1901
*Nov. 19, 20,
1902
*Feb. 20.

MARY SKINNER.....APPELLANT;

AND

WILLIAM O. FARQUHARSON.....RESPONDENT.

In re ESTATE OF JOHN FARQUHARSON, DECEASED.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Will—Capacity of testator—Insane delusion.

F. in 1890 executed a will providing generously for his wife and making his son residuary legatee. In 1897 he revoked this will and executed another by which the provision for his wife was reduced, but still leaving sufficient for her support, and the son was given half the residue, testator's daughter the other half. His wife was appointed executrix and guardian of the children. Prior to the execution of the last will F. had frequently accused his wife and son of an abominable crime, for which there was no foundation, had banished the son from his house and treated his wife with violence. After its execution he was for a time placed in a lunatic asylum. On proceedings to set aside this will for want of testamentary capacity in F.

Held, reversing the judgment of the Supreme Court of Nova Scotia (33 N. S. Rep. 26.) Sedgewick J. dissenting, that the provision made by the will for testator's wife and son, and the appointment of the former as executrix and guardian, were inconsistent with the belief that when it was executed testator was influenced by the insane delusion that they were guilty of the crime he had imputed to them and the will was therefore valid.

APPEAL from a decision of the Supreme Court of Nova Scotia (1) reversing the judgment of the Judge of Probate for the County of Halifax and declaring

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*PRESENT:—Taschereau, Sedgewick, Girouard and Davies JJ.

(Mr. Justice Gwynne was present at the hearing but died before judgment was given.)

(1) 33 N. S. Rep. 261.

void and inoperative a will of the late John Farquharson executed in 1897.

The will was attacked by the respondent on the ground that the testator, when he executed it, was influenced by an insane delusion as to the conduct of his wife and the respondent his son, and was therefore wanting in testamentary capacity. The material facts are sufficiently stated in the above head-note and in the judgments published herewith.

The appeal was argued in the February session of 1901 Mr. Justice King being then present. His Lordship having died before judgment was given the court ordered a re-hearing.

Borden K.C. for the appellant.

Harrington K.C. for the respondent.

TASCHEREAU J.—I fail to see on this record sufficient evidence to set aside the will in question. In the first place, it is not clear to my mind that the testator's belief that his wife had been guilty of the abominable crime in question was, at its origin, an insane delusion, however unfounded that belief was. A belief of that nature, whether founded or not, preying upon a man's mind is undoubtedly of a character to drive him ultimately to the mad house; but that he is from the beginning a madman and *non compos mentis* simply because his suspicions are unfounded seems to me an untenable proposition. But even if this erroneous suspicion constituted insanity in the testator in this case, I cannot see in the evidence that it was that insane delusion, if an insane delusion it were, that controlled his power of will and prompted him to execute the instrument in question and reduce the bequests to his wife and son that he had made by his prior will. The man was old and sickly, it is true,

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and had lost some of his vigour of mind, but he was, apart from this delusion, perfectly sane and capable of administering his property. And it is not the law that no one but those in the prime of life can make a will. It is not the law that any one who entertains wrong-headed notions, capricious whims, or absurd idiosyncrasies, cannot make a will.

If by this new will, the deceased had revoked entirely the legacies to his brothers and sisters provided for by his first will and had bequeathed the whole of his estate to his wife and son, the brothers and sisters could not successfully have assailed it.

If the deceased's delusions had influenced the disposal of his property, the respondent's contention should perhaps prevail. But that is a question of fact. And twelve average men could not, reasonably, but come to the conclusion that if that had been the case, if he had had present to his mind, when he went to his solicitor, that his wife was the vile, loathsome creature that he intermittingly had believed her to be, if that had been the impulsive cause of his making a new will, he would not, by that new will, have appointed her guardian of his children and one of his executors, besides bequeathing to her and his son a substantial amount of his property. Such dispositions cannot have been the offspring or result of this delusion. On the contrary the inference from them is that the delusion cannot have been in actual operation at the time when he made them. Then this will cannot be said to be an inofficious one as regards the wife and the son. It was a rational act rationally done, according to the solicitor's evidence. The respondent's reasoning is, in my opinion, fallacious. This testator must have been insane, he argues, because, though under the belief of his wife and son's henious criminality, yet he did not disinherit them altogether, but

left them a considerable portion of his estate. But there is, in that theory, no compatibility between the efficient cause and the effect. It is *petitio principii*, it is assuming that the will was made because of that delusion. Now that is the very question to be determined. And I cannot but help thinking that if it were that delusion that had guided the mind of the testator when he made this will, he would not have given a cent to his wife and to his son. If he had disinherited them altogether, they would be justified in contending that it was an insane delusion that had influenced him to do so. But I cannot see that they can base such a contention on the ground that he left them a portion of his estate. What he left them, it is true, is less than what he had left them by the first will, but that he left them anything at all, that he appointed his wife one of his executors, that he appointed her guardian to his infant children, seems to me utterly irreconcilable with the proposition that he was, at that time, acting under the impulse of hatred or of vengeance and under the impression that he had suffered a most grevious tort at their hands.

I would allow the appeal with costs, and restore the decree of the Judge of Probate.

SEDGEWICK J.—Before the death of our late brother Mr. Justice Gwynne, he had prepared a full and exhaustive opinion on the subject matter of this appeal. It was delivered to all the judges who at the argument formed the court, and it so coincided with my views that I did not think it necessary to express them in writing. I adopt his judgment as my own and append it hereto for that purpose.

The question in this case is, whether the late John Farquharson, deceased, was of sound mind, memory, and understanding capable of disposing

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of his property by the will which is impeached here, made upon the 9th of March, 1897. The learned judge of the Probate Court of Nova Scotia pronounced in favour of the will mainly upon the ground that there was nothing in the will to show that the testator was acting under the influence of any insane delusion, even admitting the fact (which however he did not think established by the evidence) that any insane delusion had existed in his mind prior to the making of the will. The learned judge thought the disposition of his property made by the will to be quite rational and he therefore pronounced judgment in favour of it.

The Supreme Court of Nova Scotia, consisting of three judges, unanimously reversed this judgment. From the judgment of the Supreme Court this appeal is taken.

The deceased was married in 1876, and he and his wife continued to live happily together until January, 1897. In January, 1894, he had a paralytic stroke from which he was confined to his bed for some time. A Dr. Cowie was then his medical attendant. Dr. Chisholm, who was also called in when deceased was suffering under the paralytic stroke, says that there was no difficulty in diagnosing his case. He had a disturbance of the circulation which destroyed the functions of the brain; the result was paralysis of mind and speech. There was nothing to be done for him but just carry on the treatment which Dr. Cowie had prescribed. Deceased, he says, began to recover from the paralysis, but not much. He began gradually to move about but it took him some months. Afterwards when attending deceased's son witness had an opportunity of observing the condition of deceased. He was then moving about better; this was in 1895.

Monomania, he says, does follow as a result from such injury as deceased was suffering from; delusions and hallucinations do exhibit themselves as phases of the brain trouble from which he suffered. The medical testimony upon this point further was that in the majority of cases of paralysis of the brain more or less mental defect is the result.

Now in the year 1890 the deceased had made a will whereby he devised the whole of his estate, real and personal, to his wife and his son and daughter, with the exception of $1,000 which he divided among two brothers, a sister and two nieces, and $500 to the poor of Halifax, and $500 to the Womans' Home.

From the evidence of a niece of the deceased who lived in the house with him from some time in the autumn of 1895 until April, 1897, it appears that until January, 1897, husband and wife lived happily together and deceased was never in the habit of using abusive, coarse or bad language, or of acting in a violent or excited manner towards his wife or son, but that between the 1st of January and the month of April, 1897, when witness ceased living with them, it was deceased's constant habit to use violent, abusive and bad language towards his wife and son. On different occasions upon witness coming into the room where deceased and his wife were alone together witness found deceased in an excited manner, abusing and ill-treating his wife, from which he would desist upon witness coming in. He would tell his wife at the table in the presence of his son and of witness that she would have to earn her own living; that she would have to do something after he was gone, for that he did not intend to leave her his money. Witness said that this occurred before the son had left the house to live with Mr. Allan, which took place on the 20th of February. She added that between the 1st of January

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and when she left in April there were frequent "outbursts" of this nature. That at first they occurred at intervals of three or four days and then the "outbursts" got to be more frequent. Mrs Farquharson testified that it was on the 31st of January, 1897, that deceased first made known to her the dreadful accusation which he made against her and her son, from the gross and utter absurdity of which she says she endeavoured, but in vain, to disabuse his mind. That during the month of February he got worse. He would rave at his son at table using language unfit for mother and son to hear; that on one occasion he threw a plate at his son and was proceeding to strike him when she interfered to keep the blow off from him, when deceased struck her with a slipper which he had in his hand. This occurred, she says, early in February. Deceased also early in February threatened her that he was going to change his will. He said he was going to give Mr. King (his solicitor), her character to have him change his will, and that she might keep boarders for a living or go to the poorhouse. At a subsequent time, but when in particular did not appear, he told her that he had changed his will and spoke in a very excited manner. In consequence of this conduct of her husband in the month of February, she some time in that month went to consult Dr. Chisholm and requested him to see her husband whom he had attended in 1894 when suffering under the paralytic stroke, and who also in the winter of 1895-96 had attended her son when suffering from an injury to his hip which kept him from college for two years.

A letter from the deceased, dated 25th of February, 1897, to his daughter at school, has been produced, which shows that the charge made by deceased against his wife and son had apparently become ineradicably planted in his mind, from which I make an extract as

having a bearing upon the main point to be considered in this appeal to which I shall have occasion to refer later on:

HALIFAX, February 25th, 1897.

DEAR MINNIE,—All days are alike to me now, since the trouble in this house. We have got Will out of it; he has gone to board near the college until the spring examination, and *then he must go out of the province and earn his living, otherwise I will put him in the Industrial School and let him learn to make shoes and split kindling wood.* The other associate is still in the house under close inspection; it makes life not worth living for, but fate has placed this heavy load upon my head, and I must bear it for a short time until death removes me; and the disgrace is something awful.

Now Dr. Chisholm said that Mrs. Farquharson came to him in February, but the precise day he did not say. It was he thought about the 20th of February. She complained that her husband had became dangerous to herself and her son, and from what the doctor said subsequently it appears that she had told him the charge made by her husband against herself and her son. She asked the doctor to visit her husband, but for some unexplainable reason, as the doctor said, he did not go to do so until after she had sent for him three times. At length, after more than a week had elapsed from the day she had called upon him he did go upon the 8th of March, and found deceased lying upon a sofa in his house. Witness examined him on that day as to his mental condition and tried to discover the traces or foundation of what Mrs. Farquharson complained without disclosing her complaint to him, but he failed to draw out anything to show the traces. The doctor thought that deceased was on his guard and so did not commit himself. He saw him again a day or two after, upon, he thinks, the 11th of of March. Upon that occasion he met deceased in the street, and having failed to draw him out as on the 8th he put to him the direct question in reference to his

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son, and said that it was a shame to send his son away from home and to think he was guilty of such an enormous crime. Deceased, he says, then came out with it and stuck to it that such was the case. He said that his wife and son had too intimate relations. Witness asked why he thought such relations existed, to which he answered that when at Rockingham the preceding summer he had heard noises in his son's room; he did not say what noises; and for another reason which it is not necessary to repeat, but which the doctor knew to be attributable to a disease common among women for which he was himself treating Mrs. Farquharson. The doctor endeavoured to disabuse the deceased of his delusion, but failed, and the doctor then came to the conclusion that the delusion was the result of the brain trouble from which the deceased had suffered. This conclusion he arrived at because of the character of the suspicion and that what the deceased relied upon as evidence in supporting it was outside of all proportion with common sense, and the accusation was unsupported by anything which could be characterized as rational evidence. Witness saw the deceased a day or two after again at his own house and prescribed some quieting medicine for him and continued to visit and prescribe for him off and on for some time.

Now it was in this month of February, 1897, that the deceased went to his solicitor, Mr. King, to have a new will made. Mr. King cannot give the precise date, for although he took down his instructions in writing he did not keep them. The only entry on the subject made in his books is under date of 11th March, 1897, as follows:

JOHN FARQUHARSON, DR.

To taking instructions and drawing your last will and testament and writing to your son..... $10 00

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Mr. King however provides material from which we can approximate the date of his receiving his instructions. He says that he took a memorandum in writing of the changes deceased wanted, and that a couple of days after he showed deceased a draft he had made of the new will and read it to him; that deceased then directed witness to have it engrossed; that a day or two after the deceased called on witness again when witness read over to him a typewritten copy which he had had made. This copy witness gave to deceased and told him to take it home with him and to give it some consideration; that deceased took the copy home with him and in a week or ten days brought it back and said he wanted to execute it, and it was then executed by him. This took place on the 9th of March. Assuming then the periods above named to be nearly accurate, we can fix the date of Mr. King receiving his instructions to be about some day between the 17th or 18th and the 23rd of February. Now it was on the 20th of February that the son left the deceased's house, and on the 22nd that he went to live with Mr. Benjamin W. Allan, as testified by Mr. Allan, who was secretary-treasurer of the W. F. Johnson Piano Company, of which deceased was vice-president. Mr. Allan deposed that deceased's son came to live with him on Monday, the 22nd, and stayed with him about ten days. Witness had an interview with deceased in the office of the Johnson Company while the son was at witness's house. Witness asked the deceased why his son was going to board outside his house. He answered that the boy wanted to board outside and that his mother had sanctioned it. Witness replied that the boy was a good living boy and he ought to keep him at home. Deceased said then that the boy was a good moral boy and that he had never known him to tell a lie. *Inside of five minutes after*

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that he said that he should never allow him to enter his door again. Deceased seemed a little excited. The whole conversation did not take more than five minutes. It was on Friday, the 19th of February, at Woolrich's funeral that the son asked to come to witness's house, and he did come on the following Monday.

Now Mr. King's evidence was that he was familiarly acquainted with the deceased and was his solicitor for many years. That deceased was a very capable clear-headed and shrewd man of business and had a keen knowledge of all of his affairs. That when witness received his instructions for the will he did not notice anything peculiar about him, but that he seemed prejudiced against his son in some way. That witness in fact thought that they had had a quarrel by the way deceased had cut down the provision for his son; that nothing was said to indicate the reason for it. That up to the time of signing the will deceased had made no offensive remark about his wife and family; that when cutting down the provision made for his wife by the will of 1890 from $25,000 to $15,000 deceased said he thought $15,000 enough to make her a good income and he instructed witness to bequeath that to her only during widowhood. That witness discussed the matter with deceased when he directed the change but could not remember his giving any very satisfactory reason for it, *other than that he did not like the way things were going on.* Witness thought that deceased and the boy had had some misunderstanding. What he had against the wife was that she sided with the boy. That deceased said that she and the boy had things pretty much their own way and that he, deceased, was not satisfied the way things were going on. That the boy had not selected any occupation and that he (deceased) could not do anything with

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him because the wife sided with the boy. He repeated that the wife and the boy had things pretty much their own way and that the boy was not inclined to do anything for himself and had not selected his life work; that he thought he ought at his age to have some idea of what he was going to do; and he said that when he remonstrated with him the mother always sided with the boy, and that he was not satisfied the way things were going on; and that he added this remark, that he (deceased) had had hard enough work to make the money for them; and that he wanted to make some provision for his brothers and sisters, and that on account of the shrinkage of his estate he could not do so much for his wife and children as in his former will and give what he wanted to his brothers and sisters. Witness said that it was when saying that he would like to do something more for his brothers and sisters than he had done in his former will *that the deceased gave as a reason that his son did not indicate a desire to enter upon the earnest* duties of life, that he was *not taking life as seriously as the deceased thought he ought*, and that he feared that *leaving him too much money would not be* good for him; *that it did boys good to make them rough it* a little; *then it was he said that he did not like the way things were going on; that he was dissatisfied and that when he remonstrated the mother would side with the boy.* In fine witness said that when he received the instructions for the will and when it was executed witness had not heard of the criminal accusation against the wife and son, and that he had then no doubt that the deceased was fully competent to make his will. However he said that on the 11th of March, two days after the making of the will, the deceased came again to witness's office then in a very excited manner. Then he told witness the criminal accusation which until then the witness

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had not heard. Deceased then said that his son had been home the night before. What excited him was what he said had occurred the night before. That he then went over a lot of things which he said had happened before and culminated in what he said occurred the night before. He said that something important had then occurred and he was determined that his son should go away from the house and he wanted witness to write to the son and to get him to go away. This interview related to the criminal charge which deceased made against his wife and son, and this witness said that this was the first time he had heard of it. About three weeks or a month later deceased called again upon witness upon the same subject, and was then in a much more excited condition. He then wanted witness to get the son sent to the Industrial School. He was consulting with witness to see if he could do so. Witness dissuaded him from doing anything of the kind and told deceased, as he says, that the witness did not believe the accusation. Witness says that he then thought deceased was labouring under a delusion and that if deceased had acted before the making of the will as he was acting then, witness would have made inquiries as to the mental capacity of the deceased before drawing his will. Deceased's manner was then, witness said, irrational, and from what witness had heard from Dr. Chisholm and Mrs. Farquharson, and from witness's own observation, he believed deceased then to be insane on that subject, although he had in a most capable business-like and intelligent manner transacted many items of business with witness during the summer of 1897 before going to the asylum for the insane.

There are some singular discrepancies between the evidence of this witness and that of Dr. Chisholm as

to a conversation which passed between them and as to the time of such conversation, and also discrepancies of a like character between the evidence of this witness and that of Mrs. Farquharson, and also between the evidence of the witness and that of young W. O. Farquharson as to the time of his receiving the letter written by King and Barss to him at the request of deceased, and of the young man's interview with Mr. King upon the receipt of that letter. I mention these discrepancies, not because they are upon material points, but because though not altogether immaterial, I think that the question raised on this appeal can be determined without determining the points in which these discrepancies occur. I do not think it necessary to refer further to the evidence in this painful case than to say that the deceased continued gradually to get worse until October, 1897, when from apprehension of violence to his wife he was upon medical certificate sent to the asylum where he remained in the care of a special attendant of his own until January, 1898, when he was moved from the asylum to his own house at Rockingham in charge of the same special attendant until September, 1898, when he was sent by medical advice south, and was taken care of by the son who was the subject of the criminal accusation. The special attendant William Rogers says that during all that time he was constantly with the deceased, dressing him in the morning, giving him his meals, walking about with him, putting him to bed at night, and going in to look at him at night. Deceased used to fancy that there were all kinds of noises in the house at night, people going about the house, also rats running about. When there were neither noises nor rats at times he would get up out of his bed and go round raving about the noises and calling to witness. Often in the asylum he used to

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complain in this manner of the noises at night, saying "all these things again last night. The man was rushing through the halls and knocking at the doors and shouting to the inmates." On these occasions he would get very excited and talk in an irrational manner; and he could not be reasoned out of these delusions. The same thing continued at Rockingham after he came out of the asylum. In August, 1898, he used to complain of all kinds of noises going on upstairs and of people being in the house. On one occasion he got out of his bed and was going to jump out of the window to get away from the noises. He used to write much, putting down on paper about the noises. On one of these papers he gave the date of the time he began to hear noises at his house in Brunswick Street in the year 1896. Another paper contained the criminal charge against his wife and son. He told the story of this several times to Rogers when in the asylum. He used also to tell it to the patients, and when speaking of this he used to work himself into a great state of excitement and say that he was going to make his wife keep boarders for a living, and that he would employ a lawyer to turn her and his son out of the house. Upon this subject and the noises he was quite irrational. He used to repeat the above a great many times both in the asylum and afterwards at Rockingham. From this testimony of the man who was in constant attendance upon the testator in the asylum and afterwards at his house in Rockingham, it seems pretty clear that his idea about hearing noises of every description in the house constituted part of the delusions under which he laboured, and in this circumstance and also in that of his habit of writing down the date of the times when he began to hear noises in his house in the year 1896 there seems to be grave significance, for from the

statements made by the testator on the 11th of March, 1897, to Dr. Chisholm when the doctor asked him why he entertained the idea which he did about his wife and son it seems that the delusion as to the charge made against his wife and son had its origin in noises which he said he heard in the summer of 1896 in his son's room upstairs. The origin of the noises and the accusation seems to be the same, namely, the morbid imagination of the testator.

In September, 1898, he was by medical advice taken down South in the care of his son. The delusions as to the noises and as to the criminal charge still continued. In the following spring these became less frequent, as the testator became more feeble in his mind and body. He was brought back by his son in May, 1899, and upon the 26th of that month he died, as testified by Dr. Chisholm, an imbecile, his mind a blank and physically a wreck.

It is quite unnecessary in the present case to advert to that portion of the learned judgment of the Privy Council in *Waring* v. *Waring* (1), delivered by Lord Brougham, wherein he characterizes the idea of what is called "partial insanity" as itself a delusion. It will be sufficient to rest upon the doctrine as laid down in the cases in which that judgment is criticized. In *Banks* v. *Goodfellow* (2), it is laid down at page 561 that where a delusion has had, or is calculated to have had an influence on the testamentary disposition it must be held to be fatal to the validity of the will. And at page 565 it is laid down that in order to the exercise of the capacity competent and required for the making of a will it is essential that no disorder of the mind shall poison the affections, prevent the sense of right of the testator, or prevent the exercise of his natural faculties, and that no insane delusion shall influence the testator's will in

(1) 6 Moo. P. C. 341. (2) L. R. 5 Q. B. 549.

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disposing of his property; that if insane suspicion and aversions takes the place of natural affection, if reason and judgment are lost and the mind becomes a prey to insane delusions *calculated to interfere with and disturb its functions* and to lead to a testamentary disposition due only to their baneful influence in such a case it is obvious that a will made under such circumstances should not stand. And at page 569 the court adopts the doctrine announced by the Privy Council in *Harwood* v. *Baker* (1), that though the justice or injustice of the disposition in a will may cast some light upon the question as to the capacity of the testator, still that if the testator had not the capacity required for making the will the propriety of the disposition of his property made by the will is a matter of no importance. Again at page 570 it is laid down that, where the fact that a testator has been subject to any insane delusion is established, a will should be regarded with great distrust and every presumption should in the first instance be made against it, and the presumption against a will made under such circumstances becomes additionally strong where the will is an inofficious one, that is to say, one in which natural affections and the claims of near relationship have been disregarded; but that where a jury are satisfied that a delusion under which a testator has been proved to be suffering has not had *and could not have had* any influence on the disposition made by the will as was the case in *Banks* v. *Goodfellow* (2), the will should be upheld, *but on the contrary that where a delusion is of such a nature as to be calculated to influence the testator in making the particular disposition a jury would not be justified in coming to the conclusion that the delusion* still existing was latent at the time so as to leave the testator free from any influence arising from the delusion.

(1) 3 Moo. P. C. 282.

(2) L. R. 5 Q. B. 549.

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In *Smee* v. *Smee* (1), Sir James Hannen, following the doctrine as laid down in *Banks* v. *Goodfellow* (2) thus lays down the law:

> The fact that a man is capable of transacting business whatever its extent or however complicated it may be, and however considerable the power of intellect it may require, does not exclude the idea of his being of unsound mind.

And again he says:

> Any one who questions the validity of a will is entitled to put the person who alleges that it was made by a capable testator *upon proof that he was of sound mind at the time of its execution. The burden of proof rests upon those who set up the will and a fortiori when it has already appeared that there was in some particular undoubtedly unsoundness of mind, that burden is considerably increased.*

Then as to delusions he says:

> Upon the surface all may be perfectly clear and a man may be able to transact ordinary business or follow his professional calling, and yet there may be some idea through which, in the recesses of his mind, an influence is produced on his conduct in other matters.

He then lays down the duty of a jury upon a question as to the validity of a will impeached as having been made under the influence of an insane delusion, to be, to inquire and say

> whether or not the flaw or crack in the testator's mind *was of such a character that though its effect may not be seen on the surface of the will it had an effect upon him when dealing with the disposition of his property.*

And further to inquire and say:

> Whether the character of the unsoundness proved does or not show the *possibility and probability* of connection between the will and the delusion under which the testator suffered, and *unless the jury are satisfied that there is no reasonable connection between the delusion and the bequest in the will, those who propound the will do not discharge the duty cast upon them and the verdict must be against the will.*

Now it is obvious that the same duty is cast upon a judge or court when, as in the present case, they are invested by the law with the obligation to perform

(1) 5 P. D. 84.

(2) L. R. 5 Q. B. 549.

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the functions of a jury. In *Jenkins* v. *Morris* (1), the same principle was applied to a contract *inter vivos* the rule being that when the existence of an insane delusion is once established the question to be determined is whether it had any, and if any what, influence upon the performance of the act or transaction which for the time being is under consideration. Now in *Waring* v. *Waring* (2) an insane delusion is defined to be a belief of things as realities which exist only in the imagination of the patient, and the incapacity of the mind to struggle against the delusion constitutes an unsound frame of mind. And in the 2nd edition of Am. & Eng. Cycl. vol. 9, p. 195 the definition of an insane delusion as enunciated by Sir J. Nicholl in *Dew* v. *Clarke* (3), followed by Sir James Hannen in *Boughton* v. *Knight* (4), is thus expressed in concise language:

> Delusion is insanity where one persistently believes supposed facts (which have no real existence except in his perverted imagination) against all evidence and probability and conducts himself however logically upon the assumption of their existence.

Reading now the evidence in the case in the light of the above authorities no doubt can be entertained that the idea of the unfortunate man's wife and son being guilty of the dreadful crime imputed by him to them first conceived (as would seem from his conversation with Dr. Chisholm on the 11th of March, 1897), some time in the preceding summer at his house at Rockingham, but developed and openly manifested in January, 1897, had no foundation whatever in fact, but that the unfortunate man's belief in the existence of the offence as charged by him existed only in his own morbid imagination caused by lesion of the brain

(1) 14 Ch. D. 674.
(2) 6 Moo. P. C. 354; 12 Jur. 947.
(3) 3 Ad. Ecc. 79.
(4) L. R. 3 P. & D. 68.

which was the consequence of the paralytic stroke which he had had in 1894, and that the delusion from the period of its manifestation in January remained ineradicably fixed in his mind until his death in May, 1899. In the argument before us this indeed was not disputed, but the contention of the propounders of the will was that the instructions for the will were given and the will itself was executed in the lucid interval. Now by the term "lucid interval," it was said by Lord Thurston in *Attorney General* v. *Parnther* (1), is not meant

> merely a cooler moment, an abandonment of pain or violence or of a higher state of torture, a mind relieved from excessive pressure *but an interval in which the mind having thrown off the disease had recovered its general habit.*

In *Waring* v. *Waring* (2) it is said that

> a lucid interval is not the mere absence of the subject of the delusion from the mind. By a lucid interval is not meant a concealment of delusions, but their total absence, their non-existence in all circumstances and a recovery from the disease and a subsequent relapse.

Such is the nature of the lucid interval which the propounders of the will have undertaken to prove in the present case, and the sole witness in support of it is the solicitor who prepared the will, who witnessed its execution, and who as executor of it propounds it.

Bearing in mind Mr. King's evidence that until the 11th of March, two days after the execution of the will, he had never heard of the accusation made by the testator against his wife and son, and bearing in mind Mr. King's knowledge of the testator's keen and clear ability as a business man, it is not surprising that he should have, as he says, seen nothing to cast any doubt upon the testator's testamentary capacity when giving instructions for the alterations in his will, or when it was executed; but we have to con-

(1) 3 Bro. C. C. (Belt) 444. (2) 12 Jur. 948, 952.

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sider the condition of the testator at those periods by the light of the knowledge which we now have and which Mr. King acquired on the 11th of March, and at an interview which he had with the testator about three weeks later when the testator's conduct clearly manifested that he was then labouring acutely under the influence of the insane delusion.

We have seen that in the early stage of the manifestation of the delusion the testator when acting towards his wife in a threatening manner and in a high state of excitement had nevertheless power to control and restrain himself upon the occasions when his niece, Florence Corbin, entered the room and found him so acting in a violent and excited manner. We can well understand therefore that he should have the power to restrain himself in like manner, though still retaining the delusion in his mind, when he went to his solicitor to transact the business of altering his will of 1890 which the solicitor had in his custody. His keen business ability would naturally induce him, though labouring under the delusion, to conduct himself on such an occasion in a cool, calm and temperate manner. Indeed his whole conduct when giving Mr. King instructions for altering his will is quite consistent with the fact of his being then acting for the purpose of concealing the delusion, which to him appeared a reality, from his solicitor. The skill and ability of persons labouring under insane delusions to conceal them successfully is not unknown to the courts. Of this skill and ability the two most notable illustrations are *Greenwood* v. *Greenwood* cited in *The Attorney General* v. *Parnther* (1); and in Lord Erskine's speech in *Rex* v. *Hadfield* (2), and in the case of one *Wood* also cited in the same page of 27 Howell and, in *Waring* v. *Waring* (3).

(1) 3 Bro. C. C. (Belt) 444. (2) 27 How. S. T. 1315.
(3) 12 Jur. 949.

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By the evidence of testator's niece, Florence Corbin, it has been established beyond doubt that the testator was under the influence of the delusion from some time in January until she left in April; that in February he threatened his wife that he would leave her nothing and that he would go to Mr. King and alter his will. And at a subsequent date he told his wife that he had been to Mr. King and had altered his will. He did not, it is true, fulfil his threat that he would leave her nothing, but as already said the clear business abilities which it is said that he possessed may have very possibly suggested to him that as to the value of her dower in his real estate he could not deprive her of it, and that if he should leave her nothing by his will that might defeat the object he had in view, which plainly was to punish her for the offence which he imputed to her, and that the best way for effecting his purpose was to cut down in the manner he did the provision he had made for her in his former will. Then as to the son it is evident that in the same month of February he exhibited an unnatural aversion to him explicable only by attributing it to the delusion in his mind as to the offence imputed to the boy and his mother. Under the influence of that delusion he insisted upon his son, a youth of 19, leaving his house. The youth left on the 20th of February, and by the letter of the 25th of February, addressed to his daughter, we find the delusion had then its full influence upon the testator's mind. In it he exults over having got the son out of the house, and expresses the intention unless his son leaves the province *he will put him into the Industrial School and let him learn to make shoes and split kindling wood.*

Mr. King, in his evidence, admits that when he was receiving instructions for the alterations in the will he conceived the idea when he saw the way the father

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was cutting down the provision he had made for the son in the will of 1890, that he had quarrelled with his son and had taken a dislike to him. And when instructed to cut down the wife in the manner in which the provision for her was cut down, he says he asked the testator for his reason, and that the only answer he got, which he says was not very satisfactory, was, *that she and the son had things very much their own way, and that he did not like the way things were going on.* Then in the month of March we find the testator telling Mr. King the charge which as already shown he had made in January against his wife and son and instructing him to see the son and get him to leave the province, and consulting him as to his putting his son into the Industrial School, thus acting in perfect accord with the plan which he had formed, as stated in his letter to his daughter of the 25th of February. From this time forward until his death the evidence establishes that the testator was never free from the delusion, and that as his health grew worse he manifested more and more the inveteracy of the delusion, repeating the accusation to every one he met, repeatedly to the person who waited upon him at the asylum and to the patients there.

Now that the delusion under which the testator so laboured was calculated to affect the disposition of his property as made in the impeached will, does not admit of a doubt. The burthen therefore rested upon the propounders to prove that in point of fact it had no such effect and that the will was made during a lucid interval, that is to say, when the testator's mind was as absolutely free from the delusion as if it had never conceived the idea which constituted the delusion. No jury, upon the evidence appearing in this case would be justified in arriving at any such conclusion. The propounders of the will, therefore, have failed to

discharge the burthen imposed upon them. The judgment therefore of the Supreme Court of Nova Scotia voiding the will should be affirmed, and this appeal dismissed with costs.

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DAVIES J.—The sole question in this case is whether or not John Farquharson, the testator, was of sound mind so as to be capable of making his will, when about the middle of February, 1897, he gave instructions to his solicitor for the preparation of his will, and on the 9th March following when he executed it. The learned judge of Probate at Halifax, Nova Scotia, admitted the will to probate after hearing a great mass of testimony in support of and against its validity. The will was attacked by the testator's son, the respondent, and by his widow, and the ground of attack was the alleged existence in the mind of the testator of an insane delusion that his wife and son had incestuous intercourse with each other which so tainted and perverted his judgment and mind as to render him incapable of making a will. The learned judge of probate held from the evidence before him, and from the rationality of the will itself, that the testator was competent to make it when he did and that at the time he made it he was not the victim of the alleged insane delusion. The Supreme Court of Nova Scotia reversed this decree, Mr. Justice Eitchie however, while concurring with the rest of the court, expressing his doubts whether the delusion was operating on testator's mind at the time he made the will. After careful consideration of the evidence, I find myself in accord with the conclusions reached by the learned judge of probate who heard all the witnesses, and think therefore his decree should be restored and the appeal allowed.

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The facts may be stated within a reasonably short compass. The testator was a retired tradesmen residing in Halifax, Nova Scotia, who died in May, 1899, aged 74. He was an uneducated man, but had amassed a considerable estate which at his death was estimated at from $60,000 to $65,000. He had been married twice, but the first wife had left no children and his second wife was many years his junior. She survived him, also a son, W. O. Farquharson, the respondent, aged at his father's death 21, and a daughter, then aged 16.

Farquharson (testator) made a will on the 5th May, 1890, and on the 9th March, 1897, he revoked that will and made a new one. It is the will of 1897 which is in contest. The testator's nearest collateral relatives at the time of the making of the first will were his two brothers, Peter and James, and his sister Mary Skinner. When the second will was made, Peter had died, leaving a wife and children.

The second will, while substantially reducing the provision made for his wife, and altering somewhat the bequests made to his son and daughter, divided $15,000 of his estate between the testator's surviving brother and sister and the children of the deceased brother; with the exception of this $15,000 and some small legacies all of his estate was divided between his widow, son and daughter. While of course calling prominent attention to the reduction made in the bequests to the widow and the son, I do not understand it to have been contended, either in the court below or at the Bar, that the dispositions generally made of his property by the testator are in themselves irrational, unfair or unjust, or that any argument could be fairly drawn from the will itself that the testator's mind had become tainted by some delusion and perverted against his wife and son, but rather that

the evidence outside of the will and notably that of the wife and son combined with the testator's letter to his daughter of the 15th February, showed his mind to have been imbued with an extraordinary delusion which incapacitated him from properly making a disposition of his property to his wife and son, or in any way properly fulfilling his duty towards them.

I am quite unable to follow the reasoning of the learned judges in the court below by which they reached the conclusion of the testator's incompetency. The simple question to be decided was whether or not the testator was capable of making a valid will when in the month of February he gave Mr. King instructions to prepare it and on the 9th day of March the day of its actual execution. I think altogether too little weight has been attached to the actual dispositions made of testator's property in his will and too much weight to his condition and conduct subsequently. General statements to the effect that the alleged delusions had so incapacitated him and perverted his mind as to render him incompetent to in any way fulfil his testamentary duty towards his wife and son are to my mind completely answered by the terms and dispositions of the will itself. Conclusions which are reached as to the testator's mental condition on the date of the will from the evidence chiefly of Mrs. Farquharson and her son are to my mind shown by it to be unfounded. There is no doubt that some suspicion must attach to the evidence given by those so deeply interested as the widow and the son, but giving to their evidence and that of the other witnesses produced by them, including the testator's letter of February 25th, every possible weight, I cannot in the face of the will itself reach a conclusion that at the time it was made the alleged delusions dominated, tainted or controlled testator's mind so as to render him incapa-

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ble of making a valid will. There is no doubt that early in February he had begun to harbour suspicions respecting the relations existing between his wife and his son. But these suspicions had not then developed into a fixed or permanent belief or delusion. On the contrary they were capable of being removed and were removed by reason and argument as shown by Mrs. Farquharson herself. They were intermittent and from time to time revived, but if the evidence of Mr. King, the solicitor who drew both wills and managed testator's business for thirty years is to be believed, were certainly not dominating, tainting or controlling his mind either when he gave instructions for his will or a fortnight afterwards when he executed it. Mr. King in his evidence says:

Q. If he gave you any reason for wishing to change his will, what was that reason?—A. First, he said his estate had been shrinking, he was not worth as much as he was when he made his former will. He said also that he would like to do something for his brothers and sisters more than he had done in the former will. And then he gave as a reason that his son did not indicate a desire to enter upon the duties of life, he was not taking life as seriously as he thought he ought to. He feared that leaving him too much money would not be good for him. He expressed an opinion that it did boys good to have to rough it a little. Then he said he did not like the way things were going on. He was dissatisfied, and that when he remonstrated, the mother would side with the boy. I think he was perfectly capable of making his will. I saw nothing and knew nothing to render him incapable of making a will. I told you he expressed dissatisfaction with his son. I cannot recall anything else but what I have mentioned. I cannot recall anything else at the time of taking the instructions for the will. Mr. Farquharson indicated to me that he was giving his reasons. Apparently there was nothing that he was keeping back. I had a long interview with him. Testator's brother Peter had died shortly before he gave instructions for the last will. Mr. Farquharson referred to that fact when he was giving instructions for making the will. I do not recall anything of the kind that he said Peter's children were not very well off. I was aware of it but I do not know whether I got it from him or not. In taking these instructions Mr. Farquharson

seemed to fully understand the matter and evidently had given it some thought. None of my suggestions were there at all. They were all his suggestions. He seemed to have a very intelligent idea of what he wanted to do. From the time he first gave instructions to the time the will was executed, was from a fortnight to three weeks, and Mr. Farquharson gave no sign whatever of changing his intentions during that time. There was not the slightest indication by Mr. Farquharson at the time he gave these instructions to make his will, of his having these charges against his wife or son. I had no suspicion of any such thing.

Q. You told us when you drew the last will that he displayed prejudice against his son?—A. I do not infer that from anything he said. I cannot recall anything of the kind. He said his son did not seem inclined to take hold of the earnest business of life, he must have his bicycle and his sports.

A great many authorities were cited as to the effect which a delusion in the mind of a testator may have in avoiding his will. In recent years the law seems to have been re-established more as it was understood before the case of *Waring* v. *Waring* (1), and *Smith* v. *Tebbitt* (2), were decided. These two cases laid down the doctrine that any degree of mental unsoundness however slight and however unconnected with the testamentary disposition in question must be held fatal to the capacity of the testator. But since the case of *Banks* v. *Goodfellow* (3), and *Smee* v. *Smee* (4) a different rule has prevailed, and the rule laid down by Sir James Hannen in the latter case at p. 92 may now be accepted as a safe one to adopt in determining these cases. He says:

The capacity required of a testator is that he should be able rationally to consider the claims of all those who are related to him and who according to the ordinary feelings of mankind are supposed to have some claim to his consideration when dealing with his property as it is to be disposed of after his death. It is not sufficient that the will upon the face of it should be what might be considered a rational will. You must go below the surface and consider whether the testator was in such a state of mind that he could rationally take into

(1) 6 Moo. P. C. 341.
(2) L. R. 1 P. & D. 398.
(3) L. R. 5 Q. B. 549.
(4) 5 P. D. 84.

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consideration not merely the amount and nature of his property but the interest of those who by personal relationship or otherwise had claims upon him.

In the case of *Banks* v. *Goodfellow*,(1) Lord Chief Justice Cockburn in delivering the judgment of a very strong court after reviewing the previous decisions as well as the jurisprudence of other countries, said at p. 565 :

It is essential to the exercise of such a power (testamentary disposition) that a testator shall understand the nature of the act and its effects, shall understand the extent of the property of which he is disposing, shall be able to comprehend and appreciate the claims to which he ought to give effect, and with a view to the latter object that no disorder of the mind shall poison his affections, pervert his sense of right or prevent the exercise of his natural faculties, that no insane delusion shall influence his will in disposing of his property and bringing about a disposal of it which, if the mind had been sound, would not have been made.

And again at 569, in commenting upon the judgment of the Privy Council in *Harwood* v. *Baker* (2) he says :

From this language it is to be inferred that the standard of capacity in case of impaired mental power is,to use the words of the judgment, the capacity on the part of the testator to comprehend the extent of the property to be disposed of and the nature of the claims of those he is excluding. Why should not this standard be also applicable to mental unsoundness produced by mental disease? It may be said the analogy between the two cases is imperfect; that there is an essential difference between unsoundness of mind arising from congenital defect or supervening infirmity, and the perversion of thought and feeling produced by mental disease, the latter being far more likely to give rise to an inofficious will than the mere deficiency of mental power. This is no doubt true but it becomes immaterial in the hypothesis that the disorder of the mind has left the faculties on which the proper exercise of the testamentary power demands unaffected and that a *rational will uninfluenced by the mental disorder has been the result.*

In *Jenkins* v. *Morris* (3) it was decided by the Lords Justices in Appeal, as stated in the head-note to the case, that

(1) L. R. 5 Q. R. 549. (2) 3 Moo. P. C. 382.
(3) 14 Ch. D. 674.

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the mere existence of a *delusion* in the mind of the person making a disposition or contract is not sufficient to avoid it even though the delusion is connected with the subject matter of such disposition or contract; it is a question for the jury whether the delusion affected the disposition or contract.

In that case the jury reached their conclusion that the delusion did not affect the capacity of the lessor to grant the lease (there in question) on the intrinsic evidence contained in several letters written by the lessor relating to the farm leased, at or about the time it was leased.

The question to be determined was, as put by Baggally L. J.:

What influence had the insane delusions by which Price (the lessor) was affected upon the particular transaction in respect to which it is alleged that he was incompetent to act? Upon that we have the five letters to which so much reference has been made; those letters were read to the jury, were proved to have had reference to the particular transaction, and from them the jury inferred, and the judge agreed with them, that they afforded abundant evidence that there was not that incompetency on the part of Price to deal with his own affairs which was alleged.

Now I am of opinion that these common sense principles, if applied to the case at Bar, solve the question in dispute. The will was as is shown by the evidence of Mr. King, the solicitor who prepared it and who had been for many years the testator's legal adviser, the latter's "own act entirely." Mr. King says:

In taking these instructions Mr. Farquharson seemed fully to understand the matter and evidently had given it some thought. None of my suggestions were there at all; they were all his suggestions. He seemed to have a very intelligent idea of what he wanted to do.

After the will was drawn Mr. Farquharson took it to read and think over, and brought it back about a fortnight afterwards and executed it. No suggestion is made that any one influenced or tried to influence him. When the will itself is examined it seems to be

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a very fair and rational one, uninfluenced by the mental disorder charged. Here is a man possessing real and personal property of the value of about $65,000 including his furniture. He has a wife and two children nearly of age, and two brothers and a sister, one of the brothers being dead, leaving a family. In 1890, at a time when his mental capacity is not questioned, he made a will leaving to his wife in lieu of her dower, the income of $25,000 for her life, a life interest in one of his houses to be selected by her and his household furniture. To his daughter he gave $200 per annum until she attained 21, and then $10,000 and the balance of the accumulated income thereof. To his son he gave $200 per annum until he attained the age of 24, then to receive the residue of the estate. He left legacies to the amount of $2,000 including $250 to each of his brothers and sisters, and he provided that in case his son died in his lifetime intestate and leaving no issue, the residue should be disposed of as follows: $15,000 to be divided between his brothers and sisters, and the balance between his wife and daughter.

This will be revoked by the one now in dispute in March 1897. By this latter will he gave to his wife, in lieu of dower, during widowhood, the dwelling house in which he resided, which was said to be his most valuable house, and the income of $15,000, also the household furniture absolutely, except the piano which went to his daughter. To his daughter he gave $200 per annum until she attained 21, then $8,000 and the balance of accumulated income, also the piano. To the son he gave $200 per annum until 24 then $5,000 and the balance of accumulated income. $15,000 he left to be divided between his brother and sister and the children of his deceased brother, *and the residue of his estate he divided between his son and his*

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daughter. He left legacies to the amount of $250 each to his brother and sister and the children of his deceased brother and other legacies to the amount of $700. His former charitable legacies he reduced from $1,000 to $450. *He appointed his wife co-executor of his will with his solicitor Mr. King, and appointed his wife the guardian of his children;* substantially, with the exception of some small legacies and $15,000 which he gave to his two brothers and his sister, he divided his whole estate between his wife and his son and daughter.

It is this will, making such dispositions as those in favour of his wife and children, that is now attacked on the ground that at the time he made it he was labouring under an insane delusion which dominated and controlled his mind and poisoned and perverted it against his wife and son. So far from the provisions of the will affording any evidence that his mind was tainted, perverted, dominated or controlled by the existence of an insane delusion against his wife and son at the time he made the will, they satisfy me beyond reasonable doubt that such was not the case, but that on the contrary he was in full possession of his faculties, still retained his confidence in his wife whom he appointed both executrix and guardian, made generous provision for both his son and daughter for whom he ought naturally to provide, and a not unreasonable disposition generally of his estate. There cannot be gathered from the provisions of the will the slightest indication of the existence of the "insane delusion" which we are asked to declare existed and which as a consequence would void the will.

Interesting questions might well be argued as to whether under or not the evidence the existence of such a belief as Mr. Farquharson entertained of the relations between his son and wife constituted in law an insane

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delusion. A belief based upon imperfect evidence, or evidence which I might hold altogether insufficient would not constitute an insane delusion. I prefer, however, to relieve the case so far as I am concerned of that inquiry, and to deal with it on the hypothesis that the suspicions which he at first harboured subsequently developed into an unfounded belief which amounted to an insane delusion. The question, however, which we have to decide, is not whether the testator was sane or insane six months after the will was made when he was placed in an asylum, or whether at any time subsequently to the making of the will his suspicions had developed into this insane delusion, tainting, perverting and dominating his mind, but whether that condition existed at the time he gave the instructions on which the will he subsequently executed was drawn. *Perera* v. *Perera* (1). To my mind the evidence as to the circumstances and conditions under which it was made, together with the contents of the will itself, is the best answer that they had not. Is it conceivable that a mind perverted and dominated by the delusion that his wife was guilty of incestous intercourse with his son could have made the reasonable provision for her support and comfort given by the will? Is it conceivable that such a mind could have appointed such a woman as the co-executor of his will and the guardian of his two children, one of them being the very boy with regard to whom he entertained the horrible delusion? Is it conceivable that such a mind should have made such reasonable and liberal provision for this very son, leaving him an annuity till he was 24, $5,000 with accumulated earnings when he reached that age, and after leaving $15,000 to his own sister and brothers, together with a few small legacies, dividing between

(1) [1901] A. C. 354.

his son and his daughter *the residue of his estate?* I frankly say that to my mind it is not. I am willing to admit that during the month of February he showed evidence that this dreadful suspicion had entered his mind. But it had not effected a permanent lodgment there. It appears from time to time intermittently, but was capable, as Mrs. Farquharson in her evidence showed, of being reasoned away. It cropped up conspicuously in the letter of the 25th February, written by him to his daughter. It was again notably absent so far as we can gather when he gave these instructions to his solicitor, a most important if not a controlling date; (see *Perera* v. *Perera*(1)); and while it may have returned for a period, or periods more or less lengthy during the fortnight he had the will which had been prepared in his possession, it must to my mind have been absent when he executed that solemn document. It must be remembered that Mr. Farquharson was not by any means satisfied, apart altogether from the alleged delusion, with the conduct and life of his son, complained that he did not seem inclined to take hold of the earnest business of life, gave up too much time to sports and would not bend his mind in any way to earn his own living, and that in all this his mother encouraged him. As Mr. King says, when giving the instructions for his will,

> he said he would like to do something for his brothers and sister, more than he had done in the former will. And then he gave as a reason that his son did not indicate a desire to enter upon the earnest duties of life, he was not taking life as seriously as he thought he ought to. He feared that leaving him too much money would not be good for him.

All this affords ample and sufficient reason and justification for the change made in the benefactions to the son, without resorting to the harsher, and, in my judgment, unjustifiable conclusion, that testator was insane,

(1) [1901] A. C. 354.

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as the result of a dreadful and horrible delusion with respect to his son and his wife.

Then again it must be remembered that there never was at any time any judicial investigation into the mental condition of Mr. Farquharson in his lifetime. It was true that in the autumn of 1897 he was confined for a few months in an asylum, but no judicial investigation preceded his confinement, nor does it appear that any was sought when, or after, Mrs. Farquharson and his children knew he had made a new will. Such an investigation would without doubt have been immeasurably more efficacious in determining the true condition of his mind at the time when it is necessary we should come to a conclusion upon it than the one held after his death and on the application to prove the will.

Applying to this will, therefore, the different tests laid down by the authorities I have quoted, I am of opinion that it should be upheld. While I agree that the evidence, taken by itself alone, apart altogether from the will, might justify the presumption that at the time it was made the insane delusion had dominated his mind, I am of opinion that the will itself, with its manifestly fair dispositions recognising fully the claims upon him of both his wife and son and vesting in her the powers and responsibilities of an executor and guardian over this very son, is a complete rebuttal of such presumption. It was not only a rational will, that would not be enough, but going below the surface and considering the circumstances and conditions under which it was made, the amount and nature of the property he had to dispose of, the interest of those who by personal relationship had claims upon him, I cannot find anything in it to show me that any disorder of his mind had poisoned his affections, perverted his sense of right, or prevented

the exercise of his natural faculties, much less that any insane delusion had brought about a disposal of his property which he otherwise would not have made.

The appeal should be allowed with costs to the appellant in this court and in the Supreme Court of Nova Scotia, to be paid out of the estate, and the decree of the Surrogate Judge of the Probate restored.

Appeal allowed with costs.

Solicitor for the appellant: *A Cluney.*

Solicitors for the respondent: *Harrington & Fullerton*