

Probate Records for John Cleland, Jr.

The attached pages show the will and probate records from Chautauqua County, NY from 1876 and 1877. The actual will was written in 1866, and it is transcribed into court records on page 241 in 1877 after it was accepted as being a valid will. The remaining pages record testimony of his children and a surviving witness who were providing testimony for the court surrogate to establish “proof” of the authenticity of the will during 1876. The will was being contested.

The genealogical records from these probate records are from two primary sources:

1. The statement of the court surrogate that identifies the heirs and next of kin for John Cleland, Jr. This includes the place of residence for each, and it lists the children of Emily Maxham, who was deceased: Marcena Maxham (Wellsburg, Crawford County, PA), Dallas Maxham (Charlotte, Chautauqua County, NY), Otis H. Maxham (Stockton, Chautauqua County, NY) and George C. Maxham (Charlotte, Chautauqua County, NY). All were listed as being “of full age”, except for George who was 19.
2. The testimony of Darius Cleland on Page 245, where he identifies the children of John Cleland, Jr. in their order of birth: (1) Darius Cleland (2) Augustus Cleland (3) Emily Maxham - deceased (4) Marilla Todd (5) John W. Cleland (6) Hannah Loucks (7) Byron Cleland.

This is the first mention of Dallas Maxham that has been made. He does appear in Federal Census records, but never in the home of Otis and Emily Cleland Maxham.

William V. Gehrlein
October, 2015
Lewes Delaware

Probate Records for John Cleland, Jr.

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In the name of God Amen. I John Cleland of Town of Charlotte in the County of Chautauque and State of New York. of the age of of seventy three years and being of sound mind and memory do hereby publish and declare this my last Will & Testament, in manner following, that is to say:

First I give and bequeath to my wife Hannah Cleland all of my household furniture.

Second I give and bequeath to my Daughter Marilla the sum of One Hundred Dollars. To my Daughter Hannah the sum of One Hundred Dollars, and to my son Augustus Cleland the sum of Two Hundred Dollars. which said several legacies or sums of money I direct and Order to be paid to the said respective legacies within one year after my decease.

Lastly, I give bequeath and devise all the rest residue and remainder of my property and Estate both Real & Personal of every name and nature or kind or value to my son Cyren Cleland his heirs and assigns hereby revoking all former Wills by me made.

In Witness Whereof I have hereunto set my hand and seal this Ninth day of January, in the year of our Lord one thousand eight hundred and sixty six.

John Cleland. L.S.

The above instrument consisting of one sheet was at the date thereof signed sealed published and declared by the said John Cleland as and for his last Will & Testament in presence of us who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereto.

Elipha M. Beck. Charlotte. Chautauque Co. N.Y.
Obed Eileen Charlotte Chautauque Co. N.Y.

Recorded the foregoing last Will & Testament of John Cleland deceased and compared the same with the original Will this 10. day of April 1877.

C. H. Bayles
Surrogate.

For Proceedings see Page 245

and this 6th day of April 1874.

Luke ^{his} ~~son~~ Kaighr, L.S.

The above instrument consisting of one sheet of paper was at the date thereof signed sealed published and delivered by Luke Kaighr ag and for his last Will & Testament who at his request and in his presence and in the presence of each other have signed our names as witnesses.

J. S. Mace. Brocton Chanc. Co. N.Y.
Jay P. Merick " " " "

Recorded the foregoing last Will & Testament of Luke Kaighr deceased and compared the same with the original Will this 30th day of April 1877.

Ch. Chaples Surrogate.

At a Surrogates Court held at Maysville in and for the County of Chautauque N.Y. on the 14th day of September 1876.

Before Charles C. Chaples Surrogate of said County.

Now the matter of the Estate of John Cleland deceased.

On the day and year and at the place aforesaid Jereb Cleland Legatee named in the last Will & Testament of John Cleland late of the Town of Charlotte in said County appeared and offered the said Will for probate and made satisfactory proof before the said Surrogate that the said deceased died on the 26th day of August 1876.

That at the time of his death he was an inhabitant of Chautauque County N.Y.

That he died leaving a last Will & Testament which is now exhibited in the said Surrogates Court which bears date on the 9th day of January 1866 which relates to Real Personal Estate.

That the following named persons are all the kin and next of kin of the said deceased with their ages and places of residence as nearly as can be ascertained viz:

Orinus Cleland, John W. Cleland, Marietta Todd, Jereb Cleland of Charlotte, Augusta Cleland, Brocton of Chautauque County N.Y. Hannah Louisa Warren Pa. and the children of Emily Maxham deceased, Harlow Maxham, Melleborg, Crawford N.Y. Dallas Maxham, Charlotte, Ohio, Maxham, Brocton all of full age, and George C. Maxham, Charlotte aforesaid aged 14.

Therefore Ordered. That a citation issue to the kin and next

of him of the said deceased. to appear and attend the Probate of
 the said Will before the said Surrogate at his office in Waverly
 N.Y. on the 12th day of December 87. at ten o'clock in the forenoon
 In Testimony Whereof I have hereunto
 set my hand, and seal of office this
 1st day of September 1876.
 L. S. C. L. Maples.
 Surrogate.

This case was adjourned from time to time until April 4. 1877.
 C. L. Maples
 Surrogate

At a Surrogates Court held at Waverly, N.Y. in and
 for Hamilton County this 4th day of April 1877.
 Before Hon Charles L. Maples Surrogate.
 In the matter and Estate of }
 John Cleland deceased.

On the day and at the place aforesaid Cyrus
 Cleland Legatee of the last Will & Testament of John Cleland
 late of Charlotte in said County deceased, appeared and prayed
 that the said Will be admitted to probate and exhibited, the follow-
 ing proofs
 First. By service of the citation heretofore issued upon all the
 heirs and next of kin of said deceased.
 Whereupon the following witnesses being duly sworn testified as follow

In the case of Proving the last Will & Testament of John
 Cleland, deceased.

April 4. 1877. at the Office of Obedt Edson, Sincinville, N.Y.
 Obedt Edson. Sworn on oath of PropONENT.

I am a subscribing witness to the Will of John Cleland
 deceased now shown me. I was present and saw him sign said
 Will. at that time he declared it to be his last Will & Testament
 I signed it as an attesting witness at his request, at that time
 he was of sound mind and memory as far as I could see, and was
 acting under no restraint. He was of full age, at that time.
 Elipha H. Beck was the other subscribing witness. I saw him
 sign it he is now dead. he died after the execution of the Will
 he died about 1872. or 1875. his signature to the Will is in his own
 handwriting. The Will appears now as it did when so executed
 without any alteration whatever. The Will is in Mr Beck's hand-writing
 I think the Will was executed in this Office. Mr Cleland, Mr Beck
 and myself were present. can say who else was present. Mr Cleland
 requested Mr Beck and myself to sign it as attesting witnesses
 which we did in his presence and in presence of each other
 Cross Examined.

I can't say positively but think I was about the Office
 when the Will was drawn. can't tell whether any one came in
 with Mr Cleland. can't tell whether any one was present when

the Will was being drawn or not. I have an impression that no other person was present when the Will was executed. I don't know what was done with the Will after it was executed. Obed Edson.

Whereupon the paper purporting to be the last Will & Testament was offered for Probate by Judge Edwards for admission for Probate.
Proposito Rosta.

Darius Cleland. Son for Contestants.

I am son of John Cleland, deceased. Byron Cleland who is named as Executor is also son of deceased, and has resided with his Father most of his life. I am the oldest child of my Father, Augustus. 2nd Emily who married Wm. H. near deceased. 3rd Marilla Todd. 4th John W. Cleland. 5th Harquah Loucks. 6th Byron 7th. I have heard conversation between Father and Byron about 1859 or 1860, somewhere.

Objected to by Edwards. Ex.
Father told Byron what he would do, that Byron might stay and work the farm and have all he could make or raise off of the farm and have the farm by paying the heirs. First Augustus should have \$500. Hannah \$250, if I remember right. I may be mistaken. Marilla must have a home, there with them. John was mentioned and was to have the fifty acres of land upon which he then lived upon, witness was to have off of it, old farm, 25 acres. Father was mentioned. Father said the strength there was \$500. Personal Property. I don't recollect for certain, but when Byron said he would sell right along to work, and he did continue right along in this way. I have heard Father & Mother talk about the property.

Objected to by Edson. Ex. This was soon after, perhaps a month after the conversation just related, the talk was relative to the property, and relative to the conversation with Byron and was about the same. Father told me he had got to do something to keep Byron at home, nothing said about making a Will. I never heard Father say that he had made his Will. I had before heard him say he never should part his property out of his hands, or make a Will. I had heard him say this for a year or two before making this Will. I was at home after Father had been sick when he was getting better but cannot tell the time in reference to the date of the Will. I have heard Byron say that he ought not to say Augustus so much, that if he had got to support Marilla, he would support her at the Poorhouse. This was about two years ago but not before making the Will.

Corey Examined. I heard the first conversation in the evening I went up to the house still and quiet and listened and over heard the conversation this was in 1859 or 1860. I did not let Byron or any one know that I overheard the conversation. I might have been there half or three quarters of an hour

I think it was in the fall but cannot be positive, cannot tell the month. I think I waited about long enough for Byron to get to Father before I started to go there. I think there was no fence in front of the house, the cellar door was open and I went into the cellar and when the cellar stairs came by the door that opened into the room where Father and Byron were having the conversation. I think Father decided the fifty acres to John before he made his Will, he also decided the 20 acres of the old farm before he made the Will. Father died in 1876, his health was usually good, he was a man of married character, but at times quite childish. He frequently said he meant to keep the control of his property in his own hands, I think I could hear all the conversation between Father & Byron, the conversation had commenced when I got there.

Darius Cleland

Mrs Harilla Todd, Byron, for Contestants

I am Daughter of John Cleland deceased.

This Will was one of the Contestants and I made objects to her testimony. It is six years since I left home, I was living at home in or about 1866. I have heard Father and Mother converse at times about 1862. Father said it is all well enough as it is, but I don't think it is not well enough as it is, that Byron should stay here and work and not know what he is to have anything for it. Father said he was having his own family's living and the wants of every thing that may come. Mother said that is not enough, he wants to be secured. Father said together I don't want to give my property all to one child and she next may have any, she said all the rest have got hopes, but him. He said my children have all got hopes, she replied they will be taken care of some way. I have heard such conversations frequently which were about the same thing. I heard Mother say to Father that there was no way for her to get them out of there, must one child will off. Father said if there was not, he did not want one child to have it all. I have heard such conversations up to 1866, and after. Father was taken sick August 12, 1866, he was very sick and in pain, it required considerable help to keep him in the bed. The Doctor's last visit was about August 19, 1866, after that he always complained of his head troubling him up to 1866, and up to 1872. Byron had charge of the farm and managed the business.

Cross Examination. I have always lived at Father's house or near. I have had my living there. Byron took the management of the farm in about 1856, or 8, he was married in 1856, and was then about 25 years old, I was 56 years old. I cannot to Tom six years ago. I go in to that I worked at home more of my time. Byron's wife did not take the management of the home in the house while I lived there. The conversations were had before the Will was made, he lived some ten or

never gave after the Will was drawn. he was not as well after the sickness as before.

Marilla Todd.

John M. Cleland. Sworn on part of Contestants.

I am son of John Cleland deceased. I have had conversation with Father in regard to Byron, having the property. some between 10 and 14 years ago. he said he had got to do something. when Mother was crowding him to make his property over to Byron that it was making her sick and when she was finally angry that Byron was talking of leaving and she could not bear the thought. I told him. I thought she would recover. and he said he must do something to restore her.

Cross Examination. Mother died 3 or 4 years ago I think about 3 years before Father died.

J. M. Cleland.

John M. Elson. Sworn on part of Contestants.

I was acquainted with John Cleland. I had a conversation with him. last 2nd of July he said "there is something wrong in that Will" or "that ought to be altered" you know. I cannot tell which he said or whether he said both or not. I replied, we have no time now to talk about it. I have had no other conversation with him about it.

Cross Examination. I had known him for 66 years. I think his mental capacity good. he was old. was a little broken by old age. 10 or 12 years ago his faculties were then good. I have usually seen him and conversed with him at Town Meetings and Elections. he was not easily controlled except by reason and argument. he was a man of rather positive character. I never had much business with him. never saw his capacity for finances tried very much.

John M. Elson.

Marilla Cleland. Sworn. Contestants.

I am the wife of Rufus Cleland. I never had any conversation with John Cleland about his Will. last summer at this place at my house he said he wanted to get some clothes and get some writing done but did not state where.

Marilla Cleland.

Whereupon. I the Surrogate aforesaid upon the proof aforesaid being satisfied of the genuineness and validity of the said Will do hereby give to the said John Cleland the said Will to be admitted to Probate and that Letters Testamentary thereon be granted to Byron Cleland administrator with the Will annexed of said Estate in his living and subscribing the oath of office prescribed by Law.

Whereupon on the day of 1877. the said

administrator with the Will annexed. Having taken and subscribed the oath of office prescribed by Law which oath is duly filed by me it is further Ordered that administration of all and singular the goods chattels and credits of the said decedent and any way concerning his Will be granted to

in the said Will annexed.
It is further Ordered in the application of the said administrator as aforesaid that two disinterested parties of the Town of in said County of Chautauque be appointed appraisers of the Personal Estate of said decedent.

L.S.

Our Notary Public Whereof We have caused the seal of office of the said Surrogate to be herewith affixed.

Witness Charles G. Mayfield Surrogate of the said County at Wayville this 10th day of April 1897.

C. G. Mayfield
Surrogate.

In the name of God Amen, I Harvey Baldwin of the Town of Sheridan County of Chautauque State of Nebraska, of the age of 78 years being of sound mind and memory and considering the uncertainty of this frail and transitory life do therefore make and publish and declare this to be my last Will and Testament that is to say:

After all my lawful debts are paid and discharged, I give and bequeath to my son Horace C. Baldwin, the sum of Eight Hundred and Fifty Dollars, it being the exact amount which I have already given to my son Albert C. Baldwin, now residing in Kansas. The remainder of my Estate and Property, I give and bequeath to my sons Albert C. & Horace C. Baldwin to be divided equally between them, each to equal amount.

Living I name constitute and appoint Franklin Baldwin of the Town of Sheridan County of Chautauque State of Nebraska, to be Executor of this my last Will & Testament, hereby revoking all former Wills by me made.

In Witness Whereof, I have herewith subscribed my name and affixed my seal the Twentieth day of July, in the year of our Lord one thousand eight hundred and Seventy Six.

Harvey Baldwin, L.S.

The above written instrument was subscribed by the said Harvey Baldwin in our presence, and acknowledged by him to each of us, and he at the same time declared the above instrument to be his last Will & Testament, and we at his request have signed our names as witnesses hereto in his presence and in the presence of each other and written opposite our names our respective places of residence.