

[Payne, David R.]

Estate Must Publish Book of Testator About Religion

The world may read "The Elijah Message" so far as the law is concerned, Surrogate Joseph M. Feely decided yesterday.

When published, the book will become the posthumous literary bequest to posterity of David R. Payne, a childless widower of Rochester. He died in December, 1933 [on the 29th]. In his will, which provided that the whole of his estate, valued at \$3275, be devoted to publication of this book to give his views on religions, churches and people, he said in part:

"I ask no odds of anybody. It is my money and nobody else's that will publish my views. I admit I am not an educated man and maybe some of what I have written may have to be changed by my executor, who is well qualified to make all necessary changes.

"If I am not an educated man in the college sense, I have made up in part of a college education by long study in libraries and from books. I have also heard the best preachers and writers in Rochester and other places. I have heard such men as Phillip Brooks, Henry Ward Beecher, E. J. Chapin, and my beloved friend, Algernon S. Crapsey. I have attended meetings of the Saxe class for many years at the First Universalist Church under the leadership of Raymond H. Arnot, a profound scholar and thinker and one of the best informed men I ever knew."

Mr. Payne, who was about 79 when he died, wrote his own will and named Attorney Arnot as executor. It was an unusual document, both as to the matter and the phraseology of it. As executor, Mr. Arnot submitted the will to surrogate Feely for a decision as to whether the terms of the will should be carried out in publication of the volume, which was held to contain some matter that might be libelous.

Surrogate Feely read the manuscript and based a long opinion on it. In concluding his decision he said that whatever was offensive could be expurgated by the executor, and said:

"My decision is that if this is done, the will can thus be effectuated; and then the entire estate must be devoted to the purpose of publication and distribution; and that none of the estate can fall by law to the heirs of the testator."

That Mr. Payne's work was not without merit was strongly intimated by Surrogate Feely, who had some comments of his own to make.

"In this book," said the surrogate, "testator described the history of most of the well known religions, old and new, and makes reasonable comments on them from his own viewpoint of 'a purer, simpler faith.' He also discusses at length the attitude of the youth of [our] day toward religion. The

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foregoing quotations manifest the ability and style of the testator as an author.

"It is certain also that the book, for all its lack of polish, still has a definite scientific value as the naive, sincere, spontaneous record of the reaction to religions and churches of a thoughtful, self educated man.

...

This testator, speaking of George Fox, remarks: 'Isn't it a queer thing that the founders of all religious faiths that I am acquainted with were lowly people of no particular education. The highbrows never founded a religion.'"

"Mr. Payne," comments Surrogate Feely in another part of his decision, "had an uncommon store of mother wit; some of his observations are keen; and he is not without support when he laments the large number of 'morons' and of thoughtless and indifferent people there are to be found in the world. When one considers the vast sums and the great efforts that are being spent on religion, it must be of value to those in charge to see exactly how their work is affecting the mind of a man like this testator, and how he saw the work registering in the minds of less thoughtful persons about him, in the various churches."

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[minimally abridged]

Transcribed on 13 Jan 2009 by Karen E. Dau of Rochester, NY