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WILLS-LOOSE SHEETS AS A WILL

WILLS—LOOSE SHEETS AS A WILL.—Testatrix's will contained twenty-eight sheets of correspondence paper, each complete in itself and not physically bound together. When presented for probate, the last sheet held only an attestation clause and the signatures of testatrix and witnesses; each of the others was signed by testatrix; and the whole group were consecutively

numbered. The attesting witnesses, employed at the bank with which testatrix did business, identified the writing on all twenty-eight sheets as that of testatrix, but could not say that these very sheets were present when the last was executed. They testified there was a bundle of similar sheets, and one witness stated that the last was then numbered twenty-eight. The pages were so arranged that provisions for the same general purpose were together; none were inconsistent. *Held,* on appeal, that there was some evidence to sustain the finding of the probate court and it would not be disturbed. *Appeal of Sleeper* (Me. 1930) 151 Atl. 150.

In so far as the court has found that there was some evidence to sustain the lower court, it is correct; but, by the tests normally applied by other jurisdictions, the sufficiency of that evidence would be seriously questioned. Three rules have been evolved, and one or another adopted generally, for determining the acceptability of loose sheets as a will, for no court will deny that a will may be on separate sheets. The problem before the court in the present case has been clearly recognized, and the usual methods of approach ably discussed, but the court has chosen to discard them for a modified rule adjustable to changing situations. The simplest test, and perhaps the oldest, is to the effect that if all the sheets were in the room at the time the will was executed though not all seen by the attesting witnesses, they may be probated. *Bond v. Seawell,* 3 Burr. 1773; *Gregory v. Queen's Procurator,* 4 Notes of Cas. 620; *Harp v. Parr,* 168 Ill. 459, 48 N.E. 113; *Gass v. Gass,* 3 Humph. (Tenn.) 278. A second test, applied largely in New York state, provides that if the sheets can be shown to have been physically attached at the time of execution, the will may be probated. *In re Fitzgerald's Will,* 68 N. Y. S. 632; *Field's Will,* 204 N. Y. 448, 97 N.E. 881; *Goods of M'Key,* Ir. Rep. 11 Eq. 220. But by far the largest group of jurisdictions apply the rule that the sheets must be connected by their internal sense, by coherence or adaptation of parts, to be probated. *Wikoff's Appeal,* 15 Pa. 281, 53 Am. Dec. 597; *In re Maginn,* 278 Pa. 89, 122 Atl. 264, 30 A. L. R. 418; *Martin v. Hamlin,* 4 Strobh. L. (S. C.) 188, 53 Am. Dec. 673; *Ela v. Edwards,* 16 Gray (Mass.) 91 *In re Johnson's Will,* 80 N. J. Eq. 525, 85 Atl. 254. What the exact meaning of that phrase is has been disputed, but it is generally interpreted to demand a carrying over of an incomplete sentence from one sheet to another, or a reference by one sheet to another, and a general dependence of one sheet on the remainder for clearness. In the present case the court has set aside fixed rules and decided that since its purpose to carry out testratrix's wishes, whether the will shall be probated or not should depend upon the circumstances of the case and extrinsic evidence. It is not alone in its attempt for even under the strict rules several courts have relaxed. There is a presumption, in the absence of contrary evidence that all sheets were present at the time of execution; *Bond v. Seawell,* supra; *Marsh v. Marsh,* 1 Sw. & Tr. 528; that they were attached then as presented for probate; *Barnewall v. Murrell,* 108 Ala. 366, 18 So. 831; *Rees v. Rees,* L. R. 3 P. & D. 84 (1873). One case held that holding the sheets between the fingers during the act of execution was a sufficient physical connection; *Lewis v. Lewis,* L. R. [1908] P. Div. 1, and *Gass v. Gass,* supra, clearly urges the use of circumstances. In the light of these cases the court might well quote *Rees v. Rees,* supra, "if any theory consistent with the validity of the will can be suggested, which

appears to the court to be as probable as the theory on which the argument for the invalidity is based, the will as found must be maintained."