Recent Medico-Legal Cases.

REPORTED BY DR. MERCIER.

[The Editors request that members will oblige by sending full newspaper reports of all cases of interest as published by the local press at the time of the assizes.]

PROBATE ACTION.

GILLETT *v.* ROGERS AND OTHERS.

(*Before* MR. JUSTICE BARGRAVE DEANE *and a Common Jury.*)

The hearing of this case, begun on the previous day, was closed. It was a probate action arising out of the testamentary dispositions of Miss Ann Holtam, late of 40, Millbrook Street, Gloucester, who died on April 26th, 1912.

The plaintiff, Frederick Gillett, propounded as executor a will dated April 25th, 1912. The defendants, twenty in number, all of whom were nieces and nephews, alleged—(1) That the will of April 25th, 1912, was not duly executed; and (2) that at the time of its alleged execution the testatrix was not of sound mind and did not know and approve of its contents, and by way of counter-claim they asked the Court to pronounce against the will and to grant letters of administration of her estate to the defendant Alfred Michael Holtam.

In the substance of their case the defendants further alleged—(1) That on April 22nd, 1912, the woman had an apoplectic fit, and remained in a comatose condition until her death on April 26th, and so was incapable of any reasoned or connected thought, and was totally incapable of speech or communication with anyone or of distinguishing the persons about her, and was therefore incapable of making a will; (2) that she neither gave instructions for the will, nor was it read over or explained to her, and that she neither read it herself, nor was she aware of its nature and effect.

Mr. Hume-Williams, K.C., and Mr. T. Bucknill appeared for the plaintiff; Mr. Bayford for the defendants.

Mr. Hume-Williams said that the testatrix had formerly been a housemaid, and had saved about £700. About April, 1904, she adopted Florence Mary Hill, æt. 11 months, a child of a nephew. On April 22nd, 1912, she had a stroke and lost all power of speech. She could, however, recognise people and indicate by signs and mumbling what she required. She was in the same state on the 23rd and 24th. It became clear that something was on her mind. Mr. Gillett, a builder, who had long known the woman, was sent for on April 25th, and arranged by a series of signs to take her assent to or dissent from what he was saying. She assented to the propositions that she wished to make a will, and that she wished to leave property to her adopted child and to her niece for the benefit of the child. The plaintiff then tried to ascertain whether the deceased could make a mark on a slate. He

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wrote out her instructions, which were communicated to him by her pressing his hand a certain number of times or by not pressing in answer to his questions. The testatrix made a mark on the will, which was attested by Jesse Gillett, a brother of the plaintiff, and Sarah Annie Jeynes, a neighbour. On the same date she was removed to her sister's house, where she died on April 26th.

The Plaintiff's Evidence.

The plaintiff, in the course of his evidence, said that on April 25th he saw the woman. She was speechless. He asked her questions. He asked did she wish him to make a will for her. She nodded her head. He asked her questions to satisfy himself that she understood. He asked her if she could make a mark on a slate. She nodded, and she made a mark with her left hand on a slate. He asked her if she wished him to act as executor. She nodded. He then arranged with her as to the form the communications should take. Sometimes assent was to be expressed by one, two, or three pressures; dissent by an absence of pressure. Thus the will came into existence. He asked her to make a mark, not a cross. She assented by pressure, and she made "a sort of broken line" with her left hand.

Cross-examined.—He obtained the instructions between 11 a.m. and 12 noon. She nodded or shook her head as confirmatory to the pressures of the hand. The last question he asked was whether she was perfectly satisfied, and if she were would she push his hand right away. In reply, "She pushed it away to arm's length with substantial force, about 1 ft."

Mr. Jesse Gillett gave corroborative evidence.

Mrs. Jeynes gave evidence in support of the will. Mrs. Jeynes asked testatrix to press her hand if she wished her to attest the will, and the testatrix did so.

Medical evidence for the defence was now interposed by leave of the Court for the convenience of the doctors who were called.

Medical Evidence.

Dr. James A. Bell, M.R.C.S., L.R.C.P., said that his partner attended the testatrix on the first day of her illness. The witness himself saw her the following day, April 23rd, and on the 24th and 25th she was unconscious, paralysed down the right side, and had lost her speech. She had a large hæmorrhage on the left side of the brain, and he formed the opinion from the first that it would be fatal. There was only a slight movement of the left hand and eyes, but that did not last after April 24th. She made no sound. On April 25th there was practically no alteration in her condition. He saw her soon after 9 a.m. on that day. She was still comatose and paralysed. She was incapable of any conscious movement of the head or arm. She could do nothing consciously. In his opinion she was absolutely incapable of making a will. If she pressed anyone's hand the movement must have been involuntary or spasmodic; it could not have been a conscious movement.

By Mr. Hume-Williams: She was quite incapable of lifting her arm

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or moving her eyes or head on that day. If witnesses had sworn that she did any of those things they must be mistaken.

Dr. Walter Knowsley Sibley, M.D., of Harley Street, gave evidence, but he had never himself seen the dead woman.

Evidence for the plaintiff was resumed.

Nurse Balloch, a district nurse at Gloucester, said that she attended the woman in her last illness. She seemed to understand what the witness was doing.

Cross-examined: On April 23rd the left side did not seem to be affected as the right was, and she could have moved, but in fact did not.

Mrs. Jeffs, a niece, gave evidence of conversations she had had with the dead woman before her illness as to her testamentary intentions with regard to the child, and as to the condition after her seizure on April 22nd. The witness did not agree with the evidence of Dr. Bell that her aunt was incapable of conveying her wishes to others or of making any movement. On several occasions she had signed to the witness with her left hand and signified assent by pressure of the hand, and seemed to comprehend what was said to her.

Mrs. Lucy Elizabeth Holtam, wife of Alfred Michael Holtam, one of the defendants, said that when she saw the woman on April 23rd in her opinion she could not recognise her. She made no movement except an aimless sort of "picking" with her left hand.

Further evidence was also given.

The "Pack of Cards" Case.

Mr. Bayford, in the course of his address to the jury on behalf of the defendants, said that his Lordship had referred to the case of Moore *v.* Moore (reported in *The Times* of February 13th, 1900), a case known as the "Pack of Cards case." In that case the testatrix had had a paralytic stroke, which had caused aphasia. Her solicitor hit on the ingenious idea of taking two packs of cards and writing the names of her relatives on the cards of one pack and the various properties of which her estate consisted on the cards of the other pack. He then "dealt" her a card with the name of a person, and she selected and played to it a card with an item of her estate on it, and the solicitor "gathered the trick" and put it in the will. The learned counsel went on to distinguish that case from the present one, and further cited passages from the judgment of Baron Parke in Barry *v.* Butlin (1838), 2 Moore's Privy Council, at p. 482, and from the judgment of Lord Hannen in Burdett *v.* Thompson (reported in a footnote to Boughton *v.* Knight, 3 L.R., P. and D., 64). He submitted that the will which the plaintiff sought to propound was not the will of the dead woman.

Mr. Hume-Williams addressed the jury.

Mr. Justice Bargrave Deane said that whatever were their opinions as to the justice or injustice of the will they must satisfy themselves from the evidence that the will had been made according to the wishes of the deceased.

The jury, after an absence of seventeen minutes, returned into Court and found for the will on all the issues. On those findings,

Mr. Justice Bargrave Deane pronounced for the will and reserved the question of costs.

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Solicitors: Messrs. Clarke, Rawlins and Co. (for Mr. George R. Bonnor, Gloucester); Messrs. Willis and Willis (for Mr. A. Lionel Lane, Gloucester).—*The Times*, May 8th, 1913.

The verdict seems to me to be justified by the evidence as reported. The jury believed the evidence of Mr. Gillett, whose method of ascertaining the wishes of the testatrix was remarkably intelligent, and could scarcely have been bettered, except that he would have done well to have had a witness present. In the face of Mr. Gillett's positive evidence that the testatrix did give instructions for her will, the jury disregarded, and, I think, rightly disregarded, the evidence of Dr. Bell that she could not have done so. It is very difficult to be sure, in a case of the kind, that a patient is incapable of making some voluntary movement, and there is a possible reconciliation between Dr. Bell's evidence that the testatrix was comatose at 9 o'clock in the morning, and Mr. Gillett's that she had a disposing mind between 11 and 12 on the same day. It is possible that at 9 o'clock she was asleep; and anyone who has had experience of such cases knows how very much graver the apoplectic state appears to be in sleeping than in waking. One is very apt to forget that apoplectic patients require sleep, and do sleep. The hæmorrhage into the brain occurred on the 22nd, and she did not die until four days afterwards, the will being made on the third of these days. During the time that the hæmorrhage existed, therefore, she would have required some sleep, and may well have been sleeping when Dr. Bell saw her. I have been accustomed to warn students against assuming hastily that a person cannot, or will not, do a thing, when all that the evidence warrants is that he or she does not do that thing when requested; and I think that in this case, the fact that the patient did not move her head or arm may have been accepted by Dr. Bell as evidence that she could not do so.

It is very unfortunate that the small estate of the testatrix should have been dissipated by the expense of a two days' trial in the High Court, which could have been avoided altogether if Mr. Gillett had had the forethought to call Dr. Bell to witness the making of the will. If this elementary precaution were always to be taken in cases in which a question of the validity of a will is likely to be raised, the business of the Probate Division of the High Court would be almost abolished.

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