

HOW WILLS ARE PROVED.

BY A FAMILY LAWYER.



DO you remember old So-and-so, don't you? Well, he died last week, and has appointed me his executor. I suppose his will must be proved; but I am sure I don't know how to do it. Can you tell me?"

How many times I have heard this remark! and yet,

when a will is tolerably simple, the operation of obtaining Probate is by no means a difficult one.

I will endeavour to put it within your power to obtain a Grant of Probate without going to the expense of employing a solicitor. If, however, the trusts of the will are at all complicated, and difficulties are likely to arise, I would advise you to seek legal assistance, and also to consider whether you should *renounce* the executorship or not.

The duties of an executor, or trustee, are sometimes onerous and responsible, generally unremunerative, and *nearly always unthankful*. If he does his work well and conscientiously, he rarely gets thanked for it; but should he make a slip, then woe betide him!

In the event of your being appointed an executor, you should carefully consider the question of undertaking the trusts or *renouncing* them. There is not the slightest difficulty in the matter, and you are perfectly at liberty to renounce should you desire to do so.

The duties of an executor are often burdensome in this respect: viz., that he must keep accurate accounts of the estate and all dealings with it until it is finally distributed. These accounts sometimes become rather intricate and troublesome, especially where there are "infants" in the case, and the final division is postponed until their coming of age. Not unfrequently a testator leaves an annuity to some person "during the life of a favourite tom-cat," or dog, and then the executor has to wait patiently until puss has quite exhausted her nine lives. Again, the deceased (*not* the cat) may have left a number of transactions behind him, some half completed, and others only just commenced. The executor must ponder over all these things, and exercise his own discretion. Personally, the writer usually declines all invitations to become a trustee or executor, considering that he has quite enough to do to manage his own affairs.

I do not, however, say this by way of discouraging my readers; but simply to point out some difficulties which may present themselves.

Let me here say a few words concerning the direction to "pay his just debts," with which a testator very generally commences his will. There is no occasion to insert this direction, and the words are mere surplusage; for an executor is *compelled by law* to pay the testator's debts, provided the assets are sufficient.

If the assets are insufficient the debts are paid in the following order:—

- (1) Reasonable funeral expenses.
- (2) Costs of Probate, solicitor's costs, and other expenses of distributing the estate.
- (3) Crown debts, by "record" and "specialty."
- (4) Debts which have a priority by Act of Parliament, as money due from the deceased as officer of a Friendly Society or Savings Bank, or as Overseer; and also Regimental debts.
- (5) Debts of record, as debts due on judgments and recognisances (including decrees in equity and orders in bankruptcy). Until recently the "specialty" debts had to be paid by an executor before the "simple contract" debts. But now this distinction is abolished by the 32 & 33 Vict. c. 46, and therefore:
- (6) After the above debts are satisfied all others are paid *pari passu*.

Having decided to act as executor, you will probably ask, "What ought I to do *before* proving the will?" If you determine to renounce, you must do so before intermeddling in any way in the trusts; otherwise, you may render yourself liable as "executor de son tort," as it is expressed in Norman-French: that is, "executor of his own wrong." My advice is, Do as little as possible beyond what is absolutely necessary.

However, there are some things which *must* be done. For instance, the funeral must be ordered; and the effects of the deceased should be looked up, and an inventory made of them; his family must be provided with the necessaries of life, and with mourning, &c. If the deceased had horses or cattle, these must be fed.

With regard to the funeral and its cost: the general opinion would seem to be that it should cost about £10 or £15, if the assets are not sufficient to pay all debts in full. In fact the deceased should be buried suitably to the estate which he leaves.

Blackstone says, "The deceased should be buried in a manner suitable to his station." The funeral expenses are allowed in priority to all other debts; but still, if they are extravagant the executor may be made liable for wasting the estate.

"Tim Finnigan," the song tells us, "lived in Sackville Street—an Irish gentleman mighty odd;" and it is related that the obsequies of this gentleman included "a gallon of whiskey at his feet and a gallon of whiskey at his head." History, however, does not inform us whether the price of the whiskey was allowed in the funeral expenses, or whether the refreshment was the *gift* of some sympathising friends of the deceased.

We must next consider the question of *Probate Duty*, and ascertain what property is subject to duty, and what is exempt.

It may be here stated *generally* that all Government and other funds, leaseholds, and similar property,



FILLING IN WARRANT FOR PROBATE AND ADMINISTRATION STAMPS.

coming under the legal designation of "personal estate, is *liable* to Probate Duty; but that freehold and copyhold property, called "real estate," is *exempt* from Probate Duty, with a few exceptions.

The Probate Duty, and also the Court fees taken in the Probate Registry, are calculated on the *net* amount of the assets *at the time of proving the will*, as shown in the "Affidavit for Inland Revenue," and *not* according to the value at the date of the testator's death.

Formerly the duty payable on "Administrations" was heavier than that on "Probates," but now the duties are the same.

The following are the rates of duty :—

Where the estate is above £100, and not above £500, the duty is at the rate of £1 for every full sum of £50, and for any fractional part of £50 over any multiple of £50.

Where the estate is above £500, and not above £1,000, the duty is 25s. for every full sum of £50, and for any fractional part of £50 over any multiple of £50.

Where the estate is above £1,000, duty is at the rate of £3 for every full sum of £100, and for any fractional sum of £100 over any multiple of £100.

Where the personal estate of a testator dying on or after the 1st June, 1881 (without any deduction for debts or funeral expenses) does not exceed £300, the fees of court and expenses payable are only 15s.; and in case the estate exceeds £100, the further sum of 30s. for *Stamp Duty* (44 Vict. c. 12).

Having elected to act, the next thing is to estimate the approximate value of the estate. Thus, you must ascertain the amount of "Cash in the House," "Cash at the Banker's," "Furniture," &c., according to the items set out in the Affidavit for Inland Revenue, of which I will speak presently. As regards the furni-

ture, it must be valued by an appraiser, unless it is small in value, in which case the Inland Revenue officials will generally accept the executor's estimate of the *maximum* value.

If the deceased owned any shares in public companies, you should carefully go through them to see if any are exempt from Probate Duty, as these of course will be omitted from the affidavit. The debts *due at the death of the testator*, and the funeral expenses, can also be deducted.

The value of the estate having been arrived at as nearly as possible, you can now set to work to prepare the necessary papers for Probate.

Should the will contain any erasures, interlineations, or alterations, these will have to

be explained by affidavits of the witnesses who attested the execution of the will, or by any other persons who are able to testify to the same.

I would advise you in the first place to make a *verbatim* copy of the will, to keep for your own satisfaction.

You should next prepare a schedule or list of the personal estate, and also a list of debts and funeral expenses. When you have done this you can go to Somerset House, and get some forms of "Affidavit for Inland Revenue."

There are two forms of this affidavit: one called "Form A," and the other called "Form B." The first of these is used in *all* cases except when the estate, without deducting debts and funeral expenses, does not exceed £100, so that no stamp duty is payable; *or* when a stamp duty of 30s. is impressed under Sec. 33 of the 44 Vict. c. 12 (*i.e.*, when the estate exceeds £100, but does not exceed £300). The second is *only* used when the estate, without deducting debts and funeral expenses, does not exceed £100, so that no stamp duty is payable, *or* when a stamp duty of 30s. is payable.

You will naturally ask where these forms are to be had, so I will proceed to direct you. Upon passing through the archway of the principal entrance to Somerset House (in the Strand), you will come to a large quadrangle. In the centre of the right-hand side of the quadrangle you will see a door, over which are painted the words "Legacy and Succession Duty Office." Enter at this door, and on your right hand, immediately on passing in, you will see an attendant. Ask him for one or two forms of "Affidavit for Inland Revenue" [Form A or B, as the case requires]. These forms are supplied free of charge.

On your way home call in at a law stationer's, and

ask for a form of "Oath for Executors," price 1d. or 2d.

Now, having obtained the forms, you will proceed to fill them up, and sign each schedule required by the Affidavit for Inland Revenue, ready to be sworn by you.

[The marginal notes on the forms will be found of great assistance, and can be easily followed, provided you have the average *quantum* of common sense.]

The forms being duly filled up, you will sign your name in the margin of the original will, thus:—"John Noakes, Executor." This being done, take the will to the law stationer, and ask him to *engross it for Probate*. Next, having fetched away the will and engrossment, you will take all the papers to a Commissioner for Oaths, who will swear you to the "Affidavit" and the "Oath for Executors," and will charge 1s. 6d. for each oath and 1s. for marking each "exhibit."

So far, so good, and the papers are now ready for investigation by the Inland Revenue officials. The next thing to be done is to pay the Probate Duty, and for this purpose you must return to Somerset House.

You will go through the main entrance, as before, but instead of proceeding as far as the quadrangle, you will, passing through the archway, turn to your right, and through a second arch. There are several policemen at the doors near at hand, and you should ask one of them to direct you to "No. 7 Room," where the duty is paid. On arriving at this room, you will procure a "Warrant" for "Probate and Administration Stamps" (forms of which you will see hanging up near the door), and this must be filled up with the amount of the duty, and handed, with the Affidavit for Inland Revenue, to an official at the long counter on your left hand. You will then pay the amount of the

duty (either in bank-notes or *heavy* gold), and the official will either affix stamps to the affidavit or he will require you to call again the next day. You must bear in mind that since the 28th February, 1891, gold coinage other than of the present reign has not been a legal tender. When you have obtained the "Affidavit" duly stamped, retrace your steps to the quadrangle, and in the centre of the side facing the entrance you will see a door over which are the words "Principal Probate Registry." Upon entering, you will find yourself in a large room, containing a number of reading-desks and big volumes of wills. This is the room where the wills are "searched" for and read by persons who are interested, or believe themselves to be interested, in the same. However, you do not wish to *search* for a will, but to *prove* one, and you will cross the room to the door on the left side of the room, under the clock.

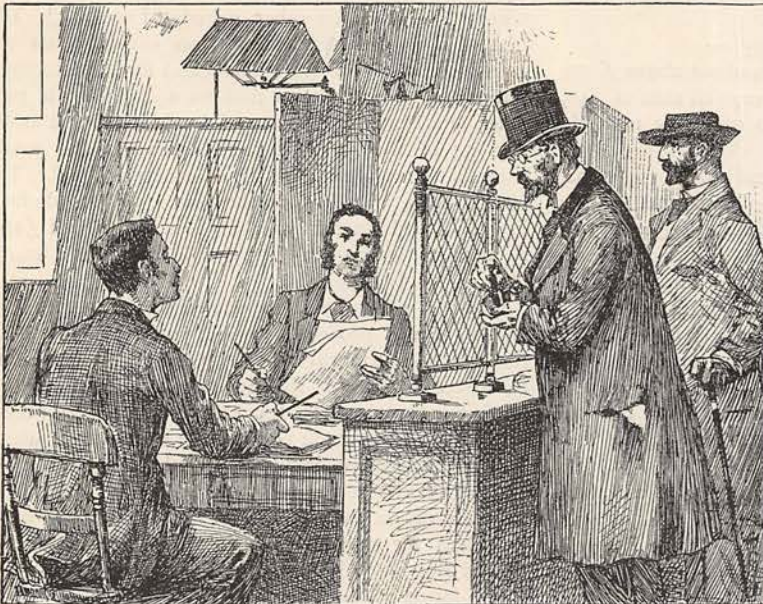
Pass through this door, and enter the first room on the left in the corridor. In this room are sold the *search tickets* for those who wish to see wills, and it is here, too, that you will pay the "Court Fees." There are two gentlemen seated in this room, and to one of them you will hand the following papers, viz. :—

- (1) The *original* Will.
- (2) The Engrossment on parchment.
- (3) The Affidavit for Inland Revenue, duly sworn and stamped, and with all schedules attached.
- (4) The Executor's Oath, duly sworn.
- (5) Any Affidavits rendered necessary by reason of alterations in the Will, or any other reason.

The papers are then examined, the fee stamps affixed, and a receipt given for them. The official then hands you back the papers, and directs you which room to take them to.

You must now continue along the corridor, and at the end you will find an iron staircase leading up-stairs. Go up to the first floor, and find the room the number of which was given to you downstairs. Having found this room, the papers will be handed to the official seated therein, who in *his* turn will examine the papers, and if they are in order will give you a voucher for them. This voucher you must carefully preserve, and after *two clear days* the Probate will be ready, *provided the authorities have not raised any "queries" on the papers.*

The two clear days having elapsed, you will again attend at the Probate Registry—being duly armed with the voucher before mentioned. You had better ask someone to direct you to the "Sealer's Room," and having found it, hand the voucher to the official and ask for the "Probate



ROOM WHERE "COURT FEES" ARE PAID.

under Seal." If it has passed muster, you will receive it there and then : but if it is not ready, the official will direct you to a certain room, and you must now make up your mind that there is a *hitch* or hitches somewhere. These hitches having been removed to the satisfaction of the officials, you will call at the "Sealer's" again in a day or so, and then you will find the Probate duly sealed.

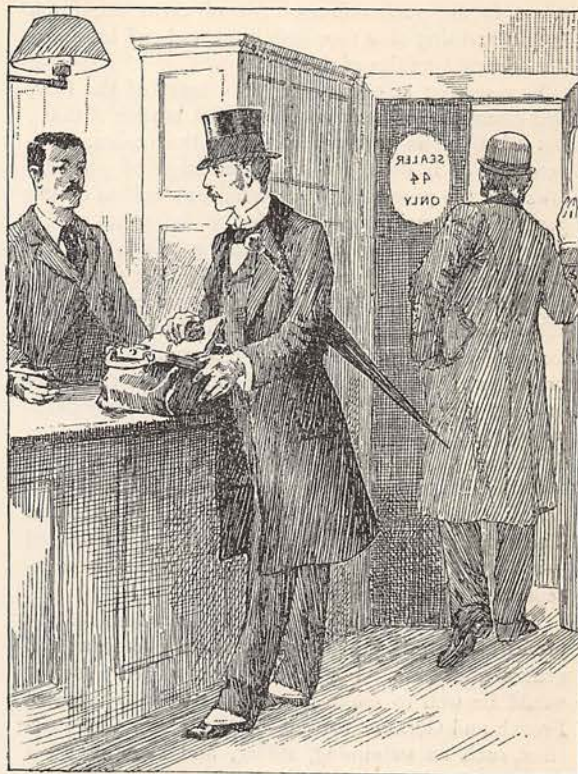
It is not often nowadays that one hears of a will made by two persons, and the following is a curious one which was proved some years ago by the writer of this article. It is an exact copy of the will, the names only being changed :—

IN THE NAME OF GOD AMEN.

We John Smith and Robert Smith Brothers and Partners in Business Living in the Parish of — in The County of Somerset and knowing that it is appointed for All men once to Die do make and Ordain this our last will and Testament that is to say Principally and first of all we give and Recommend our souls into the Hand of Almighty God that gave it And our Bodys we commend to The Earth to be Buried in Decent Christian Burial at the Description of Our Executor and as tuching Such worldly estate wherewith it Hath pleased God to bless us We give and dispose of the same in the following manner We give and Bequeath to Our Nephew Thomas Jones Whom we likewise constitute make and Ordain the Sole Executor of this Our last Will and Testament The Dwelling House and Mill and all other Buildings and Garden belonging Thereto and all Our Household Goods and Effects and all that We shall Possess at our Demise and the said Thomas Jones Shall Pay off all Our Just Debts if any

In Witness whereof we Have Hereunto set Our Hands And Seal this Eighteenth day of February in year of Our Lord one Thousand Eight Hundred and Seventy

Signed sealed Published
Pronounced and Declared the mark of John Smith ×
By the Said John Smith
and Robert Smith as their
last Will and Testament
in the Presence of us and



SEALING FOR PROBATE.

of each other who have
Hereunto Subscribed our Names
JOHN BROWN
JOHN JONES

Robert Smith (Seal.)

With reference to this will, I may here add that it is quite unnecessary to seal a will.

The limits of this article are necessarily short, and it is impossible to provide for every contingency that may arise ; but it is hoped that the foregoing directions will give the reader some idea "How Wills are Proved."
H E. B.

In my last article, entitled "Gentlemen of the Jury!" it was inadvertently stated that special jurors are now paid £1 1s. per day, and common jurors 10s. 6d. per day. This should be altered as follows :— Special jurors are paid £1 1s. a *cause*, and common jurors 1s. a *cause*.

THE PROFESSION OF ELECTRICAL ENGINEERING.

BY J. MUNRO, C.E., AUTHOR OF "PIONEERS OF ELECTRICITY," ETC.

THERE are now at least four learned professions—the Church, Law, Medicine, and Engineering. The Ministry and Law are concerned with the spiritual and moral, Medicine and Engineering with the material well-being of a man. If the Church deals with his relations to God, and the Law with his relations to his fellow-men, Medicine and Engineering are equally occupied with his relations

—intimate or casual—to Nature. Covering as they do the whole field of human life, they are all connected with each other. Though we have named the Church and Law together as dealing with moral effects, and Medicine with Engineering in respect of physical things, we might, on the other hand, class the Church with Medicine in their joint concern for the health of the individual, and Law with Engineering, since they