

who would have been the natural objects of his bounty; but, unless he was aided by having those claims brought to his attention, he had not that capacity which, since the decision in *Banks v. Goodfellow* (1870), L.R. 5 Q.B. 549, has always been regarded as necessary. See *Murphy v. Lamphier* (1914), 31 O.L.R. 287, at p. 317 et seq.

The testator's mind was so enfeebled by disease that he could entertain only one idea at a time. He had a fixed and well-rooted antipathy to his brother George, and his strongest testamentary desire was to exclude George from sharing in the estate.

There was a conflict as to what took place after the wish to exclude George had been expressed. The solicitor who received instructions from the testator and drew the will, asked the testator how he wished to dispose of his estate; and, according to the solicitor's evidence, the testator said, "I want to give it to Archie" (the defendant) "and I want Archie's family to benefit." The solicitor asked about Archie's family, and the testator seemed disconcerted. The solicitor asked, "How do you wish your brother and his family to share?" After a little time the testator said, "Well, give it to Archie." The solicitor said, "Will you trust Archie to deal fairly with his family?" The testator said, "Yes." The defendant's account differed from this; but, according to either version, no other possible beneficiary was mentioned or considered.

In the learned Judge's opinion, the change from an intention to benefit Archie's family to an absolute gift to Archie alone was the result of mental inertia and weakness.

By a will drawn at an earlier period, neither George nor Archie took any benefit. Archie's children received the greater portion, but female relations received substantial shares and provisions. Had the testator been so roused that he could have thought of these relations, or had his attention been drawn to them, the result might have been different.

The question was not whether the testator knew that he was giving all to Archie and excluding all other relations, but whether he was capable at the time of recollecting who these relations were, of understanding their claims upon his bounty, and of deliberately forming an intelligent purpose of excluding them.

The testator, the learned Judge was satisfied, thought of no one save George, Archie, and Archie's children. The latter were intended to be objects of his bounty, and were excluded not by any conscious act of the testator, but because the question put to him, as to how division was to be made between Archie and his children, was one calling for greater effort than he was able to make.

The result of declaring the will void is that the two brothers