

Witches and Wills

BY HARRY HIBSCHMAN

YOU, of course, do not believe in witches. Hence the question of the effect of such a belief on the competency of its holder to make a valid will does not interest you as related to your own will. But what about that legacy you are expecting? Will the will giving it to you stand up in court? Is that dear and loving relative of yours normal? Or is he a queer old codger with crazy ideas and foolish eccentricities? Does he, perhaps, entertain quaint notions about fairies, ghosts and witches, or species not found on Broadway, that may be used later to impeach his mental fitness and his testamentary capacity?

These are questions that may prove of direct importance to almost anyone, for many a fortune has gone to the lawyers and the heirs, instead of to the beneficiaries mentioned in a will, because its maker was proved to have been too irrational to make one that the courts would uphold.

And so far as witchcraft is concerned, unfortunately belief in it is not yet dead in these Enlightened States of America, as has been demonstrated within the last few years in several notorious criminal trials. Witches and *hexers*, as they are called by the Pennsylvania Germans, still live and still play an active part

in the affairs of men. How do the courts look upon belief in them and upon the acts and deeds of persons harboring such beliefs? Particularly, what do they hold as to the testamentary capacity of believers in witchcraft?

THESE are not merely pertinent questions. They are also extremely interesting ones. For the answers must be sought in actual cases decided by the courts, many of which present facts so weird and preposterous as to appear like the inventions of a modern Poe or Munchausen. And even stranger than the facts are, in many of the cases, the decisions of the august judicial tribunals.

One of the queerest of these cases arose in South Carolina a little over a hundred years ago. It involved an attack on the will of an absurd character of the name of Mason Lee, who disinherited all his relatives including two illegitimate sons, and gave his property, valued at over fifty thousand dollars, to the States of South Carolina and Tennessee jointly. The facts as detailed in the opinion of the Supreme Court of South Carolina are in some respects so inelegant, to put it mildly, that only an expurgated version of them

can be given in a sedate family journal. But the following condensed statement in the language of the Court will suffice to give us a fair picture of the personality of the testator:

The testator had no particular grounds for disliking his relatives, with one exception, . . . He believed that his relatives desired his death and that they used supernatural agency and bewitched him. He believed that all women were witches and would not sleep in a bed made by a woman. He believed also that an influence could be exerted on his body and mind from a distance; that some of his relatives were in his teeth, and to dislodge them he had fourteen of his teeth drawn. . . . He had holes cut in his shoes and in his hat, so that if the devil got in he could drive him out the easier. . . . He made his clothes himself. They were without buttons. He did not clean his clothes for months. He kept his hair shaved close to prevent the witches from getting hold of his hair. . . . In the daytime he dozed in a hollow gum log for a bed, keeping awake at night to fight the devil and witches. Once he imagined he had the devil nailed up in the fire-place.

SUCH being the testator's beliefs and actions, he made a will in which, as already stated, he gave everything to the two States named. He then provided: "And it is my will and desire that no part of my estate shall be enjoyed or in any wise inherited, by either or any of my relatives, while wood grows or water runs. . . . And my executors are enjoined to contend with them, either in law or equity, to enforce this my will by employing the best Charleston lawyers. . . ."

Well, the executors did have to contend; and, what is more, though I dare say you would never guess it, they won. For Mason Lee, in spite of all his absurd delusions and eccentricities, hardly to be matched

outside of an institution for the insane, was declared to have been competent to make the will in question.

To be sure, this case is over a hundred years old. So let us examine some that are later; for, after all, the law is supposed to be a progressive science. Sometimes, too, different rules prevail in different jurisdictions.

A LEADING case and one that is frequently cited as a precedent in later decisions came before the Supreme Court of Indiana in 1854, and is worthy of note because the judicial attitude of the time relative to this subject is so fully revealed in the opinion.

The facts are comparatively simple. The will attacked was that of Francis Stephen, described by the court as "an ordinary, prudent, judicious business man, an average farmer." He had five children by a wife with whom he lived unhappily for some time prior to her death, and over whose death he expressed joy. Some of the children left him after their mother's death and refused to return, asserting that it was impossible to live with him. These children he disinherited, and they contested the will, alleging that their father was mentally incompetent when he made it. The gist of the evidence offered in support of their contention was that he believed in witchcraft, that he declared their mother, over whose death he rejoiced, was a witch, and that he asserted and believed that "at her death she had left her witch-sticks to her children," who, he complained, treated him badly because they, too, were witches.

In other words, he disinherited them because of their alleged unfilial conduct, and he attributed that conduct to the fact of their being bewitched or being witches themselves.

After reciting these facts the court said that it was only called upon to answer one simple question, and that its answer to that question would be decisive of the case. The question was: "Is a belief in witchcraft evidence of such insanity as disables a person to make a will?" The court's answer, somewhat mixed both grammatically and theologically, was as follows:

From the visits of Lot and others of the patriarchs (without referring to the scenes in the garden of Eden) down to this time, when the spirits, like Poe's stately midnight raven, come gently rapping, rapping at the chamber-doors of modern mediums, some of whom are eminent persons, the world, pagan, Jewish and Christian, have to a greater or less extent believed in spiritual existences, some being good and some evil, which have maintained a connection with and manifested their powers through human beings — in the case of the Witch of Endor to even raising the dead; while scarcely any pretend to be, and no one in fact is, able to explain the mystery, to unfold the manner of their operations, or lay down the laws governing them. The prevalence of the belief, however, and the authority on which it rests, are sufficiently extensive and respectable to shield any individual indulging it from the charge, if not of weakness, at least of insanity, simply on account of such belief.

THE validity of the will was sustained, though it may be pointed out that the question formulated and answered by the court failed to contain one important element revealed by the evidence. It did not take into account the fact that the testator's belief in witchcraft was directly connected with and responsible for his

action in disinheriting his children. He thought his daughters were mistreating him because they were bewitched or were witches themselves, which is quite different from merely holding an abstract belief unrelated to the will.

THE evidence in a New York case decided in 1888 describes in considerable detail the peculiar means and remedies employed by a believer in witchcraft to protect and defend herself against the baleful machinations of the witches who were attempting to harm her.

The will attacked was that of a seventy-seven-year old woman of the name of Eliza Ann Vedder, who had left all her property, except one hundred dollars, to her husband, a man twenty years younger than herself, with whom she had lived harmoniously for a quarter of a century. There were no children, and the one legatee favored was a niece. The will was contested by the decedent's nephews and nieces. They contended that their aunt was mentally incompetent because of her belief in witches; and in support of their contention they showed the following facts, among others:

Mrs. Vedder talked a great deal about buried treasure and how to find it. She said she had seen lights at night over certain spots on the farm and, if a person would dig there at midnight, observing the proper ritual, he would find money. And once she took one of her nephews on a digging trip. She enjoined him to be absolutely silent from the time they left the house until they returned, and she made him carry a red rooster. She told him where to dig, but took a

certain number of steps around the spot and went through some mysterious ceremonies before she motioned to him to go to work. They were disturbed in their search by evil spirits in the form of cattle, and found no gold.

There were times when the cream in the churn did not turn promptly enough, and then she knew it was bewitched. On such occasions she put irons into the cream and marked the sign of the cross on the bottom of the churn.

She said she could not keep her horses fat because the witches rode them at night. Once, she told a neighbor, she saw a headless rider crossing her field. She said she had seen the devil and had talked with Jesus. She also claimed to have seen her dead sister in a vision and to have been to heaven.

ONE time she visited a neighbor whose child was sick, and she declared it was bewitched. She advised the mother to search the pillow on which the child was lying, and said a hard bunch of feathers would be found in it, which she directed should be boiled at night in a pot. Then at midnight, she said, there would be a knock at the door, which no one was to answer; and in the morning the witch would be found lying dead outside.

The court said: "There is no evidence whatever to show that any or all of these beliefs, delusions, eccentricities, or peculiarities, had the slightest connection with or influence upon her testamentary act here in question." And it sustained the will.

But one of the most extraordinary

cases to be found in the books arose in Mississippi before the Civil War and involved the will of Joseph P. Kelly, who can hardly have been surpassed by his negro slaves for credulity, superstition and voodooism.

As a number of witnesses expressed it, Kelly "blamed everything that went wrong on witches." If his slaves were sick, they were bewitched. If the cotton crop was poor, it was the witches' fault. Even when he went fishing and the fish failed to bite, he felt sure that the fault was not with his bait or with his piscatorial technique, but was convinced that evil spells had been cast upon the fish and upon him.

There were times when invisible forces made it impossible for him to enter his corn-crib, and others when for long periods he was mysteriously prevented from going to certain of his fields.

He had none of the usual comforts of living. He had a bed and a cot that had been repaired many times, but not enough bedding to keep warm. He had two plates, one cup and saucer, two or three chairs, and a safe nailed on the wall. He always wore an old hat, even at the table, and would not look at any one with whom he was talking. He frequently burst into tears without apparent cause. He hated women and would turn around if one sat down facing him. He never smiled or laughed; and he never returned home by the same route he used in leaving, because, he said, the witches would not let him. Sometimes he could not swallow his food and thought he was bewitched. And once he said the witches pushed him off a log into a creek, evidently,

contrary to tradition, not being afraid of water.

Like Mason Lee, he, too, claimed to have seen the devil; and, strange to say, his first meeting with his Satanic Majesty he claimed to have been in a church. As soon as the door of the pew was closed on him, "the conjuring —— of a devil" got hold of him, he asserted. Once, also he said, the witches took hold of the preacher and led him out of the church backward, showing no respect for, or fear of, the cloth. He himself was led out of his house in the same way, though he did not explain what the witches did with him after they abducted him.

WITHOUT going further into the voluminous oral testimony, much of which, like that in the Lee case, is unprintable except in law books, we may let the following excerpts from a letter written by the testator in 1850 to one John Williams serve to complete the picture of his mind and personality:

I am going to plague you again. Them conjuring creatures have got me at such a pass that I can't go in my plantation. I haven't seen any of my crops this year except about ten acres. . . .

I wrote to you about my father's trying to hang me at the persimmon tree. . . . His daughter (referring to a man he believed his enemy) was at the spring with your sister Nancy. . . . They made my hogs eat up my chickens and turkeys and sometimes the sows eat up all their pigs and they bewitch and conjure nearly everybody I have anything to do with. . . . Great God, deliver this world from conjuring devils!

In his favor, evidence was offered that he never mixed his witch ideas with his business, that he talked politics like a sensible man, and that he never indulged in witch talk when

he was drinking. Another argument against the Eighteenth Amendment!

He gave all his property to his physician on condition that he pay the next of kin seven hundred dollars a year for ten years. The brothers and sisters and nephews and nieces contested the will and submitted against it the evidence outlined above. They had their trouble and expense for nothing, for in spite of all the queer beliefs and actions described by the witnesses and revealed in his own letters, the court held him competent to make a will. Let him who can, find comfort in that judicial pronouncement!

The Supreme Court of Illinois as recently as 1914 recognized the legal soundness of the rule applied in the cases discussed above, saying: "The fact that a person believes in witchcraft, clairvoyance, spiritual influences, presentments of the occurrences of future events, dreams, mind-reading, and the like, does not necessarily affect the validity of a will. Manifestly a man's belief can not be made a test of sanity."

THERE are some other adjudicated cases in which belief of a testator in witchcraft was presented to impeach his testamentary capacity. But there are none in which the will was successfully attacked. For the courts stand firmly on the principle that a mere belief, no matter how ridiculous, is not evidence by itself of mental incompetency, and that only if the belief is directly connected with, and the cause of, the testator's particular disposition of his property, will it be considered as casting doubt on the validity of the will. A man may be as crazy as the proverbial

bedbug on one or more subjects, but if "he is capable of comprehending all his property and all of the persons who reasonably come within the range of his bounty, has sufficient intelligence to understand his ordinary business, and knows what disposition he is making of his property," he is competent to make a will.

As already indicated, modern courts apply a compartment theory and hold that a person may be laboring under an admittedly insane delusion, though they do not concede a belief in witchcraft to be such, and yet be competent in other respects and in other spheres. While some courts are inclined to modify this doctrine, the gap between the legal conception of mental competency and the scientific conception is on the whole as wide here as it is in the field of criminology. For even if a belief in witchcraft is not sufficiently

extreme in a specific case to constitute an insane delusion, it is clearly evidence of a psychopathic trend; and in cases like those of Lee and Kelly, where the delusion is systematized so as to determine the daily way of living, it reveals a definite psychosis. Such unfortunate individuals would be diagnosed as paranoiacs by almost any present-day psychiatrist. Certainly, as one authority says, "The very fact that an insane delusion does persist in the mind is proof enough that a man can not reason soundly; he will reason insanely, feel insanely, and sooner or later he will act insanely."

The man who believes in witches can make a valid will under present judicial rulings; but, were we like Kelly, we would say, "That's the rule only because the judges themselves have been bewitched." It will not always be so.



THE LITERARY LANDSCAPE

by

HERSCHEL BRICKELL



THIS chapter of the Landscape will be written *en plein air*, and so if autumnal tints and sounds become somewhat confused with observations about books, the reader will understand. A maple flames before the Landscaper's eyes when they are lifted from his faithful typewriter; the goldenrod and asters are blooming, and the crab apples by the front door are a rich red and unbelievably mellow. The little lake lies mirror-like except when one of those fancy carp called goldfish breaks its surface. Beneath the rustle of dying leaves — all those who have sharp ears and who have lived the seasons round in the country knew the difference between the sound of leaves in spring and in autumn — the crickets' song goes steadily on, a romantic sound, *triste*, as the Spaniards have it, but not too sad; a sort of pleasant melancholy, with something of death in it, but the death of things that die only to come to life again, and speedily.

Or, in plainer language, another season is upon us, and the Landscaper is of the opinion that very few of those who have anything to do with books, either as writers, publishers or merchants, will be sorry

that nature has come to the rescue. One of the reasons — it may have been a rationalization — most often advanced for the period of depression in matters literary during the past six months has been that the supply of books has offered very little excite-

ment; that the book-buyer, ever a timid and sensitive soul, stopped his visits to his favorite book store because there was so little in it that he had to have. Perhaps this is where the drug stores come in, for no one can remain away from drug stores. Even if there is no need for the newest toothpaste or the latest cigarette with medicinal qualities, one must stop in for a drink or set of golf clubs, or a tire for the family automobile. . . . And while there, why not buy a book? Well, this prejudiced person can think of several reasons why not, but he, as any faithful followers he may have already know very well, is a pathetic old fogey, from whom life has run away, born too late into a world too old, or something like that.

Good Books Aplenty Now

BEFORE we pursue this digression too far, before getting into the fact that whatever has been wrong