WestVirginiaUniversity
THE RESEARCH REPOSITORY @ WVU

Volume 36 | Issue 4 Article 10

June 1930

Wills–Testamentary Intent

Paul E. Bottome
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Estates and Trusts Commons

Recommended Citation

Paul E. Bottome, *Wills--Testamentary Intent*, 36 W. Va. L. Rev. (1930).
Available at: https://researchrepository.wvu.edu/wvlr/vol36/iss4/10

This Student Notes and Recent Cases is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.

sion was never notified of the assignment to the surety company and for the further reason that he had a superior equity, since he had loaned to the contractors in order that they might pay off laborers. The court did not pass upon the priorities between Riley and the surety company, but rested the case upon the priority of the materialmen with respect to Riley, although their assignments were subsequent to Riley's. The case seems to turn on the peculiarities of the particular situation, and the policy in favor of protecting materialmen. The fact that Riley's money was used to pay laborers seems to have been neglected, and he was treated as an ordinary general creditor. It seems that the court took the view that something in the nature of an equitable lien on the claim against the Commission arose by operation of law in favor of the materialmen prior to any assignment to them and this gave them priority over the assignee, Riley. It would seem that this case does not weaken the general rule favoring the prior assignee.

In view of these facts, it would seem that, until further adjudication upon the point, the West Virginia rule can be understood to be in accord with the minority view.

—SIDNEY J. KWASS.

WILLS—TESTAMENTARY INTENT.—Proceedings to probate as the will of T, a letter to his brother written and signed by T. The letter was to the effect, "If I should fail to pull through this operation I want you to sell the Columbia Carbon Stock * * * * and divide the proceeds equally among my brothers and sisters * * * *". T died two days after the operation. The Circuit Court found this to be T's will and ordered it probated. Objected that the letter did not show *Animus testandi*. *Held, animus testandi* is the purpose to direct the posthumous disposition of property. It is not essential to this purpose that the testator should intend to make a will or know that he has performed a testamentary act. The letter written by T showed this intent. *Langfitt* v. *Langfitt*, 151 S. E. 715 (W. Va. 1930).

A holographic will is good under our statute, ch. 77, 33. It is not necessary that the decedent should know that he has performed a testamentary act, nor that he should intend to perform such an act. *Rice* v. *Freeland*, 131 Va. 298, 109 S. E. 186. No particular words are necessary to show testamentary intent. *In re Major's Estate*, 264 Pac. 542. One may act *animo testandi* without knowing that he is making a will, if he manifests clear intent to dispose of his property after his decease and observes

statutory formalities. *Merril* v. *Boal,* 47 R. I. 274, 132 Atl. 721, 45 A. L. R. 830; *In re Bybee's Estate,* 179 Ia. 1089, 160 N. W. 900; *Earle* v. *Arnold,* 119 Va. 500, 89 S. E. 900; *Rice* v. *Freeland, supra; Milan* v. *Stanley,* 33 Ky. L. R. 783, 111 S. W. 296; *Arendt* v. *Arendt,* 80 Ark. 204, 96 S. W. 982; *Cowley* v. *Knapp,* 42 N. J. L. 297, *Buffington* v. *Thomas,* 84 Miss. 157, 36 So. 1039; *Byers* v. *Hoppe,* 61 Md. 206, 48 Am. Rep. 89; *Alston* v. *Davis,* 118 N. C. 202, 24 S. E. 15; *In re Estate of Kimmel,* 123 Atl. 405. The case of *Rice* v. *Freeland, supra,* was substantially the same as to facts as the case under discussion. In that case letters written in France in direct contemplation of the fact that the writer might not survive the war, containing a definite expression of the disposition, which in that event he desired to have made of whatever property he might leave behind, were construed as a valid will, notwithstanding that the testator in all probability did not think he was writing a will.

In the case of *Thompson* v. *Randall,* 150 S. E. 249 (Va. 1929), an attempt was made to probate two letters as a will, both letters having been written by the alleged testator to his daughter and granddaughter, and each letter containing language to the effect that they were to have his house and lot when he died. One letter was written eight years before his death and the other, two years before his death. The Virginia court refused to probate these two letters as a will, saying, "that the letters which the plaintiffs seek to have probated do not show the testamentary intention with sufficient clearness, at the time the letters were written, to dispose of the property by the letters themselves." It would seem that the nearer to the impending death such letters are written the better chance they have of surviving as valid wills, when offered for probate. The result of *Langfitt* v. *Langfitt, supra,* is justifiable under our statute, ch. 77, §3, and the case follows what seems to be a decided weight of authority.

—Paul E. Bottome.

Automobile Accident Insurance—Judicial Definition of Term "Accident".—A deputy sheriff was escorting a prisoner to jail in an open car, and was driving along at a speed of from twenty-five to thirty-five miles an hour, when the latter jumped out. The deputy, abandoning the wheel, jumped out after him to prevent his escape and was thrown to the ground, receiving fatal injuries. The Supreme Court of Appeals of West Virginia in a recent case denied the beneficiary a recovery under his accident insurance policy, holding that he was not "accidently thrown"