"I MUST MAKE MY WILL!"

BY A BARRISTER-AT-LAW.

IN the diary of a late distinguished diplomatist appears the entry, repeated almost daily for many months, "I must make my will!" Sometimes the words vary. One note, for instance, is to the effect that he was on his way to his solicitor's, but turned back because it began to rain; another that he was prevented by some other like trifling *contretemps.* But all agree in forming a striking instance of that fatal habit of procrastination which so often affects those advanced in years. It is almost needless to add that the will was never made, and that a large fortune thus passed away from those who would have enjoyed it — and to whom it had been repeatedly promised—to strangers.

The story is one of every-day occurrence. In the matter of making their wills, it is a remarkable fact that often the most business-like men and women are terribly remiss. On one excuse or another the step is put off often until it is too late altogether, or the judgment is clouded and the mind weak, while the trembling fingers can hardly hold the pen. It is necessary, therefore, to say at once that, except under very special circumstances, it is a very serious act of omission to put off making a will. Every man or woman who has anything to leave behind them, whether it be little or much, and any one to whom they desire to leave it, ought not to delay a moment in performing so solemn a duty.

It is almost a crime to leave property to be distributed according to the rules which apply to intestates' estates. In one case, which came before the writer some years ago, a man who had invested the whole of his own and his wife's fortunes in freehold land died suddenly intestate, with the result that his widow and daughters, instead of being left well-to-do, found themselves absolutely dependent upon the heir, who would only consent to make them an allowance during pleasure. The intestate of course never contemplated such a contingency; but those who put off making their wills year after year are generally absolutely ignorant as to the rules which will govern the distribution of their property in the event of their death without a will. Yet, as commonly as not, owing to a silly superstition that if they make a will they will die soon afterwards, the act is put off again and again even by men who are rational in all the other duties of life. But it is needless to discuss the causes for that fatal procrastination which finds expression in the common phrase, "I must make my will!"

There is a general belief, which it is hopeless to attempt to eradicate, that the making of a will is a terrible piece of work. It is commonly thought that a will must be couched in legal phraseology, and be full of the pedantic redundancies with which legal instruments bristle. Nothing could be further removed from the truth. So long as certain very simple conditions are fulfilled, the more plainly and simply a will is expressed the better. It is only under very special circumstances, when the testator wishes to provide for certain contingencies, which may or may not happen, or when the property is very complicated in character, that any real difficulty in expressing his intentions commonly arises.

The difficulties and disputes arising out of home-made wills are generally not so much due to the fact that they have been drawn by the testator himself, instead of by his legal adviser, but to his having made use of some legal words or expressions without understanding their force and effect. One old lady, who wished to leave her money among her nephews and nieces, on her sisters' death, in equal shares, for example, made use of the fatal word "issue," with the result that after her death, and that of her sisters, at an advanced age, her property was divided into some hundreds of shares. But if she had used the word "children" as she meant to do, her will would have been perfectly good, and her evident intention carried out. Of course some people are incapable of expressing their intentions in plain language, often saying exactly the reverse of what they mean.

Others, again, do not even take the trouble to ascertain what they have to leave. Napoleon Bonaparte, for instance, bequeathed magnificent sums by will, and otherwise disposed of them by gift, to the great disappointment of his legatees. An old lady, again, who had been faithfully attended by a companion for many years, in her will only left her the "money at my banker's," greatly to the joy of the family, which was changed to chagrin when it was found that most of her securities had, either by accident or design, been sold out, and the money paid into the bank, so that the lady in question got the bulk of the fortune.

But the commonest mistake is to omit some portion of the property from the will altogether, and so to swell the residue out of all reason. Often, for instance, after-acquired property falls into the residue, although the testator would probably have otherwise devised or bequeathed it if he had re-made his will, or had added a codicil. It is, of course, always most important that there should be a residuary legatee, but the object which the testator should keep clearly in view is to see that the great bulk of the property is included in the will, unless it is intended to leave a large residue, or the chief beneficiaries are also residuary legatees.

But although there is no reason why many a will should not be written on half a sheet of note-paper in

simple language—and, so long as it is properly witnessed and executed, be a perfectly good will—there are probably but few people who will dispense with professional assistance in one of the most important transactions of life.

The future of all those who are near and dear is not a matter to be lightly passed over, and it is in nearly every case desirable, in order to avoid mistakes, that a will should be drawn under legal advice. We have already indicated some of the points which crop up in drawing wills, and these are themselves sufficient to deter most testators from drawing their wills themselves. We must, therefore, not be understood, in the remarks we have to make, to mean that laymen are to be recommended to try the experiment. Even the home-made wills of great lawyers, like Lord Westbury, have been successfully disputed, proving the truth of the adage that "the man who is his own lawyer has a fool for his client."

All that can be said is that, if for any good and sufficient reason no legal adviser is available, it is far better that a man should make his own will rather than none, and that he will avoid many dangers if he expresses it in the ordinary language of daily life, as simply and with as few ambiguities as regards both persons and property as possible. A will should be so drawn that it is perfectly intelligible to strangers.

Whether a man makes his own will or not, it is obviously necessary that he should ascertain what he has to leave, and make up his mind to whom he desires to leave it. The necessity for emphasising this simple precaution will be appreciated when we add that its omission is the cause of a very large number of the suits which come before the Courts.

Mr. Croker tells a story of the late Lord Hertford which illustrates the truth of these observations. Lord Hertford was so constantly changing his intentions as to the disposition of his large property, that he not only drew several wills, but made a pastime of adding to them codicil after codicil of his own composition. The will which was in existence at the time of the noble lord's death literally bristled with codicils, and such was the complication resulting that Mr. Croker, who had been promised a large legacy, only received £20,000, instead of about four times that amount. It is easy to understand that he would never forget the facts of such a story.

At the same time, it must be confessed that the adding of a codicil has sometimes been the means of preventing injustice and remedying wrong. It is often an easy matter to make any alterations which may be desirable in a will in this way, and it is far better to do this at once, as soon as occasion arises, without waiting to make a new will—a step which most men are always very unwilling to take. Of course when the codicils have accumulated so as to make an unintelligible jumble of the whole instrument, there is nothing for it but to consolidate them into a new will.

It may be stated as an axiom, that in cases in which there is any "tying up" to be done, skilled advice is absolutely indispensable. The technical phraseology which is necessary before anything of the kind can be satisfactorily accomplished, is, or ought to be, unknown to a layman. If he attempts to use it, it may be taken for granted that a considerable portion of his property will pass into the pockets of a bevy of lawyers engaged in the congenial task of "construing" his meaning. We are not now concerned with the settlement of real property, and the day is, it may be expected, not far distant when estates tail will be swept away altogether by Act of Parliament. But this said, it must be confessed that the creation of life estates is constantly the only available means of disposing of property fairly, and in some form or other—which it may be left with safety to the legal fraternity to devise—they will exist for ever.

So far as these and the like knotty points are concerned, it would, however, be idle to attempt to deal with them within the limits of this article; and for the purpose of disposing of any property in this way it will probably always be necessary to act under professional advice. And whether necessary or not, most people will be content to do this, since otherwise they cannot, under any conditions, be sure that their intentions will be carried out. Any testator who may have tried his 'prentice hand at "tying up" may rest assured that, unless he forthwith takes competent advice, he will die in ignorance of the effect of his own words.

But although it would be useless to discuss here such legal intricacies as these, we may mention some of the fundamentals of the law of wills. It is not, for instance, generally known that a will can be signed by any one at the direction, and in the presence, of the testator, or acknowledged by him in the presence of two witnesses. No attestation clause is strictly necessary, but since it saves expense in proving the will, it is invariably added. It usually runs:—"Signed by ——, the within-named testator, in the presence of us, who in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses." A witness, it should be added, can take nothing under a will—an elementary rule which cannot be too widely known, since many a fortune has changed hands through ignorance of it.

A will should be wholly written, and printed forms should, in any case, only be used as a guide. It is, too, of the utmost importance that it should contain no erasures whatever, and any corrections or interlineations should be signed by the testator, and "tested" by the witnesses. And here it may be remarked, that if it be possible to read the original words of the will they remain of full force and effect, notwithstanding any attempts which may have been made to blot them out. It is only when any words have been so effectually obliterated that they cannot be read, that any change made in this rough-and-ready way stands good.

This brings us naturally to revocation: a subject of curious interest, on account of the many questions which have arisen upon it. Practically there are only three ways of revoking a will:—

(1) Marriage;

(2) Destruction in whole or in part; and

(3) Revocation by express direction in another will.

The fact that marriage voids any will then in existence is, of course, known almost universally; but we make no apology for stating it here, since the rule is sometimes forgotten. A popular lady novelist, for instance, recently wrote a story, the plot of which turned upon the effect of a will made before a marriage, which is duly recorded.

With regard, too, to the destruction of a will, it is only safe to say here that it must be complete. Dozens of wills which have been partially destroyed have been admitted to probate. There is one well-known case, in which a testator tore a will, and cut it about, in the full belief that he had thereby revoked it. For years it was lying in his cellar amidst rubbish, but upon his death it was successfully set up and maintained. The revocation was held to have not been sufficiently complete.

Without going into the nice distinctions which have been drawn between what does, and what does not, constitute revocation, we may add that it seems to be enough if the signature of the testator and those of the witnesses be torn off, since the instrument thereupon ceases to be a will at all. Broadly speaking, however, much litigation would be avoided if all old wills were destroyed. A second will does not, as seems to be very widely believed, revoke a first, unless it expressly purports to do so. It is, as many people know to their cost, quite possible for two wills to stand together, and any part of the older will which can be construed together with the later will is good.

A great change was made on the 1st of January, 1883, in the powers of married women with regard to wills. Prior to that date a married woman could only make a will of what was known as her "separate estate," or of her property generally with her husband's consent. But now married women can, in most cases, bequeath property accruing to them after that date, although they will do well to do so only under proper advice. Women married within the last six years can, of course, dispose by will of all property belonging to them at the time or acquired afterwards, in all respects as if they were unmarried.

From all this it will be seen that there is a mass of technicalities surrounding the apparently simple matter of disposing of one's property after death, although we have only touched upon the fringe of that great monument of human ingenuity, the law of wills. We have said little which will probably tempt people to try so dangerous an experiment as to make their wills at home, unless their wishes are capable of simple expression; but we repeat that this alternative is far to be preferred to an intestacy. In any case, there is no good and sufficient excuse for the continued reiteration of that hackneyed confession of dilatoriness, "I must make my will!"

HIS OWN PROPERTY.

BY THE AUTHOR OF "A MAN OF THE NAME OF JOHN," ETC. ETC.

"'For green leaf, and blossom, and fine sunny weather,
And singing, and loving, all come back together!
For green leaf and blos——' *Oh!*"

THE "Oh!" was in quite a different key, and did not seem to harmonise with the rest of the song. Ellie Fairfax was equally surprised and disgusted to find that she had an unexpected auditor—a young man, who stood in the middle of the path, with an amused smile on his face that was quickly supplanted by a decorously grave expression as he saw that he had attracted her attention.

"I beg your pardon," he said, lifting his hat, "but I have completely lost myself in these woods. Can you tell me if there is any possible way of getting out of them? I begin to think that I have been bewitched."

He was rather a good-looking young man, dark and slight, with a spruce neat air that exasperated Ellie, who was instantly conscious of having come primrosing, with the boys, in her oldest clothes.

Nevertheless, she was a young person of dignity and decision, as behoves the only, and elder, sister of a large family of boys, so, despite her perilous position amid encumbering hazel-boughs, she drew herself up, and answered severely—

"I suppose you are aware that these woods are private property, and that you are trespassing?"

"Really I am extremely sorry if I have trespassed on your property," said the stranger.

His air of extreme regret somewhat mollified Ellie, who answered in a less forbidding manner—

"Oh, it is not ours, but we have leave to come here while the owner is abroad."

Therewith she emerged slowly from the clinging bushes, and arrived on the path a little dishevelled, being more intent on preserving her primroses than her raiment. In spite of her old winter gown and her general untidiness, she was a very pretty girl as she stood in the broad green ride, with the spring sunshine