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Treatise on the Law of Wills

Paul L. Sayre

Indiana University School of Law

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TREATISE ON THE LAW OF WILLS*

The first edition of Professor Rood's work was perhaps the most popular textbook on Wills for many years after its publication in 1904. The present edition of this work involves some extension in point of subject matter, but for the most part it is the first edition over again with the added element of ample citations to more recent cases and particular references to the Lawyer's Reports Annotated, Ruling Case Law and other encyclopaedias and digests of the law. In some instances there has been a re-writing of the original exposition, but for the most part the sections in the present edition will correspond pretty closely to those in the 1904 edition with the exception of the added material in the footnotes and slight changes to make the original text conform with recent developments in the subject.

The reader should remember that the author in his preface to both editions makes it clear that his purpose has been to write a thorough and accurate work on the law of Wills in a single volume, in which the subject would be so explained and documented that the book would be useful for practicing lawyers. For more than twenty years the first edition of this work has fulfilled this purpose; the reviewer thinks it likely that the present edition will continue to do so and that it will be welcomed by the profession for its own merits and for the value which full citations down to date now give to it.

The method of treatment is somewhat similar to the Hornbook method although the bold face type is much less than in the Hornbook series. Thus for the most part Professor Rood has not put more in the headings than a single statement or single phrase while the text matter which follows under these set forth the significance of this phrase as a part of the exposition of the law of Wills. In keeping with this plan the reader will understand how natural it is for the author to quote some word or phrase from a famous judicial exposition of a principle in the law of Wills and then let his textual comment be an explanation of the significance of that word or phrase in the law itself. Thus in the treatment of *Gifts Causa Mortis* we have independent sections in exposition of the following words which are placed at the head of the sections in quotation marks—

* *Treatise on the Law of Wills* (including also *Gifts Causa Mortis* and a summary of the law of Descent, Distribution and Administration). Second edition by John R. Rood. Chicago: Callaghan & Co., 1926. Pp. ix, 1112. Price \$6.50.

"Gifts," "Voluntary," "Executed Transfer," "Intended as a Gift," *et seq.* The reader will readily understand the dangers to which such a method of writing may lead. This plan for expounding the law makes it almost inevitable that the author's general treatment will be somewhat choppy and that perhaps undue emphasis will be placed upon the legal exposition of a particular word while the significance of the rule of law in which that word is embedded may not be so clearly or helpfully explained. It will be noted further that this method makes a sustained and critical consideration of different doctrines in the law of Wills exceedingly difficult. The author's effort is exhausted in the discussion of the parts and he has insufficient force left for his attack on the whole. Thus both author and reader are in grave danger of failing to see the woods for the trees.

The writer's method of treating the subject of Wills under headings that take the form of isolated phrases and definitions inevitably leads him into somewhat involved explanations. The reader will see that such a method tends toward a jurisprudence of conceptions and makes it unusually difficult for a writer, even with the best intentions and the greatest ability, to explain the significance of legal rules themselves. It has been the common experience that our law tends toward a jurisprudence of conceptions both in judicial decisions and in the work of legal writers. It is very easy for a legal concept to take hold of the mind and then to grow by analogy or interpretation as if by its own vitality and apart from its continued correspondence to the legal interests involved. It is therefore a difficult thing for a writer under the most favorable circumstances to control this tendency, especially where he undertakes a considerable treatise; it seems unfortunate that any writer should adopt a piecemeal method of exposition that greatly increases the tendency to juristic conceptions apart from the legal interests involved. Thus in section 107, the author says that an invalid will may become valid by republication. Surely this is a question of incorporation by reference and not of republication as Dean Evans has explained in his admirable article (*Testimentary Republication*, by Alvin E. Evans, 40 Harv. L. Rev. 71).

What has been said in criticism of this treatise does not at all apply to its information and usefulness as a ready reference textbook of the practicing lawyer. Here he will find a brief, clear statement upon the point that is before him at the moment and he will find the footnotes ample in their useful references to recent cases and to the digests and encyclopaedias. One thing is especially pleasing in the footnotes. In many instances the author cites cases from all the states which have passed on that point so that the footnotes give this work at least the summary advantages of a digest as well. The reviewer cannot claim to have read all the footnotes and certainly not all the cases there cited; in so far as he has gone into them, however, he has found the explanations in the footnotes very helpful. It appears that

the author has cited cases for their value and not for their numerical impressiveness.

Part of the book is given over to practical advice in the drawing of a will. The reader is admonished not to do the following things in preparing a will and directed to do some other things. This homely, direct advice seems to the reviewer admirable. It would seem a pedantic criticism to suggest that comment of this kind is out of place in any treatise, however thorough it may be. It may be said with fairness, however, that this part of the book seems to encroach on the kind of book that Mr. Lewis undertook in his *Preparation and Construction of Wills*. Perhaps direct advice of this kind together with information through forms and other illustrated material should be in a separate form book on Wills or in a separate volume of a longer treatise on Wills.

The reader may fail to find certain recent cases which he considers to be important in the present development of the subject. He will also find a few typographical errors and a few rather clumsy expressions. The reviewer does not mention the instances of these errors which he has noted. It seems sufficient to say that none of these defects are more than a reasonable allowance for any considerable work in this human world; they do not impair the real merit of the work itself. The book is honest and thorough. The first edition was a source of great convenience and service to the profession for more than twenty years; the present edition should continue this splendid reputation in the future.

PAUL L. SAYRE.

Indiana University School of Law.