1968

Wills (1959-1967)

Dudley Warner Woodbridge
William & Mary Law School

Wills

3. On October 15, 1957 Arthur Ashton, a widower of the City of Richmond, duly executed his last will which, so far as is material, provided:

> "(3) I bequeath to Carle Bond, my lifelong friend and associate, all securities found at the time of my death in my lock box in the Savings and Commerical Bank of Richmond, which securities Carle Bond shall have in his own individual right with full power to control them and to enjoy their benefits in such manner as he may elect, and with further power to sell, give or bequeath the property to any person he may desire; provided, however, that should any of such securities be not disposed of by Carle Bond, those so remaining at his death shall pass absolutely to my son and only child John Ashton.
>
> "(4) All the rest and residue of my property I devise and bequeath to my son John Ashton."

Carle Bond died a widower and intestate on April 21, 1959. Arthur Ashton died on May 28,1959, at which time securities having a value of $76,000 were lodged in his lock box. A controversy has arisen between John Ashton and Thomas Bond, the only child of Carle, each claiming ownership of the securities. Which should prevail? (WILLS--PROPERTY) Thomas Bond should prevail. The gift of the contents of a lock box describes the gift and is not void because the contents may be changed from time to time. Under the principle laid down in May V. Joynes Carle Bond was given a fee simple absolute since it was not expressly limited to him for his life and since he could defeat the gift over at his whim. The gift over of what may remain is said to be void for repugnancy and uncertainty. The legacy to Carle Bond does not fail in this case because he predeceased the testator, but is saved by our anti-lapse statute(V#64-64)which provides that the issue of devisees or legatees take in their place unless the will itself provides otherwise.

4. On August 31,1958 Albert Harris, a young man then 19 years of age, executed a will containing the following provisions:

> "(a) I leave all my personal property to my brother Thomas, such property to be his absolutely.
>
> "(B) I leave in fee simple to my brother Robert our family farm 'Bluestone' situated in Patrick County, which farm was devised to me by my father."

On Jan.4,1959 Albert Harris married Susie Woods who died childless on Feb.10,1959. On June 15, 1959 Albert Harris died, and the executor named in his will consults you seeking your advice as to the proper beneficiaries of the personal property of Albert Harris and of the farm "Bluestone." What should you advise?
(WILLS) Thomas is entitled to all the personal property as a minor over eighteen may make a valid will of personalty.

Albert has died intestate and without issue and under 21 seized of realty devised to him by his father since one must be of legal age to devise realty. The realty thus goes to Albert's heirs on the side of his father who, in this case, appear to be Thomas and Robert and any other brothers and sisters or the descendants of those brothers and sisters who may be deceased.

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3. Basil and Mollie Hubbard had no children of their marriage but they did have two nephews, Frankie and Johnnie, of whom they were very fond. Desiring to leave their entire estate to their nephews, they each signed the following paper:

"March 12, 1949

"This is our last will and testament.

"One. In consideration of Mollie's agreement to leave her farm, Birchbark, to our nephew, Johnnie, I herewith give and devise my farm, Seven Pines, to our nephew, Frankie; and I also give all of my personal estate to Frankie.

"Two. In consideration of Basil's agreement to leave his farm, Seven Pines, to our nephew, Frankie, I give and devise my farm, Birchbark, to our nephew, Johnnie; and I also give all of my personl property to Johnnie.

"We appoint our good friend, Tobias Huxter, our Executor.

"Basil Hubbard
"Mollie Hubbard"

The paper contained the usual attestation clause and was properly signed by two witnesses. On Jan.1,1951, Basil died. Mollie, unaware of the usual procedure of procuring the probate of a will, kept the paper in her possession with instructions to Tobias Huxter to take the paper to the Clerk's Office upon her death. In May of 1954, Johnnie was indicted and convicted of a felony and sent to the penitentiary for a term of two years. Mollie, thereupon, duly executed the following paper:

"This is my will.
"I leave all of my estate, real and personal, to my nephew, Frankie, to be his absolutely.
"I want Tobias Huxter to be my Executor.
"Witness my signature. "Mollie Hubbard"

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This latter instrument was entirely in the handwriting of Mollie Hubbard. Mollie died on June 10,1958. Tobias Huxter instituted an inter partes probate proceeding in the proper court and prayed the court to determine which if either of the papers should be admitted to probate as the last will of Mollie Hubbard.

Johnnie appeared and contended that the second will was ineffective as a revocation of the first will and that the latter should therefore be admitted to probate as the last will and testament of Mollie Hubbard. The court held that the second will did revoke the first will and therefore admitted the second will to probate. Thereafter, Johnnie consults you inquiring:

(1) Whether the probate court committed error in holding that the second will revoked the first will; and

(2) Whether he may successfully claim the property devised and bequeathed to him by Mollie under the first will. What would you advise?

(WILLS)(1) The probate court did not commit any error when it held that the second will revoked the prior will to the extent they were inconsistent. Mollie had the power to revoke, but not the privilege because of her contract with her husband. (2) Johnnie can successfully claim the property as a third party beneficiary of the contract made in the mutual will. The husband carried out his part of the agreement, so the wife cannot later go back on her part. See 123 Va.643.

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4. Shortly after the ddath of Peter Grosspoint, the Scrooge Savings and Trust Co. and Happy Cudlipp presented and offered for probate in an inter partes probate proceeding the following paper writing:

"September 1, 1948

"I, Peter Grosspoint, of Hicksburg, Va., make this my last will and testament, having revoked all wills made by me.

"I direct the payment of my just debts.

"I give, devise and bequeath all of my estate to Happy Cudlipp.

"I appoint Scrooge Savings and Turst Co. Executor of my estate.

"I revoke this will, the same to be null and void as of this 10th day of June, 1953.

"Witness my signature.

"Peter Grosspoint

"Signed, published and declared by Peter Grosspoint as and for his last will and testament in the presence of us who in his presence at his request, and in the presence of each other have hereunto subscribed our names as witnesses, this the 1st day of Sept.,1948.

"R.J.Pear

"W.L.Wheat"

The paper offered for probate was entirely in the handwriting of Peter Grosspoint with the exception of the signatures of R.J. Pear and W. L. Wheat. The attesting witnesses testified that Grosspoint signed the paper in their presence and at that time the language-

"I revoke this will, the same to be null and void as of this 10th day of June, 1953."

was not on the paper.

Should the paper writing be admitted to probate as the last will and testament of Peter Grosspoint?

(WILLS) No. There has been a holographic revocation of an holographic will. It was not necessary for the testator to rewrite his signature since by placing the revocatory words directly over his old signature he thereby adopted the old signature. See 175 Va.203, 7 S.E.2d 881 on p.1702 of the Wills cases in these notes.

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10. Phineas Phogbound executed the following typewritten instrument in 1922:

"April 3, 1922

"I, Phineas Phogbound, being only too aware of the transient nature of this corporeal existence, and being of sound mind and enduring spirit, do hereby make and declare this to be my last will and testament. I give, devise and bequeath all of my property, both real and personal, to my beloved spouse and comrade in arms, Philomena Phogbound.

"Phineas Phogbound"

This instrument was signed by Phineas and was duly attested by three witnesses. In 1924, Phineas and Philomena Phogbound became the parents of Flem Phogbound, their only child. As Flem Phogbound grew to maturity it became obvious to his parents that he was destined to be a failure.

On November 13, 1953, Phineas, in his own handwriting, wrote the following at the bottom of the typewritten instrument above referred to:

"Codicil to my Will of April 3, 1922.

"November 13, 1953.

"Hallelujah!

"Knowing that the end is near and knowing that my will is made in favor of my wife, Philomena Phogbound, I would like to make some provision for the needy of our town. I therefore bequeath the sum of $1,500 to the Salavation Army.

"Phineas Phogbound"

Phineas died in June, 1959. Flem consults you as to whether each or both of the papers may be admitted to probate, and what his rights, if any, are in his father's estate. What would you advise?

(WILLS) I would advise Flem that he had no rights. While he was originally a pretermitted child, the will speaks as of the date of the codicil at least when reference is made to it. It is as if the entire will had been executed in 1953. Flem is not a pretermitted child at that time as Phineas then knew only too well of his existence. See Gooch v. Gooch, 134 Va.21. Hence, both the formal will and the holographic codicil are entitled to probate.

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2. Jack Summers and Mack Winters were bachelors and had met while serving in World War I. After their discharge, each bought a farm in Madison County, and for many years they cultivated the two farms, each assisting the other as time permitted. Shortly before the death of Jack, they prepared on a typewriter a paper in the following words:

"This agreement, made this 20th day of October, 1959, between Jack Summers and Mack Winters,

WITNESSETH: Whereas we desire to make arrangements about the future, we agree as follows:

1. In the event Jack Summers should die before Mack Winters, all property of Jack to be the sole property of Mack Winters.

2. In the event Mack Winters dies before Jack Summers, any property of Mack is to be the sole property of Jack Summers."

This paper was signed by both parties and acknowledged before a notary public, and it was duly admitted to record in the Clerk's Office of the Circuit Court of Madison County.

Upon the death of Jack Summers, Mack offered the paper writing for probate, but the heirs-at-law of Jack insisted that it did not constitute a will. Mack contended in the alternative that the paper constituted an enforceable agreement between himself and Jack, entitling Mack to receive Jack's entire estate.

Assuming the proper legal proceedings, should the court decree the writing to be either (a) a will, or (b) an enforceable agreement?

(WILLS) No. While the parties intended a mutual will, the instrument does not comply with the statutes in that there are not two witnesses. Since they intended a will there is no contract. No property rights were meant to pass at the time this ambulatory instrument was drawn. In 187 Va.730 at p.744 the opinion reads, "We find no such hybrid instrument, with its dual personality, self-executing and shifting gears, chameleon characteristics and Phoenix-like qualities as yet known to the law. Due to its conflicting features, inherent infirmity, and external insufficiency, it died aborning."

3. T60 Tobias Smitt, an elderly widower, executed in the office of his attorney his last will and testament, consisting of one typewritten page, properly witnessed, the pertinent provisions of which are as follows:

"FIRST: I bequeath to my faithful servant, Laura Mays, $100.00 in cash.

"SECOND: The rest and residue of my property I give, devise and bequeath to my beloved and only child, Tobias Smitt, Jr."

Tobias Smitt later learned that Tobias,Jr., had secretly married and was the father of a son, Tobias,III. In a fit of anger at not having been consulted about the marriage, Tobias instructed Laura Mays to locate his will in the drawer of his desk and to destroy it. Laura Mays, confused by the blue jackets on the papers and believing that she was destroying the will, instead tore up the deed to Smitt's home, and reported to Smitt that the will had been destroyed.

Thereafter, the unexpected death of Smitt,Jr., kindled the affection of Smitt for his daughter-in-law, Mary Smitt. In going through his papers, he found the will supposed to have been destroyed, and in the presence of Laura Mays and Mary Smitt, he drew an ink line through the figure "100.00" in the bequest to Laura Mays and wrote above it "50.00". He also deleted with ink the words "my beloved and only child, Tobias Smitt,Jr.," and substituted therefor the words "Mary Smitt".

Upon the death of Smitt, in proper proceedings, the above facts were proven and the probate court was asked to decide the following issues: (a)Should the will be admitted to probate? (b)What rights has Laura Mays? (c) What rights has Mary Smitt? (d) What rights has Tobias Smitt,III? How should the court rule on each of these questions?

(WILLS)(a) Yes. Intention to destroy without destruction is not a revocation. Even i there had been destruction, it, would have been ineffective since it was not done in the testator's presence. Nor was there revocation by cancellation because under the doctrine of dependent relative revocation testator intended a cancellation only if his changes were effective. Since this was not an holographic will the changes were not effective.(b) Laura Mays is entitled to $100 for the reason given above.(c) None, because the change was not made in a formal manner as by an holographic or a duly witnessed codicil.(d) Tobias Smitt,III has all the rest of the property either by virtue of the devise to his father and the anti-lapse statute, or because of the intestate laws.(It is arguable that testator had no intention under any circumstance to leave his property to a person he knew was dead and hence that the doctrine of conditional revocation should not be applied to the Second item, which would then pass under the intestacy laws).

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7. On Jan.3,1960, Rose Gordan and William Gordan filed their Bill against Esther Gordon, in her own right and as Executrix of the estate of John Gordan, deceased,to impeach and set aside the Will of the said decedent. The Bill was in the barest skeleton form.The complainants alleged that the defendant, without any notice to them had "offered for probate" in the Clerk's Office of the Corporation Court of the City of Newport News, a paper writing purporting to be the Last Will and Testament of John Gordan, their late brother, bearing date of Nov.12,1955, and admitted to probate Nov.16,1955; that the paper writing was not the Last Will and Testament of John Gordan and was not in the form required by law. John Gordan was an old bachelor and Rose, William and Esther were all of his brothers and sisters. They prayed that John Gordan be declared to have died intestate and the paper writing not his Last true Will and Testament.

The defendant filed a demurrer, and, in addition to the ground that the bill was not sufficient in law, assigned the further ground that the action was barred by the statute of limitations, because the will had been probated for more than four years prior to the institution of the suit. No evidence was taken. Complainants' attorney, in his argument on the demurrer, contends that defendant cannot take advantage of the statute of limitations by a demurrer to a Bill of Equity.

How should the court rule on the demurrer?

(WILLS)(PLEADING) The demurrer should be sustained. The right to contest a will in equity is a right given by statute and the time in which this right is to be exercised is also provided for in the same statute. Under such circumstances the time is of the right, and not merely of the remedy, and if complainant's pleading fails to show affirmatively that the action or suit was instituted within the time provided for by the statute, it is subject to demurrer. See 172 Va.413 or 2 S.E.2d 327 on p.512A of the Pleading Cases in these notes.

5. DLO Spinster duly executed the following three separate papers, each written in her own handwriting:

(1)
"I bequeath to my sister Jane all of my property at my death, this April 10,1958."

(2)
"My sister Mary, being a widow, I bequeath her all of my estate, this Jan.2,1960."

(3)
"I hereby revoke my will of Jan.2,1960, this July 1,1960."

Spinster died Sept.1,1960, survived by Jane, Mary and a brother, James.

What share of the estate, if any, does each receive?

(WILLS) Jane receives it all. The first two wills were each ambulatory having no legal effect until Spinster's death. In the meantime Will 2 was revoked. Hence Will 1 is the only will in existence at the time Spinster died. The revival statute has no effect as it applies only to revoked wills and will 1 was never revoked. See 200 Va.372 and 201 Va.950 on p.1722 of the Wills cases in these notes.

6. DLO Testator, unmarried, properly executed a will containing the following provisions:

"(a) I bequeath to my nephew John $10,000.

(b) I bequeath to my sister Mary $5,000. out of the amount to my credit in the First National Bank.

(c) I bequeath to my friend Tom Smith my shares of stock in General Motors Corp.

(d) All the rest of my estate, after the payment of my debts, I devise and bequeath to my brother Sam."

At Testator's death, nephew John had already died leaving surviving him his widow Jane but no children; there was only $1,000 on deposit in the First National Bank and Testator had sold his General Motors stock and reinvested the proceeds in other stocks; he also owned additional stocks and bonds, a valuable store building and had $20,000 on deposit in Merchants Bank; he owed no debts.

What are the respective rights, if any, of (1) John's widow; (2) Sister Mary; (3) Tom Smith; and (4) Brother Sam?

(WILLS) (1) John's widow receives nothing. Since she was not a lineal descendant the bequest to John lapsed, as our anti-lapse statute (V#64-64) applies only in favor of descendants. (2) Mary is entitled to $5,000 since the bequest is a demonstrative legacy payable first out of the account indicated and then from the general assets. Note that testator did not say "only out of." (3) Tom Smith has no rights as his specific legacy has been adeemed by the sale of the stock. (4) Brother Sam thus gets the whole under the residuary clause subject to Mary's right to her $5,000. See Harrison, Wills and Administration ##296 et seq.

4. JEJ On January 7,1945, Spinster executed her will, a portion of which reads as follow

"I will and bequeath all of my personal property and my farm known as 'Nubbin Ridge' to my beloved sister Pocohontas Smith for her comfort and support during her lifetime and at her death it is to go to the children of my niece, Betsy R. Fairfax and the children of my nephew, John Ross."

Spinster died in April of 1947, and at the time her will was admitted to probate no children had been born to either Betsy Fairfax or John Ross. Pocohontas Smith died in 1959. Betsy R. Fairfax died in 1960, survived by only one child. John Ross died in 1960, survived by five children. All six of these children were living at the date of Pocohontas' death.

What are the respective rights of these children under Spinster's will?

(WILLS) Each of the six children get an undivided sixth interest on the death of the life tenant. . . . This is a valid class gift composed of the children of Betsy R.Fairfax and the children of John Ross. It vested in the first of the six children born subject to opening up and letting in all other children born or conceived during the life of Pocohontas Smith. The children take per capita since there is nothing to indicate that they should not. The fact that they are all equally related to Spinster--equal in blood, equal in affection--makes the per capita presumption still stronger.

3. D61 Earl Crockett, a widower, died a resident of Charlottesville on November 10, 1961. His holographic will, which was duly probated, provided:

"I, Earl Crockett, do make this as my last will: I leave my farm known as 'Greenfield' to my brother David Crockett absolutely. I leave my son Thomas the sum of $5. All the residue of my property I leave absolutely to my son Herbert and my brother-in-law John Sweet. Signed on November 14, 1954. Earl Crockett."

John Sweet, who was unmarried and without issue, died on August 15, 1958. The residue of the estate of Earl Crockett has a value of approximately $80,000, and a controversy has arisen between Herbert and Thomas Crockett, the only children of the testator, Herbert contending that he is entitled to the entire residuary estate, and Thomas contending that he is entitled to share in that estate. How should the residuary estate be apportioned, if at all, among the two sons?

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(WILLS) Thomas and Herbert should each take half of Sweet's one half. When Sweet died without issue the gift to him lapsed. Here the lapse is in the residuum and hence it cannot fall into the residuum as the residuum cannot fall into itself. Hence Crockett has died intestate as to this one half, and Thomas gets one fourth of the residuum and Herbert three fourths. See 160 Va. 1.

4. D61 The duly executed will of Mary Smith provided, in part, as follows:

"I devise my farm Redwood, located in Hanover County, Virginia, to my daughter Sally, for life, remainder to whoever Sally may appoint by her will. Should Sally fail to exercise this power of appointment, I devise Redwood after her death to my nephew William Jones, in fee simple."

Mary Smith died on June 30, 1950. One month later, her will was admitted to probate in the Circuit Court of Hanover County. On September 10, 1952, Sally duly executed a will which contained the following provisions:

"1. I devise my house and lot known as 1840 Monument Avenue, Richmond, Virginia, to my aunt Nancy Brown.

"2. All the rest and residue of my property, real or personal, I devise and bequeath to Sheltering Arms Hospital absolutely and in fee simple."

Sally died on October 31, 1960, and her will was admitted to probate in the Chancery Court of the City of Richmond. William Jones now asks whether he is entitled to Redwood. What should you advise him?

(WILLS) I would advise him that he had no rights. By V § 64-67 which reads in part, "A devise or bequest shall extend to any real or personal estate which the testator has power to appoint as he may think proper and to which it would apply if the estate were his own property." Hence the hospital takes under the residuary clause. Note: The common law may be different. See 90 Va. 284.

3. J62 William Potter, by Clause Seventh of his will, bearing date Dec.11,1959,provided:

"I give and bequeath to my daughter, Diane, 50 shares of stock of the Cold Point Refrigeration Corporation."

At the time of his death, on April 12, 1962, Potter owned 60 shares of stock of Cold Point Refrigeration Corp., having a value of $60,000. In a suit to construe Potter's will, Diane offered in evidence a letter that she received from her father, bearing date Dec.24,1959, wherein he stated:

"I have recently prepared my will and by the Seventh Clause I have left to you my Cold Point Refrigeration Corp. stock, amounting to $60,000 in value."

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Diane further offered to prove that at the time her father wrote his will, at the time he wrote the letter, and at the time of his death, he owned 60 shares of stock in that Corporation and that at all times it had a value of $1,000 per share. The executor, by counsel, objected to the proof of the letter and to the introduction of the other evidence offered by Diane. How should the court rule?

(WILLS) The Court should rule in favor of the executor. Where there is no ambiguity in the will, either patent or latent, the will speaks for itself. Since the letter does not purport to be testamentory in nature it is not a codicil to the will. See 177 Va.509.

See 199 Va.767 of the Wills cases in these Notes.

4. 562 Jonathan Timbrook, by the terms of his will, in part provided:

"I give and bequeath $18,000 to my niece, Sally Swift, to be paid by my executor from the money received from the sale of my preferred stock of the Eastern and Western Transportation Company."

Jonathan Timbrook died on the 1st day of June, 1962, and it was shortly determined by the executor that the Eastern and Western Transportation Co. stock was worthless.

Sally Swift consults you inquiring whether she is entitled to be paid $18,000 from the estate of her uncle. Upon investigation you find that the residuary estate of Jonathan Timbrook anounts to $40,000. How would you advise Sally Swift?

(WILLS) I would advise Sally Swift that she is entitled to the $18,000 since she has a demonstrative rather than a specific legacy. An indication of the fund to be charged as the source of the payment of a demonstrative legacy means that such a fund is the first to be used and that if that is insufficient or even non-existent then the legacy insofar as still unpaid is treated as a general one. See 1 Harrison Wills and Administration, Sections 295 and 296(2). "A demonstrative legacy partakes of the double character of a specific legacy and a general legacy, and enjoys the advantages of both without the drawbacks of either. It is a specific legacy so far as the principles of abatement apply, and it is a general legacy so far as not being subject to ademption." Id.

10. 562 On May 10,1962, Richard Butterworth died leaving the following holograph will:

"January 2,1962

"This is my Last Will and Testament

"I am very sick and my doctor has advised me that I do not have long to live. Jacob, you are my favorite nephew, and I want you to have all of my real and personal property, and I want you to take care of your sister, May Belle,the best you can. I want you to look after me when I die as you did Barney.

"Richard Butterworth" 1

The will was duly admitted to probate and shortly thereafter May Belle called upon her brother, Jacob, to contribute to her support and maintenance, as she was in dire need. Jacob refused to give his siter help, whereupon May Belle filed a bill in equity against Jacob seeking a construction of the will and claiming that the will created an enforceable trust for her benefit and sought to charge Jacob as a trustee. Jacob demurred to the bill of complaint. How should the court rule?

(WILLS--TRUSTS) The demurrer should be sustained. There is no trust res. The words are precatory only. They create a moral charge on Jacob and not a legal charge on the property received. See 175 Va.411, 9 S.E.2d 315.

2. D62 Bart Stone, a lifelong resident of Nansemond County, Va., and a widower since 1920, died at his home on August 7,1962, in his 91st year. A search of his personal papers, which he kept in a roll-top desk in the dining room, failed to disclose a will, and his lock-box in the Bank of Chuckatuck yielded only Confederate bills. One of Bart's sons qualified as administrator of his father's estate, representing to the court that Bart had died intestate.

Susie Brown, a 63 year-old spinster, then offered for probate a yellowed unsigned carbon copy of what appeared to be a will of Bart Stone dated in 1922, and in which she was named as his sole beneficiary. In a proper proceedings to establish a lost will, the evidence established: that in 1922, Susie and Bart were courting and planned to be married; that Bart's children were opposed to the marriage because of Susie's youth; that the marriage was postponed from time to time and never entered into; that late in 1922, Bart had duly executed a will prepared by a now-deceased Suffolk attorney; that the yellowed copy was an exact carbon copy of that will;and that Bart took the will with him after its execution. 211.

Stone's four children testified that they had never seen a will among Stone's papers and that he had never mentioned a will to any of them. They admitted their opposition to Bart's proposed marriage to Susie. All the witnesses testified that Bart was hale and hearty until the date of his death.

Should the court admit the copy to probate as the last will and testament of Stone?

(WILLS) No. When a will is traced to the possession of the testator, and cannot be found there is a rebuttable presumption that he has destroyed it with intent to revoke. This presumption was not rebutted. See 192 Va.764.

3. D&Z Andrews, a wealthy but eccentric industrialist of Richmond, died in June, 1962, leaving a holographic last will and testament, which was duly probated. After making bountiful provisions for the widow and certain charities, the will further provided:

> "6. I give to my only child Jeffrey the sum of $1,000, it being my good fortune to be able to save him from the unhappiness he would experience from the ownership of great wealth. With the thought that Jeffrey might not consider this a blessing, I direct that in the event Jeffrey in any manner contests this will then this gift shall revert to my estate."

Jeffrey instituted a suit in the proper court, seeking to have the will impeached on the ground of his father's mental incapacity as of the date of the will. When the cause matured and came on for hearing, Jeffrey's only evidence to support his contention consisted of the provision of Par. 6 of the will, and the court dismissed the suit.

Jeffrey now retains you and asks whether his father's executor can be required to pay the $1,000 bequest to Jeffrey. What should your answer be?
(WILLS) Either of two answers as follows:(1) No. Jeffrey violated the "no contest" condition and hence is entitled to nothing. Such conditions are valid as tending to discourage serious family squabbles. In this case Jeffrey had no reasonable basis on which to contest the will and hence should not be allowed the $1,000. In support of this view see 198 Va.522 on p.1719 of the Wills Cases in these notes. (2)Jeffrey is entitled to the $1,000. There is no gift over to a third party. A provision for reverter to the estate is not a gift over. In the absence of such a gift the "no contest" condition is regarded as merely in terrorem(i.e. merely to frighten) and inoperative. This view is supported by a dictum in Fifield v. Van Wyck, 94 Va.557, 563. In 198 Va.522(supra)the Court expressly refused to consider whether this dictum is law in Virginia since there was a gift over in the 198 Va.522 case.

9. D&Z In his last will and testament, properly executed and probated, Vick Thompson provided for certain burial arrangements, for the payment of his debts, and for the appointment of his executor. The other pertinent provisions of his will are as follows:

> "3. I give my daughter Vera Thompson $1,000.
> "4. My farm 'Greenbelt' in Gloucester, Va., I give to my friend, William Speller.
> "5. I give my automobile, savings accounts, and my books and records to Leo Durham.
> "6. My house and lot at 3rd and Elm Streets, West Point,Va., is to be sold, and the proceeds paid into my estate.
> "7. Any other property is given to my brother, Herby Thompson."

Vick Thompson died a widower but survived by his daughter, Vera, and also by William Speller, Leo Durham and his brother, Herby Thompson. Sale by the executor of the property specified in Par.6 brought net proceeds of $10,000. In a proper proceeding for that purpose, Vera Thompson seeks to establish her entitlement to the proceeds of the West Point property as her father's sole heir-at-law. Herby Thompson contends in the suit that those proceeds pass to him under the provision of Par. 7. Vera contends (a) that Par. 7 does not constitute a residuary clause and (b) that even if Par. 7 is a residuary clause, nevertheless, the meaning of Par. 6 is that the proceeds of the sale should pass to Thompson's heirs-at-law.

How should the court rule on Vera's contentions(a) and (b)?
(WILLS) Vera's contentions are both invalid. #7 is a residuary clause since it disposes of any other property. In case of doubt the law will construe a will in such a way as to avoid a partial intestacy. The estate is not a person, and a direction to pay "into my estate" is not a direction to pay the heir. An express gift of $1,000 to Vera negatives the idea that she was meant to receive anything more. See 195 Va.214 on p.1716 of the Wills Cases in these Notes.

10. Jonas Hobson left a valid will at his death which provided in part as follows:

"TENTH: I give the sum of $10,000 to State Bank of Richmond, Va., in trust, nevertheless, and the trustee shall invest this fund, collect the income therefrom, and use the net income to provide annual prizes on Thomas Jefferson's birthday for the ten students of Thomas Jefferson High School of Richmond making the highest grades in the study of history."

Hobson' heirs and distributees instituted a suit to contest the validity of the provisions of section TENTH, alleging in their bill that those provisions were void because they violated the rule against perpetuities. The defendant demurred.

How should the court rule on the demurrer?

(WILLS) Demurrer sustained. A gift to trustees for an educational purpose is a charitable trust and is exempt in this case from the requirements of the rule. Minor on Real Property(2d Ed.) #825.

6. Adam Brown, a resident of Roanoke, had his lawyer draft a will which he took home to consider. Several days later, he decided to execute the typed paper and pursuant to that determination he signed it. He then took the document to the local bank, called in his friend, James Carson, and the Cashier of the bank and said to them: "This is my will which I have signed and I want both of you witness it, but neither of you must read any of it." Accordingly, they then signed the paper as witnesses, all three being present when this was done, and Brown delivered it to the Cashier for safekeeping. After Brown's death, the paper was offered for probate. It contained no attestation clause. The will nominated Carson as Executor.

Brown's heirs at law opposed the probate of the will on the following grounds:

(1) The will was not signed by Brown in the presence of the witnesses.
(2) The witnesses had not read the will.
(3) The named Executor was incompetent as a witness.
(4) The will contained no attestation clause.

Which, if any, of these grounds for denying probate are good?

(WILLS) None of these grounds are good.(1) Brown acknowledged his signature in the presence of both witnesses.(2) A will is a private matter and there is no requirement that witnesses must read it.(3) The executor is a competent witness by V#64-54. (4) No formal clause is required as long as the witnesses intend to sign as witnesses. Attestation is a mental matter and the signing is a physical matter evidencing the mental intent.

7. John Smith, using his own typewriter, wrote the following document:

"I, John Smith, do hereby make and publish this, my last will and testament. I give all of my property to my brother, George; I regret that I can leave nothing to my only child Henry.

"Given under my hand this 13th day of January, 1962.

"Subscribed by the Testator and by us in his presence and in the presence of each other on the above-mentioned date."

This was followed by the personal signatures: "John Smith," "William Brown," "Frank Green".

John Smith died, leaving his adult son Henry from whom he was estranged. The son consults you as to his rights, if any, to his father's estate. How ought you to advise him?

(WILLS) I would advise him that he had no rights. John Smith has signed the will in such a manner as to make it manifest he intended "John Smith" to be his signature. The will states that it is given under his hand and that it was subscribed by the testator.

8. T63 Byron Evans wrote a valid will in 1955 which contained the following provision:

"I give and bequeath my ten shares of common stock in the Broadway Bank to my Trustee for the benefit of my wife Emma, for her life. At her death, I give and bequeath five shares of said stock to my friend Scrooge, and the remainder to my children."

At the time Evans wrote his will he possessed only 10 shares of common stock in the Broadway Bank. However, in 1961 the Broadway Bank merged with the Farmers Bank of Timberville. The bank resulting from the merged banks was thereafter known as the Timberville Bank. That Bank delivered to each former stockholder of the Broadway Bank 2 shares of stock in the Timberville Bank for each 1 share of stock of the Broadway Bank. At his death in 1962, Byron Evans was the owner of 20 shares of stock in the Timberville Bank.

(1) Upon Byron Evans' death what interest in this stock, if any, did the Trust for Emma receive?

(2) Upon Emma's death what interest in the Timberville Bank stock, if any, did Scrooge receive?

(WILLS) Here the 20 shares in the merged corporation took the place of the 10 shares in the Broadway Bank. There is no evidence whatever that this fact changed the testator's wishes and hence there is no ademption. It follows that the trustee for Emma is entitled to all 20 shares, and that upon Emma's death Scrooge is entitled to 10 shares and the children to 10 shares. Parol evidence is admissible to show the facts. See 19 Grattan 758 and 127 Va.341.

2. D63 Dr. Julian Hood of Alberta,Va., died in June, 1963. In his suitcase was found an envelope on which was written wholly in his own handwriting "The Last Will of Dr. Julian Hood in this envelope." Inside of the envelope was a single page holographic writing which read in its entirety as follows:

"November 1, 1960.

"I do make this my last will and direct that my estate be divided between my brothers, Jacob and Isaah, and my nephew, Esau. Jacob to be Executor."

This paper and the envelope were offered for probate.

Pending the Court's consideration of probate, Jacob Hood found another paper in Dr. Hood's desk drawer, which he offered for probate, again wholly in the handwriting of Julian Hood, and reading as follows:

"This must be carried out Jacob, without fail

"Regardless of anything contained in my will, I wish and will that Mrs. Susie Burton of Greene County receive a $500 bond without fail as she is the only one who has offered me a place to stay.

"This no good(void) unless attached to the original Will.

(signed) "Dr. Julian Hood"

Which, if any, of the papers offered should be admitted to probate?

(WILLS) Neither should be admitted. The first one is not signed in such a way as to make it manifest that it was intended as a signature of the testator to the will. Rather it merely indicates the contents of the envelope. The second one was subject to an express unsatisfied condition precedent that to be valid it must be attached to the original will. It is hence void by its own terms. Nor could the "original will" be incorporated by reference as that paper is not sufficiently described, nor is it certain that such a paper was even in existence at that time since the second paper is not dated. See 183 Va.453 and V#55-29,30,32.

3. Harry Black died testate in November of 1963, leaving a gross personal estate of $100,000. Earlier, Black's affection for his wife Beulah had waned, and in 1952, with the intention of restricting Beulah's share in the bulk of his estate, he established an irrevocable charitable trust of assets valued at $200,000, retaining only a life income for himself. One month after the execution of the trust in 1952, Harry executed his last will which left Beulah personal assets valued at $40,000. The will further recited that his three sons were in comfortable circumstances and that for that reason no provision was made for them. The remainder of his estate, amounting to $60,000 in personal property, was bequeathed to the Trustees of the charitable trust. Ralph, a fourth son, was born to Harry and Beulah in 1958. Upon learning of the provisions of the will at Harry's death, Beulah consults you and asks the following questions:

A. Can the charitable trust be set aside?

B. Can Beulah receive more of Harry's estate than the will provides?

C. Is son Ralph entitled to any portion of the estate?

How should you advise on each of the three questions?

(WILLS) A. No. A married person can give away his personal property. It is immaterial that he or she reserves a right to the income on it during the donor's life.

B. No. If she renounces the will she will received only one third of $100,000 which is less than what she was given by the will.

C. No. By V#64-70 as amended in 1960, if there are other children when a will is made, and no provision is made in the will for them, then a subsequently born child is not treated as a pretermitted child. In such a case there is no reason to prefer the last born child over the other children.

6. John Wilson, a widower, died in January of 1958, leaving surviving him as his only living descendants his son James Wilson, who was then unmarried, and Carter Brown the son of a deceased daughter. The will of John Wilson, which was duly admitted to probate, contained the following provision:

"ARTICLE IV. I devise the old Wilson farm in Hanover County, Va., to my son James for his life and thereafter to his children in fee simple; but should none of the children of James attain the age of twenty-five years, then such farm shall pass absolutely to my nephew Sam Wilson.

"ARTICLE V. I devise my residence in the City of Richmond, Va., to my grandson Carter Brown in fee simple; but should my grandson Carter fail to attain the age of twenty-five years, then my Richmond residence shall pass absolutely to my nephew Sam Wilson."

James Wilson died in May of 1964, survived by his daughter Sarah who is now four years of age. Carter Brown is now living.

What estate, if any, has Sam Wilson in each of the two properties?

(WILLS--PROPERTY) Sam Wilson has no interest in the Wilson farm as the devise violates the rule against perpetuities. At the time John Wilson died there was a possibility that one or more of James Wilson's children would fail to reach the age of 25 at a later period than lives in being and 21 years.

Sam Wilson has a valid contingent shifting executory limitation in fee in the Richmond residence. Carter Brown was a life in being when John Wilson died and if he fails to live to be 25 that fact is bound to occur, if at all, within his lifetime and 21 years. Hence this devise does not violate the rule against perpetuities.

7. Gordon Gore, a widower, died a resident of Fluvanna County leaving surviving him as his only descendants a daughter Carrie, a son Henry and a grandson William, the latter being the child of Henry. Found among the effects of Gordon Gore shortly after his death was the following paper wholly in his handwriting, which paper the Clerk of the Circuit Court of Fluvanna County admitted to probate:

"I, Gordon Gore, of Fluvanna County, Virginia, do make this to be my last will and testament. As my son Henry has recently inherited from his Uncle Herbert a sum greater than the value of my estate, I direct that he not share in my estate as one of its beneficiaries.

"Witness my hand this 15th day of April, 1964.

"/s/ Gordon Gore"

After payment of debts, taxes and expenses of administration, how should the estate of Gordon Gore be distributed?

(WILLS) It should be divided equally between Carrie and Henry. There is no will. The alleged will disposes of nothing. One cannot make a negative disposition of his property. 85 Va. 459.

4. D64 A suit was commenced in the Circuit Court of Albemarle County, Va., to construe the Fifth Clause of the will of James Woodlow. That clause of the will provided:

> "I devise to my only child, Bessie, my two farms, situate in Albermarle County, Va., for her use during her lifetime, it being my intention to give a life estate to her, and to be disposed of a t her death as she may think proper."

One year after the death of James Woodlow, his daughter, Bessie, executed and delivered a deed of conveyance for the two farms to Jonathan Pippin, the deed reciting a reservation of a life estate to Bessie in the farms. Three years after delivery of the deed to Pippin, Bessie died, intestate, survived by her two children, Baxter and Maud. Baxter and Maud instituted a s uit, to which Pippin was made a party, to obtain a construction of the Fifth Clause of Woodlow's will and to recover possession of the two farms from Pippin, claiming that their moher, Bessie, could only execute the power of appointment by will, and as she died intestate the property descended to them from their grandfather, Woodlow. How should the court rule?

(WILLS) In 115 Va.540 it was held that the Court should rule in favor of Pippin. Woodlow did not specify how the power should be exercised. If he did not so state, it may be exercised by either deed or will. Bessie received her life estate and appointee got the rest exactly as the testator wished. Note:(1) May v. Joynes is not involved here as there was no gift over by way of remainder.(2)An answer stating that Bessie had a general testamentary power exercisable by will only, would probably be entitled to much credit.

5. D64 Edward Cork died May 10, 1963, and the following paper, entirely in his own handwriting and signed by him, was found in his desk in his home:

> "Leesburg, Virginia
> "August 1, 1958
>
> "I am going away on a dangerous mission and I seriously doubt that I will return, so I will my property to may nephew, Tommy Bounce, and I express the wish that he take care of his mother as long as she lives.
>
> "Edward Cork"

In a probate proceeding in which all interested parties were convened, it was proved that Edward Cork had been assigned to a dangerous mission abroad and he had expressed to his friends and relatives that he expected to be killed and that he would not return. It was further proved that the orders assigning Edward Cork to the dangerous mission were cancelled two weeks after he wrote the paper offered for probate and that in fact he never left Leesburg before his death. Edward Cork's brother, Jack, contended that the paper could not be admitted to probate, as it was clear on its face that it was not to become effective except upon Edward's death while on his mission abroad. Should the paper be admitted to probate?

(WILLS) Yes. The introductory statement merely tells why testator deems it best to make his will at the present time. There is nothing therein to indicate that if he meets death in some other way, or does not go on the dangerous mission the will is to be regarded as revoked. See problem 98 on pp. 16 and 17 of the Text Materials on Wills in these Notes.

D64

6. Maud Muller executed two wills and left them both in the custody of the trust department of a Lynchburg bank which was named as executor in both wills. The first will was dated May 10,1950. The second will was dated October 4,1958, and in the first clause thereof it was stated that the testatrix makes "this my last Will and Testament, hereby expressly revoking any and all wills and/or codicils by me at any time heretofore made." On June 11,1959, Maud Muller went to the bank and requested the delivery to her of the 1958 will, giving as her reason that she wanted to make some changes in it, and expected to do so by a new will. The 1958 will was accordingly delivered to her and was never later found. On November 15,1964, Maud Muller died. The bank has in its possession the 1950 will and a carbon copy of the 1958 will which it is prepared to prove is an exact duplicate of the original. Which, if either, of these papers is entitled to probate?
(WILLS) The first will is entitled to probate. Both wills were ambulatory and hence ineffective until death. There is a rebuttable presumption(not rebutted in this case)that where a will is traced to the possession of the testator and cannot be found that testator destroyed it with intent to revoke it. Hence will #2 was never effective for any purpose. The revocatory words in will #2 are testamentary in character rather than presently declaratory: If there had been an holographic revocation, and nothing more, then they would have been effective at once and even a destruction of the revocation would not have revived the will. See 201 Va.950 on p.1722 of the Wills Cases in these Notes.

J65

3. Percival Parson, being sixteen years old at the time, inherited certain real estate, shares of stock, and farm machinery, all of considerable value, as the result of his being the only child upon his widowed mother's dying intestate. Three years later, Percival executed a will, wholly in his own handwriting, as follows:

> "This is my will made July 6, 1964. Because they have been so kind to me and have furnished me a home since my mother's death, I hereby give all of my property, being the farm and other property inherited from my mother, to Minnie and Bill Hoffer.
>
> "(Signed) Percival Parson"

Within this same year, Percival died. When the will was offered for probate, Uncle Malcolm, the only heir at law of Percival, by a proper proceeding, contested the probate on the ground that the will was totally invalid because Pervical lacked testamentary capacity, Malcolm claiming that he was entitled to all of Percival's estate as his only heir at law. How should the Court rule?
(WILLS) An infant over 18 years of age may dispose of his personal property by will, but he must be 21 to make a valid will of realty. Hence the Hoffers win as to the personalty and the Uncle wins as to the realty. See V#64-49 and 119 Va.500.

J65

4. David Huntley, in his own handwriting in black ink, wrote and signed the following:

> "I hereby leave at my death one-half of all my property to my sister Nancy and one-half of all my property to my friend Lowell Gunther. Dated and signed as my will this June 2,1963.
>
> "(Signed) David Huntley"

David's sister, Nancy, was his only heir at law. After the death of David, this will was offered for probate, and it was shown that there was an interlineation in blue ink after the name Lowell Gunther and before the word "Dated" which read "and my friend John Thomas, to be equally divided," so that with the interlineation, the last phrase of this sentence read "...and one-half of all of my property to my friend Lowell Gunther and my friend John Thomas, to be equally divided." This interlineation was shown to be unquestionably in the handwriting of David Huntley, and this was the only writing in blue ink on the paper. David Huntley was survived by his sister, Nancy, Lowell Gunther, and John Thomas.
State who was entitled to take what share of the estate of David Huntley?
(WILLS) The sister should receive one half and the friends one fourth each as per the interlinear change. The changed will is a valid holographic will since it is still wholly in the handwriting of Huntley. It is not necessary that he resign the will after the change as it is presumed that he has adopted the signature already there. See 161 Va. 906 and 187 Va. 463.

6. D65 David typed his own will and signed it in the presence of Acquaintance, saying: "This is my will. I want you to witness it and then I will get Friendly to do the same." Acquaintance signed as a witness and then David took the writing to his bank, called Friendly to come in the customer's room and said to him: "This is my will. I have written it, we are alone and I want you to witness it." Friendly then signed as a witness, and David placed the writing in his safety deposit box, saying to the attendant: "That's my will and I want to put it in a safe place."

After David's death, the writing was offered for probate in the proper Virginia court.

Ought the court admit it for probate on proof of the above facts?

(WILLS) The will is not entitled to probate since our statute(V#64-51)requires that the testator either sign or acknowledge his signature in the presence of two witnesses present at the same time.

7. D65 James Brown died intestate on January 2, 1965, owning a valuable farm in Virginia which had been devised to him by his paternal grandfather. He was survived by his widow, his father and two brothers. Who inherits the farm?

(INTESTATE SUCCESSION) The widow inherits the farm in step 2 since Brown had no lineal descendants. The statute about the descent of infants' land in certain cases has no application since Brown received the farm, not from one of his parents, but from a grandparent. Moreover we are not advised that Brown died while under 21 years of age.

6. J66 Henry Smith, a widower, died intestate with a net estate of $30,000. He had never had any children. His parents were dead. Smith had had no sisters. He had had only three brothers, Sam, William and James, who predeceased him. Sam was survived by two children, Mary and Elizabeth; William by one, Nancy; and James by two, Katherine and Jane. These nieces of decedent were all living at the time of his death except Jane. She had predeceased him, survived by three children, Harry, John and Kermit, who were still living when decedent died.

To whom and in what amounts should the $30,000 be paid?

(INTESTATE SUCCESSION) Under Va.Code 64-1 and 64-3, nieces take per capita and grand-nieces take per stirpes the share that their mother would have had had she survived. Thus each living niece should receive $6,000 and the three children of the deceased niece, Jane, $2,000 each.

7. J66 On January 1, 1966, Testator properly executed his typewritten will, by which he disposed of his entire estate. Thereafter he wrote in ink on the left margin of each page of his will the following: "This will be hereby revoked. 3-15-66." Three days later he died. Ought the will be admitted to probate?

(WILLS) The revocation was ineffective since not in any of the forms provided by the statute, such as subsequent will or codicil or some writing executed in the manner as required of a will, or by cutting, tearing, burning, obliterating or destroying the will or the signature thereto. Va. Code 64-59. Will not holographic and thus original signature not adopted by the marginal writing.

8. J66 In Item VII of Testator's properly executed will, he provided:

"I give $5,000 to each person whose name I shall write on a card and place in my safety deposit box in the XYZ National Ban, Richmond,Va.

After his death a card was found in said safety deposit box bearing the names of three of his nephews and containing this notation:

"This is the card I mentioned in my will."

Ought the three persons whose names appeared on the card to receive the legacies of $5,000 each?

(WILLS) No incorporation by reference because cards not in existence at time of execution of the will and doctrine of independent legal significance not applicable as cards had no such independent significance. Harrison, p.205; 187 Va. 511; 202 Va. 594.

6. D66 On January 16, 1958, Thomas Abbott executed a will which, among other provisions, recited:

> "All money on deposit to my credit in the First Bank of Farmville at the time of my death I bequeath to my nephew Albert and Ben Abbott and the children of my deceased nephew Charles Abbott."

Thomas Abbott died on October 15, 1966, and his will was duly admitted to probate in the Circuit Court of Prince Edward County. At the time of his death, Thomas Abbott had $60.000 on deposit in the First Bank of Farmville. Prior to October 15, 1966, Albert Abbott had died leaving surviving him his wife Wilma and an only son Allen Abbot; but Ben Abbott survived the testator as did Carl and Calvin Abbott, the only children of Charles . A controversy has arisen between Wilma, Allen, Ben, Carl, and Calvin over the distribution of the fund $60,000. To settle the controversy, the Executor of the will of Thomas Abbott has brought a suit for advice and guidance in the Circuit Court of Prince Edward County seeking a ruling on who is entitled to the $60,000 and in what proportions. How should the Court rule? (Wills)

Albert's son will take his father's share. Under the Virginia Antilapse statute, Virginia Code 64-64, the issue of any legatee or devisee will take his parent's share should the parent predecease the testator. All the legatees take per capita. As a general rule, effect must be given to the expressed intention of the testator. However, where, as here, nothing in the instrument shows an intention to have the property divided per stirpes, a general rule is that the beneficiaries take per capita. (156 Va. 728).

7. D66 Smith signed the following paper written entirely in his own handwriting:

> "I, J. Funston Smith, give all my property to my beloved Uncle David Galt because he has been so kind to me.
>
> (Signed)J. Funston Smith"

On November 15,1966, Smith died, unmarried and a resident of the City of Richmond. Shortly thereafter Galt duly brought suit in the Chancery Court of the City of Richmond seeking to establish this writing as the last will and testament of Smith. During the trial, and on the motion of Herman Smith, the brother and nearest blood relative of the decedent, the Court (a) refused to permit Tom Bolt, a business associate of the decedent, to testify that six months earlier the decedent had stated to him that the writing was his last will, and (b) held that the writing should not be admitted to probate. Did the Court err in either, or both, of its rulings?

(a) The court did not err. If a paper lacks on its face any indicia of animas testandi, extrinsic evidence to prove that it is a will should not be admitted (200 Va. 372).

(b) The writing in question is not a holigraphic will, because it does not exhibit testamentary intent. Smith has used words of present gift rather than testamentary disposition.

9. Molly Pratt died Dec. 18, 1966, leaving three paper writings purporting to be wills. A paper writing, bearing date January 10, 1960, entirely in the handwriting of Molly Pratt, contained the following language:

"I give and bequeath the sum of $2,000 to my friend, Mona Buck.

"I give and bequeath the sum of $3,000 to my daughter, May Stock.

"I give and bequeath to my son, Ernest, the sum of $1,000.

"I give and bequeath the residue and remainder of my estate to my daughter, Betty.

"This is my last will and testament and I revoke all other wills made by me."

This paper writing was signed by Molly Pratt.

A paper writing, bearing date April 15, 1961, entirely in the handwriting of Molly Pratt, contained the following language:

"I revoke all prior wills made by me.

"I bequeath and devise one-third of my estate to my daughter, May Stock, one-third to my son, Ernest, and one-third to my daughter, Betty.

"This is my last will and testament."

This paper writing was signed by Molly Pratt.

A paper writing, bearing date June 10, 1963, entirely in the handwriting of Molly Pratt, was in the following language:

"Last Will and Testament"

"I do now make this codicil to my last will and testament, bearing date January 10, 1960, as I desire to make an effective declaration concerning Mona Buck. I wish it to be clearly understood that under no circumstances is Mona Buck to receive anything from my estate. I have been advised that she will receive nothing. However, knowing of her vicious trouble making character I deem it advisable to make this declaration. She made false accusations against my character and has contributed to my illness and anticipated early death."

This paper writing was signed by Molly Pratt.

In an inter partes probate procceding all three papers were offered for probate. What papers, if any, should be admitted to probate?

(WILLS) The second paper only should be admitted to probate. The 1960 paper was expressly revoked by the valid 1961 will. The 1963 paper does not revive the 1960 paper by incorporation by reference. The 1963 paper does not have the necessary testamentary intent nor does it contain any disposition of property. 202 Va.764, Va.Code 64-60, 64-47.

10. Ralph Sparks died testate on the 1st day of February, 1967. His will, after providing for the payment of taxes, debts and administrative costs, made seven cash bequests in varying amounts to nephews and nieces named in his will. Paragraph 9 of the will provided:

"I give and bequeath 500 shares of General Motors Corporation stock to my Aunt, Matilda Hobbs, or if I do not own such stock at the time of my death then I give to her the cash equivalent thereof based on the value of said stock at the time of my death."

Paragraph 10 of the will provided:

"I give and bequeath 600 shares of General Electric Corporation Stock to my Aunt, Sophia Bates, or if I do not own such stock at the time of my death then I give to her the cash equivalent thereof based on the value of said stock at the time of my death."

The will concluded with a general residuary clause. At the time of his death the testator owned the stock bequeathed by Paragraphs 9 and 10 of his will, but he did not have sufficient cash on hand to satisfy all of his debts, taxes and administrative costs and pay the cash bequests in full. In a suit to construe the will the seven nieces and nephews to whom these bequests had been made, contended that the stock and the cash bequests should abate ratably to pay the debts, taxes and administrative costs, whereas the Aunts contended that there should not be an abatement of the stock bequests. How should the Court rule?

(WILLS) The Court should rule for the Aunts. The bequests were specific, not general in nature, and thus do not abate. The testator's intent to this effect is shown by his direction that if any of the stock bequeathed should be disposed of in his lifetime, the beneficiary should receive equivalent value in cash. There is no evidence intent of the testator that there should be uniformity among the relatives. 205 Va.318, 204 Va.867.

6. D67 Arthur executed his will, proper in form, on August 1, 1961, at which time he was a widower with two minor children, Ben, age 18, and Claude, age 16. By this will, he left all of his estate, consisting of personalty and realty of equal value, to the Community Hospital as he believed that his children should make their own ways as he had done. Arthur married Doris on Sept. 2, 1963, and on Sept. 10, 1964, a child, Eloise, was born of this marriage. After they were married, Arthur had indicated to Doris that he would make provision for his family, but upon his death on Dec.1,1966, the will of August 1, 1961, was the only one found was was offered for probate.

What are the rights to any portion of the real and personal estate of (1) Ben and Claude, (2) Doris, and (3) Eloise?

(WILLS) (1) Ben and Claude have no rights in the estate. Any provision for children which shows that they have not been forgotten, though they get nothing from the estate, is sufficient. See V#64-70.

(2) Doris has her dower interest in one-third of all the realty of which her husband was beneficially seized at any time during coverture. See V#64-27. She is also entitled to one-third of her husband's personalty in fee, since no provision was made for her in the will. See V#64-16.

(3) Eloise has no right in the estate. Where one makes a will, and no provision is made for his living children, a child born at a later date takes nothing.

7. D67 Bill Ballentine wrote the following will on his typewriter:

> "I have no wife or children, and though my sister Carla has allowed me to live in her home for twenty years, I have never liked her; so, I give all that I have at my death to my good friend and drinking compainion, Bud Wiser, Written by me as my will on January 2, 1962."

Ballentine immediately signed his name at the bottom of this document and on the same day took it to the office of his friend, John Falstaff, and showed it to Falstaff and his partner, Sam Shaffer, stating that he, Ballentine, had signed the same as his will and wanted them to witness it. Before Falstaff signed his name, Shaffer went outside of the office to talk with a friend, and when he returned in a few minutes, Ballentine and Falstaff showed him where Falstaff had signed under the signature of Ballentine "John Falstaff Witness." Under this, Shaffer then wrote in his own handwriting "Sam Shaffer."

Two years later, Ballentine died, with his sister Carla and friend Bud Wiser, surviving him. When the will was offered for probate, sister Carla, by proper proceedings, proved the above and contended that the will was invalid and should not be admitted to probate. How should the court rule on this contention?

(WILLS) The will is good. Though a testator must sign or acknowledge his will in the presence of at least two competent persons present at the same time, there is no requirement that the witnesses sign in the presence of each other. All that is necessary is that each witness sign in the presence of the testator. See 191 Va.842.