

Binding

The Woodstock Journal.

Thursday, April 4, 1861.

SURROGATES COURT.

A case just tried before L. P. Fisher, Esq., Surrogate for the County of Carleton, has excited much interest and attention. Daily the Court House, has been crowded with spectators, from both town and country, anxious to hear the evidence as it was developed in the examination of the witnesses. The case, according to rumor, is this. Robert Gurney of Jacksontown, died childless on the 26th day of December, 1850, leaving an aged widow; being possessed at the time of his death of a house and farm at Jacksontown, about two miles from Upper Woodstock village. This property as well as his personal property he by will, drawn up by L. R. Harding, one month before his death, bequeathed to the said L. R. Harding, for his own benefit, after the death of the widow, in consideration of the payment of certain debts and legacies amounting in all to about \$200, she (the widow) having the use of the real estate during her lifetime.

The validity of this will, a nephew and two nieces of the deceased, contest on several grounds, one of them being an informality in the execution of the will, and another the state of mind of the deceased, at the time of its execution.

W. H. Needham and J. C. Winslow Esqrs. appeared for the Plaintiffs, and Hon. J. A. Street and Geo. Connell, Esq., for the Defendant.

We publish as full a resumé of the evidence in the case, as our time and space will permit.

The Court being duly opened on Thursday the 28th at eleven o'clock, J. C. Winslow was called to prove the service and publishing of the citation—and the High Sheriff was also called to prove the service of the citation on L. R. Harding the Defendant. His Honor, the Surrogate, then called upon the counsel for L. R. Harding, to prove the will in solemn form, which he declined to do until the parties claiming as heirs, had proved themselves, next of kin to the deceased in order to show their right to contest the will.

Mrs. Gurney and Matthew Gurney were then called, and His Honor, after hearing them decided that their proof was sufficient. The Counsel for Mr. Harding, then proceeded to call the witnesses to prove the will.

Leonard R. Harding, Jr. was first sworn, and gave the following evidence—I am 17 years old, can read and write, have been at school—I know Mr. Gurney, the Testator, saw him sign the will that is my handwriting as a witness. Mr. Armstrong, Jonathan my brother, my father and myself were present when the will was signed. Mr. G. sat up in bed when he signed it. Understood it to be his will. My father asked him, if that was his last will,—he said it was. I saw Mr. Armstrong and Jonathan, my brother sign as witnesses. Mr. G. could have seen us if he looked. He put his finger on the seal after signing, and my father said to him, do you acknowledge this to be your last will and testament,—he replied, Yes. We were all present, when the will was done. The witnesses signed immediately afterwards in the adjoining room. Wm. Armstrong signed it first, next Mr. Jonathan last. The door was open at the time. I could see him, as he could see me, if he looked. There was no impediment. We all signed in the same position. Mr. G. lay in the bed, on his left side—the bed had no curtain, he had only to turn his eyes. We went there, to get as witnesses, I had my eye on Gurney, when the other witnesses signed. My father took the will afterwards. We put our initials opposite alterations. I believe him to have been in a sound state of mind. Don't know his age.

Cross-examined by Mr. Needham.—Am son of L. R. Harding. Was at Gurney's on night referred to. Might have been 9 or 10, or 11—will swear, I think it was not 12. There is a clock in our house. I looked at it before leaving home. Can't tell the hour,—when I last looked it was 9. Think my father was not then in the house. Can't tell where he was. Can't say if he was home to supper. Saw him before 9. Will swear he was there between ten and 11. Had tea at 6. He was home between 9 and 12. Distance from Father's to Gurney's about 50 rods. My father and brother did not leave the house together. After Father left, Jonathan and I followed him—probably half an hour after. We found Armstrong and Father there. Went into bedroom soon after. Not in the habit of going to Mr. Gurney's. Think I was there during previous week. Know the position of rooms. Mr. Gurney lay on his back, when I first went in. Father raised him up. After he had signed, he lay down in the same position as when we came into the room. Don't think I had been in bed, before going over to witness the will. The head of the bed was to the North, on the left hand side as you go in. The bedroom is opposite the main road, on the east side. The side of the bed is next the road. The road runs North and South. The bed was close to the North and West sides

of the house. About six or eight feet from the door to the wall. Don't think the door was a foot from the bed. The table on which we signed, was in the next room, down against the South wall. Will swear that it was not close up to the western wall. Don't recollect seeing the table moved. Will swear it was two feet from western wall. Door of bedroom swung to left against the bed. I signed as witness on the west side of the table, and not on the North west. There was a chair sitting there. Don't know the width of the bed—think it was a double one. Had seen Mr. Gurney since his illness. Can't say how long he was sick. It was Monday night, 26th Nov. when we signed.

Jonathan Harding was next sworn. I am brother of last witness. Signed as witness in R. Gurney's house. All present. I saw Mr. Gurney sign the will. Mr. Harding asked him, if that was his last will and testament. He replied it was his last will and testament, and that he left his business all in Mr. Harding's hands. It was not read in my presence, at time of executing. I did see him, when the other witnesses signed. Mr. Gurney was looking at them. I am positive I saw him look. I took him to be in a right state of mind. He asked for his spectacles. Father gave him his. He looked at the paper. All he saw was the end of the will. The first page of will was not opened.

Cross-examined by Mr. Needham.

I do think him to have been in a sound state of mind. Have known Mr. G. about 15 years. Had only seen him twice during his illness. Don't know whether it was the same evening or a week before. It was in the evening. I think there was some person with me. We had the following conversation. "You are quite low, Mr. Gurney." He replied "I hope I'll get round." I don't know his state of mind during his illness. It was between 9 and 11 when I left home to sign the will. Found father and Armstrong there, when I went to the house. My father came home afterwards. My brother went with me to Gurney's. The old man was lying on the bed. After signing and acknowledging it, he lay down. Question. Will you swear that Mr. Gurney did not say to Mr. Harding, "I am glad that you have corrected the will," before you all left the bedroom. Answer. Don't know whether anything more was said or not. It might have been said, but I do not recollect it. There was a debating club in Jacksontown which met different nights. I was there twice. Mr. Armstrong did not ask me, at the club to go over to Gurney's the night the will was signed. The bedroom was from six to twelve feet long. The door was near the centre, and between four and ten feet from the wall near the road side. We signed as witnesses in the adjoining room. I was standing at the North side of the table when my brother and Armstrong signed it. They were at the North west corner when they signed it, won't swear, I was facing the South. Think I was facing the North east, won't swear it. I was nearer the west than east. I was standing out further in the room than they—further east. I sat down sideways to the table. Not facing South, nor Northwest, but think it was Northeast, very near, but will not swear positively. Can't say whether my brother stood or sat to sign. The Paper lay in same place while all were signing. It lay on the table nearer the west end than the east—was not moved, till all had signed. Did not hear any part of will read. Think the will is in my Father, (L. R. Harding's) hand writing. I signed without looking at it. We put our initials near the rectification of the mistakes. I knew what I signed. They told me it was a will—that is the paper, (pointing to the will produced in evidence.) When this was done, and we came into the other room, I think my Father had not any other paper in his hand, but the will.

My Father did burn another paper, after we sat a while, which he pulled out of his pocket. I think he said, this is the first will—I will burn it before you. The witnesses were all present—I saw it burn. Nothing was said about its contents. After burning the first will, my father did not in my presence, pledge Armstrong not to say anything about what passed that evening. Mr. Gurney lay close to the front side of the bed, when he signed will—did so before when I saw him.—He lay on his back, I think,—can't say that he inclined to either side.

Questioned by Mr. Street.

My father did say on pulling out the first will, so called, "This is the first will—I will burn it in presence of you the witnesses." Do not recollect that he stated the reason—was not thinking of the matter. Am positive Gurney could and did see me, when I and the other witnesses signed the will.

Questioned by Mr. Needham.

Did not Mr. Harding say on burning first will, that the names were wrong on that will.

Ans. No he did not.

Are you witness interested in this will?

Ans. Not except as my Father's son.

The Court here adjourned, the next day being Good Friday, till Saturday, at 10 o'clock.

On Saturday at 10 A. M., the Court being again opened, L. R. Harding was called—Mr. Needham objected to Mr. Harding's being sworn, but was over ruled by His Honor. He was then sworn, and gave the following evidence in reply to Mr. Street.

I have known Gurney and his wife 25 years. They had no children. His wife's name is Jane. The will produced is his will written by me. The witnesses to it are Wm. Armstrong, Jonathan

Harding and L. R. Harding, Jr. Mr. Gurney signed it in bed, in presence of the witnesses. (Gurney) looked at it before signing,—he asked for his spectacles.—I gave him mine,—he signed it with the will laid on a book. In presence of the witnesses he signed it and placing his finger on the seal acknowledged it to be his last will and testament. He further said, I give Squire Harding full power and authority to transact all my business. Then I took the will into the bedroom, and threw it down on the table, on the east end, having first doubled up the cloth over some dishes on the other end.

Armstrong stood at the east end of the table and signed it as a witness. I stood at the table looking in at Gurney, while witnesses were signing. I do not know if the witnesses all stood at the same place, while signing. I knew that the witnesses and testator must sign in one another's presence.

Between two or three months before Mr. Gurney was taken sick, he came to me, at my house, and said he was getting old, and wished me to assist him in fixing his business. He wanted me to write his will. I told him he had better take copy and write it himself. He asked me if I had a copy, I gave him one and told him to go and write the "pramble." He met me some time after, and asked me when I would come to fix his will. This was on the 19th or 11th Nov. He told me he wanted to fix up his business, went to his house—he told his wife to get the copy of the will. She did so. He was sitting in his chair. I asked him how he wanted the property distributed. He told me he wanted to give his nieces some, and his wife to have the balance during her life. He wanted to give his niece £60, and his unmarried niece £40. He wanted to put the property into some one's hands who would take care of her. I asked me would take her, and pay all debts and legacies and keep the balance for myself, for my time. I told him I had rather have nothing to do with it, but that he had better get John Harper, who was a great friend of his, to take it. He said would not do it. Then said I, take William Walsh, but he would not do so. I told him, I insisted on it, I must take time to consider, would tell him next morning. Next day I went to Gurney's, and asked him, if he insisted my taking it—he said he would not take either those I mentioned. I then said, I would come to take it.

I then went home, and wrote the Draft of I produce here. I took it and read it to Gurney told me to make the will after the Draft here produced in evidence. I took it home and did so. I then took the will to Gurney and he read it, and said the will was all right but one thing; that he intended to give his combe a building lot, and wanted it to be put in the will. I said it could not be put in, as I would make out another will, or give an affidavit to Gurney for Newcomb. This will was signed and witnessed on the 14th Nov. in his room, was signed before the witnesses. I asked him he wanted to do with it. He told me to take of it. Ten days after, he sent for me, and told me, he wanted to change the will, and put in names of Mary Gidney Gilmore and Nancy two nieces. He said he had found the name of an old letter in his drawer. Before that, I told him, it was necessary to have the "fian" name of the legatees in the will, as it might otherwise be some trouble about it. I said it was no matter, as he did not know names.

Then I wrote a new will, and put in the names he told me to destroy the old will. I read new will to him. This was on the 26th Nov. He told me to get witnesses, so as to do it executed. I told him I could not get the witnesses. I said I would get witnesses in morning. I went to Gurney's about 10 o'clock in the evening. He asked me whether I had a will. I said, No. He said I had better get witnesses to-night and have it done. He said here is Armstrong; he will do for one. I went home and told my sons Leonard and James to come over to Gurney's, as we might want as witnesses to his will. When I came he showed him the will and read it to him, and gave it to him. The will was then executed, that time he was of sound mind. The estate mentioned is worth, I should judge, \$1500 the personal property \$150. From the information I could get, he owes £150. His age is 58. Her health is good; so good that she may live long enough to eat up the property. I had rather have nothing to do with it. I have to pay the debts and legacies, keep the "old woman," for the property, consider it a hard bargain. I once had a nephew the same kind before, and never got anything out of him. When we were talking about the will, I told him if he intended to leave his nephew anything, he would be in trouble, when his house burnt. Besides, he had heard that he was a sputtered character.

Questioned by Mr. Needham.

Have heard Gurney speak of Matthew's times, but not of his nieces by name. He never had two. Did not hear him mention anything till after he found the letter. Mr. Gurney expressly told me he had a nephew named them, but not the name of either niece, till finding the letter.

Property appraised at £450; would not more than £400 for it. Would sell it for sum I could get. Would hardly rent for per annum, in money. His arrangements were, that I was to take care of him

ber of a family, not for the purpose of settlement, but in order, under cover of the Act, to strip the Land of the lumber.

"Rules and Regulations were passed in Council on the 29th May 1852, (a copy of which is here annexed) restricting the applicants to persons not under 18 years of age, embodying the form of a Petition stating that the applicant resides in the Province, is a British Subject, — years of age, does not own any Land, and has no claim to any Land purchased from Government payable by instalments, or by labor, prays leave to pay for the Land in labor, and he pledges himself to conform in all things to the Regulations of Government for such purchase. The Regulations provided that the applicant should within three months after the publication of such approval, personally occupy the Land and make improvements to the value of £10.

"The evidence exhibits applications under this form of petition, to which they beg refer once.

"It appears by the evidence of Mr. Inches, that about 500,000 acres of Land have been applied for under this Act, and approved of, but not yet paid for, and for which grants have not yet issued; the quantity that was approved and Gazetted from 1st November 1850, to 1st November 1860, was 101,200 acres.

"The Committee have no evidence before them of the quantity for which Grants have issued, but there is a considerable quantity of Land applied for several years since, and for which labour has been performed, but no Grants have yet issued in consequence of the Certificates not having been produced at the Crown Land Office, that the conditions of settlement had been complied with under the Rules and Regulations in force. The Regulations were altered in some particulars in 1858, and the period within which settlement and improvement should be made, was extended from three months to two years. The evidence shows that this extension has proved injurious, by locking up the Land for too long a period without improvement, and affording a greater opportunity of stripping the Land of the Lumber. This period has lately been reduced to one year, and an Affidavit is now required from the applicant to the truth of the contents of the Petition.

"The Committee find that Mr. Inches was interested in 9000 acres of Land, purchased mostly in 1853 and 1854 under the instalment system. Had the instalments been annually called for the real ownership of so large a quantity of Land could not have remained so long unknown to the Department. The three last instalments were paid in July 1860, when, by means of transfers held from the parties in whose names the Lands were purchased, Grants were issued in the names of persons selected by Mr. Inches. On examining the transfers of these Lands produced from the Department, the Committee find the names of the original purchasers to include men of wealth and position, extending to persons residing in almost every part of the Province, a list of whom is herewith submitted. There were numerous facts elicited during the investigation, many of them important, but it is impossible for the Committee to give them all particular prominence in this Report; and the Committee therefore beg reference to them in the accompanying Evidence and Documents.

"The Committee have also had before them the Petition of Wm. Hayward and others, praying investigation with reference to certain Road expenditures in Glassville and Knowlesville Settlements. It appears that in accordance with the ordinary custom applied to Association Surveys, a leading Road is carefully explored by a Surveyor, and opened out at Government expense, for the convenience and encouragement of settlers. In addition to the Road service of Deputy Hartley in the above Town, for which he has received payment, the Surveyor General, at the request of some of the settlers, and by recommendation of one of the Representatives of the County employed three very suitable persons to perform further work on the Road, the gross charge for which amounts to the sum of \$656 25-10/10ths.—The Committee think the expense incurred in this case greater than the circumstances would justify, and recommend that in future all similar expenditures be made, if at all, in the most economical way, and as far as practicable at public competition. The Honorable Surveyor General estimates that from \$10 to \$12 is sufficient per mile for such purpose.

"In conclusion, the Committee beg to say that they consider the policy of permitting large tracts of Land, suitable for settlement, throughout the Province and along the line of Railway to be locked up in the hands of speculators, as detrimental to the public interests; that the interference with the Surveyor General by the payment for Surveys and other services contrary to his express orders, as tending to create insubordination in the Department; and they are further of opinion, that the Executive Government, as Trustees for the public, are responsible for the judicious management of the public domain.

All of which is respectfully submitted.  
JAMES TIBBETS,  
MATTHEW McLEOD,  
ROBERT D. WILMOT,  
ARNER R. McCLELLAN,  
GEORGE KEIR.

"Committee Room, 26th March, 1861."

Anderson, the fugitive slave, is in Montreal. He is to go to England on the opening of navigation.

his lifetime, pay his funeral expenses she was to have the use of the was no agreement that I should money for her support; but I not maintain her, I shall have tained. The personal property pay the debts out of. If there about supporting her afterwards agreement about it. I did not the value of the property.—Do worth more than the appraisal, praised by Anthony Kearney as as good men as can be found.

When I made first will and re he said it was all right, but the give a part to Mr. Newcomb. not be added, but I could give a make a new will. He said an do. I wrote one, and by his dir the will to keep, and I have not about me. George Connell has have not got it with me. I exp now. I told Mr. Newcomb about the funeral, and told him I would [Obligation handed into court, as by L. R. Harding.] This was the same day as first will was si

COPY OF OBLIGATION

"I, Robert Gurney, do request L. R. Harding, to give William friend, a building lot above the House, on the west side of the 4 59 feet in front, and 100 feet back Jane's death, and by so doing, I will oblige me, and fulfil my wish Gurney's last wish, this 14th day 1860."

"I, L. R. Harding do agree to wish of Robert Gurney, this 14 1860."

Signed, L. R. Cross questioned by Mr. Need This is my handwriting. Mr. sign it, I was directed to keep it I gave it to Connell this morning. Has been in my possession 25th Nov., 1860.

After he signed the will, Moss Kearney, and William Tompkins will, as witnesses. They remain nieces, while I was there, I think five. I think it likely Sharp say, know if Sharp was at the house, there, but I went after the other sign, I read the will to Mr. Gurney, a few days before he signed about the 11th or 12th before the I read it to him, the day when he but not in the room—no one but Mrs. Walsh, and Mary Irving were in the room. I don't know who when I read it the second time; some people; they could not hear. No one ever heard me read that w ney. [Here there was a war of Counsel and the witness, which was His Honor.] First will was signed adjoining the bedroom; I stayed with Mr. Gurney and witnesses, a After the first will was signed, on this obligation was made—I went drew it up, and took it back. The cut-d in the forefront of the day signed it in my own house; took to him, and he was perfectly satisfi He told me what to do, and I wrote words, and he said it would do as will. I signed it. Gurney did not the day of the week; was on the was not on the 17th; he then direct it and put it with the will. I then first will, not in presence of witne some day after obligation was writ this up with it in the envelope—su day—did not ask witnesses to writ on the seal. I did not seal it up be that I might put the obligation with recollect seeing Moses Sharp in the day after altering the will. About that will was executed, Mr. Gurney and told me, he had found the name in a letter. I have not the letter w Gurney gave it to me. I took it with that letter prepared a new will whether that day or the next. I prepared it, so as to show it to him the 24th, the same day as he sent that obligation, on the day I drew Took the new will to Mr. Gurney, to him, once before the day he signe to him.

I went over almost every night, evening that will was signed, and t Armstrong. It was near 10 o'clock Mr. Gurney spoke to me about get 20th in Kitchen or Parlour. S Gurney told me they made too much did not tell me the night before he other time, that he wanted watch Armstrong was in the House. Dou the door was shut. It was a tea. I went there. I used to be d by, sat with him and helped him to ed with him all night after the will gave him several drinks during night, conishing drinks—he probably h will was signed.

Did not give him any wine that he signed the will. I gave it to him his orders, I did not get the w