

When a Will is Made



Occasionally you hear of men who, heading the uncertainties of existence, distribute their property in the life time, instead of directing the manner in which it shall be disposed after they have disappeared forever from the earthly scene. Such a case occurred a few days ago in Chicago when a man of means simply placed an estate, valued at \$2,000,000 in the care of a trust company for the benefit of his four children. Thus with one stroke he satisfied himself that his property would reach the hands of those for whom it was intended, and no doubt this was a gratifying achievement. For, after all, the will that every sensible man is supposed to make does not always fulfill its object and thus the world sees a contest of claimants which is often less desirable to view than a church quarrel.

The will, as an instrument of the law, owes its development to the Romans. India did not know of it before the conquest, and it was but a rudimentary affair in Mosaic law and in ancient Athens. The early Roman will was effectual during the lifetime of the person who made it, and it was irrevocable, its object being to secure the perpetuation of the family. Thus the hereditas was vested in a person who could be relied upon to carry on the family name and traditions. Often such wills were made on the eve of battle, and they were published in accordance with the law.

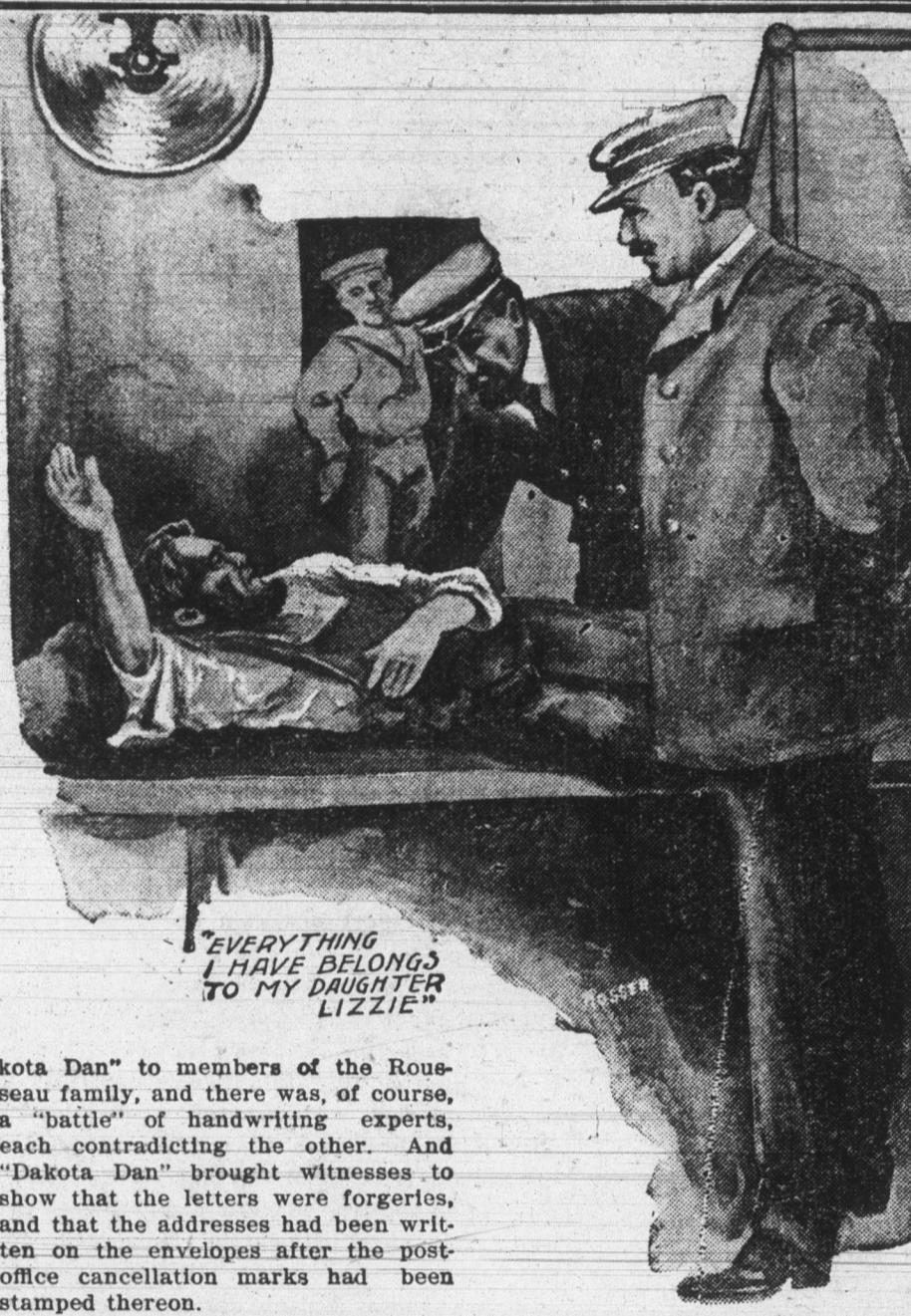
When Constantine the Great caused Christianity to be recognized by the state, this act had its effect upon will-making, inasmuch as the duty of giving bequests to the church was encouraged. Monks and heretics, however, were not allowed to make wills or to take bequests. Then again, wills were deposited in churches; indeed, in England the church exercised jurisdiction in testamentary matters for centuries. Up to 1858 the probate and custody of wills lay with the English ecclesiastical courts, but the carelessness to which the documents were exposed at the hands of lazy and incompetent officials led to vigorous criticism of the system by Charles Dickens and other writers, and, as a consequence, the church lost its ancient privilege.

In modern days, by reason of the prosaic language of legal draftsmen, wills have lost much of their interest as purely human documents; but if one were to set himself to the task of writing the social history of a great city like New York, from its beginning, he could do no better than delve into the records of the surrogates' courts. All wills are probated there; children are adopted under the direction of the surrogates; they appoint guardians and discharge them again, when minors reach the age of legal discretion; they settle and distribute the estates of the poor and rich. Thus there is to be found in the probate records the details of social life by generations, and it is possible to trace the evolution of families, old and new, and their rise and fall on the tide of fortune.

The skeleton in the closet is often revealed by legal procedure, and, though it cannot be avoided, the family quarrel is bound to be aired when will contests are tried before a surrogate. Many elements enter into these contests—dissatisfied heirs, forgery, undue influence on the part of persons who have been associated with the property owner; the existence of more than one will; vague and indefinite language in a man's last testament, for "all things which are so written in a will as to be unintelligible are to be on that account regarded as though they were not written."

Russell Sage, who disposed of a vast estate without indulging in superfluous words, adopted a simple method to prevent litigation over his property. A clause of his will read: "Should any of the beneficiaries under this, my will, other than my said wife, object to the probate thereof, or in any wise directly or indirectly contest or aid in contesting the same or any provision thereof, or the distribution of my estate thereunder, then and in that event I annul any bequest herein made to such beneficiary, and it is my will that such beneficiary shall be absolutely barred and cut off from any share in my estate." There was no contest, although it was said that the beneficiaries grumbled a little.

One of the most dramatic will cases in the history of Massachusetts was tried a few weeks ago in the probate court of East Cambridge, where two claimants appeared to fight for a share of Senator Daniel Russell's estate, valued at \$750,000. By his will the elder son, William C. Russell, was directed to share the estate equally with his brother, Daniel Blake, who had disappeared in 1885, after a quarrel with his father. The first claimant, who came from Medford, N. D., and was popularly known as "Dakota Dan," did not meet with the approval of William C. Russell and his cousin, Ferdinand B. Almy, who asserted that the man's real name was James D. Rousseau or Russaw, and that he had familiarized himself with the history of the Russell family before putting his claim forward. Photographs of Rousseau were introduced in evidence; there were exhibits of letters alleged to have been written by "Da-



kota Dan" to members of the Rousseau family, and there was, of course, a "battle" of handwriting experts, each contradicting the other. And "Dakota Dan" brought witnesses to show that the letters were forgeries, and that the addresses had been written on the envelopes after the post-office cancellation marks had been stamped thereon.

To these letters were added an application form for membership in the Woodmen of the World. This contained the family history of Rousseau and said that he had three brothers and two sisters living and that another brother had been killed in a railroad accident. All of which was apparently true. "Dakota Dan's" experts asserted that the answer had not been written by him, but had been filled in by others at a later period, his handwriting having been imitated. Thereupon the Russell lawyers showed that the paper had remained in the archives of the Woodmen of the World until the court ordered its production.

The trial dragged on for several months and as it was nearing the end a second Daniel Blake Russell, who was to be called "Fresno Dan," came out from his fruit ranch in Fresno, Cal. Out there he was known as Henry Johnson, but in Melrose, the home of the Russells, he was recognized as the missing "Dan" by the responsible citizens. He seemed to be well informed as to the details of Daniel's early life in Melrose, but "Dakota Dan" declared that his rival had been brought on to cheat him out of his rights. Judge Lawton, before whom the tedious case was tried, finally decided in favor of "Fresno Dan" and that night the Judge was burned in effigy by an angry crowd of "Dakota Dan's" supporters. If the case is carried to a higher court little may be left of the estate, for the litigation has already cost a huge sum.

In the many efforts of Albert T. Patrick to free himself from a life sentence for the murder of William Marsh Rice, an aged recluse, people have almost forgotten that Patrick was first charged with forgery in connection with the old man's will. Patrick, a lawyer, had learned of Marsh's wealth and his weak state of mind through a suit in a Texas court, and he gained the confidence of Charles F. Jones, valet to the recluse, Jones becoming the lawyer's tool.

Rice, in fact, never knew Patrick, although the latter posed as the millionaire's attorney, always working through Jones, who confessed that he killed his master at the lawyer's instigation. Motive for the murder was held to be desire on the part of Patrick to obtain control of Rice's fortune by means of a forged will, and the murder was accomplished by Jones at Patrick's command, chloroform being the death medium. Jones was allowed to go free, while Patrick was sentenced to death. This was in 1902. Governor Higgins commuted the sentence to life imprisonment, and since that time Patrick has made 23 unsuccessful attempts to regain his freedom.

Photographic records of testimony in a will case were taken in Boston for use at another trial, if permitted by the court. This unusual procedure was the result of the illness of one of the principal witnesses, who was obliged to undergo a surgical operation immediately after giving evidence. Should it be necessary to introduce these records, the attitude of the court toward them will be of interest to the legal profession generally, for it might serve to create a precedent.

Nuncupative or oral wills, the right to make which lies only with sailors at sea or soldiers in the field, are somewhat rare, but one was admitted to probate in Kings county last December by Surrogate Kettraham. This will was made by George O'Connor, chief engineer of the steamship Dorothy, while the vessel was in mid-ocean. All that he said was: "Everything that I have belongs to my daughter, Lizzie," and the will was proved with the aid of two witnesses, the captain and first officer of the Dorothy.

"By not?" inquired Mr. Weller, looking sternly round, with the poker in his hand.

"By not?" exclaimed Sam. "Cus it must be proved, and probated, and sworn to, and all manner of formalities."

EFFECT OF GLASSES

WAS DIFFERENT THAN EXPECTED ON MRS. SILVER.

Spectacles Brought Out Figures in the Wallpaper and Design in the Tablecloth That She Had Not Seen Before.

When Mrs. Silver stopped one day to think about herself, she found that she was past the age at which most people begin to wear glasses. Her husband had put them on long before. It was a wonder she had not realized sooner how much she needed them.

A few evenings later she beamed upon her family at dinner time through a brand-new pair of spectacles. "Now this is like living!" she exclaimed. "To think that there's a beautiful pattern in the parlor wallpaper and I never knew it till today! Do you hear, father? That paper's been on the wall three years—and I thought 'twas a plain tan color. And for pity's sake, what's this? A new table cloth?"

Mother, you're joking!" the grown-up daughter protested. "You know when I got this tablecloth, and all about it?"

"I never saw that rosebud design till this minute," Mrs. Silver declared. "It's lovely, too. Why, I feel if I had a lot of splendid new things."

Just then something called her from the table, and while she was gone her husband said, musingly:

"Your mother's just the opposite from my aunt Cornelia when she first put on glasses. Uncle Robin brought 'em home from town one day—he thought maybe she was beginning to need them—and the first thing she did after she got 'em on was to take one of the children by the shoulders and say, 'Mercy! I didn't know you had freckles!'"

"But that's just like mother—not the opposite," small Tim demurred.

"Not the difference is that my Aunt Cornelia discovered freckles, and dust in corners, and grease spots, and everything bad, until life wasn't worth living for the rest of the family."

"I never thought of that," said the grown-up daughter. "Mother must be discovering unpleasant things, too. She hasn't spoken of one, but if her eyesight has been affected ever since we put that paper on the parlor, just think—"

"Just think!" Her father took up the words playfully. "Think of the lines and changes in my face alone that she hasn't known were there! But you won't catch her speaking of them. That isn't your mother's way."

"Let's make her tell if father's face does look any different to her," someone proposed, just as Mrs. Silver, quite unconscious that she was the subject of discussion, came back to the table.

Everybody was looking at her as she sat down and met her husband's eyes. Suddenly she leaned a little forward and studied his face intently, with an expression that was tender, loving, sorry—all in one.

"Caught!" said one of the boys under his breath. "What have you just found out about father's face, mommie? Tell us."

"H'm! What's that?" Mrs. Silver temporized, looking actually guilty.

"Go ahead and tell 'em mother," Mr. Silver coaxed. "I sha'n't mind."

"Mind!" There was a volume in the one word as she spoke it. Then she took off the wonderful glasses and wiped a little dew from them before she answered, glancing round the circle. "You don't know, children, what it means to me to see your father's smile again, across the table as plain as ever. I was thinking, when I looked at him, how many of 'em I'd missed."—*Youth's Companion*.

Thieving Scotch Lassies.

Thieving for fun is rather an unusual pastime for young women. In Edinburgh two smart young ladies pleaded guilty the other day to 58 different charges of theft. The articles were taken from different shops in Edinburgh and Glasgow. The accused had visited shops and asked to see goods ostensibly for the purpose of purchasing them, but while the shop assistant's attention was diverted the thefts had been committed. No attempt had been made to dispose of the goods. It was stated on behalf of the prisoners that the thefts had been committed more from a spirit of mischief than criminal intent. The magistrate described the case as an extraordinary one and sentenced each of the accused to two months' imprisonment.

Neglecting the Important.

The man is curious to wash, dress and perfume his body, but careless of his soul. The one shall have many hours, the other not so many minutes. This shall have three or four new suits in a year, but that must wear its old clothes still. If he be to receive a great man, how nice and anxious is he that all strings be in order? And with what respect and address does he approach and make his court? But to God, how dry and formal and constrained is his devotion! In his prayers he says, they will be done. But means his own: At least acts so.—William Penn.

The Language.

"This is a pretty state of affairs, isn't it?"

"Yes, it is a very ugly matter, but somebody will have to pay handsomely for it."

The American Home

WILLIAM A. RADFORD Editor

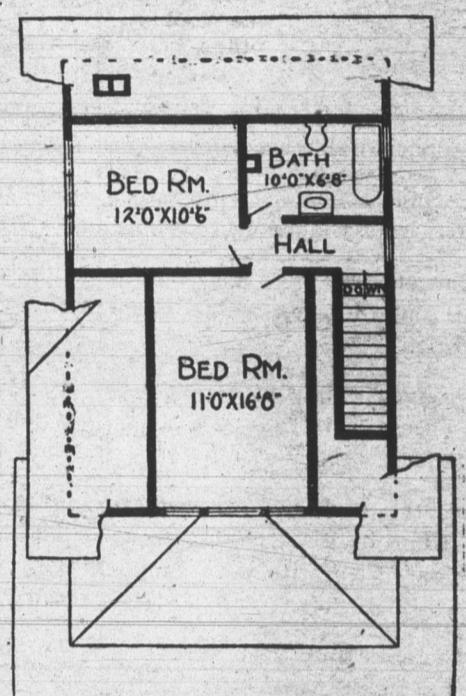
Mr. William A. Radford will answer questions and give advice FREE OF COST on all subjects pertaining to the subject of building for the readers of this paper. On account of his wide experience as Editor, Author and Manufacturer, he is, without doubt, the highest authority on all these subjects. Address all inquiries to William A. Radford, No. 194 Fifth Ave., Chicago, Ill., and only enclose two-cent stamp for reply.

To any one alive to the developments in the building world there is nothing more striking than the steady growth of the quality idea during the past ten or fifteen years. Where formerly home builders were satisfied with makeshift construction and with the cheap though gaudy effects in building there has come to be a general demand for the best grades of material and the most thorough workmanship united to form substantial, permanent structures.

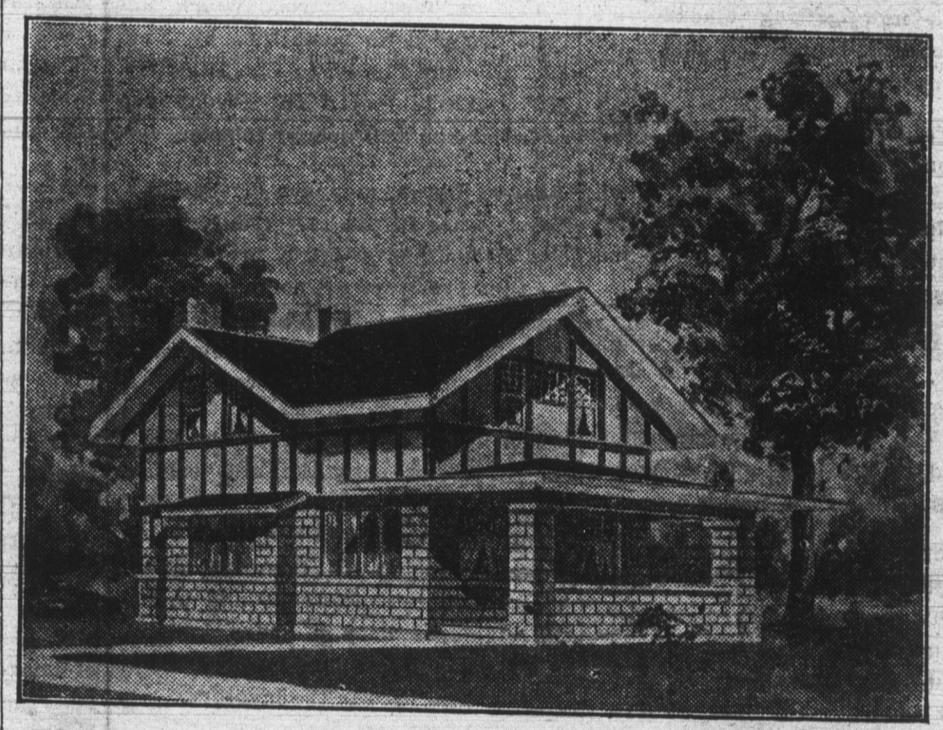
Take the medium-sized dwelling house, for instance, such as the average family requires; a generation ago \$2,000 would probably have been the top figure considered proper for its cost. Today no one would think of spending less than twice that amount if he would build with an eye to permanent use or future sale.

The increased cost of labor and materials has had something to do with this, it is true, but not so much as is sometimes thought. No; it is the added comforts and the higher standard of quality all the way through that have brought this about. Modern plumbing and fixtures, modern heating systems, modern lighting, cemented basements, permanent fireproof roofing, hard wood floors; all these, which are the luxuries of yesterday but the necessities of today, mark the advancing standards of building; and the general building public now realize what the carpenters and building contractors have known all along—

The accompanying design shows a very attractive, well-built house, planned on thoroughly modern lines and constructed in such a way as to be as nearly fire resisting as any house could well be. Concrete blocks are used for the foundation and first story, while the second story is of cement plaster on metal lath. The roof is of dark green slate. It can



be easily seen that a house of these materials would be in no danger from adjacent buildings if they should be on fire. It is interesting to note in this connection that statistics show three-fourths of our enormous fire loss in this country to be due to fire spreading from one building to another. In the numerous tests made in the U. S. government testing laboratories concrete has been proved to be



that quality building is the only kind which pays.

As a natural companion to this idea of quality building there has developed also an increasing demand for permanency and enduring qualities in building work. The demand for fireproof construction has become more and more insistent every year until now houses which may be considered fireproof, at least as far as the outside fire hazard is concerned, are very common. The building of a home almost always requires saving and sacrifice on the part of all in the family, and it is quite natural that they should

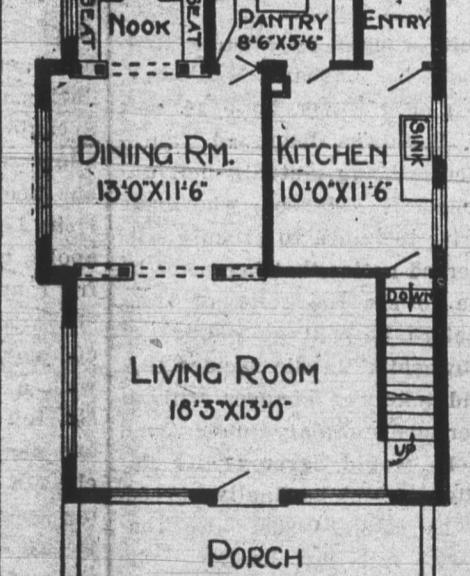
absolutely fire resisting, and not only in a laboratory but also in actual work concrete has demonstrated its fireproofing qualities in the most convincing manner.

This house is 24 feet 8 inches in width and 32 feet 8 inches in length.

It contains three large rooms, alcove and pantry on the first floor and two bedrooms and a bath upstairs.

The floor plan shows the arrangement of these rooms to be both comfortable and convenient.

The estimated cost of this house, using good quality oak flooring downstairs and edge grain yellow pine flooring upstairs and hardwood trim throughout, is \$3,000.



want to build as securely as possible so that all their labor and savings may not be wiped out in flame.

The development of Portland cement during recent years has done more to help along this fireproofing campaign than any other single factor.

At the prevailing prices of the material entering into concrete construction, viz., Portland cement, sand and gravel, substantial fireproof houses are being put up at a cost only about ten or fifteen per cent greater than for ordinary frame buildings of the same design and size.

American Children.

There are two classes of rich American children. One is never heard of. To this belong those children who are being brought up on a sensible, healthy, simple life plan, being trained by English governesses and tutors, who come from a country where the training of children is a very fine art. These youngsters will grow into strong, wholesome men and women with healthy bodies and alert minds, eager to enjoy those pleasures and interests which will be theirs when they grow old enough to appreciate them. The children of the other class are always in evidence. They sit through long performances of "Die Gostterdamerung" and "Elektra," read grown-up books, and mimic the world of their elders to the detriment of their minds, manners, and bodies. What will the world have to offer these young people when they grow up? Every luxury which their elders have enjoyed they are tasting of in greater or less degree, and most of the excitement as well. They have got so far away from the simple tastes of childhood that they can no longer understand its pleasures, while all the edge which their elders look forward to.

Breaking it Gently.

Simpkins always was soft-hearted. This is what he wrote:

"Dear Mrs. Jones: Your husband cannot come home today, because his bathing suit was washed away.

"P. S.—Poor Jones was inside the suit."—Modern Society.