subject matter is within the jurisdiction, it is not, as to it, a court of limited jurisdiction.[21] As another Ohio case held,[22] the probate courts have full power to adjudicate fully and finally all questions arising in matters properly before them.

Therefore, it would seem that in the principal case the appellate court should not have permitted the collateral attack on the judgment of the probate court in regard to the will of 1927, but rather should have denied such an attack, leaving the plaintiff to his right to bring a direct proceeding attacking the judgment. The fact that the statute of limitations has run on such a direct proceeding,[23] leaving the plaintiff without a remedy, does not justify the rendering of an erroneous decision in sustaining the present attack on the admission to probate of this later dated will. S.D.G.

Intent to Execute an Instrument Incomplete on Its Face

The Probate Court of Montgomery County recently rendered a decision admitting to probate as a valid will an instrument in which the residuary devise terminated with an incomplete sentence. The name of the devisee had not been inserted in the blank left by the testator for that purpose. The remainder of the will appointed an executor but made no other dispositions. The court found that the instrument was executed *animo testandi* and admitted it to probate, in the face of the contention that since it was incomplete on its face, the testatrix must not have regarded the instrument to be the final embodiment of her intent, but had contemplated some further act to complete it. The only evidence outside of the instrument itself in regard to the testatrix's intent was that she had called the two subscribing witnesses to her home and stated to them that she had made out her will and had requested them to act as witnesses.[1]

There are several classes of cases similar to the principal one in which the court must decide whether or not the instrument before it reflects the final testamentary intent of the deceased. Such classes include cases in which a partially executed will is formally executed in regard to personalty, but not complete in regard to devising realty; cases in which the testator has become physically incapacitated before completing the will, in jurisdictions which do not require signing; cases in which a

[21] Brown v. Reed, 56 Ohio St. 264, 46 N.E. 982 (1897).
[22] Wilberding v. Miller, 90 Ohio St. 46, 106 N.E. 665 (1914).
[23] Ohio G.C. sec. 11640.
[1] *In re* Crowe, 17 Ohio Op. 8, 31 Ohio L. Abs. 35 (1940).

bequest is void for ambiguity; and cases in which by parol evidence it is proven that the testator considered some further act necessary in order to execute his will. The question in all of these is: does the instrument in its unfinished condition represent the decedent's last wish as to the disposal of his property or would he have preferred it to pass by intestacy rather than by the unfinished instrument?

The courts of Maryland[2] and Maine[3] have admitted to probate testamentary instruments similar to the one in the principal case. Two earlier Maryland cases,[4] a New York,[5] and a Pennsylvania decision[6] have held such instruments invalid. In several jurisdictions it was formerly the rule that an unsigned, unattested instrument could be validly used for a testamentary disposition of property. What then of those instruments terminated in the middle by the testator's sudden death or physical incapacity? Is the instrument in its partially completed form the expression of decedent's last intent? A Tennessee court[7] has stated the view of those courts upholding the validity of such instruments. "If a testator gives one or more legacies by his will and is prevented from completing said will by his death, sudden sickness, or insanity, and if it appears from the evidence that the testator had expressed his full purpose and intent with regard to the legacies given, the will may be set up as far as it goes, but if it appears, either from the face of the will or other proof, that he had not expressed his full mind and intent with regard to the legacies given, the will can't be set up as far as it goes."[8] Where it was evident that the testator intended that certain technicalities or some further act, other than the filling in of blanks, should be done before the will is completed, the courts have refused to accept conformance to lesser requirements.[9] In many cases in which the testator has failed to fill in a blank, the courts have held the will valid but the specific bequest void and of no effect, no question having arisen in regard to the *animus testandi* of the entire will.[10]

In determining the validity of deeds containing blanks the courts have stated without qualification that there must be a grantee named or

[2] Harris v. Pue, 39 Md. 535 (1873).
[3] *In re* Goodridge, 119 Me. 371, 111 Atl. 425 (1920).
[4] Plater v. Groome, 3 Md. 134 (1852); Barnes v. Syester, 14 Md. 507 (1859).
[5] *In re* Pierson's Will, 197 N.Y.S. 312, 203 App. Div. 673 (1922).
[6] Murry v. Murry, 6 Watts (Pa.) 353 (1837).
[7] Guthrie v. Owen, 21 Tenn. (2 Humphr.) 202 (1841).
[8] All courts have not been in agreement on this interpretation. Tabler v. Tabler, 62 Md. 601 (1884); Montefiore v. Montefiore, 162 Repr. 324, 2 Addams 354 (1824).
[9] Mealing v. Pace, 14 Ga. 596 (1853); Lungren v. Swartzwelder, 44 Md. 482 (1876); Selden v. Coalter, 2 Va. Cas. 553 (1818).
[10] Everett v. Carr, 59 Me. 325 (1871); Bryan v. Bigelow, 77 Conn. 604, 60 Atl. 266 (1905); Hawman v. Thomas, 44 Md. 30 (1875); Heidenheimer v. Bauman, 84 Tex. 174, 19 S.W. 382 (1892); Engelthaler v. Engelthaler, 16 Ill. 230, 63 N.E. 669 (1902).

the deed is void[11] and that the instrument must describe specific property.[12] In negotiable instruments the courts recognize validity and an implied power in the holder to fill all blanks.[13] Other written contracts in which essential matters have been left in blank have been held invalid,[14] although sometimes there is found an authority to fill in the blanks in accordance with the general character of the instrument.[15] In none of these cases does the court mention the intent of the party executing the instruments. It appears that the rules applicable to deeds and contracts other than negotiable instruments are contrary to the grantor's intent, in the sense that the grantor or contracting party usually intends the instrument to be valid as executed. To him the identity of the grantee or second party to the contract is of little consequence. His main interest is the consideration received. In the case of negotiable instruments, the decision probably represents an attempt to protect the holder in due course, regardless of the promissor's intent. In contrast to these rules of substantive law, the courts have resorted to evidence of intent in determining the validity of wills containing blank spaces. If from the face of the instrument and from other evidence, it appears to the court that the instrument was executed with a testamentary intent, it is so interpreted; if the instrument and evidence indicate a contrary intent, the court will refuse to admit it to probate.[16]

It is evident, then, that two classifications are possible in regard to the four types of instruments, according to the admissibility of extrinsic evidence, (1) of intent as to validity, and (2) of authority to complete the instrument. Under the former classification deeds, negotiable instruments and other contracts constitute a group in which such evidence is excluded, whereas wills are a group in themselves wherein it is admis-

[11] Williams v. Courton, 172 Ark. 129, 287 S.W. 745 (1926); Donnelly v. Dumanowski, 329 Ill. 482, 160 N.E. 759 (1928); Aetna Casualty Co. v. Commonwealth, 233 Ky. 142, 25 S.W. (2nd) 51 (1930); Nash v. Kirschoff, 166 Minn. 464, 208 N.W. 193 (1926).

[12] Jones v. Coulter, 75 Cal. App. 540, 243 Pac. 487 (1925).

[13] Alford v. Delatte, 160 La. 712, 107 So. 500 (1926); Cassetta v. Baima, 106 Cal. App. 196, 288 Pac. 830 (1930); Adair v. First Nat. Bank, 253 Ill. App. 206 (1929); U.S. Nat. Bank of La Grande v. Miller, 118 Ore. 280, 246 Pac. 726 (1926). The party intrusted with the instrument has *prima facie* authority to complete it by filling up the blanks therein. Sec. 14, NEG. INSTR. LAW, OHIO, G.C., sec. 8119.

[14] Patterson v. Reid, 132 Cal. App. 454, 23 Pac. (2nd) 35 (1933); House v. Sealey, 154 Miss. 663, 122 So. 741 (1929); Atkins v. Van Buren Tp. School, 77 Ind. 447 (1881); Pepper v. Harris, 73 N.C. 365 (1875).

[15] Jenkins Music Co. v. Johnson, 175 Mo. App. 355, 162 S.W. 308 (1914); Johnston Harv. v. McLean, 57 Wis. 258, 15 N.W. 177 (1883).

[16] In view of the fact that the proponent of the will need only establish a *prima facie* case in Ohio in order to get the will admitted to probate, and since in this matter a *prima facie* case requires only that amount of evidence which, if it had been tried before a jury, might have resulted either for or against it, 2 Ohio St. L.J. 292, it is unlikely that the proponent will find difficulty in proving testimentary intent.

sible. Under the latter classification, contracts, both negotiable and otherwise, are a class in which the power to complete is found—in fact is sometimes presumed—whereas wills and deeds constitute a group wherein the opposite is true. Moreover, in the case of wills, it should be noted, such a power would have been terminated by death even had it originally existed. In the principal case the court has resorted to the first classification.

H.M.M.