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Solution of "The Evil That Men Do"

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Moral Question 1: Should Green, as Black's representative, pay the $4,000 debt to Molly Mauve without having that debt established on a trial?

UNDER THE FACTS STATED, Green's moral right to deal with Black's property will be premised upon the powers given by the law of New Island to administrators of decedents' estates. He will be morally obliged to exercise his powers, not only in accordance with the general principles of morality, but also in accordance with the standards of conduct which the law of the State imposes upon the personal representatives of deceased persons. We can here ignore the moral rights and duties which would have to be considered if it appeared that Green had other powers to deal with Black's property, arising out of a gift made to Green, inter vivos mortis causa, or by will, under a promise to use the subject property for certain purposes.

We will assume that the law of New Island, in its provisions which touch this case, follows the pattern most common in the American States. Under that law, Green will become the personal representative of Black only when the court has issued letters authorizing him to administer Black's estate, as executor or otherwise. From the money which Black left or which is realized by lawful sale of Black's property during administration of the estate, the personal representative will pay the debts of the decedent. In some jurisdictions, each such payment is made upon authorization of the probate court. In such a jurisdiction, Green would have responsibility only to make recommendation to the court, and would not have full moral responsibility for deciding upon the payment of any claim. We may take it that New Island is one of the jurisdictions in which the representative has a direct responsibility for paying or allowing claims. Once he has received letters, Green will be authorized and obliged to pay or to allow claims justly due at law, and his payment or allowance will have legal effect without the court's

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approval. Since the administrator, when he pays or allows a claim of debt against an estate is acting as an officer of the court and is exercising, over property which is not his own, a power given him by the law, he is morally bound to exercise this power in accordance with the standard the law has established for his conduct. The generally accepted legal standard for the performance of this duty is that the representative shall pay a claim when there is objectively satisfactory proof that the claim is justly due at law.

The statement says Green is certain that Black died owing Molly $4,000. Green should not pay the sum to Molly upon the basis only of his subjective certainty that it is justly due to her. With the assistance of his attorney, he should consider (1) whether the claim is justly due at law and (2) whether there is objectively satisfactory proof of that conclusion. Nothing recited in the statement casts an obvious doubt upon the truth of the conclusion, but Green should have Joiner's help in examining the evidence in detail and with reference to the rules of law which may have application here. Applying the rules, they should determine whether the debt was contracted and is still legally due, and whether the representative is legally authorized to pay it.

If the claimant's statement alone supported her claim of debt, the executor would act imprudently in paying or allowing her claim. While corroboration is not required as a matter of law, even when the claim is made against the estate of a deceased person, the evidence, viewed as a whole and in the circumstances of the case, must be clear and convincing.[1] However clear Molly Mauve's statement on the debt transaction may be, the circumstance that she lived with the decedent without benefit of a marriage ceremony and the circumstance that she did not urge her claim at law after he left her, suggest that the executor should be cautious in giving credence to her statement. Further, one cannot say that the executor is morally obliged to pay a claim supported only by the uncorroborated parol of an interested witness. To do so would make him liable to surcharge upon his accounting,[2] and he surely has no moral obligation to pay Black's debts out of his own pocket.

It appears here that her claim is supported, to some extent at least, by the evidence of the Browns' statements and of the decedent's records. Prudence and diligence require that the executor take Molly's sworn statement of the debt transaction and its circumstances, and consider that statement with the other evidence. The inferences of liability arising from that other evidence may be impaired or destroyed by the claimant's testimony. In New York, and probably in other jurisdictions where the personal representative has primary responsibility for deciding whether a claim shall be paid, even an examination before trial will not effect a waiver of the executor's right to invoke the Dead Man's Statute at a trial following upon his rejection of the claim.[3]

Consideration of her statement, with the other evidence, may carry Green's

[1] McKeon v. Van Slyck, 223 N.Y. 392, 119 N.E. 851 (1918).

[2] In the Matter of Estate of Hanrette, 140 Misc. 832, 252 N.Y. Supp. 424 (Surr. Ct. 1931). See Matter of Account of Mulligan, 82 Misc. 336, 143 N.Y. Supp. 686 (Surr. Ct. 1913).

[3] In the Matter of Accounting of VanVolkenburg, 254 N.Y. 139, 172 N.E. 269 (1930); *In re* Gray's Estate, 165 N.Y.S.2d 602 (Surr. Ct. 1957).

mind to a clear conviction that her claim is justly due at law. Paying or allowing her claim upon that conviction, he could not be said to have defrauded the estate. Yet he would act imprudently if by paying the claim he left himself open to being found negligent and therefore liable to surcharge upon his accounting. The executor and his attorney must apply here the standard employed by the courts in assessing such negligence and imposing a consequent liability. If a court will be satisfied that the claimant's statement is credible, in view of her character and the circumstances of the case, and especially that her statement is corroborated by other evidence, it will not surcharge the paying executor.[4] Nor need the executor fear that the statute will operate to deprive him of the benefit of the claimant's testimony in the proceeding upon his accounting, for the statute has been held consistently to be inapplicable in any case where the testimony of a paid creditor of the deceased is proposed to be adduced in evidence in such a proceeding.[5] The claimant will not be a party to that proceeding, and no title or interest is derived by the executor from her.[6]

Where the executor believes the claim justly due at law and yet has reasonable fear that the court may find the evidence supporting it insufficiently clear and convincing, he may allow the claim, without paying it in advance of his accounting. Thus the claimant will be spared the trouble and expense of bringing a separate suit to determine her claim, and the claimant will have in the accounting proceeding the benefit of the presumption of validity attributed to allowed claims by the probate statutes.[7] Yet, if the claim is there successfully contested, and therefore rejected by the court, the executor cannot be subjected to a surcharge because he will not have paid the claim.

Nevertheless, an executor who, without any reasonable fear that the claim is just and supported by proof which will satisfy the court, rejects a claim or allows it without payment, violates his duty to the court and commits an act of injustice to the estate and to the creditor. He is made an officer of the court and is paid his fees in order that he shall assume responsibility to investigate the facts and to judge the justice and validity of claims. He cannot honestly hold the office and its emoluments while shifting his responsibility back to the court that appointed him or to another court which will be called upon to determine the debt. Nor do the administrator and his attorney act justly when they, without good reason, cast upon the estate and upon the creditor the burden of delay and the additional fees and costs and trouble involved in needless trials.

After the above was written, Professor Paul Powers called to my attention the following remarks of the late Surrogate Heaton which appear to summarize and support the reasoning of the present answer:

> Every representative of an estate, soon after he enters upon the discharge of his duties, must determine whether claims made against the deceased are honest and valid

[4] In the Matter of Accounting of Klausner, 192 Misc. 790, 77 N.Y.S.2d 775 (Surr. Ct. 1957).

[5] *Id.* at 794, 77 N.Y.S.2d at 780.

[6] In the Matter of Accounting of Frazer, 92 N.Y. 239, 247 (1883); In the Matter of Account of Lese, 176 App. Div. 744, 163 N.Y. Supp. 1014 (1st Dep't 1917).

[7] See N.Y. SURR. CT. ACT §210.

> claims, and whether debts apparently due the deceased are actually due and the true and correct amount thereof. To do this he must make careful investigation in each case, and necessarily a large part of the information he is able to get must come from the creditor or debtor himself. If, after making such honest inquiry, he is satisfied that a certain debt is due from the deceased, he should pay it; or, if the deceased had a valid claim against a person, he should collect the amount due and release the debtor. He should not in ordinary cases take the position that the true facts will be difficult or impossible of proof under section 829 of the Code of Civil Procedure [now section 347 of the New York Civil Practice Act] and put either of such parties to his legal proof.
>
> It is the duty of the representative to settle the affairs of the estate; and he may settle or compromise claims for or against the estate, and a settlement made by him can be be set aside only upon proof of bad faith or fraud.[8]

Unless some reasonable fear remains after Green and Joiner have investigated Molly Mauve's claim of debt, her claim should be paid without being brought to trial.

Moral Question 2: Should Green, through Joiner, object to the admission of Molly Mauve's testimony on the debt at a trial which will determine that the debt is owing?

If Green refuses to allow the claim and Molly Mauve sues upon it, Green, as the personal representative of Black, will have power to invoke the Dead Man's Statute. At the trial of her claim, he can object to the admission of her testimony regarding transactions between her and the decedent related to her claim, and he can move the court to strike any such testimony received after he so objected. Our moral question comes to this: Will Green, in that event, be morally obliged or permitted to exercise the power given him by the statute?

Our answer must distinguish between three basically different situations. (1) Green may know or reasonably fear that claimant's excludable testimony will move the trial court to allow an unjust or invalid claim. He may have no such fear, because either (2) he is advised by counsel that, though she will offer a mendacious or mistaken statement of the facts, her statements will be ineffective as against rules of law, presumptions, cross examination, or other evidence that favors the position of the executor, or because (3) he has no doubt of the justice and validity of the claim or of the veracity of her testimony.

In the first situation, it can be reasonably argued that the state, in enacting the statute, put upon personal representatives a duty to save their estates from unjust or invalid claims by invoking the statute. This intent, at least, seems implicit in the only purposes clearly assigned to the statute by legislative committees urging its adoption or continuation and by judges construing it. In this situation, if anywhere, the purposes ascribed to the statute seem to demand that the estate representative shall not waive his objection.[9]

The criticisms levelled at the statute by Professor Wigmore[10] and others are

[8] In the Matter of Estate of Herrington, 73 Misc. 182, 185, 132 N.Y. Supp. 486, 487 (Surr. Ct. 1911).

[9] "If death has closed the lips of the one party, the policy of the law is to close the lips of the other." Louis v. Easton, 50 Ala. 470, 471 (1874). "The temptation to falsehood and concealment in such cases is considered too great, to allow the surviving party to testify in his own behalf." Owens v. Owens, 14 W. Va. 88, 95 (1878).

[10] 2 WIGMORE, EVIDENCE §578 (3d ed. 1940), (Supp. 1959).

strongly persuasive that the expediency of the statute is extremely doubtful, but they seem not to justify categorizing the statute as intolerably unjust and irrational. If they did, the statute would be ineffective to create directly any moral obligation. A human law can create a moral obligation only when it meets the tests for a just law. A statute which excludes evidence from the consideration of a court is not per se contrary to higher law, nor is its enactment beyond the competence of the lawmaker. But if the statute's effect is clearly opposed to the common good of the society in which it is enacted, or clearly and inherently inequitable in its operation, it is no law. Yet, even if the Dead Man's Statute were thus ineffective to impose directly moral obligations, the statute would have some indirect effect upon the moral problem of the executor. If his defiance of the law would give serious scandal, he would have to exercise his legal power to exclude the claimant's testimony.

Whether or not the statute be morally ineffective, an executor is surely not obliged to incur a surcharge by waiving his objection. If the claim were shown to be invalid, and to have been known to the executor to have been invalid, his failure to object at the trial to testimony obnoxious to the statute would justify a finding of negligence or collusion.

The situation we have labelled (2) seems not to have application in the present case, though it might be developed in the inquisitorial investigation by Green and Joiner. They might find that Molly is lying or mistaken in her report of the circumstances which she asserts gave rise to the debt, and they might find that the decedent's records and other independent proof, such as the Browns' statements, afford them ample material with which to controvert successfully her claim. If they then judge that their task can be accomplished more expeditiously or more surely by letting in her testimony and controverting it, than by excluding it, they will be morally permitted to choose the better expedient. If that expedient afforded the estate a certain and notable advantage, they would be obliged to employ it. Here again, they must consider the likelihood of a surcharge, though that seems less probable in this situation.

In the present case, the situation at a trial of Molly Mauve's claim is likely to be that which we have numbered (3). Green's refusal to allow the claim without adjudication would be premised upon no affirmative doubt that the debt is due and honestly provable, but upon a negative though reasoned hesitation to charge upon his estate a claim not satisfactorily provable as justly due at law. We may suppose that he thus hesitates to breach his moral duty to administer carefully, and to risk a surcharge, because his consideration of the evidence of the decedent's records and the statements of Molly Mauvé and the Browns leaves him not satisfied that the existence of the debt is clearly and convincingly proved. He is going to trial in order that the court, with the advantages of a contentious examination of the claim, may have opportunity to evaluate and relate the various items of evidence. He has no affirmative doubt that Molly's testimony will be mistaken or mendacious in its recital of the facts, but he belives that her claim cannot be allowed by a court which does not hear and consider her testimony. Does the statute or his general obligation to administer his estate prudently oblige him to

exclude from the court's consideration the testimony of the claimant?

We have not been able to find any decision which clearly fixes his duty to invoke the statute in these circumstances. The decision of the Supreme Court of California in *Kinley v. Largent*[11] does not conclude upon our problem, for the court decided only that where the administrator had declined to object to claimant's testimony, the trial court should have considered that evidence when determining the validity and amount of the claim. The court took pains to point out that any determination of a claim in suit between the claimant and the administrator is not conclusive as against the heirs. Yet the decision is instructive in its recital of the conduct and motivation of the administrator and his attorney. The lawyer told the court that he and his client were determined not to object because ". . . we feel that to interpose a technical objection to the competency of the plaintiff to testify as a witness in her own behalf in this suit would result in an injustice."[12] He explained that the administrator had known before his testator's death that the plaintiff wife had advanced money to her husband, the testator, but had not then known the amount of the advances concerning which she was to testify. The trial judge heard her evidence and then excluded it, holding the objection not necessary, though he had "no doubt . . . that [the plaintiff's] claim is a just one."[13]

A distinguished New York Surrogate, Wingate, wrote some very strongly worded dicta[14] to the effect that a personal representative must always object to testimony obnoxious to the Dead Man's Statute. He argued that there is no real distinction between this duty and the representative's clear legal duty to raise the bar of the statute of limitations. The force of his remarks is much diminished when one notes that he was speaking in a case where he had to disallow a personal claim of the accounting administratrix which, her attorney argued, was sufficiently proved by her own affidavit. He cited only cases where representatives had attempted to waive the evidence statute in their own favor, or where they had allowed claims of others outlawed by limitations.

His analogy to the duty of invoking the statute of limitations seems to lack cogency when one recalls that the bar of that statute is erected upon a presumption of payment, and that the presumption, in its turn, is premised upon conduct of the claimant — he did not avail himself of the ample periods of the statute to urge his claim. The claimant in the other case has not done anything or neglected to do anything he could reasonably be expected to omit or to perform, and it is not presumed that he has had payment. The event of death tolls the period of limitations, at least until a representative is appointed, though the period may have run for many years in the debtor's lifetime. But the same event calls the Dead Man's Statute into operation automatically and immediately, without regard to how long before the debtor's death the transaction had occurred.

Because the owner of the outlawed debt

[11] 187 Cal. 71, 200 Pac. 937 (1921).

[12] Kinley v. Largent, 187 Cal. 71, 200 Pac. 937, 938 (1921).

[13] *Ibid.*

[14] In the Matter of Estate of Van Valkenburgh, 164 Misc. 295, 298 N.Y. Supp. 819 (Surr. Ct. 1937).

has, in fact, delayed to urge his claim in his debtor's lifetime and has, presumably, received payment, there is no reason why the executor's duty to reject his claim and resist it on trial by raising the bar of the statute should be less than absolute. But because the survivor of a personal transaction with his debtor has not, either actually or presumably, done or omitted anything to enhance his own position or to worsen that of the debtor or the debtor's estate, it seems not equitable to impose upon the estate representative an absolute duty to reject his claim or to resist its proof.

If that proof is credible and has corroboration, the law will hold harmless the executor who, before judgment, pays the claim in reliance upon that proof.[15] But clear and ancient doctrine obliges the executor not to pay a claim barred by limitations.[16] It is submitted that these two distinct standards, clearly established to govern the executor's conduct in paying claims before judgment, should be preserved in their distinctness, to govern also the executor's conduct at and after a trial of the claim.

We can find no authority in New York for saying that, in the absence of special facts showing fraud, collusion or negligence, an executor who waives his statutory objection to a claimant's evidence offered in the trial of a claim, will not be allowed his costs if the claimant succeeds, or will be surcharged if he pays the claimant on the judgment secured at the trial. It is, of course, abundantly well settled that any executor who fails to raise the bar of limitations at the trial of an outlawed claim will not be allowed his costs if the claimant has judgment and, if he pays the judgment, will be surcharged therefor.[17]

We conclude that, unless the law of New Island will surcharge Green or disallow his costs, he is not obliged, legally or morally, to object to Molly Mauve's testimony in the circumstances postulated in this answer under the situation numbered (3).

Moral Question 3: What is the moral quality of the conduct of Sawyer and his client Gertrude Gray, and that of Carpenter and his client Molly Mauve, in objecting to probate of Black's will?

Molly Mauve cannot participate in the proceedings to determine the will's admission to probate without first establishing her interest in the estate. Green's petition shows that he does not recognize and will contest the interest she asserts as Black's widow, so she as an intervenor must prove her claim of common-law marriage to the satisfaction of the probate court before her objection to the testator's capacity can be heard. On the other hand, her right to elect against the will need not be exercised until after the will has been admitted. The moral problem involved in her maintaining an interest as Black's surviving spouse will be discussed in our reply to the fourth question. In discussing this third question we will leave those problems aside, and will assume that her interest in the estate as widow has been settled in the preliminary probate hearing. Gertrude Gray's interests as a distributee and legatee are recognized in the proponent's petition.

[15] In the Matter of Accounting of Klausner, 192 Misc. 790, 77 N.Y.S.2d 775 (Surr. Ct. 1948).

[16] Freeman v. Freeman, 2 Redf. 137 (Surr. Ct. 1874).

[17] See 4 JESSUP-REDFIELD, LAW AND PRACTICE IN THE SURROGATE'S COURTS IN THE STATE OF NEW YORK §3205 (Rev. ed. 1949).

We may say immediately that both contestants, Gertrude Gray and Molly Mauve, are guilty of lying and, if they verified their answers alleging fraud, duress and the testator's incapacity, of perjury. On the facts given, neither knew the allegations made in her answer to be true, and therefore it is as if they had offered to the court, and perhaps verified, statements they knew to be false. Molly claimed no knowledge whatever of the circumstances in which the will was executed. Gertrude claimed to know of fraud and duress only by inference from her uncle's generous legacy to the Orphanage; since the inference is irrational upon its face, she had not the knowledge her answer asserts. The only possible extenuation of their moral guilt of lying and perjury is that they may not have known that the formal answers imported knowledge, or, in Gertrude's case, that she may not have realized her inference was irrational. Since both attorneys were well aware of the state of their clients' minds, they acted immorally in advising and assisting in the filing and verification of the answers. In a prosecution for perjury, the character of the answers as "conclusions of law" might be a sufficient defense. The judgment of the moral quality of this conduct, however, must be assessed by asking: Did the women and their lawyers believe what they impliedly asserted when they offered these pleadings to the court? Did they believe that there were at least some probable grounds for the conclusions stated? On the facts given, we must say that they did not so believe, and that, therefore, they were guilty of lying and, if they verified the pleadings, of perjury also.

Further, the contestants and their attorneys acted unjustly in filing objection to probate upon grounds that they did not know to exist, even with slight probability, in fact. Because they well knew that their objections could not justly prevail upon a trial, they are guilty of unjustly harassing the executor and the Orphanage. It is certain moral doctrine that the act of bringing a suit to question the possession and enjoyment of a right by one who is at least probably entitled thereto, is an unjust harassment when the suitor or his attorney knows that the suit cannot prevail.[18]

It should be noted that these conclusions are based on the facts given. Here the objectants have no reasonable basis for any doubt that the will was executed freely and competently. If there were, in other circumstances, any honest reason for such a doubt, a person truly having an interest in the estate might honestly and justly file an objection and pursue it for as long as that doubt persisted. Thus, if Gertrude, who has a statutory right to share in the estate if her cousin made no valid will, had an honest doubt of his competence, she could object in the probate proceeding. The knowledge basing her doubt might be, for example, the fact that he had told her that he disapproved of orphanages in general and believed that foster home agencies should be strengthened so they could take over most of the work done by orphanages. Or the basis of her doubt might be so slight as this – she knows nothing, directly or indirectly, of the character of the person who drew and witnessed the will or of the circumstances in which that was done, so that she can have no clear reason to exclude duress unless she has opportunity to examine or cross examine those persons and, perhaps,

[18] I ST. ALPHONUS DE LIGUORI, THEOLOGIA MORALIS §220, at 427 (1839).

others who know the true facts. Obviously, an objection so based must be withdrawn as soon as the objectant is honestly satisfied that there is no good reason to doubt the validity of the will. If such reassurance be achieved, for example, in pre-trial examination of witnesses, the objection should be withdrawn at that point. Or it would have to be withdrawn before any formal proceeding if the objectant had reasonable reassurance in conversation with the attorney who drew the will. Certainly any objectant and his attorney have, in such circumstances, a very serious and difficult duty to appraise honestly doubts having slight basis in fact, and not to allow self interest to generate or amplify these doubts unreasonably. Nor may the pursuit or withdrawal of such objections be justly used, directly or indirectly, as leverage for a settlement in any amount in excess of the probable cost of the examinations which could be expected to satisfy the tenuous doubts upon which the objections are based.

Returning to the conclusion reached upon the present facts, that the objectants and their attorneys acted unjustly, it will follow that the contestants and their attorneys are bound to make restitution for any harm done by their unjust conduct. Provided they knew that their harassment of the executor and the Orphanage was unjust, and likely to cause labor and expense, they are morally bound to recompense the work and the costs undertaken by Green, Joiner, Farmer and the Orphanage Trustees in preparing to deal with these baseless objections.

Each attorney cooperated formally in his client's injustice, since he shared her intent to unjustly harass Green and the Trustees. Each cooperated affirmatively by advising and assisting his respective clients to commence suit. A lawyer's co-operation in each case is and will be actually effective as a concurring cause of the entire harm consequent upon the suit's commencement and prosecution. Therefore, each lawyer is bound severally with his client for the entire amount of the consequent damages. Sawyer may do his best to persuade Gertrude to make good all of the damages done by her objection, but if she refuses, he must make good any damage for which she does not pay. He will then have the right to compensation from her, in the amount by which his restitution exceeds the fees she may have paid him. Carpenter is in the same position in respect of his client.[19]

If the women and their lawyers persist in maintaining these objections, they will become involved in further lies or perjuries and, by continuing their unjust harassment, will incur further obligations of restitution. Such occasions may arise even before the trial is commenced, for Gertrude may be asked for a bill of particulars, specifying when and by whom the fraud or duress she alleges was exercised, and either woman may be examined before trial.

Gertrude Gray has asked her attorney to bargain the withdrawal of her objection for the Orphanage Trustees' surrender to her of some portion of their legacy. Carpenter has made a similar proposal to his client, namely, that she authorize him to ask the Orphanage Trustees for some part of the

[19] The doctrine controlling these conclusions on restitution is treated fully in I AERTNYS-DAMEN, THEOLOGIA MORALIS §§763-94, at 582-97 (15th ed. 1947); *cf.* CONNELL, OUTLINES OF MORAL THEOLOGY 116-19, 121-22 (1953); PRÜMMER, HANDBOOK OF MORAL THEOLOGY §§302-13 (1957).

residue of the estate in exchange for the withdrawal of her objection in the probate proceeding. Both proposals are clearly immoral, because both contestants and their attorneys well know that neither objection is well-founded.

In the case of Gertrude the matter is abundantly clear. When one, in exchange for another's surrender of a value which at least probably belongs to the other and to which the offeror has no probable moral claim, offers to surrender no value to which the offeror is with any probability entitled, the offeror is asking to receive something for nothing. If he attempts to put a color upon his offer by saying he will remove an obstacle which he has placed unjustly in the other's path, and which he is already morally obliged to remove, he places himself in the moral position of a robber or a blackmailer. He does not, when that obstacle is an unjust suit or the threat of such a suit, change his moral position by pointing to the "nuisance value" of his suit. A claim without any probability of right has no value whatever. The proceeds of any such settlement will have to be restored and this duty will fall severally upon attorney and client.

Molly Mauve's case is the same if she is not entitled to the debt. But if she is thus entitled, may she maintain her objection to probate in order to coerce payment of what is due to her? Even in that case, she acts unjustly in maintaining her baseless objection, for she is harassing the executor and the Orphanage Trustees in their possession and exercise of their right to have the will admitted although she is unable to show probable cause why the will should not be probated. She cannot, morally, use a lie to put them to such trouble that they may be persuaded to give her what is her due. Yet, if she does so, she will then have no obligation to repay to them anything they may give her on account of her just debt. One essential element of the duty to make restitution of property whose surrender was procured by unjust conduct is that the person from whom it was taken had a strict moral right to withhold it from the person to whom he surrendered it. This is not to say, of course, that Molly would not be obliged to make restitution for any damages caused by her conduct or of any property she received in excess of her just debt.

Moral Question 4: What is the moral quality of the purposes of Carpenter and his client Molly Mauve, to bargain with the Orphanage for the withdrawal of her widow's claim, or to pursue that claim on trial?

Molly Mauve's claim that she, as Black's widow, is entitled to the entire estate of Black if the will be refused probate, or to half of the estate if the will be admitted, is not a just one. At least after consulting with her attorney, Molly well knows that she did not become Black's common-law wife, because the agreement in praesenti required by the law of Connshire never took place between them. In the face of this knowledge, she and her attorney know also that there is no probability she will secure, by just means, the legal rights of a widow.

A suitor does not present his claim with its legal premises, or offer testimony, in a vacuum. He says explicitly or implicitly to the court that the testimony he offers

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entitles him, under the law, to the relief he asks. In pleading and in argument the court will be asked to conclude from the testimony of Molly's Connshire neighbors that she and Black contracted marriage by mutual agreement. Though the testimony will state facts objectively true and will be veraciously offered by the witnesses, the request that the court find this conclusion implies that it is true, while in fact it is a lie. If the conclusion is asserted or its finding requested in verified pleadings, morally there is perjury, though perhaps not from the view of the criminal law.

The assertion and maintenance of this claim before the court is an unjust harassment of the executor and the Orphanage Trustees, and will incur duties of restitution quite similar to those discussed in our reply to the third question – in respect both of consequential damages of the harassment and of any money or property settlement extorted thereby.

Finally, the reader should note that this problem case and the moral questions involved have made no reference to the Canon Law. If the Orphanage were an institution of Catholic charity, rather than a purely humane philanthropy as we have here assumed, the Canons would impose duties additional to those discussed in the four answers above, but the conclusions reached here would not be altered. Even if the common-law marriage were invalid because, for example, Molly or Black was a Catholic who could not marry validly except in a Catholic ceremony, her moral rights as a successor in Black's property would still be governed directly by the law of the two states.