restraint upon alienation by devise was evaded, however, when "uses" were introduced, whereby property was conveyed to one person to be held for the use of another called the cestui que trust. Courts of equity declared that
uses were divisable although legal estates which supported
them were not. When the Statutes of Uses, 27 Henry VIII,
was passed, the use became united to the legal estate and
this mode of devising lands was taken away and remained so
until the Statute of Wills, which was passed in the year 1541
or 32 Henry VIII. This statute provided that "One seized
in fee simple of lands, (except feme coverts, idiots and in-
sane persons) may devise by will in writing, (except to
bodies corporate) two-thirds of land held by them in military
tenure and all in socage tenure." This statute was a step
in the right direction but it was too broad in its nature.
To meet and remedy the many abuses and provide against the
many deceitful practices which followed, the Statute of
Frauds was passed. This statute required all instruments
devising lands, in order that they might be manifested and
proved, to be not only in writing but signed by the devisor
and attested by three or more creditable witnesses. Under
the statute 1 Vic. the testator is required to "subscribe"
and two competent witnesses are deemed sufficient.
WHAT CONSTITUTES A WILL.

Schouler defines a will as "the solemn disposition of ones property to take effect after death." (see also Bouviers Dict."Will") "The word itself naturally denotes purpose, and hence, in our present technical sense, the authentic and final declaration of that choice or purpose." The Roman civil law supplied the significant word "Testament" which is customarily linked with the word "will". The form of a will is of little consequence provided that the intention of the testator be plain. Many states have by statute made it necessary for a will to be under seal, but all wills' except nuncupative, must be in writing signed and attested. Nuncupative wills are allowed by most States when the testator is "in extremis" and declares before witnesses the disposition he wishes to make of his property. These wills are valid as to personal property if committed to writing within the statutory period and proved by two or more disinterested witnesses. (1 Red. 211-2). "It is called an nuncupative will," says
Swinburne, "because, when a man makes such a testament, he must name his executor and declare his whole mind before witnesses." (Swinb. 350.) The naming of an executor is not essential to any will in modern times, nor to a total disposition of the estate. (Hubbard v Hubbard, 8 N.Y. 202.) Nuncupative wills, being no favorites of the court, demand strictness of proof and hence the capacity of the deceased and the *animus testandi* must appear, by the clearest and most indisputable testimony. At common law any soldier in actual military service or any mariner or seaman being at sea, might dispose of his personal estate by an oral will. This single exception was expressly retained in the Statute of 1 Vic., while all other oral wills were virtually abolished. (Act 1 Vic. c. 26 #11.) This latest English policy is followed in New York, Mass., and Va., where there have been recent enactments on this subject. (Hubbard v Hubbard, 8 N.Y. 596; 2 Rev. Stat. N.Y., #22.) Under the American Codes, a duly executed, written will cannot be revoked by an oral one. (Brooks v Chapper, 34 Wis. 405.)

Joint or mutual wills exists where one promises to make a will in favor of a second person, who in consequence, thereof, agrees to make a similar will in favor of the first;
the advantage thus to accrue being to such of the two as may survive the other. This branch of the law of wills is in a somewhat confused state. Some cases appear to confine the rule to wills which are to operate exclusively in favor of the survivor. (Lewis v Scofield, 26 Conn. 452; Evans v Smith 26 Ga. 98.)

Two species of wills derived from the Roman Code are of minor interest in that they were introduced in Louisiana before its incorporation with the Union. viz.: the "Mystic testament" which consists in inclosing one's will in a sealed envelope in the presence of witnesses; and the "Holographic testament" which is peculiar in that it is written wholly by the testator himself, thereby proving itself without the formality of witnesses. (La. Civ. Code, 1581; 4 Kent Com. 519-20)
WHO MAY MAKE A WILL.

A person in order to make a valid will must possess at least two requisites. (1) He must have sufficient mental capacity. (2) He must be free from any legal disability. Therefore it follows, as a general rule, that any person of sound mind and memory, who has reached the age prescribed and regulated by statute, and who is under no legal disability or constraint of will, may be deemed capable of making a will. No definite canon as to what constitutes sufficient mental capacity, or as is expressed in the more popular phrase, "sound mind and memory" can be fairly stated. As a general proposition, the testator may be considered legally capable of making a will when he understands, without prompting, the nature of a will, the kind and extent of his property, the persons who are the natural objects of his bounty and the manner in which he desires the disposition to take effect. (Thompson v Kyner, 65 Pa. St. 365) In GreenWood v Greenwood, 3 Curt. App. 2, 30, the rule is more briefly stated by
Lord Kenyon. "He must have that degree of recollection that would enable him to look about the property and the persons to whom he disposes it." (In also Kimie v Kimie, 9 Conn. 102)

The vital question appears to be whether or not a particular instrument is the disposition of a mind "neither deranged in producing it, nor operating under stress of error, fraud or undue influence." Diseases of the mind are manifested in several different forms. The early common law drew no fine line of distinction between persons sui juris and those non compotes, which last class of unfortunate beings was harshly described in the vocabulary as "mad men, lunatics, idiots, and natural fools." Insanity has been defined by high authorities as the "prolonged departure without adequate cause, from the states of feeling and modes of thinking, usual to the individual in health." (Bouv. Dict.) "It therefore involves, we may assume, disorder of the will and feeling as well as of the intellect. Hence the feebleness of volition which easily subjects one to the coercion of those about him, causing the will to justly fail of probate on the ground of undue influence." When insanity is limited to a certain subject or object, it is known as monomania. The courts hold that monomania will only invalidate a will which is
identified with the particular delusion. (Paddock v Potter, 68 Pa.St. 342.) The great characteristic of idiocy, which is the lowest type of insanity, and presupposes a lack of understanding from nativity, is permanence, with little or no variation.

The civil disability of an idiot or utter imbecile is complete. The old doctrine that deaf mutes might be presumed idiots has long since been thoroughly repudiated. Here blindness is an impediment only in that more satisfactory evidence that the testator understood the contents of the will is required. (1 Red. on Wills, 52.) Suicide of the testator is not conclusive of insanity and the chief value of this proof consists in the corroboration it affords when considered with other facts and symptoms, to the theory of mental deficiency. (Duffield v Morris, 2 Harring 375.)

As to that form of mental aberration, known as delirium, which results from excessive use of intoxicants or is incident to fevers, Mr. Schouler says: "It stands to reason that a will made by a person when delirious, is null if not a legal absurdity." Mania or delirium is distinguished from dementia, in that the former is characterized by "force, hurry and intensity," while the latter is marked by "mental
feebleness and decrepitude so that reason flickers low in the socket and then dies out."

In the case of Boyse vs. Rossborough, 6 H. & S. Cas. 45, Lord Cranworth has justly said of testamentary incapacity that the question is almost always one of degree. "There is no difficulty," he says, "in the case of a raving madman or a drivelling idiot, in saying that he is not a person capable of disposing of property. There is no possibility of mistaking midnight for noon, but at what precise moment twilight becomes darkness is hard to determine." Although a testator may be of sound mind and memory, yet he may be so completely under the control of others as to be incapable of making a will that reflects his wishes and desires, and this is what is termed in law undue influence. The term is defined in (Turner v. Cheesman, 15 N.J. Eq., 243) as "That what compels one to do that which is against his will, from fear, the desire of peace, or some feeling which he is unable to resist." When such an improper influence is exercised by one standing in a confidential or fiduciary relation towards the testator as prevents the latter from exercising an unbiased judgment and in all cases where free agency is destroyed, the will thus made is of no effect. It is not however
unlawful for one, prompted by disinterested and honorable motives, to honestly advise or even influence the testator to make a disposition of his property by simply appealing to his better judgment. The influence of affection and attachment such as induces the desire to gratify, is not undue in any legal sense. The constraint, fraud or undue influence in order to avoid a will must be so identified with the execution of it "that the influence operated upon the testator's mind in the very act of making the instrument."

(Eckert v. Floury, 43 Penn. St., 46).

At common law a feme covert could not make a valid will but in the United States the late tendency of legislation is to free married women from all disability in respect to the management of their own property. In some states they are enabled to dispose of both their legal and equitable estates and bar whatever contingent interests others may have in their property, including curtesy. (Dickinson v. Dickinson, 61 Penn.St., 401). In other states where they have not an absolute estate in their real property, they are unable to bar the husband's tenancy by the curtesy. (Burroughs v. Nutting, 105 Mass., 228).

At common law testaments disposing of personalty might
be made by infants of fourteen years of age if males, and
twelve if females. In this country the law requires the
testator to be twenty-one years of age, in the case of males,
while many of the states confer the power on females of
eighteen years of age. The old common law with undue severity,
inflicted the penalty of incapacity upon many classes
with a view, as suggested by some authors, of enabling the
Crown to seize upon their property and confiscate it. Swin-
burne enumerates among these, "slaves, villeins, prisoners,
traitors, felons, heretics, apostates, outlawed persons,
those excommunicated and prodigals," a promiscuous list in
which criminal law breakers, wrong doers, and innocent unfor-
tunates are found unhappily blended. (Swinb. pt. 3, #7;
2 Bk. Com., 499).

As a result of the beneficial influence of public opinion existing in this country for the past century, scarcely
any of the disqualifications now exist. The single case of
what is termed "civil death" seems to be the last remnant of
the old law of criminal disqualification. As in the case of
Rankin v. Rankin, 6 Monr.(Ky.) 551, it is even held that a
person under sentence of death may make his will. Aliens at
the present time have the unquestioned right of disposing
of their personal estate at pleasure. Moreover, modern legislation is to the effect that an alien's disposition of real estate will confer a good title upon the devisee as against all but the State.
PUBLICATION AND REVOCATION.

(Execution and Attestation.)

The term publication in this connection signifies, that the testator has done some act from which it may reasonably be inferred that he intended the instrument to operate as his will. As to what act will be deemed a publication, it may be said in general that the production of the instrument by the testator for the purpose of attestation is sufficient.

A will once revoked can only be republished by an instrument of as high a nature as that which revoked it. Thus an instrument revoked by a written declaration cannot be republished by parol. The effect of republication is to make a new will which speaks from the date of the republication and therefore revokes as of its date all former wills inconsistent with its terms.

The same degree of capacity is required for the revocation as for the execution of a will. There are several ways in which the revocation may be effected. First by intention—
ally tearing, destroying, cancelling, or obliterating by the testator or by his agent. "A will is revoked by any act done to the instrument which stamps upon its face an intention that it shall have no effect, though the act be not a complete physical destruction." (Evans App., 58 Penn.St., 238). Mere words however do not effect a revocation.

Second: by the execution of a subsequent in which all former wills are expressly annulled. The same effect is produced by the subsequent birth of a child, there being no provision for such child in the will. (Brush v. Wilkinson, 4 John. Ch., 506). Children born after the execution of the will, are the subject of broad enactments, the policy of which is to revoke the will only so far as to let them into the share which would have fallen to them under the intestate laws.

"A deed of conveyance made subsequently to the execution of a will does not have the effect of a revocation unless it makes an entire disposition of the estate. The will attaches pro tanto to any part of the estate undisposed of and carries it to the devisees." (Brush v. Brush, 11 Oh., 287). Nor will it be revoked by an invalid conveyance subsequently made by the testator (Bennett v. Yaddis, 79 Ind., 347).
The codicil is a kind of sequel to or conclusion of a will. It does not ipso facto work a revocation unless it expressly provides for such revocation or its provision are repugnant to those of a will. And when the provisions in it are inconsistent with those in the will it operates as a pro tanto revocation. (Tilden v. Tilden, 13 Gray, 103). "But it does not revoke the instrument further than may be required by its express terms or necessary implication." (Collier v. Collier, 3 Oh., 389).

(Execution and Attestation)-- As local codes differ, our present investigation of the essential formalities of execution and attestation must be held strictly subject to local variations of statute requirement. The Statute of Frauds requires the will to be signed by the testator, to be attested and subscribed by three witnesses, in his presence. Under this statute it is sufficient if the testator's name appears in any part of the instrument and the signature may be by marks instead of writing, "not withstanding he was able to write at the time." (Cozzens Will, 61 Pa.St., 196).

Mr. Schouler says that "a few American codes contain peculiar provisions as to the form, signature and attestation of wills. Thus the Penn. Statute appears to have long dis-
pensed with formal attestation, even in a devise of lands, provided the authenticity of the will can be proved by two competent witnesses." (See also 1 Jarm. Wills, Am. Ed. note; High v. Wilson, 1 Watts, 463).

The Statute, 1 Vic., c. 26, which has been adopted in some of the states, declares that no will shall be valid unless in writing and signed at the foot or end thereof by the testator. "Three witnesses are required in fourteen of the states while two are held sufficient in the others. Witnesses serve in a two-fold capacity—(1) to show that instrument was executed by the testator; and (2) to judge of his testamentary capacity at the time of his acknowledgement. Under enactments adopted by the various states the policy of which is to prevent substitution and fraud upon the testator, it is requisite that the signing shall take place in the presence of the testator. What may be regarded as presence depends on the circumstances of each case. If the witnesses are in the same room where the testator can see them if he so desires, they are to be considered as in his presence within the meaning of the Act. It follows that it is not absolutely necessary that they be in the same room or that he actually see them sign. (Mandeville v. Parker, 31 N.J.Eq., 242).
"Not only the corporeal presence of the testator is essential to the validity of the attestation, but his mental accompaniment of their subscription." (Aurand v. Wilt, 9 Pa.St., 54).

The general rule of our states makes it essential that witnesses should sign in the presence of one another. One who takes under a will is not a competent witness and on the same ground a wife is not a competent witness to her husband's will. (Pease v. Alles, 110 Mass., 157). Nor would she be competent to a will containing a devise to her husband. (Sullivan v. Peo, 106 Mass., 474). Mr. Redfield holds that "this rule extends to executors where under the statute they are entitled to commissions in personal estate." (1 Red., 259)
WHAT MAY BE TRANSFERRED BY WILL.

According to the common law a devise of real estate was looked upon as a conveyance and as such could extend only to the land of the testator at the date of the will and after acquired land could not pass. This rule, however, has been changed by statute in this country. The term "testamentary gifts" includes both devises of real estate and bequests of personalty. Prior to the year 1066 A.D., testamentary gifts of real estate and personalty were equally valid. After this period it seems that devises were not allowed, since they were deemed inconsistent with feudal principles, with the single exception of the County of Kent which still retained the Anglo Saxon right to pass real estate by will.

This prohibition was abolished by the famous Statute of Wills. (33 Hen.VII.). And the modern rule is that all property may pass by will whether legal or equitable in nature. A widow's dower cannot be affected by will unless something is given her in lieu of it and she then may elect
which to take. The period in which she may make this election is fixed by statute. In the case of (Jennings v. Jennings, 21 Oh. St., 56) the court held that "the widow will not be entitled to dower in addition to the provision made for her unless such intention clearly appears in the instrument."
WHO MAY TAKE UNDER A WILL.

The general rule is that all natural persons are capable, provided they are in esse at the time of the execution of the will or are "conceived but not yet born." Many persons who are not capable of making a will, such as infants and persons of non-sane memory may be devisees, in as much as a devisee is not based upon a consideration. (Wadsworth v. Wadsworth, 12 N.Y., 376). Excepting in Pa., there are no Statutes of Mortmain and therefore the capacity of corporations to take by devise depends upon the terms of the charters by which they are created. The power to take and hold lands is usually conferred in special terms by the charter and a limit fixed to the value of property which may thus be acquired. "Such a limitation will apply to the value of the land at the time of acquisition, and though an increase in its value may subsequently occur, so that the limit is exceeded the property may still be retained. (In re McGraw, 111 N.Y., 66).
As to Aliens the modern rule is that they may take testamentary gifts and devises of real estate and hold the same as against all but the State.

Wills cannot effect the claims of creditors since it is a principle of justice and sound policy that a testator should dispose only of the surplus, after his just debts are paid and that all disposition in fraud of creditors should be set aside.
VOID TESTAMENTARY GIFTS

OR LIMITATIONS ON TESTAMENTARY POWER.

In the first place gifts may be void either because the object fails or because in conflict with some legal rule or principle. The former is well illustrated by the case where the legatee dies before the vesting of the legacy. As to the latter there are certain principles that the testator cannot over-ride. These are—(1) Rules as to the incident of property which include rules as regards dower, curtesy and liability of property for debts. (2) Principles of interpretation. (3) Rules of public policy and good morals. The local conception of public policy is liable in different jurisdictions and at different epochs to great variance and decisions must greatly differ in consequence. Gifts which fetter for an unreasonable time the free circulation of money or property are pronounced invalid under this rule. Prior to the Statute of Charitable Uses (43 Eliz.) devises at law to charitable uses generally, without implying a
trustee were void but it is not the policy of the modern law to suffer a trust to fail for the want of a trustee and the court has the power to appoint one.
RULES OF INTERPRETATION AND CONSTRUCTION. (Cy pres)

So far as mere interpretation is concerned, the testator's meaning or intention is the criterion, but in constructing a will the object of the court is to ascertain not the intention simply, but the express intention of the testator—i.e. "the intention which the will itself either expressly or by implication, declares," "The construction of a will is always a matter for the court and should never be left to the jury". (Ruffin v. Farmer, 72 Ill., 615). Generally speaking a will of real estate is construed according to the law of the place where the land is situated, but a will of personality is governed by the lex domicillii.

The rules for construing the language of a will are less rigid than those applicable to other instruments. They are not to be viewed in a technical sense or required to conform to strict grammatical accuracy but rather to be taken in their ordinary, natural and proper sense. "But if upon so reading them in connection with the entire will and an
ambiguity arises, the primary meaning may be modified, extended or abridged in accordance with the presumed intention, so far as to remove the difficulty." (Chrystie v. Phyfe, 19 N.Y., 548). Conflicting provisions should be reconciled so as to conform to the manifest general intent and "it is only in cases where such provisions are absolutely repugnant that any of them should be rejected." (Baxter v. Bowyer, 19 Oh., 490). But if two parts of a will are conflicting and totally irreconcilable, the latter must prevail. (OPRATT v. Rice 7 Cush., 209). In the case of (Fetrous' Estate, 58 Pa.St., 427) the Court laid down the following principle. "The intention of the testator when properly proved is competent not only to fix the sense of ambiguous words but to control the meaning of express words in case of difficulty and uncertainty."

A will and codicil are to be construed together as parts of one and the same instrument and the latter may, from its very nature as an after-thought or amendment, confirm, alter or revoke the former. (Brimmer v. Sohier, 1 Cush., 118). Where an instrument is opened to two constructions, one consistent and the other repugnant to law or one of which will give effect to the whole and the other to only a part of the
will, the former will prevail. (see Pruden v. Pruden, 14 Oh., St., 251; Randenback's App., 87 Pa.St., 51). When a thing is devised or granted, whatever may be necessary to its enjoyment passes as an appurtenant to it. "Thus the devise of a house or messuage will include the land on which the house is built and will also be deemed, prima facie, to carry the garden, orchard, stables and yard." (Rogers v. Smith, 4 Pa. St., 93). A bequest to a charitable use receives a liberal construction. Thus a devise to "the poor, needy and fatherless of this County," was held valid in the case (Fox v. Maillon Co., 14 Allen, 555), as meaning the paupers supported by the taxpayers of the County.

Cj Pres doctrine is a mode of construction applied to wills and means that when the testator evinces a particular and a general intention, and the particular intention cannot take effect, the instrument will be so construed as to give effect to the general intent. "If a valid devise or bequest is made in trust for a charitable purpose, the general nature of which is indicated and there is no intent expressed to limit the bounty solely to the particular application: and if after the death of the testator, the particular application becomes impracticable, impossible or illegal the Court
of Equity will apply it in a manner as near as possible to the testator's particular directions and thus carry out his general charitable intent." (Prof. Hutchins Lectures on Equity jurisprudence). In some states it is held to be a power not to be exercised by the Courts. (Holmes v. Mead, 52 N.Y., 344). In other states it is held to be of doubtful validity. (Harvard College v. Society, 3 Tray., 283).
RULES AS TO EXTRINSIC EVIDENCE

IN AID OF INTERPRETATION AND CONSTRUCTION.

Parol evidence is admissible to show the state of the testator's mind, the nature, extent and condition of his property, his relation to the contestants, and in fact all the surrounding circumstances at the time of the execution of the will. This is permitted in order to place the Court in the place and condition of the testator, in order to enable it the more accurately to understand the sense in which the language of the will was used. "Courts of Equity cannot however reform a will upon proof of mistake, though they may reform a deed under similar circumstances." (Button Exr. v. Am. Tract Society, 23 Vt., 236). But parol evidence may be received to explain a latent ambiguity or local and technical terms. (Mitchell V. Mitchell, 6 Md., 224). And in the case of (Thomas v. Stevens, 4 John. Ch., 607) it was held that "when a residuary legatee is described by a wrong Christian name, parol evidence is admissible to show who is intended."
PROBATE.

A brief outline of probate practice would not seem to be irrelevant to the law of wills. By probate is meant the proof before an authorized officer that an instrument is, in fact, the last will of the deceased person whom testamentary act it is alleged to be. The death of the testator is a condition precedent to the right of the Court to assume jurisdiction for until that time it is merely inchoate. Death is presumed however from a continued absence of seven years, nothing having in the meanwhile been heard from or of the absent party. Although no definite time can be laid down in which a will must be probated it should be done in a reasonable time. What is a reasonable time depends largely on the circumstances and if there be an undue delay on the part of the person whose duty it is probate it, any one interested may petition the Court to cause him to show cause for his dilatoriness. "All wills must be probated and until so established, no title can be set up under them nor can they be
used as evidence of claims under them." (Swanzey v. Blakeman, 8 Oh., 5). However wills over thirty years old, coming from the proper custody and appearing regular and perfect are deemed to prove themselves. (1 Greenl. Ev., sec., 21).

Formerly the Ecclesiastical Courts of England had jurisdiction of the probate of wills. But in the U.S. this power has been granted to certain judicial officers who perform the duties formerly incumbent upon the Ordinary of the Ecc. Court. The party offering the will for probate is called the proponent, and the person disputing it the contestant.

Two methods of proving a will were recognized at common law. These were known as the "Common form" and the "Solemn form". The former was employed when the executor propounded the will in the absence of persons interested and without citing them to be present. In the latter case the will was presented to the Court in the presence of witnesses who were examined separately and secretly and their depositions reduced to writing. In this country proofs are not taken until citation or notice has been issued to all interested. The witnesses testify on oath or affirmation that they were present, saw the testator sign and acknowledge the will and
that to their best belief he was sane at the time. In case a witness should move from the jurisdiction his testimony may be taken by commission or dedimus potestatem. Lost or destroyed wills may be admitted to probate upon proper proofs of their execution and subsequent loss. When a will has been admitted to probate it must be registered in the office of the Probate Judge or Clerk of the Court, together with the proof thereof and the certificate admitting it to probate. "When properly probated and not contested, it becomes operative from the time of the testator's death." (Pitts v. Melse, 72 Ind., 469).

Foreign wills may be admitted to probate, when accompanied by a certificate from the proper officer alleging that they were duly executed and proved, and "they must be recorded before the title to land situated in another state vests." (Nelson v. Tappan, 6 Oh., 172). Gross inequality in the distribution of the property is not of itself ground for setting aside a will. (Kevil v. 2 Bush., 614). A writing in the form of a deed which conveys all of the property that the maker may die possessed of, is a will, and as such it is admissible in evidence only after probate.

As the details of probate practice in the Several States of the Union are regulated by Statute, it will neither be
practicable or consistent with the object of this thesis to pursue the subject farther. Time and experience have suggested the numerous changes in the law of testamentary disposition, that from time to time have been made. It is the purpose of the Legislators and the Courts to frame and give effect to such enactments as the wants of society demand. And it may be asserted, and with truth, that the admirable wisdom and justice which mark the laws relating to this important subject are the development and result of the experience, observation and wisdom of centuries.

FINIS.