

THE TRIAL UNDER WAY.

The Contest of the Reilly Will Getting Interesting.

STATEMENTS OF THE CASE

Were Made by Messrs. Melvin and Hubbard—The Masterly Statement of the Former Brilliantly Answered by the Latter—The Case Reviewed from Start to Finish—The Jury Has Been Selected.

The second day of the Reilly will contest in the circuit court, before Judge John A. Campbell, started with the attempt to secure two more jurors to complete the panel of twenty. It soon proved successful, the additional ones being Salathiel Curtis and Herman Doepke.

The work of selecting the jury of twelve men then commenced, both sides scratching the names of four men. This left the jury as follows: C. A. Burkle, H. Clay Hunter, Fred Foraster, M. L. Giffen, John Mitchell, James A. Wood, G. W. Humphries, Joseph B. Atkinson, P. Z. Noble, Samuel Hartman, Salathiel Curtis and Herman Doepke.

Court then adjourned until 2 o'clock in the afternoon. The afternoon session started promptly at 2 o'clock. There were present nearly all the contestants, Archbishop Kain, Mr. Sullivan, and even a larger crowd of spectators than was on hand at Wednesday's session. One of the twelve jurors was absent at the start and a wait of a few minutes resulted. In this connection the unusual degree of marked intelligence of the jury was generally commented upon.

JUDGE MELVIN OPENS. Judge Melvin opened the case for the defendants, and addressing the jury, made a statement of the case. The will in contest, he said, was recorded in the county clerk's office as the last one made by Michael Reilly. Eleven months afterwards a petition on behalf of the children was filed praying and appealing that the will be not accepted, stating that the testator was not of sound mind. The result is the present trial before a jury. There is no question as to undue influence upon Michael Reilly's mind; no question as to the due execution of the paper. The contestants rely on the allegation that his mental capacity was impaired. The evidence will take a wider range, perhaps, and it is important the jury should have a full understanding.

Michael Reilly was for many years a resident of Ohio county, of advanced years when he executed the will, over eighty-six years; commenced business for himself in early youth. He was in business months after this paper was executed. His business was a history of expansion, and a record of business aptitude, the business at his death the largest, in the state. All this time he gave his personal attention to the business, unassisted so far as he knew. His record was one of financial success, and gave him a reputation as a high-class business man; also as a financier, being interested in a number of financial institutions. In all he was a trusted official.

He had six children, five sons and one daughter. He was, as he had said, practically unaided in his business. He excepted Thomas, the son who died; he did aid and assist, not as a partner, but satisfactory to both. He remained with his father to his death, a trusted son and employe. Not so regarding the other sons. What are the facts and particulars will soon be disclosed in this trial. They were not

TRUSTED AND RELIED upon as was Thomas. What was the cause, he did not know, but there was not much in common. He would further except James V. Reilly, who had been an employe of the Main street store. As to Michael, according to his information, years ago, he and his father separated, the particulars of the quarrel he knew not. Their paths diverged and they never met. The feeling resulted in the father giving Michael a small bequest.

Thomas, the trusted one, died in the spring of '91. How far that event may have changed the testamentary disposition of the old gentleman can be guessed at; it seemed to have worked a great one. His information was that before that another will had been made bearing date of 1885; it will be offered in evidence in this trial. He then had different ideas in part as to disposition of his estate, yet there are features not dissimilar. By that will Michael was left but a small bequest; Thomas, George V. and Mr. Jameson were made executors, and a distribution was provided for, among his children, exclusive of Michael and James. This serves as a declaration of his intention at that time, reflecting his later sentiments.

After Thomas' death he executed the paper in contest, signed in the presence of Mr. Daniel Lamb and Mr. H. M. Russell as witnesses. Before that time, Mr. Reilly called on Mr. Russell, asking him to assist in preparing a will he proposed to make. Mr. Reilly stated whom he desired as executors and trustees, what disposition, how the trustees should act, provisions for the support of the children for a period of years. All of the provisions of the will were told by Mr. Reilly and taken down in writing. A draft was submitted and then another prepared, and after careful deliberation was approved, and then executed. No emergency, no haste, on the contrary there was deliberation and reflection; it was approved and executed by him.

PROVISIONS OF THE WILL. Judge Melvin then called attention to the provisions of the will. It names Right Rev. J. J. Kain and Rev. J. T. Sullivan trustees, and gives them power to name successors. To them is given all the property, to control without limit, except that investments shall not be made in church interests or property. They are required, out of the property, aggregating \$300,000, to support and provide for certain children and grandchildren such sums as the trustees may determine. To all the families, except Michael's, this provision applies. This trust is to continue until the death of the longest living child or grandchild, and then the estate is to be distributed among their descendants, each family to be charged with the amounts advanced by the testator and trustees. The trustees are authorized to carry on the grocery business, employing whom they see fit, and can at pleasure close the business. Such being the nature of the paper, the question occurs, What is meant by it? The law gives the right for any man to dispose of his property as he may choose; he alone is competent to decide, is accountable to no one for the method and manner in which he distributes his estate. You are called on to decide if this is his true and last will. The question of propriety is a matter of

but little moment. If a testator has sufficient capacity it matters not what disposition he makes. Even though certain provisions seem unjust, if you find Michael Reilly had mental capacity to execute it, it is his will and his true will. As to mental capacity, it is sufficient if he could bring in review before his mind the property he possessed, then it is his true will. To make a will does not require the highest mind. The mind may be to some extent debilitated, memory impaired; indeed he may not be able to transact many of the business affairs of life, but if he had the ability to comprehend this property, the law is satisfied the testator had sufficient capacity. It matters not if he was under influence of resentment or dislike toward children, which influenced provisions of the will. If he was unjust, unreasonable, the fault was his own, but is not to be visited on him or others to the extent of setting aside his will.

THE DATE ALL IMPORTANT. The testimony of facts and circumstances may be heard, but the date is all important, June 25, 1891. It is only necessary that he was of sound mind at that date, even if he were not before and after.

Mr. Reilly was a man of strong character and business methods, capable of successfully managing an extensive and growing business. He attended to his affairs in person, until the December following the execution of the will. In managing the business, we will show, he executed papers in the usual course of business; checks, notes, etc., during all that summer, on down until he was confined to his home by his fatal illness. He attended to outside business, and though forgetful, when aroused his old time vigor returned. In dictating the will the provisions were his own, after study and mature reflection, and in the changes made he exhibited a full appreciation of the situation and what he desired. There was no disordered mind, and he declared many times his father had made a good will; that will will be offered for your consideration, and will show features similar to the one in contest. This shows that it was a settled conviction that made Michael Reilly draw the will he signed.

DELAY IN APPEAL. There was delay in appealing this will. That is a matter to be considered. It is a declaration by the appellants that he was of sound mind when the will was drawn. Had there been any question in their minds as to his mind, steps would have to be taken to protect probate, and not wait many months afterward. And more, they received during these eleven months liberal allowances and James accepted employment from the trustees and continued there a long period.

If we are able to produce this testimony we can insist that this paper is the last will of Michael Reilly. Under rules of court we shall offer evidence as to the execution, and then the contestants offer evidence in attack, and then we will offer evidence in support and rebuttal, and then will come the argument to the jury.

MEL HUBBARD SPEAKS. Mr. W. P. Hubbard then addressed the jury on behalf of the contestants. He alluded to the able statement by Judge Melvin; but he did not tell, said the speaker, who are the propounders of what the will is. He would do both, and speak for the living children, and was sure the jury would agree that the will is not the true and last will of Michael Reilly. Speaking of the trustees, he said they are not bound by ties of friendship or blood, as are the children. He referred to the will of 1885, the trustees of which were his children, to whom he should naturally turn. Not so in the will of 1891. The propounders are Bishop Kain and Rev. Father Sullivan, who, while eminently respectable and high in their profession, are not the gentlemen to whom Michael Reilly would naturally leave his property in trust. The business was to be carried on by a manager, an implication that the trustees are not capable. Then, too, the will says the property shall not be invested in church property, in which they would naturally invest.

He then said he would read the entire will, which shows lack of mental capacity on the part of the maker. In early life, he had, as was claimed, shown an aptitude for business. That state of affairs did not continue up to the time of the execution of the will or to nearly the time of his death. There were five sons and one daughter; all that a father should be proud of. The son Thomas was all he had been painted, a dutiful son who gave his life to the service of his father. Yet this testator treated Thomas' children just as he treated the others, and yet it is claimed he was in control of his entire mental capacity. You cannot believe it. Shortly after his second marriage there was a change in his mental condition; he became irrational, easily influenced, inconsistent, forgetful and would do inconsistent things.

He did not believe the business associates of Mr. Reilly would testify that he retained up to June 25, 1891, all of his old time vigor and shrewdness. He recalled instances at that period of his impaired mind.

Four or five years before his death, he said, a nurse was necessary to dress and undress him; to tell him where he was; to perform the most menial offices. This will be told by the witnesses, who know of it.

June 25, 1891, was the date of the execution of the paper, here offered by the trustees, as the last, true will, and ask your verdict that it is true. When that paper was signed, he had forgotten how to spell his own name. This man of knowledge, culture and vigor, actually forgot how to spell his own name.

EFFECT OF THE WILL. That paper ties up the distribution of the property; no human being will own the property until every living child dies. That estate he tried to control

Driving the Brain at the expense of the Body. While we drive the brain we must build up the body. Exercise, pure air—foods that make healthy flesh—refreshing sleep—such are methods. When loss of flesh, strength and nerve become apparent your physician will doubtless tell you that the quickest builder of all three is Scott's Emulsion of Cod Liver Oil, which not only creates flesh of and in itself, but stimulates the appetite for other foods.

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eighty-three years longer, to keep it from the children, some of whom he trusted up to June 25, 1891, for some of them were, up to that time, trustees on a former will.

Speaking of the paper, and alluding to the capacity as claimed by the other side, he said they had found the paper unintelligible, and one attorney had to consult with another before he understood it.

Who are the objects of his bounty? So far as can be discovered the objects are the two trustees. They are gentlemen whose business capacity is not of the kind to carry on a wholesale grocery business. This estate is left to them without security, an unusual thing. There is no provision that their successors shall give security, who may be men whom Mr. Reilly did not know or trust. This trust may go on for one hundred years without security for its faithful performance. Where will the children yet unborn look for their inheritance? During this long period there is no human being who can call the trustees to account. Judge Melvin was mistaken that the trustees must support the children; there is no such requirement. They can stand by and see those children starve in the poor house. It is said the trustees would not do such a thing. It may be so, but how about it one, ten, twenty years from now, when there may be successors to the present trustees.

Mr. Hubbard then took up the will and remarked on its provisions. Suppose the trustees are smitten with a mental disease, what provision for successors? None. He spoke of the will of Philip Reilly, which Judge Melvin, who then sat on the bench, had set aside. And, remarked Mr. Hubbard, the gentleman says this will is a good one. He tells us Michael Reilly admitted the will of his father. It is shown that he did not express his admiration until June 25, 1891. What were the provisions of the former will of 1885? His heart did not go out to future generations, but to his living flesh and blood. How about the will of 1891? This man in his full vigor spells his name in two places wrongly, and each time wrong differently. Some time during this trial it will be shown how it was that Mr. Reilly came to put his name to that piece of paper; there may have been outside causes, and if so appears, then your verdict will be that this is not the true will of Michael Reilly.

THE FAULTY SPELLING. After reading the will Mr. Hubbard said Mr. Reilly spelled his name thus, "Michael," without the "i." The witnesses, however, seemed to be in their right mind and spelled their names correctly. The second signature is spelled "Michelo."

The law said Mr. Hubbard, is that the propounders satisfy you that Mr. Reilly was of sufficient mental capacity to make the will. He did not think there would be any doubt, but if there is doubt the jury must decide against the propounders.

The question, if he had mental capacity to make the will, and to prove that he had capacity to make this will, which lawyers on the other side do not even understand, devolves on them. The question to settle is if Michael Reilly's mind was in its normal and correct condition when he made the will. He then quoted the rules that must be followed in the case. No attempt, he said, is made to bring into view his property, as Judge Melvin said was done. The objects of his bounty, he said, are beings he had never seen. It is required he must have strength of mind, and he recalled the fact, not disparagingly, that one of the counsel even did not understand its provisions. Its provisions are unjust, unnatural, provisions that show he lacked the required mental capacity.

Speaking of the delay in contest Mr. Hubbard said that the other side is very hard up in bringing up that argument. The delay, he said, was caused by the poverty of the heirs-at-law. It was true James Reilly had employment, but the employment ended. But, what has that to do with the mental capacity of Michael Reilly. Does it not show that less liberal trustees may be chosen in the future, who will take away from the children, employment and means of support. He said the heirs-at-law have all along proposed to assert their rights and contest them in a court of law.

Concluding, Mr. Hubbard spoke further regarding the will; he said that the other side must satisfy the jury, that Mr. Reilly's mind was unimpaired. They cannot do it. Failing to do it, you must give a verdict for the plaintiffs.

JUDGE MELVIN REPLIES.

Judge Melvin then spoke in answer to Mr. Hubbard. He said in explanation, he had not read the will before, and it had not been his business to do so. Mr. Hubbard, he said, refers to the fact that he made a mistake in a single instance regarding this will. He had no intention to mislead the jury; that such a mistake shows the unintelligibility of the will, is not true. Proceeding, he said, what was there the jury could not understand regarding the will; there is nothing unintelligible about it.

Together with his associates he appears not alone for the two reverend gentlemen, but also for the widow of Thomas Reilly and for her daughter. He spoke of the duty of the trustees, to provide for the children, which he claimed, in face of Mr. Hubbard's opposite opinion, is the distinct duty of the trustees. Professional men may differ, but none of you gentlemen will differ in the opinion that the trustees must provide for the children.

Complaint is made that these trustees are not in business, and that no security is required. The high standing and character of both are not doubted. If they lack business capacity there is a remedy. In this age of law and reason, the courts are always open to enforce the performance of a trust, and if they are indifferent, or unfaithful, the courts are open to children or grandchildren to have recourse.

"What interest have the children?" said Mr. Hubbard.

Judge Melvin—They have the interest of their support, which comes from the trustees.

Mr. Hubbard—Suppose all of the estate except enough to maintain the children is squandered, what interest would they have?

Judge Melvin—They would still have their interest.

Continuing, the judge went over the provisions of the will and explained certain features to the jury.

Referring to the trial before himself of the Philip Reilly will, he said there was a decree, but it was in a cause to obtain a certain construction.

Judge Melvin doubted that if the contestants doubted their father's sanity they would have for so long a period delayed entering upon a contest. As to the execution of the paper, he had no fear of undue influence on Michael Reilly being shown. On the other side rests the burden to do this. They must endeavor to show mental incapacity, and the defendants will offer evidence in rebuttal, showing his mental capacity. At the conclusion of Judge Melvin's address court adjourned until this morning at 9:30 o'clock.

For constipation, biliousness and kidney affections take Simmons Liver Regulator.

DANGER JUST AHEAD

A Prominent Professor Speaks About the Threatening Things Abroad at This Time of the Year.

"It is surprising how many people are suffering to-day from so-called coughs, colds and influenza." The remark was made by a very prominent professor, connected with one of the leading New York hospitals. Continuing, he said: "It is not these things that are troubling people, but it is an advanced form of our old enemy, the grip. People feel out of sorts, sneeze, have pain in the muscles and bones, have no appetite, lose all interest in the world and wonder what is the matter. It is the grip; nothing else."

Now, all such symptoms need to have prompt treatment. The attack must be met and repelled at once, or it is certain to result in something serious. I know of but one way to certainly avoid these troubles which are now so common, and that is, to immediately counteract them by using a good, pure, strong stimulant. Nothing of the ordinary kind, but something pure and scientific. For this purpose nothing has ever equalled Duffy's Pure Malt Whiskey, which is acknowledged to-day by the physicians and scientific people to be the only pure, medicinal malt whiskey upon the market."

The words of the professor are true and they carry a wonderful meaning to many men and women who are suffering with the first symptoms of grip, or else grip in its advanced stages. For all such people we offer a word of advice; which is to take the best means to overcome these troubles and do not permit any dealer to swerve you from your purpose to have that which has proven itself by years of use, to be the best and present stimulant in the world.

BELLAIRE. All Sorts of Local News and Gossip from the Glass City.

Fred Runge, who was knocked out in one suit against the Bellaire nail works, has, through his attorneys, brought another action and wants \$12,000 damages for injuries received while in the company's employ on January 16 last. He alleges that while employed as a laborer under the direction of a boss, he has suffered great injury to his spine, side, ribs, body and limbs by the negligence of the superintendent in starting the machinery, by which he received a fall. He alleges that he has been disabled ever since, and that he has been damaged in the above sum.

Cleveland's minstrels last night sang the song composed by Johnny Long, of this city, and set to music by Charles J. LaRoche, and will use it hereafter. The song is entitled "The Wayward Son's Reform."

Fred Rodewig, sr., is now mentioned for the Democratic nomination for mayor and Charles Husbands is looming up as the Republican candidate for city treasurer.

D. T. Cowen left for Columbus yesterday afternoon to assist his brother Walter, who is a candidate for assistant sergeant-at-arms of the Ohio senate.

The electric street railway company have sold the bonds they issued to a banking firm in Portland, Maine.

Miss Annie Griffith, of Moundsville, is visiting the family of Mrs. James Weeks here.

The annual meeting of the Bellaire nail works is called for the 27th of January.

The funeral of Dr. McMasters, yesterday afternoon, was largely attended.

Mr. and Mrs. W. H. Mills left yesterday for their home in Mansfield.

Col. J. T. Mercer, of Chicago, is in the city on business.

MARTIN'S FERRY. Haps and Mishaps in the Thriving City Across the River.

D. T. Duncan has brought suit against the Bellaire, Bridgeport & Martin's Ferry electrical railway for damages. Duncan was riding on the car that ran down the Buckeye street incline and into a freight train on the Cleveland & Pittsburgh railroad on September 19. He claims the company was negligent in not putting in safety switches, and that the employes were negligent in losing control of the car and in not keeping a lookout for the train. He asks for \$305 damages. He says his doctor bills were \$200 and loss of time \$105.

Many Martin's Ferry people who go to Wheeling quite frequently now ride over to the bridges over the main channel of the river, get off at the west side and walk over in order to save the four or five cents. The people were not long catching on to this.

Councilman M. F. Bailey, attired in a brand new suit of clothes, went to Cleveland yesterday to try to make a sure thing of S. F. Dean's job as deputy internal revenue collector. The appointment will be made soon.

Mr. Gibson Binns, a banker of near Pittsburgh, was married to Mrs. Martha Russell, of Colerain, in the Friends' church on Wednesday. The bride is a sister-in-law of Jacob Mauls, of Colerain.

The High Ridge church will be dedicated January 4. The sermon will be preached by Rev. J. A. Alexander.

Mrs. Bronneman, mother-in-law of Mr. William Cattell, was reported dying yesterday.

Mr. Harry K. Wolcott, of Van Wert, Ohio, is the guest of Martin's Ferry friends.

Spence, Baggs & Co.'s stove works will probably resume work next week.

Mrs. Harry Sommers is very sick.

How's This? We offer One Hundred Dollars Reward for any case of Catarrh that cannot be cured by Hall's Catarrh Cure. F. J. CUREN & Co., Props., Toledo, O.

We, the undersigned, have known F. J. Cheney for the last fifteen years, and believe him perfectly honorable in all business transactions and financially able to carry out any obligation made by their firm.

West & Truax, Wholesale Druggists, Toledo, O.

Walding, Kinnan & Marvin, Wholesale Druggists, Toledo, Ohio.

Hall's Catarrh Cure is taken internally, acting directly upon the blood and mucous surfaces of the system. Price, 75c per bottle. Sold by all druggists. Testimonials free.

I have been troubled with chronic catarrh for years. Ely's Cream Balm is the only remedy among the many that I have used that affords me relief.—E. H. Willard, druggist, Joliet, Ills.

The Kind of medicine

you need is the old reliable tonic and blood-purifier,

AYER'S SARSAPARILLA

It can have no substitute. Cures others, will cure you

Eiderdown Quilts!

MARKED-DOWN SALE!

Commencing this (Saturday) Morning. GEO. R. TAYLOR.

My entire stock of French Satine and Silk EIDERDOWN QUILTS will be offered this morning at the following reductions:

- \$3 50 Grade French Satine now \$3 12
6 00 Grade French Satine now 5 00
7 50 Grade French Satine now 6 25
8 50 Grade French Satine now 7 25
9 00 Grade French Satine now 7 50
10 50 Grade French Satine now 8 50
16 00 Grade Silk 12 50
22 50 Grade Silk 18 50

These Quilts are filled with the best quality of Eiderdown and covered with the finest grade of French Satine and Figured Silk.

This Sale will be conducted in Market Street Room. Store will remain open until 9:30 this evening. All packages delivered as instructed.

GEO. R. TAYLOR.

CLOTH JACKETS, } LATEST
CLOTH CAPES, } STYLES

At Exactly Half Price!

\$2 00 FAILLE SILKS CONTINUED AT 98 CENTS.

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RESTORE LOST VIGOR Sexine Pills. New discovery. Will brace you up in a week. Sold with WRITING GUARANTEE to Cure Nervous Debility, Loss of Sexual Power in either sex, Involuntary Emissions from any cause. If neglected, such troubles lead to consumption of insanity, \$1.00 per box by mail, 6 boxes for \$5. With every 6 boxes we give a written guarantee to cure or refund the money. Sold at \$1.00 per box, 6 boxes for \$5.00. DR. MOTT'S CHEMICAL CO., Columbus, Ohio.

"A HANDFUL OF DIRT MAY BE A HOUSEFUL OF SHAME." CLEAN HOUSE WITH SAPOLIO

CRANES Vital Force Nerve Food RESTORES MANHOOD. Performs Wonders in a Few Days. Last Sexual Power, Lost Brain Power, Sluggish Endurance, weak, dependent, low spirited men and women, the result of Nervous Disease, which if neglected will finally result in insanity, consumption and permanent. Try it. Sent by return mail, \$1.00, six for \$5.00, with a written guarantee to cure or refund the money. CRANE MEDICAL CO., Columbus, Ohio.

WRIGHT'S TEA. Are you CONSTIPATED? Do you have HEAD-ACHES? Is your NERVOUS SYSTEM, LIVER OR KIDNEYS out of order? If so, cure yourself by using Wright's Celery Tea. It improves the COMPLEXION. One month's treatment 25c. Three months, 50c. Samples sent free. Address, WRIGHT'S CELERY TEA CO., COLUMBUS, OHIO.

RESTORED MANHOOD DR. MOTT'S NERVE PILLS. The great remedy for nervous prostration and all nervous diseases. For the separate organs of either sex, such as Nervous Prostration, Loss of Sexual Power, Impotency, Nightly Emissions, Youthful Debility, Mental Worry, excessive use of Tobacco or Opium, which lead to consumption and insanity. With every 6 boxes we give a written guarantee to cure or refund the money. Sold at \$1.00 per box, 6 boxes for \$5.00. DR. MOTT'S CHEMICAL CO., Columbus, Ohio.