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Book Reviews

THE FAMOUS CASE OF MYRA CLARK GAINES, by Nolan B. Harmon, Jr., Louisiana State University Press, Baton Rouge, La., 1946. Pp. xi, 481. \$3.50.

"Yes," said Miss Flight, "I expect a judgment. Shortly. On the day of judgment."
—*Bleak House*.

Until eleven o'clock last night, I must confess that I never had heard of Myra Clark Gaines. Between the hours of eleven and one, when I went to bed feeling richly rewarded, I made her acquaintance. Like any other discoverer of what a great many other people have known all along, I am now urging her on everyone else.

She was the bonniest litigant this country has ever seen. She was sixty years in court, pressing a shaky, preposterous and altogether incredible claim against the owners of some of the most valuable property in New Orleans. She was twelve times¹ before the Supreme Court of the United States. The first decision of that distinguished tribunal, in her favor, was in 1839; the last one, again in her favor, came a full half century later. In the sixth of the series² Mr. Justice Wayne observed that "When hereafter some distinguished American lawyer shall retire from his practice to write the history of his country's jurisprudence, this case will be registered by him as the most remarkable in the records of its courts." Reverdy Johnson was in the case; and so, for a time, were Daniel Webster and Caleb Cushing and Francis Scott Key. Myra Clark Gaines retained at various times at least thirty lawyers, and she is believed to have paid out \$600,000 in attorneys' fees and \$250,000 more in costs while she lived in privation and borrowed postage stamps. In the end she recovered a judgment in excess of \$1,900,000 and died before she collected a penny. Her heirs finally settled with the city of New Orleans for \$567,707.92. It is to be hoped that they had the grace to give her a decent tombstone. I should like to see it.

1. *Ex parte Whitney*, 38 U.S. 404, 10 L.Ed. 221 (1839); *Gaines v. Relf*, 40 U.S. 9, 10 L.Ed. 642 (1841); *Gaines v. Chew*, 43 U.S. 619, 11 L.Ed. 402 (1844); *Patterson v. Gaines*, 47 U.S. 550, 12 L.Ed. 553 (1848); *Gaines v. Relf*, 53 U.S. 472, 13 L.Ed. 1071 (1851); *Gaines v. Hennen*, 65 U.S. 553, 16 L.Ed. 770 (1860); *Gaines v. New Orleans*, 73 U.S. 642, 18 L.Ed. 950 (1867); *Gaines v. De la Croix*, 73 U.S. 719, 18 L.Ed. 965 (1867); *Gaines v. Lizardi*, 154 U.S. 555, 14 S.Ct. 1201, 18 L.Ed. 967 (1888); *Gaines v. Fuentes*, 92 U.S. 10, 23 L.Ed. 524 (1875); *Gaines v. Miller*, 111 U.S. 395, 4 S.Ct. 426, 28 L.Ed. 466 (1884); *New Orleans v. Gaines*, 131 U.S. 191, 9 S.Ct. 745, 33 L.Ed. 99 (1889).

2. *Gaines v. Hennen*, 65 U.S. 553, 16 L.Ed. 770 (1860).

The comparison is only too trite, but this is truly the American case of *Jarndyce v. Jarndyce*. This is the tale of little Miss Flight with her bag and her documents, sitting in chancery for a lifetime awaiting the day of judgment. But this was no poor, bewildered, half-crazed little woman. This was a shrewd and able lady with a passionate belief in the justice of her cause and persistence beyond human endurance. By that sheer persistence she made good at last a claim that still surpasses belief. She gloried in her litigation; and once, in Washington, she introduced herself to a perfect stranger: "You have heard of me. I am Myra Clark Gaines, and I have suits from here to the Gulf."

She was the daughter of Daniel Clark, a cotton trader and gentleman adventurer of old New Orleans. He was on the fringes of that obscure affair of General Wilkinson and Aaron Burr, and died in 1813 under something of a cloud because of it. He left property in the heart of New Orleans which subsequently acquired enormous value and became the subject of the suits. Myra's mother was a part-gypsy, part-Creole lady of legendary beauty and dubious virtue whom everyone, including the Supreme Court, called Zulime. This fabulous creature, straight from the Arabian Nights, lived with Clark without benefit of clergy for years, and then was or was not married to him, secretly and without a record—according to the credence one gives to the testimony of her relatives long after the event. At the time she had a husband living, but he did or did not have a prior, undivorced wife, as indicated by the conflicting testimony of those who knew him and some records which may or may not have been manufactured or tampered with. Zulime complicated matters still further by marrying a third gentleman during Clark's lifetime. Myra's legitimacy was for obvious reasons in some dispute. Her sister, or half-sister as the case may be, denied it, as well as her own claim. One of the remarkable facts in the case is that during all of the litigation no one ever called Zulime to the witness stand and asked her the question. She might possibly have known.

Before his death Daniel Clark did or did not draw a new will, in which he acknowledged Myra as his only legitimate child and left her nearly all of his property. This will was or was not destroyed after Clark's death by another stock character of melodrama, his wicked partner. The partner proceeded to probate an older will, which left Myra very little and profited the partner and his associates. The property passed into the hands of bona

fide purchasers, including the city of New Orleans, and they resisted Myra's claim savagely and bitterly with every fair or foul weapon at their command.

The claim of Myra Clark Gaines rested first upon her legitimacy and the provision of the Louisiana Code preventing her disinheritance; and second, upon the destroyed will. Having carried the first ground to the Supreme Court five times and finally lost³ in 1851, she began all over again and proceeded to probate the missing will, forty-three years after the death of the testator and the probate of his estate. Her ultimate success was due in no small part to the admission of an aged witness on the stand in 1855 that Daniel Clark had shown him a sealed packet which he said contained his will, and it had written on it "pour être ouvert en cas de mort." The prior will had borne no such words.

Myra Clark Gaines succeeded in convincing the Supreme Court. She has also convinced Mr. Harmon, who thinks that she was right on both grounds. Without reading the record of the case, which was once taken to Washington in a trunk, a stranger cannot judge. Mr. Harmon's narrative carries conviction. But it is impossible not to have some sympathy with the dissent of Mr. Justice Grier,⁴ who said, as the case was dismissed "for the last time" on the sixth of the thirteen appeals:

" . . . that if it be the law of Louisiana that a will can be established by the dim recollections, imaginations or inventions of anile gossips, after forty-five years, to disturb the titles and possessions of bona fide purchasers, without notice, of an apparently indefeasible legal title, '*Haud equidem invideo, miror magis.*'"

Mr. Harmon sets this down as mere amazement and disgust of the son of a Pennsylvania Presbyterian minister at the "moral laxity of the voluptuous city of the South." But lawyers who are accustomed to look askance at reports of secret unrecorded marriages, oral admissions of legitimacy and the probate of missing wills upon parol proof two generations after the testator's death may perhaps view it in another light. Not the least tribute to Myra Clark Gaines is the utter flimsiness of the case she won.

Mr. Harmon has told the story very well. He has done an excellent job of setting forth the various legal disputes and mak-

3. *Gaines v. Relf*, 53 U.S. 472, 13 L.Ed. 1071 (1851).

4. *Gaines v. Hennen*, 65 U.S. 553, 16 L.Ed. 770 (1860).

ing clear the tangled history. He lacks the lightness of touch with which Edmond Pearson or William Roughead would have approached the story, and there is a bit too much of this sort of thing:

"As Clark slept on the ship bearing him home, had he been able to hear through the sound of the waves at night the cry of a little child, it might have told him something; had the sunlight glinting on the waters of the Gulf shown him his own eyes looking back at him from the face of a little girl, he might have learned even more."

The reader may wince occasionally, but he should be able to take it in stride. The book should not be missed. The case is, as Mr. Justice Wayne declared, the most remarkable in the history of our courts.

Of the sincerity, ability, pertinacity and strength of character of Myra Clark Gaines there can be no possible doubt. She spent her life in court; she spent a fortune of her own and other people's money; she upset the city of New Orleans and the courts of Louisiana and of the United States as no one has before or since; she won a moral victory, benefited her heirs, and got for herself not one red cent. But think of all the fun she had!

WILLIAM L. PROSSER*

LAW TRAINING IN CONTINENTAL EUROPE, by ERIC F. SCHWEINBURG.
New York: Russell Sage Foundation, 1945. Pp. 129. \$1.00.

It demands a wiser humility than most of humanity possesses for a victorious nation to study the institutions of defeated ones. This monograph by a Viennese practitioner of ten years' standing tells of legal education in Austria, France, Germany, and the Soviet Union. With an understandable preference for first-hand knowledge, he has chosen Austria for most detailed treatment. Of necessity, the picture is of the pre-war scene, which must have suffered many changes during the years of the locust. It is a valuable collection of information, some of which may be found in articles in various journals by Deak,¹ Rheinstejn,² and Riesen-

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1. Deak, *Reflections on Legal Education in the United States*, 1939 Wis. L. Rev. 473.

2. Rheinstejn, *A Comparison of Legal Education in the United States and Germany*, 1938 *id.* 5.