

Sketch: Two Wills for Vincent Mathews Wylly

Vincent Mathews Wylly died on the 14th of August 1885, in the city of Melbourne, Australia. Following his death two Wills appeared, and became the subject of a dispute that was carried on in the Equity Court. The article below appeared in the The Argus of Melbourne on the 6th of November 1885, and tells the story of the trial, better than I could. The Trove Collection of the National Library of Australia is a rich resource for historic newspapers. I am indebted to persons (unnamed) who offered their time to improve this transcription at the Trove website. I have added paragraph breaks to make the article easier to read. Pamela Hutchison Garrett, 2018.

EQUITY COURT; Thursday, Nov 5 [1885]; (Before his Honour Mr Justice Molesworth, acting Chief Justice)

RE VINCENT MATHEW WYLLY

This was as application by the Trustees Executors and Agency Company Limited for a rule calling upon ne George Boulton to show cause why probate of a will said to have been made by Wylly on the 29th June, 1885, should not be granted to the company. By this will Wylly left the bulk of his property to a Miss Irons, who had been his housekeeper. Boulton opposed the application for probate to the will on the ground that Wylly had made a subsequent will dated the 7th July 1885, by which he left his property to his wife. It was said, on behalf of the company that the will put forward by Boulton was a forgery. Dr Madden and Mr Campbell appeared for the company: Mr Topp appeared for Boulton.

His Honour, in giving judgment, said: I have to deal with a conflict between two wills of Mr Wylly. He before 1865 was married to Elizabeth Mary, a sister of the litigant, Mr George Boulton. She became a lunatic, and in 1879 was for a short time in an asylum. She was taken out and for years lived with the husband, making him, he sometimes alleged, very uncomfortable by her mental defects. On May 22, 1885, he again put her into a lunatic asylum where she remains, probably, according to some evidence, incurable. About the middle of June Miss Irons, with whom he was long acquainted, went to live with him. He made a will, which is the subject of litigation, dated June 29, 1885. By it he appointed the Trustees, Executors, and Agency Company his executor and trustee, and left it all his property upon trust to set apart a sum of £1,000, and to invest it and apply the income so long as his wife should be a lunatic patient towards her maintenance and support in a lunatic asylum or otherwise, and if she should at any time not be a lunatic patient, to pay the said income to her, or, at the discretion of the company, for her benefit, and as to the residue of his estate, including the sum of £1,000 after her death, for Sarah Ann Irons, his housekeeper, absolutely. Instructions for this will were given to

Messes. Davies and Campbell on June 25, and everything about it so far as appears was regular and methodical. At the end of July he was not apparently so ill as to cause alarm He was doing business as usual on August 4. He died on August 14, attended throughout his illness by Miss Irons. His property is valued at about £5,000.

In opposition to this will is another put forward by Boulton, dated July 7, who entered a caveat against the company seeking probate of that of June 29, and as to which he is the principal witness. His representations as to it are somewhat complicated. According to him, Wylly, on February 15, 1866, executed an instrument produced on a sheet of paper, something between a settlement and a will, but irregular as to either. It fills the greater part of two pages. It purported as to all Wylly's freehold and leasehold property, which he possessed or might become seized of, to convey it to Mr John Brett (who was his wife's brother in law), to hold in trust for his wife, absolutely for her separate use, also any real and personal property which might belong to him at his decease, and he further declared that his intent and purpose was that the deed should become an absolute conveyance of all property to Brett as trustee for his wife only, and he declared that all other wills made by him through undue influence, after disagreeing with his wife on other causes, should be utterly null and void upon that deed being found, and he declared that in the event of Brett leaving the colony, or becoming incapacitated, or refusing to act, that he appointed George Boulton to act in his stead, and to do everything necessary to secure this estate for his wife, and he directed that if Boulton refused, or was unable to act, that his wife might appoint a trustee, and that the trustee should not be called on to account after his wife's death, and, further, that in the event of his wife again getting married or dying, that the whole of the remainder of his estate should be divided between his wife's nephews, George Brett Boulton and Walter Brett Boulton, with survivorship and other limitations. This document purported to be witnessed by Mr. Clayton, a solicitor, deceased, and witnessed, after an attestation clause, by John Brett and George Boulton.

Boulton states that Brett is out of the country in England; that the instrument was in fact executed by Wylly, and, witnessed as it appears was kept by Wylly in his own possession. He says that on July 7, 1885, in Russell-street, while Wylly's place of business was, Wylly was in company with a man he did not know, apparently seafaring, who afterwards assumed the name of Edward Emmett; that Wylly called to him, and said he wanted him to sign a paper, and they then went into a hotel in Russel- street to a small room; that Wylly had with him the old document of February, 1866; that it had added on the second page an attestation clause of a will in pencil, that Wylly directed Emmett to write an attestation clause over the pencilling, that there was also previously written in ink a short form of a will purporting to leave all his property to his wife's trustees as an absolute conveyance under the above trusts for her sole benefit, "as witness my hand and seal," &c. There was a seal. Boulton states that Wylly then

signed, and told Boulton that he was satisfied it was correct; that Boulton read the attestation clause and signed, and the person called Emmett signed afterwards, that he (Boulton) went out, Wylly and Emmett after, the latter then having the signed document.

To proceed into Boulton's statement, he says he saw an advertisement of the company applying for probate as executor, which he supposed referred to some subsequent will, that he went to Wylly's house, met Miss Irons, and subsequently saw Mr Woolf, her solicitor, and his clerk, Mr Austin. He said nothing about the will of July 7, as he says, because he thought the will in favour of Miss Irons was dated July 29 after it. He went to consult the master in equity and lunacy as protector of the lunatic wife, and told him of the will of July 7 and his whole story. The master advised him to advertise by placards and otherwise for the will and Edward Emmett. He did so by placards, offering £100 for the will, and saying that Emmett would be handsomely rewarded. A letter in pencil reached the master, "Ada" stating that she was living with a man who had picked a gentleman's pocket of the will sought. There was then an advertisement by Boulton saying what reward he would give for the will, and it was brought to the master, and Boulton says that he gave £25 to two men and a woman, who came to him by night and the will being got, paid them.

Outside of the evidence of handwriting, as to which there is great conflict of evidence upon opinion, the whole case rests upon Boulton's evidence, who, if he succeeds, will get great advantage to his sister, and probably to his own family, and he has to encounter a number of difficulties. The document of February, 1866, has many improbabilities on its face. It should not have been left in Wylly's hands. Wylly might have had misgivings as to the fairness of the will in favour of Miss Irons-might temporarily have wished to undo it. But he was an accurate man of business, and it is strange that he should resort to such a clumsy means of making a different will, go to an hotel instead of his own office in the same street, bring a man such as Emmett as a transcriber and a witness, and this Emmett has never been traced or induced to come forward. Should we suppose as to the document that it was left with Emmett, whether it was lost by Wylly or Emmett, we should expect that Wylly would have heard of the loss and supplied another will. It may be said, however, that Wylly's feelings on the subject were wavering, and that he fell back to a preference for Miss Irons. It was improbable after a reward of £100 was offered that the holders of the document would be satisfied with £25. According to Boulton's story, he ought reasonably to have mentioned his will to Miss Irons, Davies and Campbell, Woolf, and Austin. He is contradicted by several of them as to his alleged ignorance of the date of Miss Irons' will, who say that they showed it to him or told him of it. He should at all events have reasonably referred to the document of 1865. Perhaps there might be an excuse for both omissions -his inability to produce the document. That He has not offered for himself. Several witnesses gave evidence of his having stated to them that he had not seen Wylly for a

considerable time before his death (Woolf, Austin, and Mrs Burton). He said that he was at Wyllly's house on May 3 and 10. He is contradicted as to both, and has produced no evidence of his having been in his company at all recently.

His credibility is impugned by being an uncertificated insolvent since 1865, and being convicted of keeping an illicit still. But the case for the will in favour of the wife might be sustained by evidence of handwriting of Wyllly to the will and documents, and some such evidence has been offered, strong enough to show at all events that those produced are good forgeries. I have a great amount of evidence, however, by persons who knew Wyllly's writing and by comparison of documents known to be his and Boulton's, and that of experts as to handwriting, arguing in a careful way from going through the documents, showing agreements and disagreements as to the writing of many letters, capital and small. And experts have arrived at the conclusion that the alleged deed of February, 1866, and signatures of Wyllly, Clayton, and all the witnesses on it, the will put forward, the attestation clauses, and all the writings on the paper except Boulton's name are forgeries by Boulton.

I have not arrived at any distinct opinion about this class of evidence except to think that the alleged will was not Wyllly's writing. There is evidence of Miss Irons, and of her relations and friends, of his having frequently spoken of the will of June 29, and of having shown it as good. One Mrs. Phillips also says that on July 7 he produced that of June 29 as valid. On the whole I make the company's will absolute against Boulton's, with costs.

[source] The Argus (Melbourne, Victoria, Australia); 6 November 1885; Law Report, page 9; from the National Library of Australia; Trove Collection.

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Sketch: Two Wills for Vincent Mathews Wyllly, compiled by Pamela Hutchison Garrett for Markham of Chesterfield website; 2018.