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Jury Trial in Will Cases in Minnesota

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JURY TRIAL IN WILL CASES IN MINNESOTA

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THIS study of Minnesota cases[1] involving testamentary capacity and undue influence in the execution of wills is made to evaluate the comparative results of trying these issues to the court and trying them to a jury. For convenience in tabulation, the issues are treated separately, the issue of undue influence being treated first, and testamentary capacity last. It is, of course, well known that the two issues are commonly raised together, and that the issue of fraud is often added. This study does not, however, include the issue of fraud except as it may be regarded as inherent in undue influence.

It is now well settled in Minnesota, notwithstanding *Fischer v. Sperl*,[2] that in appeals[3] to the district court, there is neither a constitutional nor a statutory right to a jury trial of these issues.[4] Indeed, it has been decided, that even though the court has impanelled a jury in the case, the court may, after the issues have been submitted to the jury and before it has decided them, withdraw the case from the jury and itself decide the issues.[5] If, however, the issues are submitted to the jury, and it brings in either a general or a special verdict, then under the Minnesota practice, the verdict has the same effect as a verdict in an action at law.[6] The verdict is not merely advisory. But the court may deal with the verdict in these cases just as it may in jury actions

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[1]A complete table of all the cases considered is appended at the end of this study. It is believed that it includes all cases involving the issues discussed decided in Minnesota and reported through Vol. 274 N. W. If any are inadvertently omitted, the writer welcomes the correction. It should be noted that some of the cases cited represent two trials of the issues. Cases of undue influence which do not involve the issue of testamentary capacity are indicated by an * so as to obviate the necessity of repeating the citations in the supplementary table of cases involving that issue.

[2](1905) 94 Minn. 421, 103 N. W. 502.

[3]These appeals are in fact trials de novo. Minnesota, Laws 1935, ch. 72, sec. 169. This was true also under the prior Probate Code.

[4]Grattan v. Rogers, (1910) 110 Minn. 493, 126 N. W. 134; Lewis v. Murray, (1915) 131 Minn. 439, 155 N. W. 392; In re Estate of Enyart, (1930) 180 Minn. 256, 230 N. W. 781. Indeed, the Fischer v. Sperl case would seem to be contra to the earlier case of Schmidt v. Schmidt, (1891) 47 Minn. 451, 50 N. W. 598 in which Mr. Justice Mitchell wrote the opinion of the court.

[5]See cases cited in footnote 4 supra. In the case of Lewis v. Murray, the jury had been out 49 hours without agreeing on a verdict.

[6](1931) 15 MINNESOTA LAW REVIEW 478.

at law. In a proper case, it may set it aside and grant a new trial, and may even grant judgment notwithstanding the verdict.[7]

Although the submission of these issues to a jury is discretionary, in twenty-three trials involving the issue of testamentary undue influence, out of fifty-eight, a jury was impanelled. Thus a jury was called in for the trial of this issue in more than 39 per cent of all trials of that issue. The jury did not, however, determine the issue in that percentage of the cases. In three of these cases,[8] the court directed a verdict. On the issue of undue influence, these cases must be counted as determined by the court. In three more of these cases,[9] the court withdrew the issues from the jury and itself decided them, and in each of these cases the action and decision of the lower court was sustained. These cases must, therefore, also be counted as court cases. Thus in seventeen out of fifty-eight, or substantially 29 per cent of the trials, the issue was actually left to a jury.

How do the results of jury trial of the issue of testamentary undue influence compare with the trial of like issues by the court?[9a]

[7]To do this, the statutory prerequisites must be observed. Mason's 1927 Minn. Stat. sec. 9495. Wilcox v. Wiggens, (1926) 166 Minn. 124, 207 N. W. 23. And see footnote 18 post.

[8]Schuch v. Arneson, (1934) 190 Minn. 504, 252 N. W. 335; In re Brown's Will, (1888) 38 Minn. 112, 35 N. W. 726; In re Nelson's Will, (1888) 39 Minn. 204, 39 N. W. 143. In the latter case, a verdict was directed on the issue of undue influence only, the issue of testamentary capacity being left to the jury.

[9]In re Estate of Enyart, (1930) 180 Minn. 256, 230 N. W. 781; Grattan v. Rogers, (1910) 110 Minn. 493, 126 N. W. 134; Lewis v. Murray, (1915) 131 Minn. 439, 155 N. W. 392. In the latter case the jury had been out forty-nine hours without agreeing when the issues were withdrawn. All three are authority for the proposition that there is no constitutional or statutory right to a trial by jury of these issues.

[9a]The original trial of these issues by the probate court, where all trials are without a jury, is disregarded in this study as throwing no light on the matter. The Minnesota constitution does not require probate judges to be law trained, (Minnesota constitution, art. 6, sec. 7.) and many are not. It is stated that on December 1st, 1934, fifty out of eighty-seven of these judges were not members of the bar. 1935 Minnesota State Bar Association Proceedings 67. For that reason and also because appeals from the probate court are in reality trials de novo before the district court, the hearings on these matters are usually a perfunctory fulfillment of a prerequisite to the real trial in the district court. When the probate court hearing is not thus perfunctory, it is likely to be a fishing expedition to find out what evidence the other side will be able to produce at the appeal or real trial, with each side exerting itself to conceal as much of its evidence as it can. Hence these preliminary skirmishes cannot be regarded as of any significance. A reversal of the probate court in these matters cannot be regarded as a reflection on its ability, because, as indicated, the issues are seldom fully tried there. On the other hand, should not the fact that jury trials of these issues are not allowed in the probate court be a broad hint to the district court that the trial of

To come to a reasonable conclusion on that point, it is necessary to evaluate some of the cases and eliminate others altogether. Thus, verdicts and decisions reversed chiefly or solely for error in rulings on the admission or exclusion of evidence are eliminated because it is a risk common to both methods of trial.[10] A reversal or setting aside of a verdict for error in the charge is counted against trial by jury because it is a risk of trial by jury, but it is not counted against the jury as a fact finding body. Other special evaluations of cases will be noted in the text.

On the basis of this realignment and elimination, we have fifteen jury trials left. In four of these cases[11] the district court set the verdict aside and granted a new trial on the ground that the evidence did not warrant the verdict, which action on the part of the court was sustained.[12] In one case, the lower court refused to set the verdict aside and grant a new trial and the supreme court held the evidence did not warrant the verdict and ordered a new trial.[13]

Fischer v. Sperl[14] and the second trial of *Boynton v. Simmons*[15] may be discussed together. The first of these cases was tried to a jury which found against the will. The trial court then granted judgment for the will notwithstanding the verdict. This action of the lower court was reversed. A reading of the opinion by Mr. Justice Jaggard constrains one to think that he, at least, felt that the contestants had a statutory or constitutional right to trial of the issues by a jury. If so, the opinion ignored what had been said by Mr. Justice Mitchell in an earlier case,[16] and the decision is limited in a later case[17] where it is explained that the decision in the *Fischer v. Sperl* case went merely to the propriety

these issues in that court by way of appeal, should also be by the court without a jury?

[10]The cases here eliminated for this cause are: Burmeister v. Gust, (1912) 117 Minn. 247, 135 N. W. 980; McAllister v. Rowlan, (1913) 124 Minn. 27, 144 N. W. 412, 36 Ann. Cas. 1006 (jury cases); In re Brown's Will, (1888) 38 Minn. 112, 35 N. W. 726 (in this case the court directed a verdict, and hence it is counted as a court case.)

[11]Buck v. Buck, (1913) 122 Minn. 463, 142 N. W. 729; Buzalsky v. Buzalsky, (1909) 108 Minn. 422, 122 N. W. 322; Estate of Mumm, (1929) 177 Minn. 226, 225 N. W. 102; Estate of Shell, (1925) 165 Minn. 349, 206 N. W. 457.

[12]The Shell Case, (1925) 165 Minn. 349, 206 N. W. 457 was again tried to a jury, the second verdict being like the first. The second verdict was allowed to stand and is counted in favor of jury trial. See footnote 21 post.

[13]In re Hess' Will, (1892) 48 Minn. 504, 51 N. W. 614, 31 Am. St. Rep. 665.

[14](1905) 94 Minn. 421, 103 N. W. 502.

[15](1926) 166 Minn. 65, 207 N. W. 189.

[16]Schmidt v. Schmidt, (1891) 47 Minn. 451, 50 N. W. 598.

[17]Lewis v. Murray, (1915) 131 Minn. 439, 155 N. W. 392.

of granting judgment notwithstanding the verdict. The reversal of the lower court would seem, therefore, to turn on a question of practice.[18] It seems clear, that had the lower court set aside the verdict and granted a new trial, that action would have been sustained.[19] Hence the *Fischer v. Sperl* case is counted against successful jury trial.

Boynton v. Simmons was twice tried to a jury and each time reversed;[20] on the first trial for error in charging the jury, a common risk of jury trials. The court, however, said the evidence warranted the verdict found. Hence, while this trial may be charged against jury trial on the first point, it cannot justly be charged against the jury as a fact finding body. The appeal on the second trial is like the case of *Fischer v. Sperl* on the question of practice. The lower court granted judgment notwithstanding the verdict, and was reversed. The supreme court also held that the evidence sustained the verdict, and directed that a new trial should be granted only on grounds other than the sufficiency of the evidence. The second trial of this case must, therefore, not only be counted in favor of the jury as a fact finding body but it seems just also to count it against trial by the court. This leaves seven cases tried to a jury, all of which were affirmed by the supreme court. These seven[21] successful trials constitute 46.7 per cent of the cases counted as jury cases. If the two jury cases previously eliminated[22] were to be counted, the seven successful trials would put the jury's score at 41.2 per cent successful. If the two Boynton trials[23] are counted in favor of the jury as a fact finding body, its score is raised to 60 per cent. If we take

[18]This and the Boynton Case, (1926) 166 Minn. 65, 207 N. W. 189 after its second trial can be evaluated only in the light of Mason's 1927 Minn. Stat. sec. 9495 and its progenitors, which makes a motion for a directed verdict at the close of the evidence a prerequisite to a motion for judgment notwithstanding the verdict. See Wilcox v. Wiggens, (1926) 166 Minn. 124, 207 N. W. 23 and cases there cited. It does not appear that the prerequisite motion was made in either of these two cases. On the other hand, the court does not expressly base its reversal on this omission.

[19]A new trial resulted from the reversal in Fischer v. Sperl.

[20](1923) 156 Minn. 144, 194 N. W. 330; (1926) 166 Minn. 65, 207 N. W. 189.

[21]In re Estate of Shell, (1925) 165 Minn. 349, 206 N. W 457 (on second trial); In re Estate of Mollan, (1930) 181 Minn. 217, 232 N. W. 1; Reed v. McIntyre, (1902) 86 Minn. 163, 90 N. W. 319; In re Pinney's Will, (1880) 27 Minn. 280, 6 N. W. 791, 7 N. W. 144; Moe v. Paulson, (1915) 128 Minn. 277, 150 N. W. 914; Storer v. Zimmerman, (1881) 28 Minn. 9, 8 N. W. 827; In re Estate of Olson, (1929) 176 Minn. 360, 223 N. W. 677.

[22]Footnote 10, supra.

[23]Footnote 20, supra.

into consideration the risk of jury trial other than error in rulings on evidence,[24] the score of the jury stands at 53.3 per cent successful.[25] Again if the two eliminated jury cases were to be counted in, the score would stand at 47.1 per cent successful.

It must be said that the record of jury trials of the issue of testamentary undue influence is not good in any view. But is the record of the court any better? As we have seen, 40[26] of the 58 cases are to be regarded as tried by the court—a small fraction less than 69 per cent. The decision of the court was reversed in three of these trials.[27] That gives it a score of sustained results in 92.5 per cent of the cases. If we count the second trial of the *Boynton v. Simmons* case[28] against the court, the score stands at 90.2 per cent,[29] and if *In re Brown's Will*[30] is also counted in against the court, the score still stands at 88.1 per cent successful trials. Thus the best view of the jury's record falls far below the severest view of the court's record in the trial of testamentary undue influence.

The issue of testamentary capacity is usually coupled with that of undue influence, and this was true in forty-two of the fifty-eight trials considered under the latter issue. Testamentary capacity was found to be involved in twelve additional cases, in which undue influence was not involved. Thus we have fifty-four trials of testamentary capacity for consideration. In twenty, or about 37 per cent of these trials, a jury was impanelled. But again, in six of these cases the jury was not allowed to decide the issue; in three,[31] a verdict was directed on the issue of testamentary capacity, and in three,[32] the issues were withdrawn from

[24]This computation counts the first Boynton trial against the jury and the second trial in its favor even tho there was a reversal.

[25]This basis of scoring would seem to be the fairest appraisal of the jury trial.

[26]The basis for this figure is to be found in notes 8, 9, and 10 supra and text passim. If the second trial of the Boynton v. Simmons case is counted against the court, as it will be later, the number of trials will be forty-one as a basis for computing the score.

[27]Kennedy v. Kelly, (1912) 119 Minn. 531, 137 N. W. 456; Bush v. Hetherington, (1916) 132 Minn. 379, 157 N. W. 505; Tyner v. Varien, (1906) 97 Minn. 181, 106 N. W. 898. The affirmed cases are not separately listed. The cases will be found in the table of cases at the end of this study.

[28]See footnote 20, supra and text passim.

[29]This figure would seem to be a fair appraisal of the court trials.

[30]See footnote 10, supra and text passim.

[31]Fischer v. Sperl, (1905) 94 Minn. 421, 103 N. W. 502 (verdict directed on issue of testamentary capacity); Schuch v. Arneson, (1934) 190 Minn. 504, 252 N. W. 335; In re Brown's Will, (1888) 38 Minn. 112, 35 N. W. 726.

[32]These three cases are the same cases withdrawn on the issue of undue influence. See footnote 9, supra.

the jury and decided by the court. Thus in only fourteen of the cases, or substantially 26 per cent, did the issue of testamentary capacity actually go to the jury.

The results in these fourteen cases are appraised as follows: In one[33] the lower court set the verdict aside and granted a new trial for errors in rulings on evidence. Another[34] was reversed by the supreme court on the same grounds. On the basis of evaluation adopted on the issue of undue influence,[35] these two cases are eliminated from further consideration except as later specially noted. In one,[36] the lower court granted a new trial on the ground that the jury did not properly consider the evidence. Another[37] was reversed by the supreme court for error in the charge to the jury. Thus we have two reversals, one of which is to be charged against the jury as a fact finding body. This leaves ten trials of this issue in which the jury's findings were approved. Thus the jury has a score of sustained results in 83.3 per cent of these twelve cases. Its score in these cases as a fact finding body stands at 91.7 per cent. And if all the reversals are counted against it, its score still stands at 71.4 per cent of sustained results.[38] This gives the jury a good record in the trial of testamentary capacity.

Perhaps the difference in the jury record on the two issues considered is explained in part by the fact that in two of the cases[39] here counted in favor of the jury on the issue of testamentary capacity, the lower court granted a new trial on the issue of undue influence only, letting its finding of testamentary capacity stand, and in one[40] of these cases, the lower court directed a verdict in favor of the will on the issue of undue influence. One of the sustained verdicts seems clearly to be a sympathy verdict, but the fact is the lower court and the supreme court[41] allowed it to stand. Let it be noted also, that while the record of the jury on the issue of testamentary capacity is much better

[33]McAllister v. Rowland, (1913) 124 Minn. 27, 144 N. W. 412, 36 Ann. Cas. 1006.

[34]Hammond v. Dike, (1890) 42 Minn. 273, 44 N. W. 61, 18 Am. St. Rep. 503.

[35]See footnote 10, supra and text passim.

[36]In re Estate of Mumm, (1929) 177 Minn. 226, 225 N. W. 102.

[37]In re Layman's Will, (1889) 40 Minn. 371, 42 N. W. 286.

[38]Perhaps the number of trials of the issue of testamentary capacity is too small for a fair appraisal of jury trials of this issue. In a lesser degree, perhaps the same can be said of jury trials of the issue of undue influence.

[39]Buck v. Buck, (1913) 122 Minn. 463, 142 N. W. 729; In re Estate of Shell, (1925) 165 Minn. 349, 206 N. W. 457.

[40]In re Nelson's Will, (1888) 39 Minn. 204, 39 N. W. 143.

[41]In re Estate of Weber, (1925) 163 Minn. 389, 204 N. W. 52.

than its record on the issue of undue influence, a smaller percentage of all the cases in which capacity was an issue and also a smaller number of cases in which capacity was an issue were submitted to a jury than was the case in respect to the issue of undue influence.

Now as to the record of the court in testamentary capacity cases. This issue was tried to the court in forty cases, in thirty-two of which this issue was coupled with the issue of undue influence. One[42] was reversed for error in rulings on evidence and hence must be eliminated from further consideration. Another[43] must be eliminated as dealing merely with a question of practice. This leaves thirty-eight trials for appraisal. In four[44] of these there was a reversal, and an affirmance in thirty-four. This gives the court a score of sustained results in 89.5 per cent of the cases. If the *Fischer v. Sperl* case is shifted from the reversed to the affirmed column, as it fairly should be,[45] the court's score stands at 92.1 per cent of sustainable results. Thus the court has a uniformly good record in the trial of both issues. The jury has a good record on the issue of capacity and a distinctly bad record on the issue of undue influence.

In view of these results, should the issue of testamentary undue influence and capacity be submitted to a jury? In *Schmidt v. Schmidt*[46] Mr. Justice Mitchell said that at that time the usual practice was to submit the issue (of will or no will) to a jury. He also said that it was

"also true, that in theory at least, such an issue is one eminently fitted to be submitted to a jury, although in practice it must be admitted that the result is not always satisfactory, for the question with the jury in such cases is very apt to be, not whether the instrument is the will of the testator, but whether it is such a will as they think he ought to have made."[47]

Eminent writers on the subject agree[48] with Mr. Justice Mitchell.

[42]In re Brown's Will, (1888) 39 Minn. 112, 35 N. W. 726.

[43]Buck v. Buck, (1914) 126 Minn. 275, 148 N. W. 117. An order denying a new trial on the issue of testamentary capacity was affirmed.

[44]Bush v. Hetherington, (1916) 132 Minn. 379, 157 N. W. 505; Kennedy v. Kelly, (1912) 119 Minn. 531, 137 N. W. 456; In re Estate of Waggner, (1927) 172 Minn. 217, 214 N. W. 892; Fischer v. Sperl, (1905) 94 Minn. 421, 103 N. W. 502.

[45]See footnotes 14 to 19 inclusive, supra and text passim. A further reason for counting this case in favor of the court on the issue of testamentary capacity lies in the fact that the supreme court seemed satisfied with the decision of the latter issue.

[46](1891) 47 Minn. 451, 50 N. W. 598.

[47](1891) 47 Minn. 451, 456, 50 N. W. 598, 600.

[48]2 Schouler, Wills, Executors and Administrators, 6th ed., sec. 802. Atkinson, Wills 92, 93. See also Borland, Wills and Administration 225.

Perhaps the conclusion to be drawn herefrom for future practice is that whenever a district judge feels that his capacity for deciding these issues is less than that of an average jury, he should call in

TABLE OF CASES CONSIDERED IN THIS STUDY

[1]*Undue influence cases decided by the court.* The cases in which testamentary capacity was *not* also involved are indicated by an asterisk (*). In the cases not so marked, both issues were present.

Schuch v. Arneson, (1934) 190 Minn. 504, 252 N. W. 335.
*Estate of Eklund, (1932) 186 Minn. 129, 242 N. W. 467.
Estate of Conway, (1932) 185 Minn. 376, 241 N. W. 42.
Estate of Lande, (1931) 183 Minn. 419, 236 N. W. 705.
Estate of Enyart, (1930) 180 Minn. 256, 230 N. W. 781.
Estate of Miller, (1930) 180 Minn. 70, 230 N. W. 275.
Estate of Mumm, (1929) 177 Minn. 226, 225 N. W. 102 (on second trial).
Estate of Hallan, (1929) 176 Minn. 456, 223 N. W. 771.
*Estate of Keeley, (1926) 167 Minn. 120, 208 N. W. 535.
Will of Nagel, (1926) 167 Minn. 63, 208 N. W. 425.
Estate of Christ, (1926) 166 Minn. 374, 208 N. W. 22.
*Estate of Jenks, (1925) 164 Minn. 377, 205 N. W. 271.
Lynch v. Rasmussen, (1923). 156 Minn. 100, 194 N. W. 318.
Estate of Jernberg, (1922) 153 Minn. 458, 190 N. W. 990.
Rasmussen v. Evans, (1921) 150 Minn. 319, 185 N. W. 297.
Estate of Wood, (1921) 150 Minn. 218, 184 N. W. 955.
Seiler v. Henle, (1921) 150 Minn. 86, 184 N. W. 564.
Estate of Olson, (1921) 148 Minn. 122, 180 Minn. 1009.
Estate of Larson, (1919) 141 Minn. 373, 170 N. W. 348.
*Kroschel v. Drusch, (1917) 138 Minn. 322, 164 N. W. 1023.
Bush v. Hetherington, (1916) 132 Minn. 379, 157 N. W. 505.
Lewis v. Murray, (1915) 131 Minn. 439, 155 N. W. 392.
Woodville v. Morrill, (1915) 130 Minn. 92, 153 N. W. 131.
*Chamberlain v. Gordon, (1915) 129 Minn. 523, 151 N. W. 529.
Crowley v. Farley, (1915) 129 Minn. 460, 152 N. W. 872.
Kennedy v. Kelly, (1913) 123 Minn. 259, 143 N. W. 276 (on second trial).
Kennedy v. Kelly, (1912) 119 Minn. 531, 137 N. W. 456.
Collins v. Dowlan, (1912) 118 Minn. 214, 136 N. W. 854.
Kletschka v. Kletschka, (1911) 113 Minn. 228, 129 N. W. 372.
Grattan v. Rogers, (1910) 110 Minn. 493, 126 N. W. 134.
Church of St. Vincent De Paul v. Brannan, (1906) 97 Minn. 349, 107 N. W. 141.
*Tyner v. Varien, (1906) 97 Minn. 181, 106 N. W. 898.
Clarity v. Davis, (1904) 92 Minn. 60, 99 N. W. 363.
Cady v. Cady, (1903) 91 Minn. 137, 97 N. W. 580.
*Hogan v. Vinje, (1903) 88 Minn. 499, 93 Minn. 523.
Little v. Little, (1901) 83 Minn. 324, 86 N. W. 408.
*Will's Estate, (1897) 67 Minn. 335, 69 N. W. 1090.
Schmidt v. Schmidt, (1891) 47 Minn. 451, 50 N. W. 598.
*Mitchell v. Mitchell, (1890) 43 Minn. 73, 44 N. W. 885.
In re Nelson's Will, (1888) 39 Minn. 204, 39 N. W. 143 (testamentary capacity left to jury).
Re Brown's Will, (1888) 38 Minn. 112, 35 N. W. 726.

[2]*Undue influence cases tried to a jury:*

*Estate of Mollan, (1930) 181 Minn. 217, 232 N. W. 1.
Estate of Mumm, (1929) 177 Minn. 226, 225 N. W. 102.
Estate of Olson, (1929) 176 Minn. 360, 223 N. W. 677.
*Boynton v. Simmons, (1926) 166 Minn. 65, 207 N. W. 189 (court granted judgment notwithstanding the verdict).
*Estate of Shell, (1925) 165 Minn. 349, 206 N. W. 457 (second trial).

a jury to assist him. Others will do their duty, decide the issues themselves and save the public the expense of a jury trial, and the parties the expense and trouble of trying the issues twice in substantially half the cases.

Estate of Shell, (1925) 165 Minn. 349, 206 N. W. 457.
*Boynton v. Simmons, (1923) 156 Minn. 144, 194 N. W. 330.
Moe v. Paulson, (1915) 128 Minn. 277, 150 N. W. 914.
McAllister v. Rowlan, (1913) 124 Minn. 27, 144 N. W. 412, 36 Ann. Cas. 1006.
Buck v. Buck, (1913) 122 Minn. 463, 142 N. W. 729.
*Burmeister v. Gust, (1912) 117 Minn. 247, 135 N. W. 980.
*Buzalsky v. Buzalsky, (1909) 108 Minn. 422, 122 N. W. 322.
Fischer v. Sperl, (1905) 94 Minn. 421, 103 N. W. 502 (court granted judgment notwithstanding the verdict on the issue of undue influence and directed a verdict on the issue of testamentary capacity.)
Reed v. McIntyre, (1902) 86 Minn. 163, 90 N. W. 319.
*Hess' Will, (1892) 48 Minn. 504, 51 N. W. 614, 31 Am. St. Rep. 665.
Storer v. Zimmerman, (1881) 28 Minn. 9, 8 N. W. 827.
Will of Pinney, (1880) 27 Minn. 280, 6 N. W. 791, 7 N. W. 144.

[3]*Cases of testamentary capacity not coupled with undue influence, tried by the court:*
Estate of Jensen, (1932) 185 Minn. 284, 240 N. W. 656.
Estate of Gordon, (1931) 184 Minn. 217, 238 N. W. 329.
Estate of Waggner, (1927) 172 Minn. 217, 214 N. W. 892.
Estate of Knopf, (1924) 160 Minn. 480, 200 N. W. 632.
Schleiderer v. Gergen, (1915) 129 Minn. 248, 152 N. W. 541.
Buck v. Buck, (1914) 126 Minn. 275, 148 N. W. 117.
Geraghty v. Kilroy, (1908) 103 Minn. 286, 114 N. W. 838.
Coates v. Semper, (1901) 82 Minn. 460, 85 N. W. 217.

Cases of testamentary capacity not coupled with undue influence tried by a jury:
Estate of Weber, (1925) 163 Minn. 389, 204 N. W. 52.
Sheeran v. Sheeran, (1905) 96 Minn. 484, 105 N. W. 677.
Hammond v. Dike, (1890) 42 Minn. 273, 44 N. W. 61, 18 Am. St. Rep. 503.
Re Layman's Will, (1889) 40 Minn. 371, 42 N. W. 286.

To complete the record of cases examined, the following citations should be added. The cases were eliminated from consideration for reasons herein indicated.

In re Estate of Hobhaggen, (1923) 154 Minn. 145, 191 N. W. 409. The question for decision was whether contestants should be allowed to file objections after the will had been admitted to probate.

In re Estate of Murphy, (1922) 153 Minn. 60, 189 N. W. 413. It was found the testator had not executed the will, hence the issues here considered were never reached.

Thill v. Freiermuth, (1916) 132 Minn. 242, 156 N. W. 260. Not a will case.