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## Willing Entertainers

## “WILLING ENTERTAINERS”

*By Harold B. Wagner of the Denver Bar*

IT has often been said that a will speaks as of the death of the testator, but some of them keep on speaking long after their authors have passed on. Many of them say strange and interesting things about the testator, about his attorney, about his family and about his supposed family, sometimes accidentally and sometimes intentionally.

A case of technical as well as human interest is that of Jacob Camenisch, whose will was probated in the County Court of Arapahoe County. It seems that he was in the habit of lending money to a lady in whom he was interested, but in spite of this interest, he was canny enough to take from her promissory notes secured by mortgages for the amounts of the various loans. During the course of these dealings he executed a will in which he gave to the lady fair all of her notes *at that time* held by him. The loan business continued, however, and so did the giving of the notes, which were in the testator's possession at the time of his death. The surrounding circumstances indicated that the testator desired to give all the notes to this lady, but she was finally convinced of the legal weakness of her position and paid the notes which had been made after the execution of the will.

Some wills speak of contrition and attempt to make amends for some false steps of the testator or of someone else. For instance, the will of Rufus Clark, No. 13,744, admitted to probate in the County Court of the City and County of Denver on December 14, 1910, provides, among other things:

*Fourth:* I hereby devise and bequeath to 'The Rufus Clark and Wife Theological and Training School' situate at Shaingay, Sherbro Mission in West Africa and which school is managed by The Home and Frontier Foreign Mission Society of the Church of the United Brethren in Christ all the rest and residue of my estate—

(Then follow certain administrative provisions)

*Fifth:* Prior to the payment of the Fourth bequest herein I direct my executor to pay as soon as he qualifies as executor, to the Government of the United States the sum of Thirty-five Hundred Dollars, the same being a sum of money I knew a man in 1863 to have then defrauded the United States. The fact was never reported by me, which I now feel in honor to do."

The records show that the Theological School received over \$33,000.00, and the legacy to the United States was paid in full. It is possible that Clark's descendants would have preferred him to send \$3,500.00 to the United States Government during his lifetime.

Fitz-James MacCarthy (whose stories appeared under the name of "Fitz-Mac") was a Denver newspaper writer who was characterized by the Supreme Court of Colorado as follows:

"MacCarthy was of that type of newspaper writers, fast passing, if not wholly passed, typical of the earlier days of the Golden West. There were buoyant, cheerful dreamers and prophets, whose enchanting stories enticed thousands of men and large sums of money westward, and whereby great lonely, rugged and unproductive mountains, and sun-scorched barren plains were transformed as if by the touch of Aaron's rod, into flowing streams of precious metals, and fruitful fields of nature's riches. We are indebted largely to these men for so early a creation of many of our new and prosperous commonwealths.

"Coloradoans will recall the familiar *nom de plume* of this brilliant writer. He wrote much of mines and mining camps in Colorado and Nevada. To him every mining camp was an Eldorado, every mine a bonanza, and every important strike a glittering jewelry shop."

Fitz-Mac's will seems to have been so optimistic and so imaginative in tenor that the mere reading of it induced the Supreme Court to write an opinion in equally flowery language. At the time of his death his net estate amounted to about \$3,500 in actual value. He was the holder of some stock of the London-Arizona Copper Company, and so great was his faith in it that he provided specific legacies and annuities amounting to many times this sum. Five thousand shares of his Copper stock he left to the City of Denver "to elevate and sustain the already fine character of the schools." From this fund the following prizes were to be provided: The Fitz-Mac Primary Teachers' Cash Prizes; The Fitz-Mac School Flower Cash Prizes; The Fitz-Mac Pupils' Flower Cash Prizes; The Fitz-Mac Window Box Cash Prizes; and The Fitz-Mac Pupil-Hero Cash Prizes.

After litigation which terminated in the Supreme Court of Colorado it was held that a provision in the will that the executor should buy in any mortgage on the home of his niece, Mary MacCarthy, not to exceed \$5,000., and should sell part of his mining stock for this purpose, made a general charge

upon the estate, and to this purpose Fitz-Mac's entire estate was devoted.

Every list of unusual Denver wills should include that of Fred H. Forrester, whose estate, it has been said, went to the dogs. Here is a quotation from it:

*"Ninth:* Should I be unmarried at the time of my death I give and bequeath all the balance of my estate . . . to the Colorado State Board of Child and Animal Protection (E. K. Whitehead, Secy. at this date), requesting it to use the same in perpetuity, in affording relief to hungry, thirsty, abused and neglected cattle, horses, dogs and cats in Denver and in Colorado at large, and to use the income, or the principal at its discretion in prosecuting those who neglect animals or who abuse them. I request that three (3) iron drinking fountains for animals be erected in down town Denver, the City of Denver having been niggardly and selfish in that respect. I especially request that my dog Shep (if living) be given every care and a good home during his life and a decent burial upon his passing. Any person may be proud of this dog's friendship.

"No part of my estate is to be spent upon human beings (except as specifically stated herein) nor upon, or for the so-called Juvenile Court of Denver."

Funeral and burial arrangements occupy an important place in some wills. That of Mary C. Smith (probated in the Denver County Court) makes this provision:

*"First:* It is my earnest desire that under no circumstances shall my body be embalmed, but it shall be held at least four days after my death, on ice if necessary, and that my burial be conducted according to the rites of spiritualism, without any expensive coffin or display, and I particularly ask that no coffin box be made."

Somewhat similar directions are contained in a letter from Mary H. Collins to a friend of hers, one Mr. Legge, though her will is silent in this particular respect. This letter says:

"Dear Mr. Legge.

"I wish to ask a favor of you & it is this—if you should survive me, will you please see that I am buried out at Fairmount by the side of Ned, and that some one will mark the date of my birth on the end of the stone under my name which is already there, to correspond in style of the one on the other end where Ned's name & dates are.

"The date of my birth was Dec. 8, 1838—was probably brought by a *Loon*, instead of the ordinary *Stork*, as it all happened up in the Adirondack Mts. New York.

"Another request please, & perhaps I won't bother you any more until I see you on the 'other side'.

"Please insist on my being dressed as soon as possible without embalming & placed in a casket & that closed at once, so *no one can see me again*.

"Bury me without any ceremony whatever & only your's and the Nichols family & Mrs. Speck's to attend my journey out to Fairmount & have the undertaker hire some men to carry me."

A will which attracted wide attention is that of Frank C. Cook, (No. 42,028 in the Denver County Court). Its main provisions are:

"I, Frank C. Cook being of sound mind and mind and body do hereby will and bequeath my personal, real estate and other belongings as follows:

"\$1000.00 to the Denver Elks Lodge No. 17, Denver, Colo. This money is to be used in giving entertainments to the members of the Lodge, at least once a month, until all of this money has been used up.

(Then follow certain other bequests.)

"\$1.00 to my so-called son (Whose name, I presume is Frank Cook), by my first wife, who now lives somewhere in Chicago. I do not consider that I am the legitimate father of this boy.

#### HOW TO HANDLE MY FUNERAL

"When I die, the funeral arrangements shall be conducted by the Olinger Mortuary, Denver, Colo.

"I want to be dressed in my evening dress suit, with the Masonic and Elks pins on both the lapels of my coat, as are now on my coat. My Masonic apron, that is in a package in my dresser drawer, is to be tied around my waiste.

"In regards to the contributions of flowers at my funeral services, I do not care for a lot of CUT flowers, to be carried out to my grave and to be ALLOWED TO WITHER AWAY AND DRY UP in a few days, but I prefer that all flowers be POTTED PLANTS, so that all of them can be re-planted on my grave.

"If possible, I want Professor Lohman to play the dirge music, when services are held over my body and such services are to be held in the Elks Lodge Building.

"If possible, I want to be buried on a SUNDAY and to be taken to the Elks Lodge for house services and then the Masonic Lodge shall conduct the services at my grave.

"The music on the march to the cemetery shall be handled by George Roy the Musician, and shall NOT BE OF THE SOLUMN DIRGE NATURE, but when the band starts down the street at the head of my funeral procession, I want the band to play LIVELY TWO STEP MUSIC. The band is to go all the way to the cemetery and to be taken in a bus and to play the entire time on the trip to the cemetery (of course allowing time for the musicians to rest). At the grave the solumn music can be played again during burial services, but when the band leaves the grave, I want them to again play the lively airs.

"The cost of this music is to be paid out of my estate and not to be borne or paid for, by either the Elks or the Masonic Lodge.

"My life has been spent in making a dance floor wax, I have listened to lively music all of my life, so that in my last days on this earth, as I am being taken to the cemetery, I want the SAME KIND OF LIVELY MUSIC.

### MY MONUMENT

"If possible, I want a monument erected over my grave, that be an exact duplicate of a can of Cooks Dance Floor Wax, the can measures 3 by 7 inches, so then I want a granite monument (that will conform to the rules of the Cemetery) to be made like a can of Cooks Wax to measure 3 by 7 feet, with a suitable base and my name on it, and if possible to have the engraving on the face of the monument, to have the same wording as is now on the front of the face of a can of Cooks Wax.

"Then on top of this round monument, I want a bronze dance couple to be mounted. The dance couple is to be about 2 feet or so in height.

"From what I understand of the Cemetery Association, they will not permit a monument of this nature to be erected, for the reason that it would be considered as an advertisement feature. If such are the conditions and I cannot be permitted to erect such a monument over my grave, if possible then I would prefer that my estate to buy a suitable plot of ground outside or adjoining the cemetery which would then permit of this monument in being erected.

"The monument to cost not less than \$5000.00 and to be deducted from my holdings, before any other bequests are made.

"I prefer to be buried at Crown Hill Cemetery.

"I herewith attach my name and signature to this will this seventh day of July, 1927, at Denver, Colorado.

FRANK C. COOK."

On account of the widow's objection, it was impossible for the executor to carry out the unusual features in the funeral services. The Cemetery would not permit the erection of the memorial desired by the testator, and his remains were interred in a mausoleum crypt.

In nearly all of the wills from which I have quoted you see at least a little of the testator's character shining through. Many people seem to regard wills as special confidants of their difficulties and troubles, their hopes and aspirations. Only the man who dies intestate misses his last opportunity of leaving the mark of his personality on the public records.