

HUMOROUS PHASES OF THE LAW.

which there was no ground to claim in conscience, the party may recover it back again.

In another paper we shall endeavor to collect and examine the American authorities on the question.—*Albany Law Journal*.

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THE IMMORALITIES OF WILLS.

Man has a natural longing to perpetuate himself, his likes and his dislikes, his ambitions, his ideas. He dreads to have his name die out, and desires male offspring to keep it alive. If he is a link in a long unbroken chain of family, he shrinks at the reflection that he may be the last link; and hence arises the establishment of an inheritable order of nobility. Above all he clings to material possessions. It is a bitter thought to most men, that others shall pluck the fruit of the trees which they have planted, and thrive under the roofs which they have reared, and follow the North star in ships which they have built; and so one bestows his name on a forest or a graft of apples, another erects a block of houses and calls it after himself, and the third nails his name to the broad stern of a steamship. The desire exists in all; it is only a difference in measure. Napoleon desired to found a dynasty: Smith leaves his India-rubber business to his sons, and directs that the firm shall be Smith's Sons. In others the desire has more of philanthropy, but not much less of vanity; one founds a library and another endows a college, but both insist that their name shall be attached to the gift. Few persons can do even as simple a thing as give a book, without writing their name as donor on the fly-leaf.

Experience has taught man that sooner or later he must give up his possessions, but he clings to the power of controlling what he leaves behind him. He wants to have his way, and make others feel his power, even after he is dust. Like a trustee of long standing, he grows to consider the fund as his own. Instead of viewing his interest in the property which God has permitted him to accumulate, as usufructuary merely, he not only regards it as his own, but endeavors to impress the stamp of his ownership upon it after death. So, while his bones are slowly mouldering, and cattle crop the grass that springs from his dust, he still has a bone of contention among his descendants or beneficiaries, in the shape of an estate burdened with conditions, or loaded with intricate trusts. None but the lawyers call him blessed.

It has been a grave moral and legal question whether a man has a right to effect the disposition of his property by will. Political economists have differed on this subject. Shall I not do what I will with my own? asks one. But another replies, you have no more right to direct the course of your property after your death than to dictate the policy of government.

You are done with earthly societies, and all you had falls back into the common fund. Society listens to man's pleadings for posthumous power only in a measured degree. His right to make a will is everywhere attended by limitations, differing according to the form of the government or temperament of the people. In some countries the rule "first come first served" is adopted, and primogeniture obtains. In others the testator may give to whom he chooses, but not as long as he chooses—for not longer than two lives, for instance—on the theory that to control his estate for twice as long as he possessed it is a sufficient reward for getting it. In others, he is restricted in the objects of benefactions; for example, if he leave a wife or child he cannot give more than a certain proportion to religious or charitable uses. In all communities he is prohibited from depriving his wife of dower in his estate.

At first thought one would suppose that the law would care but little concerning the disposition of a man's body after death. The law sometimes hands the bony parts of malefactors over to the surgeons for the instruction of students and the warning of the evilly disposed. But if a man proposes to do this for himself by will, the law makes a great fuss, and even suggests that the idea argues insanity. It is related of Ziska, that, as his end drew near, he commanded that drums should be made of his skin, in order that, though dead, he might speak terror to his enemies; he would have made a complete drum corpse of himself. In the case of *Morgan v. Boys*, the testator devised his property to a stranger, wholly disinheriting the heir or next of kin, and directed that his executors should "cause some parts of his bowels to be converted into fiddle-strings, that others should be sublimed into smelling salts, and that the remainder of his body should be vetrified into lenses, for optical purposes." In a letter attached to his will the testator said: "The world may think this to be done in a spirit of singularity or whim, but I have a mortal aversion to funeral pomp, and I wish my body to be converted into purposes useful to mankind." The testator was shown to have conducted his affairs with great shrewdness and ability, and, so far from being imbecile, he had always been regarded by his associates through life as a person of indisputable capacity. Sir Herbert Jenner Past regarded the proof as not sufficient to establish insanity, it amounting to nothing more than eccentricity, in his judgment. Judge Redfield, from whose work on wills I quote this case, remarks on it: "This must be regarded as a most charitable view of the testator's mental capacity, and one which an American jury would not be readily induced to adopt. *We do not insist* that the mere absurdity and irreverence of the mode of bestowing his own body, as a sacrifice, to the interests of science and art, in so bald and lawful a mode, *was to be regarded as plenary evidence of mental*