

Surrogate's Court.

In the matter of the
Last Will & Testament

of
Stephen F. Burkmandid } Points for
Proponent.

Speaking without notes which I will not attempt again in such a case, I find on reflection that I omitted several matters to which I desire to call the attention of the Surrogate. I avoid repeating what I have already said as much as possible.

Referring to the line of my argument that the three Wills were made under different circumstances, and different influences and from different motives.

That the first Will was made while the Testator was influenced in favor of Miss Sue, the motive being her benefit, to reward her for what she had done and was doing for him.

That the will in favor of the widow was made while still living with Miss Sue, but after she had treated him so badly that he no longer entertained anything but a feeling of repugnance towards her, and to retaliate against her ill treatment and having at the time nobody else on the whole earth entitled to his bounty he made the second Will in favor of his wife.

The influence of his minister Dr Bache through his advice as stated by him was entirely creditable, to him helped to produce this second Will.

At this time according to the evidence the Testator seems to have been almost entirely friendless living upon crusts and his home a hell, he had lately recovered from a severe fit of sickness and drinking deeply whenever he could procure the means to gratify his appetite.

It is plain that in such a state of things the man must have been living in a sort of craze, and he was not at the time even friendly with his relatives. Neither the Andrews nor the Moores his Neices never at all intimate with him. Mrs Andrews was a witness, she did not pretend that any friendliness existed Mrs. Moore we do not hear from.

He had not yet become reconciled with his Cousin Mrs Gertrude Buckman but evidently had no idea of how far he had according to the testimony no reason to expect he ever would be.

Suppose he cast about him for a subject for his bounty after having fully determined to cast off his See. He was under no sort of obligations to any of his blood relatives, neither to the Andrews nor the Moores nor Mrs Gertrude Buckman.

Under these influences and the advice of Dr Bache he made the second Will.

With respect to the Testator's fear of Miss Sue it was claimed on the arguments on our side, that the plan of getting Ford who was publicly known to be a Deputy Sheriff to go to New York for him was a plan to lull her suspicions, so also the request to Mrs. Carick to write him that his old nurse, Deannah Shorter was sick and wanted to see him, why this, but to get away from Miss Sue, on a false pretence. Again, E. H. Hudson was employed by him to look up the law and write out an opinion showing how the law stood with respect of divorce and bigamy. Now all this is scarcely reconcilable with anything short of his fear of Miss Sue or what she might or could do to make him trouble.

Now if she had been able at any time, while he was under the influence of drink to induce him to go through some form of pretended marriage ceremony with her this would account for his course completely, this though there were nothing whatever in it.

The Will in favor of Miss Sue was at the time of its execution and under the circumstances, not without reason, many a better clearer headed man might have done as he did with credit to his heart. She had given up all she had to give up, her maidenhood for the most part and was living with him as his wife, at this time no family ties

bound him, as we shall see later on, his wife, who had left him, was secured of a generous maintenance from his estate, and it does not appear that he was at all intimate with his only brother or any of his Cousins, or other blood relatives.

Miss Sue in the flush of her young womanhood was kind to him, and what so natural as that he should prefer her as an object of his bounty, so long as she continued to desire it - except that she sinned only with him and for his gratification, at this time they were accustomed to high living and he given to drink.

But all this was changed, the Testator became impoverished, he drank heavily, became a sot almost there was no longer any thing about him desirable to a woman of Miss Sue's make up and ambitions (what an effort it must have cost her to succeed in imposing herself on Dr Bache and his Church Congregation as the wife of Mr Burkman, this was ambition yet not in the least degree honest.)

So when the Testator had become a pensioner of his agent Mercer (who had been appointed Receiver of property to pay his judgment debts) and was supporting himself and family on six Dollars a week allowed him by Mercer, See Account Book Exhibit E³ Feby 3rd 1883. Miss Sue hoisted her true colors, she spit in his

face &c &c, and made his home to use his own language a hell, he naturally turned against her. It was during this period that he advised with Dr Bache his minister regretting his manner of living in a state of open adultery, the Dr advised him to reform &c to rectify wrongs &c.

Then I desire to speak of the unexplained Conveyance of the Eighth Avenue property to Mr Mercer the Consideration mentioned in Deed is \$2500, subject to all incumbrances, though the payment of this \$2500. is acknowledged in printed parts of this Deed we are persuaded it never was paid and that by this means Mercer was secured for all advances he might make. That he did advance is plain. He was Receiver to pay judgment debts, any amount desired from the 15th Street property over and above paying taxes &c and the annuity to his wife was applicable to the payment of these judgments. Yet Mercer allowed him \$6 per week to run his house hold, paid his rent and when he got in the litigation with Miss See advanced hundreds of Dollars to pay expenses.

The doing of this is not in keeping with the ordinary Customs of real Estate brokers, unless they have some safe security to fall back upon. Mercers note to the Testator advising him to Convey the 15th Street property to him (Mercer) and let

the Will (2^d Will) took its course is in Keeping and Kindred with the same scheme.

If the 8th Avenue property was so Conveyed to Mercer to Keep away Mr Bestmans Creditors this was pretty Effectual, for the debtor had nothing but the 15th Street property left, subject to his wifes Annuity, it was very little. And Mr Bestman Could not be heard to allege his own fraud he was most Completely at Mercers mercy.

As to the Circumstances under which the 3^d Will was executed, briefly.

When he came to his Cousin at Tarrytown he had been bitterly beaten flat in New York without friends, his home a hell and had doled out to him by Mercer just money enough to keep body and soul together. He also drank deeply so deeply according to the testimony that he was continually under the influence of liquor. This was in Nov 1881.

In a short time all this was changed, his home was what a home ought to be he was treated kindly by his Cousin and her family, she loaned him money when he needed it, and he discontinued his excessive drinking. This was not brought about without assistance. the man who drank and Craved for liquor as he did while in New York did not "taper off" as he did without assistance. Of Course it hurt to stop his habit, which had become

immoderate, it hurt him as it will hurt any body vide the evidence of W^m Perry and B. F. Cornell, when the interviews they state took place, he had stopped his drinking for the most part, but this stopping hurt him, he felt the effects of his former excesses and was in proportion unmanned and feeble.

We donot hear of his becoming intoxicated after coming to Tarrytown to stay. He visited the City sometimes but we donot hear of his returning at any time the worse for liquor. +

He did not make his last Will directly when he came from New York, not until the August following in the mean time he had written Mercer of his intention to change his Will, he thought he would make a codicil this note to Mercer which is in evidence was written sometime before the execution of the Will. This shows that the testator had thought of it then, it engaged his thoughts and finally resulted in the last Will.

Counsel for Contestants talk loudly about influence, undue influence, having admitted the Testators competency there was little else that they could say on behalf of their case.

What is influence? and what undue influence? I claim it may be safely stated that no testator ever yet nor ever will make a will in favor of his own children without he is influenced so to do.

The testator was influenced to make the first will in

favor of Miss See as we have seen but we have not yet seen any undue influence about it.

He was influenced by his bitterness against Miss See to cut her off and made the second Will in favor ~~in~~ ^{of} ~~fact~~ his wife, to accomplish this we do not see any undue influence in it.

He was influenced to make the third Will in favor of his Cousin because she took him in and cared for him treated him kindly when every body else had deserted him.

He may have been influenced by the thought of his most unkindly treatment of her in the litigation he had set on foot against her at a former time, and the means and the men he had employed to berate and defile her if he could, in Court and out of Court.

He may have been influenced by the advice of Dr Herlick which was most Christian like, as well as most sensible.

He had asked the Dr substantially after stating his former manner of life, and giving him an outline of all the Circumstances with respect thereto which have been proven in this case to advise him what to do. The Dr answered, You are fully qualified, use your best judgment and do as your Conscience dictates, this was worthy of the Christian Minister Dr Herlick is. And this is just exactly what Stephen F. Beckman did do.

It was well known that, ^{was} Georgiana L. Beckman

was a member of the D's Church society, she had been a member of the Church then, under his care, Mrs Gertrude Bullman was not a member, But the D^r did not find it in him to advise that he leave the remnant of his property to his wife, who did nothing for him, who did not even communicate with him or care to know if it were well or ill with him.

The Testator's death was unexpected his health and appearance and improvement indicated many years of life for him, meantime his hold of Mercer was ^{most} precarious he was completely at his mercy he might allow him enough to pay his board, but he was under no legal obligation to do so. And it is almost a conceded thing that his Cousin Gertrude, would not turn him out if the time come when he could no longer pay his board. Why should he not prefer her to all others?

And his wife had no hold of his affections or respect even so far as we can see, to repeat but little, She had married a spend thrift who had already run through one estate, his share of his Mother's estate, he was dissipated, and in no way a desirable husband, but she had nothing, and he belonged to an old patroon family and had great expectations. His father died and he directly came into possession of all property he could ever expect from any quarter, then she separated

from him first securing from his estate what has turned out to be the more considerable portion and thereon allowed him to live in a state of open adultery with Miss See.

Granted that he had been infatuated with her at the time of the marriage and for some years after what wifely duty according to the testimony did she ever care to render him. Some women in her position would not have been too very good to interfere and make an effort at least to rescue him from Miss See and his wicked manner of life and doings. She might have threatened him with a divorce she might have done something, and as we can now see from the testimony perhaps the least effort she had made had rescued him, but she did nothing, she was not grateful enough, to the man upon whose substance she was living to make an effort to see him even, She was not Christian Woman enough to stretch forth her hand to save him, If he had been on the road to the poor house she would not have spared to him enough of his own property to save him."

And how is it that she has any claim to the pennant of his property such as it is.

When he thought of all this what did he think of her, But when he made the will in her favor he had become embittered against Miss See, and meant to punish her and there was ^{not} at the time,

so far as we can see any person whatever having claims upon him.

Counsel for the contestant assumed and were both of them quite emphatic repeating often that the will was not read by the testator and was not

so far as we can see any person whatever having claims upon him.

Counsel for the Contestant assumed and were both of them quite emphatic repeating often that the will was not read by the testator or read over to him arguing that he might not or did not know what it contained. This is based upon the testimony showing it was not read over in the presence of the Witnesses, so far as our experience goes a will is never read over in the presence of witnesses, it is generally regarded as a private matter, its contents are kept secret and are known only to the Testator and Counsel employed to draw it.

The testator's mem (Exhibit B² Feby 5 1883) in his own hand writing is "Thursday August 4th 1881" Went to Purdy's office made a new will in favor of "G" Frank Davis and E^d. Birdsall witnesses.

This described the third Will exactly and no other, the G standing for Gertrude then he did know what the will was, he did read it or it had been read to him after all.

(This exhibit will be found in a white envelope Letter size). On the reverse side of this same exhibit he entered a "Mem" of the Conveyance to Mrs Gertrude Buckman in pencil. Now this "Mem" is not a copy of the Deed it is an abstract simply of its peculiar provisions which abstract would be quite creditable to one learned in the law.

This is mentioned to show how well the testator was posted with respect to what he was doing and how competent he was to execute the Will and Deed both and that he was entirely free from undue influence, this "mem" was a private secret thing known to himself only at the time yet in keeping with his habits as shown by his various "mem" and writings in evidence.

As to the value of the 15th Street property rated by a witness of Contestant at \$25,000, this simply cannot be its present value, the witness did not specially say whether his valuation was present or prospective.

If its present value be fixed by the amount it produces, which it is submitted is the safer criterion in the absence of some special circumstances against it (none of which are shown) the property all told, including the life estate of the widow is worth about \$10,000, and not to exceed \$10,000 its value to Mrs Gertrude Suttman personally is likely to be inconsiderable, she and the widow are of nearly equal age they are likely to live equally long and while the widow lives it will scarcely pay for the case involved. It must be kept in repair, taxes must be paid and the owner must attend to this in any event though it rent for less than enough to pay the annuity.

A very great deal has been urged against Gertrude Bustman because she married Gerard R, her Cousin.

When Dr Bustman the father made his will he found himself able as he thought to give his Son Stephen F; his share of his estate absolutely, this he could not do for Gerard R, who was so greatly in debt, this his whole share would serve to pay his debts in part only, so the Dr created a trust providing that Trustees should support Gerard R out of the interest and income of his share, the principal to go to his widow and Children, It was in effect accomplishing on behalf of Gerard R, what he had done for Stephen F; as nearly as he thought he could come to it; If Gerard R had contracted a death bed Marriage (as Selden Spencer did) to answer the requirements of the will it would have been in no sense unjust to Stephen F; who had had his share of his fathers estate and squandered it, He did not as it turned out squander his brothers share nor was he allowed to let a harlot squander it, This however had been the sole cause of the estrangement and Contention between Stephen F; and his Cousin Gertrude, Dr Bustman intended that Gerard R should dispose of his share when he was done with the use of it the same as if he could will it to whom he chose, in his judgment and in

his way, he came as near to this as possible, and surely Stephen F. had no sort of claim to the share of his brother, in law or equitably. Yet he inaugurated an extensive litigation about it. It may benefit somebody where it is, if Stephen F. had got it, it would have gone the way of his own share, yet this had been the length and breadth of Gertrude Bustma's offending him. There was no sort of reason why Purdy should have been offered as a witness except to disprove what has been called herein a fourth Will in favor of the widow, testified to by Miss See. It was not to be expected that he would offer himself as a witness, for it is abominable for Counsel to volunteer and get on the stand and testify to enough to support or establish a case prosecuted or defended by him, when some unexpected thing turns up which it is thought necessary to swear away.

No body believes the testimony of Miss See in this respect or any other. Counsel for Contestant did not believe her or they would have called Purdy themselves, this would have relieved him from the obnoxious objection above stated.

Again, if there be a fourth Will the proving of our third Will will not injure, for just as soon as the Widow can establish in any way the existence of the alleged fourth Will she may

apply and prove it. If they have any faith in Miss See, they will present a petition to prove this alleged fourth Will, they may then examine Purdy, Miss See and present all sorts of evidence to establish that it is or was. It is plain the Widow and her Counsel have no faith in any fourth Will.

As to Mrs. Gertrude Butman's absence from Court it is submitted that no decent woman to say nothing of one who prides herself somewhat upon being respectable in the Community could be expected to endure being present when what was said of her in the earlier stages of this Case any woman having the least degree of self respect would be compelled to do as she did to escape the humiliation. We do not say she was driven out of Court no Court would allow this but she felt compelled to remain away to escape unmolested abuse which had been fully prepared for her.

If we could have foreseen the course of Counsel on the summing up, she had been glad to attend, but after all the reflection will come, had she been present Counsel might have been less Considerate.

There was evidence in the case of some talk of an attachment of the Testators prop-

erty by Miss See.

This was the subject of some criticism by Counsel for Contestant. It was by them thought to be quite improper that such a danger, had been suggested by the Testator's Counsel in the Miss See litigation to him &c.

Let us look at the case a moment. The Testator had conveyed the 8th Avenue property to Mercer, under suspicious circumstances all of his ostensible property, the 15th Street was in the hands of a Receiver to pay his debts. Miss See had sued him to recover about \$4000. for services and also held his promissory note for \$3000. all he had to pay her with was his equity in the 15th Street property which barely paid its way. It looked as if the conveyance to Mercer was not exactly the square thing for if Mercer had paid the consideration \$2500. what had become of the money, and Mercer was advising him to convey to him the 15th Street property and Mercer was furnishing him money to live on &c. Now if Miss See and her Counsel had been fully posted with respect to these facts surely there was enough to support an attachment. His Counsel reported to the Testator that he had heard a rumor that Miss See meant to get an attachment and it is

hardly likely that he did so untruly.

A point was made by Contestant's Counsel on the argument in respect of the absence of all letters from Mrs Gertrude Bustman to the Testator, the intimation was that these letters had perhaps been suppressed by our side.

According to the testimony they were few in number but Miss See had them as she had every thing else belonging to the Testator which he had left at his New York residence when leaving it for Tarrytown. All letters produced came from her hands per Laurences with his wearing apparel and the like.

We claim that Miss See has shown herself to be bad enough to suppress any thing she took a notion to suppress.

As to the Conveyance of the 15th Street property to Mrs Gertrude Bustman.

The testator as we have seen was dependent on Mercer, who was at him to convey this property to him (See his note advising this Dated May 28th 1881 & B. Jan'y 19-1883). We can well imagine what he did when he saw the Testator and handed over money to him in this direction. If he desired to get rid of Mercers importunity this Conveyance was effectual for this purpose, and the Conveyance was subsequent to the will, besides Miss See was threatening him

with serious litigation which he must have means^{to} resist and who would help him when Mercer failed him but his Cousin Mrs Gertrude Buckman. And the conveyance only did what he had already provided by his Will that the remnant of the 15th Street property when he was done with it was to go to her. This was the will, this was the conveyance but the conveyance rid him of Mercer. It certainly is in no way against his competency or his desire to do right and as his Conscience dictated, that he had after coming to Tarrytown given more attention to religious matters, He attended Church. (see a book in evidence Exhibit D³, Feby 5th 1883.

It would require very much more time I expect than the Court could conveniently admit to dissect minutely the testimony of the several witnesses examined in the case nor would this be profitable in the face of Contestants admission of competency.

A very great part of Contestants effort was in this direction this question being out of the case, there remains but the question of undue influence. We have seen that a testator is always the subject of influences in the making of a Will, the three Wills herein are an exemplification of influence,

reaching a Testator. And what is undue influence upon a testator was admitted to be competent², He lent some express fraud calculated to operate upon a testator and induce him to make a Will he would not make if he were not led astray by such fraud, or if we admit a fraud of suppression might so operate, what express fraud or what suppression has been shown. That his Cousin took him in and cared for him and treated him kindly was not fraudulent. That she aided him to reform his habit of excessive drinking was not a fraud. That he gained in health in flesh and strength through her care and management was not fraudulent surely. She did not lie to him, she did not tell him ill natured falsehoods about his wife or any body else, there is nothing like fraud shown. If we consider the extravagant stories Miss See Maggie Redmond and Mrs told of Mrs Varick, and what she said to the testator about making a Will, and about his having made a Will and the like, why Mrs Varick must be set down as a natural — Well she is not and we know she is not but on the contrary her testimony was bright and clear, and she denies these stories if they were true she had as well gone to New-

York and told that her mother had a Will in her favor which had been procured by managing &c the Testator. She knew too much to do any such thing.

Mrs Varick had associated with all these people including the Gallidets, she was their superior socially and in every other respect. they did not approve her - and have been spiteful against her.

Miss See has been spiteful towards Purdy whose position as Counsel for the Testator for his brother Gerard and for Mrs Gertrude Beckman has forced him against her views and what she desired. He it was who sent Ford to take the testator away from her to White Plains, who always advised the testator against her who defended him against her suits.

Who believes that Mrs Gertrude Beckman wrote the testator that Purdy had just got over a beastly drunk and that he had best come up &c³ as she testified she did. Saying that he had witnessed a fourth Will in favor of the Widow was after Purdy.

It was simply spiteful, she felt most likely as if she would like to bite. She has not from the start cared to tell the truth or any thing near the truth.

Mr Gales points inclosed covers the law
of the Case pretty fully these Enclosures

Wm F. Purdy.
For Proponent.

