Hopper vs. Dunsmuir

Full Court Yesterday Handed Down Judgment in Favor of Defendant.

Chief Justice Delivers a Masterly Analysis of Action Involving Millions.

Appeal Is Dismissed With Costs—The Full Text of the Judgment.

THE full court yesterday, in the case of Hopper vs. Dunsmuir, gave judgment dismissing the appeal with costs. The learned chief justice delivered an exhaustive and masterly analysis of an action involving an estate valued on the whole at several millions of dollars, and the trial of which has already consumed in the costs and expenses of both parties litigant, something in the neighborhood of half a million of dollars. The most eminent counsel in the province were pitted against each other in a great legal battle, in which all their resourcefulness and skill had ample scope, backed as it was by clients who had the will and the money to contest every step which the law afforded. During the trial and the long argument on appeal, the case seemed complex and difficult, but since it has gone through the legal laboratory of the chief justice it is made to appear simple and clear as day. The case, as will be seen from the able judgment of the head of the court, is almost altogether one of fact, the only question of law being that of domicil. In this, however, there is no question of doubt, as concerns this case, the chief justice's research bringing into notice a decision of the House of Lords as late as last December directly bearing on the point in issue in this case.

Hon. Mr. Justice Irving concurred in the judgment of the Chief Justice.

Hon. Mr. Justice Martin also delivered written reasons for judgment (which will be published tomorrow), maintaining the decision of the learned trial judge on all points.

Following is the judgment of the Chief Justice, which took nearly two hours in the reading:

Chief Justice's Judgment

In 1889, Robert Dunsmuir died at Victoria, B.C., leaving a widow, two sons, James and Alexander, and seven daughters. The estate consisted principally of the controlling interest in two joint stock companies, one the Union Colliery company (originally the Wellington Colliery company) the other the Esquimalt & Nanaimo Railway company, which respectively own coal mines and a railway with a land grant attached on Vancouver Island, and a coal selling business carried on under the name of R. Dunsmuir & Sons in Victoria, B.C., and the R. Dunsmuir Sons Company in San Francisco, California.

Several years before his death he had made a will leaving everything to his wife, but shortly before his death, had a will drawn up by which the bulk of his estate was divided equally between the sons, while due provision was made for his wife and daughters. This will was, however, unexecuted for reasons which do not clearly appear, and about which it is unnecessary to speculate. The fact remains that although the sons had grown up with and helped to carry on the extensive business of the father without any regular salary or substantial interest in it, the entire estate passed to the widow on the father's death, and this fact would appear largely to account for the family differences which have ensued.

Fundamental Facts

The business was carried on by the two sons in the same way as before, the elder, James, taking charge at Victoria, and the younger, Alexander, at San Francisco, where he had been sent by his father in 1877. Neither, however, had any salary or substantial interest, both taking out of the business what they wished with the acquiescence of their mother, who was the legal owner.

Things went on in this way until 1898, when owing no doubt to the desire of the sons that some effect ought to be given to the intentions of the father as disclosed in the unexecuted will, the mother consented that the business in San Francisco should be converted into a joint stock company, the stock to be divided equally between the sons, except four shares necessary to be issued to others to legally constitute the company. She, however, imposed a condition to the effect that if either of her sons predeceased her, his share was to revert to herself. The reason for this was that Alexander was living with a woman named Mrs. Wallace to whom she entertained great repugnance, and she was afraid that in the event of his predeceasing Mrs. Wallace, the latter might acquire the whole if not the chief share of his estate to the exclusion of the other members of the Dunsmuir family. This was shortly followed by an assignment to the sons by the widow of the existing indebtedness of the Esquimalt & Nanaimo Railway Co. to her of $687,854.49, and also of the indebtedness to her of the Union Colliery company to $376,221.59. Her interest in the stock of these two companies was transferred to them in equal shares.

In 1899 she sold the business and good will of R. Dunsmuir & Sons in Victoria including three coal mines which shortly afterwards became worked out, two steam colliers and two tugs to the two sons for $410,000 to be secured by a mortgage of the sons' interest in the business and in the railway and colliery companies. In this transaction, the sons, particularly Alexander, considered that she drove a bargain with them and did not carry out the intention of the father. It would also appear that at the time of the making of the first will in question in this action, she had received altogether $3,000,000 worth of property out of the estate. I say appear, because it is difficult to extract the facts regarding the value of the father's estate and of its ultimate distribution from the enormous mass of evidence which has accumulated during the progress of the litigation.

Alexander at San Francisco

Alexander, as has been said, was placed in charge of the business at San Francisco in 1877. About the same time he became acquainted with Mrs. Wallace, who had two children, one the plaintiff, by her husband who was an usher in a San Francisco theatre. Alexander and Mrs. Wallace lived together as if they were man and wife until Mrs. Wallace was divorced from her husband in 1880, and continued these relations until December 21st, 1899, when they were married in California. Shortly before this, Alexander had purchased in her name an estate at San Leandro, California, and a large house was hardly finished when he died on January 31st, 1900, in New York admittedly from the effects of excessive drinking. The total value of the San Leandro property was over $300,000.

On October 5th, 1898, Alexander made a will by which he left his whole estate to James, who was married and had a large family, and immediately after his marriage he re-executed this will in California. Alexander, according to the admission of James, imposed a trust on his brother that he should pay his widow $1,000 a month during her life, and after some negotiations, on December 1st, 1900, partly no doubt in order to avoid litigation, James entered into an agreement with the widow by which he agreed to pay her for life $25,000 per annum, and one half of what may be shortly described as the net profits of the San Francisco business, while she in return released all her claims against Alexander's estate. She died shortly afterwards in June, 1901, and her daughter, who is the principal beneficiary under her will, brings this action alleging that both Alexander's will and the agreement between her mother and James were produced by the undue influence of James and that neither document was the act of a free and capable person.

Mrs. Dunsmuir Intervenes

Shortly after the trial commenced, an order was made allowing the defendant's mother to intervene for the purpose of enabling her to contest the validity of the will, thereby bringing all parties in interest before the court.

Towards the end of the trial, the plaintiff and the intervener applied to be allowed to amend their pleadings by setting up that Alexander had become domiciled in California, and that therefore in any event his will was invalid by California law. The application was refused by the learned trial judge, but it was allowed by this court, and the appeal was stood over to allow the parties to adduce evidence on this point.

In considering the appeal it will be convenient first to deal with the case of the intervener, as it is obvious if the will was that of a free and capable testator there is no necessity to consider the question as to whether Mrs. Alexander Dunsmuir's agreement with James was the result of undue influence, or if so whether the plaintiff has any right to have it set aside.

The case set up by the intervener is two-fold. She alleges first that the will should be declared void as being that of a person of unsound mind, and in any event as being the result of the undue influence of James, and that it is at any rate void as not being executed in accordance with the laws of California. Probate thereof has in fact been set aside by the California court of first instance, and we are informed that an appeal is now pending.

Some facts surrounding the execution of the will are not in dispute. It is admittedly a copy of the former will which was made in September, 1898, by the testator when he was in Victoria and was prepared by their common solicitor. It is in the handwriting of the solicitor and was prepared by him on the verbal instructions of James who took it with him to California at Alexander's request in order that Alexander should execute it. At the time of its execution James and Alexander had each, as already stated, acquired a half interest in the railway and colliery business, while the sisters were dependent on the bounty of the mother, who had, as already stated, retained a large portion of the original estate and had received large sums of money out of the business from the sons. Before his marriage Alexander was of loose and intemperate habits, and there is no doubt that, as already stated, intemperance was the cause of death.

Inasmuch as large interests are at stake, and the case is entirely one of fact, it seems proper to review the evidence at length, and I will consider the evidence adduced for the plaintiff as having been also adduced by the intervener and will bring it together as far as possible in the order of events and not in the order in which it was given.

The Plaintiff's Story

The plaintiff says that about 1897 she and her mother lived in the same house with Alexander; that she left and returned to them before 1885; that she was sent to school by Alexander; that he and her mother visited her at the school; that he was kind and affectionate to her; that in 1885 or 1886 Alexander and her mother took a house on Post street; that while there he used to stay in bed every Saturday and Sunday and drink, and would generally come home at night under the influence of liquor; that he had delirium tremens more than once; that he made it a point to go to his office in the morning and sober up; that after living on Post street he removed to Ellis street and used to do most of his drinking in the house instead of at the club, as he had theretofore done; that he had delirium tremens in the Ellis street house; that in 1890-1891 he had longer spells of drunkenness, sometimes lasting a week, and went less to the office; that he perpetrated foolish jokes on her; that he gave her to understand that he would make amends in time for the trouble, humiliation and illness caused her and her mother by reason of his conduct, and his illicit relations with the latter, that she saw him on two or three occasions from 1892 to 1895 when he was still drinking; that in 1897 when on one of her theatrical tours she saw him at the Grand hotel, when he was weaker than before, and had a doctor in daily attendance; that his speech was faltering and indistinct at times, and some times childish; that he seldom went out; that she saw him next in New York in 1898, when he appeared to be more easily affected by liquor than before; that he made extravagant purchases for her and her mother; that he would break off in his conversation and that his memory was giving way during his more sober intervals, and his appetite poor; that he insisted on her doing silly things; that she next saw him at San Leandro for about four weeks in 1899 when he was just getting over a serious illness; that he was stooped and his walk slow and faltering; that he dragged his feet; that he had to be always waited on; that he wanted to be amused like a child; that he cried when the plaintiff drove up with a pair of ponies which he had bought for her mother because he wanted to give her them himself; that she saw him every day in New York in January, 1900; that he did not recognize her at any time until told who she was; that he became delirious on the 17th, and finally died in a state of coma on the 31st. In cross-examination she admits that she was maintained and educated by Alexander; that she was given an allowance; that the San Leandro estate which Alexander gave her mother was worth over $300,000; that her mother got all the money she wanted; and that after Alexander's death her mother received $2,000 a month until she died.

Some Medical Testimony

R. Marshall, physician, says that he has practised for forty years; that he was called in to visit Alexander in 1886 when he found him verging on delirium tremens; saw him for about a week; his mental condition was fair when he was not drinking too much; continued to treat him from time to time on to the fall of 1897, when witness retired from general practice and went to Europe; the times of treatment gradually approximated each one from five to six months down; saw him about eight months before his death; used to see him every few days at the club; about the last time they met he did not seem to have the same spirit and hold on himself; it was impossible to keep up any conversation with him; he would become wabbly in his talk; he would commence a subject and immediately in a few seconds drop off on something else and seem to forget all about it; in early days he was very erect and he began to stoop and show signs of weakness; and to have hallucinations about the food and his cigars and whiskey being poisoned; also wanted his coal mines put on his bed. Cross-examined: says he was called in on an average of five times a year; Alexander was always "boozy" when he saw him; had no business transactions with him; seems uncertain as to when the hallucinations took place as he says once they were about 1886 and then about 1896; Alexander could not in his opinion carry on a sensible conversation from 1895 to 1897; witness would not try to sustain a conversation with him but would get away as quickly as he could; he always spoke affectionately of Mrs. Wallace and the plaintiff.

Miscellaneous Evidence

Mrs. Douglas knew deceased in 1885; used to see deceased every day in 1886 when living on Post street; "my then husband, a brother of J. J. Agnew, and myself were living two doors away; I was on very friendly terms with Mrs. Wallace; deceased was in bed most of the time under the influence of liquor; used to see them often when they lived on Ellis street from July to September, 1889; never saw him sober; I always thought he was sober when I visited them on Jones street; saw him about six or seven times at the Grand in 1896; he was always under the influence of liquor; his conversation was silly and foolish; never heard him talking any business there." Cross-examined: cannot remember any of his foolish talk; am not on good terms with Mrs. Agnew.

P. Rafferty, watchman, and later steward at the Pacific Club, San Francisco, in 1886; saw deceased about a dozen times under the influence of liquor at night; he would sometimes "hold the bar down all night"; on one occasion I saw him throwing handfuls of money out of a window into the street.

Dr. Buckley, superintendent of an asylum for the insane in England about 1865; was called in to attend deceased in November, 1893. He was delirious, insane, and remained so about a month; had bad kidney trouble; had three doctors during that time besides myself; we had to give him chloroform to make him sleep; we diagnosed the case as congestion of the brain and inflammation of the meninges from alcohol; we thought he could not recover because there was complete suppression of the urine for 48 hours. After treating him about four weeks I ordered him abroad; his mental condition was then all right; that is, his reason was restored. I saw him again about a couple of years later, but did not attend him professionally; he seemed to me in a condition of semi-idiocy from drink. Cross-examined: do not make the last statement as a medical man; that is only how he impressed me.

A. Buzzelo, masseur and nurse, nursed deceased in November, 1893, when Dr. Buckley was attending him; he was irrational most of the time, was there about seven or eight days when another nurse took my place.

H. Jaeger, nurse on the same occasion, corroborates the last witness.

Plaintiff's Ex-Husband

D. W. Hopper, ex-husband of the plaintiff, first met Dunsmuir in 1894 on his return from Europe, next in San Francisco a year later; saw him two or three times a day for about two weeks at the club; he was drinking a great deal; never saw him afterwards.

H. C. Skinner, bartender, knew deceased when living at the Occidental in 1894-5; he would generally come in about midnight and drink at the bar for an hour or so; often as late as 4 or 5 o'clock; he had a habit of looking through the glass before he poured out the whiskey; he always left under the influence of liquor. Cross-examined: he rarely went into any of the rooms, but almost always stood at the bar when drinking; would rarely come in in the afternoon; would drink late about twice a week; could not say he was there every week; saw him only once or twice after he left the Occidental.

G. A. Koch, mining promoter, first met deceased about 1895; met him in the Occidental bar frequently at night for about four or five months; he always stood at the bar; would not go into a room. He would get stupidly drunk and would branch off to some other subject if he entered into an argument, or if a proposition was being discussed.

Uri McKee, watchman at the United States mint, San Francisco, knew deceased when he was at the Occidental in 1896; assisted him several times to his room at night when he was under the influence of liquor.

Hotel Servants' Evidence

L. Ginter, a bellboy in the Grand hotel, San Francisco, says: Alexander and Mrs. Wallace occupied adjoining rooms in the hotel for about three years, leaving in 1899; every day when I was on duty I would bring him one or two bottles of whiskey; he always had a bag of cracked ice on his head; he was nearly always in bed when I saw him; Dr. Robertson visited him every day until his (Robertson's) death; I never saw him dress himself; he was always dressed by Mrs. Wallace or the maid; he left on the 13th August, 1898, for Victoria in a drunken condition, and remained so until he got to Victoria on the 10th all the while eating nothing, he consumed two and a half bottles of whiskey between San Francisco and Portland; he stayed at his mother's house in Victoria from the 16th to the 5th of September; during that visit he was drunk on one occasion; he was absent on a fishing expedition between the 5th and 15th September; during this period he was sober; he drank a good deal on his return until by instructions of his brother I left Victoria with him on October 8th for New York; he drank continuously during the trip, and ate very little, and was verging on delirium tremens; he drank heavily during his stay in New York, and also during his trip back from New York to San Francisco; I never had any conversation with him. In cross-examination the witness admits that he offered to give evidence for the defence, and that the evidence he was prepared to give would not do the defence any harm; that he kept a little memorandum book of the dates ;that on the fishing trip Alexander ate well; that his health seemed to improve wonderfully, and that he could attend to business except when he was drunk; that he never heard him mumble when sober.

F. Baumbartner, bellboy and porter at the Grand, used to attend on the deceased in Ginter's absence; used to take up generally one bottle of whiskey a day, sometimes three or four when he was short of case whiskey; it was delivered from the outside in baskets. Cross-examined: saw him going out two or three times; was always neatly dressed; there was always someone with him.

Very Observant Persons

R. Burnet, bartender, was bellman at the Grand in 1897 from January to December when deceased was living there; used to answer his bell several times a day; used to take him quart bottles of rye whiskey, sometimes one a day, sometimes two, and once three; he was much bloated and very unsteady; used to wear a towel around his head; have summoned Dr. Robertson quite often; "sometimes he seemed to talk fairly good, other times he did not know what he was talking about, just mumbled to himself; he used to put the money in my hand and I knew what he wanted." Never saw him entirely sober. Cross-examined, says he thinks deceased was drunk all the time; saw him go out of the hotel only once; will not say he summoned the doctor more than once a month; took on the average six bottles of whiskey a week to his room.

L. Folsom, elevator boy at the Grand for eight months, commencing February, 1898, then bellboy for a week, then night watchman for about two years and a half; says he does not think deceased left the hotel more than eight times while he was on the elevator; always walked with a cane, was very shaky; when bellboy, took him a couple of botles of whiskey and some punches; he used to wear a towel about his head; when watchman, he would call for liquor in the middle of the night, but at Mrs. Dunsmuir's request witness would not give him any: has telephoned for the doctor a couple of times. Cross-examined; the doctor used to be in each day until they went up North; when he went out it was generally for three or four hours; saw more than a dozen cases of whiskey taken into his room.

H. Smith, bellboy at the Grand; have brought whiskey to Dunsmuir's room three or four times a week; have seen him in bed with a towel around his head during the summer of 1897; on one occasion I telephoned for a doctor at Mrs. Wallace's request; he was screeching, or had some kind of a fit; have observed him acting wildly and mumbling to himself when intoxicated; never saw him after he left the Grand.

C. Schlundt, waiter at the Palace hotel, San Francisco, knew deceased when he lived at the Grand, used to take meals to him; champagne and chicken about 11 p.m.; his face was often very red and he seemed very nervous. Cross-examined: did not attend him regularly; only took in several meals a week; often put the breakfast on the table without seeing him; saw him several times with his head bandaged; there were two other waiters attended him from the Palace hotel besides myself.

Feminine Perspicacity

Mrs. Stevens met Alexander in San Francisco in 1897 at the Grand hotel; saw him every day for nearly a month; during that time he was out only about twice; he was drinking constantly; he would whine for his drinks and talk baby talk; he could not carry on a connected conversation. Mrs. Wallace was in constant attendance; he used to talk with his head stooped over his shoulders and his knees bent over; used to spill his food, and it was hard to get him to eat; was very affectionate to Mrs. Wallace and her daughter. Saw him again in New York in December, 1899; he did not recognize me, was mentally and physically gone; saw him nearly every day until he died; do not think he ever recognized me; he could not talk rationally. Cross-examined, she says that she never talked any business with him.

B. D. Stevens, husband of the last witness, saw Dunsmuir at the same times as his wife and generally corroborates her accounts. On one occasion deceased offered to back the plaintiff as a star if witness would manage the company.

Mrs. Jacques knew the deceased at the Grand; was employed continuously as seamstress by Mrs. Wallace from 1895 to August, 1897; deceased used to remain a good deal in his apartments in bed, more so towards the end of my stay with this family; he was rarely out; drank very heavily, on the average about two quart bottles a day; I attended to the liquor, putting it away and giving it to him; put fresh bottles in the wordrobe every morning, that was my duty; he would usually get away with three bottles; sometimes two, sometimes less, sometimes one and a half; we considered him on his good behaviour when he only got away with one and a half. Witness ordered a case every two weeks from Golberg & Bowen; he used to order other liquors unknown to witness and Mrs. Wallace from the bellboys; Dr. Robertson was there twice a day during his sprees; he lost control of his bowels; was in bed three months as the result of one spree; generally stayed in bed two or three weeks when he had his drinking spells; was always under the influence of liquor; used to take it by the doctor's orders in pepsinized milk; the spells became more frequent towards the end of my stay; do not think he ate more than one meal a day when he was laid up; had a couple of hemorrhages; used to wear a handkerchief with cracked ice around his head. Cross-examined: "About every three weeks he would take a good spell in going out; never out more than two days consecutively that I know of; he could have gone out for a whole day without my knowing of it; don't know how many times he did so; he used to have his dinner, if he had any, after I left.

E. Keil, of Goldberg, Bowen & Co., liquor merchants, supplied whiskey and other liquors to deceased at the Grand and at San Leandro for seven or eight years before his death; at the Grand on the average of eight quart bottles a week; it was paid for by monthly cheques.

J. L. Copeland, attorney, met deceased in the latter part of 1898 or early in 1899 at the Grand; went to see him on five different occasions for a client who supposed he knew the whereabouts of her husband; on all occasions he talked incoherently, generally about his coal mines; his eyes had an unnatural and vacant look; I thought he was crazy. Cross-examined: probably not over ten days elapsed between the first and last visit; was not in the room more than five minutes on any occasion; did not know him well enough to tell whether he had been drinking.

Family Testimony

Mrs. Snowden, a daughter of the intervener, says she saw her brother Alexander in September, 1898, when in Victoria; he seemed feeble and shaky; on one occasion he was intoxicated; he seemed stupid when not intoxicated; he would repeat things over and over; he was worse then than I have ever seen him before; James told me it was dangerous to have Alexander sign cheques or to have anything to do with the business in San Francisco. In cross-examination she admits that she saw him only for a week or so at the end of September.

Mrs. Chaplin, another daughter, says she saw him at her mother's house in September, 1898; he was much changed from what he was a year or two before; he did not talk intelligently, but mumbled an drepeated his words; "I never saw him actually drunk." In cross-examination she admits that she then saw him for only a day or two after he arrived; that she went away and returned, but cannot say whether she saw him again before he went to New York.

Reginald Chaplin, husband of the last witness, saw him only once at the intervener's house when he could not talk, but muttered, and on only one other occasion, when he was leaving Victoria for New York, but that he could not get him to enter into conversation; and on cross-examination states that Alexander was sober on both occasions.

Mrs. Croft, another daughter, says that in 1895 she saw Alexander on several occasions; he complained of being dizzy; he was at his mother's house in September, 1898; when he was there he had delusions; he said that James was trying to get his money away from him; James told me it was not safe to leave the business in Alexander's hands as drink was affecting his brain. She also testified that Alexander wanted his mother to make over the property to her sons but that her mother told him he was a madman; and in cross-examination she says that her mother is a person of very strong will.

Edward Palmer, secretary of the Union Club, Victoria, says that he used to see Alexander almost every day at the club during his last visit to Victoria; he drank a good deal; he was muddled sometimes even at luncheon; would not say he could not talk intelligently when not in liquor.

H. R. Burroughes says that he met Alexander on one occasion in 1898, at the Union club, and endeavored to interest him in assisting to start a champagne business in California, but found it impossible as Alexander's conversation was very involved and fuddled.

Mrs. Dunsmuir's Evidence

Mrs. J. O. Dunsmuir, the intervener, says in her examination taken de bene esse, that a few months before Alexander's death James came to her with a sealed will and said: "This is Alex.'s will and $350,000 for the girls in it." This was the last time she ever saw James; Alexander was ill at her home in August or September, 1898; Dr. Davie said his head was not right and that he was not to be disturbed; my son did not speak very plainly; he mumbled; his health and mental condition were getting worse every year; there was not much improvement when he came back from a fishing trip in October; he never talked about business; no one could influence him easily when well; his father thought he was the business man of the two and always said he would send him to San Francisco; in 1898 Alexander was a wreck and had no will of his own. Cross-examined, she says that James was always doing things she disapproved of; that she had never heard of Alexander making a will before the interview with James; does not adhere to her statement that the doctor said Alexander was not to be disturbed because of his head; admits that Alexander was in better condition after the fishing trip than before.

Mary A. Howe, plaintiff's maid, said that she saw Alexander in October, 1898, every day for about three weeks between 10 and 11 a.m.; he was ill; although close to him I could not distinguish what he was saying to Mrs. Wallace as he mumbled; I saw him in the following year for about four weeks at San Leandro; he did not dress himself; he was stooped in the shoulders; he insisted upon me doing childish things to amuse him; his conversation was disconnected; he slopped his food over his clothes; his clothes would have to be changed and cleaned every day; he did not recognize me in New York in 1900." In cross-examination she states that he did not require assistance to walk about; that she saw him intoxicated only once, although he was always drinking; and that there were times when he spoke intelligently.

Servants' Hall Again

H. Sample, Pullman conductor, met deceased and his wife in December, 1899; they were travelling to Chicago; deceased went into the stateroom shortly after leaving Oakland, and did not leave it until he got to Chicago. He was drinking constantly and ate very little; was very stupid all the way and seemed very feeble; I had to sponge him off at Chicago as he was in an offensive condition. Cross-examined, says deceased was very nervous and feeble when he left the train; did not notice whether he was drunk or sober when he got on board.

W. Wiggins, room clerk at the Imperial hotel, New York, assigned deceased and his wife their rooms at the hotel in December, 1899; deceased appeared to have been drinking a good deal and for some time; he was nervous and mumbled something that was unintelligible; was assisted up the elevator; never saw him again.

Mrs. Shrader, first met deceased in the Baldwin theatre, San Francisco, in 1895, where plaintiff was playing an engagement; saw him often for about two weeks; he was always under the influence of liquor. Saw him again in 1897 or two occasions; he seemed to drag his feet on the first occasion, and on the second did not recognize me; saw him again in New York in 1898 at the Girard about three times; the first time he was very drunk and Mrs. Dunsmuir was undressing him; next saw him just before he died; he did not recognize me." Cross-examined, she says she never saw him sober; nor did she ever have any connected conversation with him.

S. Murphy, for a short time plaintiff's coachman, saw deceased in 1898 in New York at the Girard four or five times a week for about four weeks; would take Mr. and Mrs. Dunsmuir driving and shopping; he would come down the stairs in a very feeble manner; Mrs. Dunsmuir generally assisted him into the elevator and into the carriage; she generally gave me the orders; deceased would seldom go out of the carriage [illegible]; she was always by him as though he were a little child. Mrs. Dunsmuir in his presence wanted me to go to San Leandro as his valet, as he could never be left alone, at which deceased only smiled. Next saw him about Christmas, 1899, but did not have any conversation with him.

Mary E. Howe, [illegible] mother, says she first met deceased in the fall of 1898 at the Girard, where he stayed about four weeks; saw him two or three times a day; [illegible] frequently, sometimes [illegible]; he was laid up twice [illegible]; he never went out without Mrs. Wallace; he would wander off into silly talk, ate noisily and dropped his food; they were affectionate towards each other; others had to do his writing for him; bought things for the plaintiff that were suited only for small children.

E. Crowninshield, a broker of New York City, first met Alexander in 1898 at the Grand hotel in New York, he was incapable from liquor; would answer in monosyllables; could hardly walk; saw him every other day for three or four weeks; dined with him a couple of times when he slopped his food over his clothes; would whine for his liquor or anything he wanted; wanted the plaintiff to buy everything she saw; imagined he was very rich; helped to put him on the train for the West. Next saw him about Christmas, 1899, for about an hour and a half; he did not recognize me, he was worse than before; faltered in his conversation and shuffled his feet; saw him every day afterwards up to the time of his death; went to the theatre to see the plaintiff on the stage; he did not recognize her on the stage; helped him home; [illegible] his bed for about a week before he died, drinking all the time. Cross-examined: never saw him sober; he never desired to talk; used to talk on the subject of his mines; often mentioned his brother; was afraid of his brother.

More Medical Evidence

Dr. Culbert, first met Dunsmuir in January, 1900; was called in to see him; he was delirious; had [illegible]; was unable to carry on any connected conversation either then or at any time up to his death; [illegible] questions with a vacant stare; was there over an hour; diagnosed the case as alcoholic dementia, which condition arises after a prolonged use of alcohol to excess; should judge he had been in this condition for over a year; would say he was of unsound mind and that he must have been so for several years; saw him several times a day until he died. Cross-examined, says he gave the certificate of death to the undertaker in which he stated that the cause of death was meningitis, but says the contributory cause was alcoholic dementia, a form of insanity from which the patient may suffer for a number of years but never recovers; admits that he is not an expert; and that all the symptoms from which he inferred dementia might be symptoms of other ailments.

Dr. Drumond was called in to visit Dunsmuir January 9th, 1900, found him somewhat delirious; could not carry on connected conversation with him; his heart and pulse were weak and fluttering; considered he was suffering from nervous prostration due to alcoholism; saw him three times a day until he died; would characterize the case as alcoholic dementia; cause of death, alcoholic dementia; would say he was of unsound mind and had been so for probably 18 months. Cross-examined, he says he does not think that a man who dies of alcoholic dementia could have a lucid interval within 18 months of the time of death although he will not say it is not possible.

Dr. Janeway examined the deceased in January, 1900; found him suffering from alcoholism; found great impairment of mental condition, also that he was physically weak; heart rapid and feeble; speech wandering. Cross-examined, refuses to testify as an expert; will not say that there could not have been an occasion within 18 months of his death when he could understand a matter of business; thinks that alcoholic dementia would best describe the condition, but says persons suffering therefrom may have a lucid interval and that he hoped deceased might entirely recover, and that sufferers from alcoholic dementia in the sense he uses the phrase sometimes recover altogether.

It is evident from the above that this witness does not use the phrase alcoholic dementia as equivalent to alcoholic insanity, and that he did not consider that the deceased was insane in the ordinary sense of that word.

The foregoing is in brief the evidence of the eye-witnesses adduced for the plaintiff and intervener on the question of unsound mind, and undue influence, and I will now proceed to give a resume of that given for the defendant.

The Defence Analyzed

C. K. Hooper, manager of the Occidental, first met deceased in January, 1895; he came as a guest in the hotel and stayed till July, 1896; I was the hotel clerk; saw him almost daily; never noticed anything peculiar about him; never saw him intoxicated; have seen him drinking with Skinner; "he seemed to be of an independent mind and able to hold his own and not have to seek the advice of others"; "had very decided opinions." Cross-examined: do not know how late he used to stay in the bar; have had a number of drinks with him myself.

J. A. Lindsay, assistant manager of the Dunsmuirs at Victoria, knew Alexander since 1889; met him several times in Victoria in 1896, 1897 and 1898. I would discuss the affairs of the business with himself and James; "it would be discussion about how the railroad was doing, and the steamers, the output at the mines, and prospects, and what the coal was costing per ton, and steamers loading at the mine, and when they would be loaded, and steamers due, and vessels and things like that, everything pertaining to the business that you would expect people that had such interests to talk about." He would discuss the business intelligently; there was no numbling or incoherency in his speech; his memory seemed good; never saw him drunk, but saw him only in the office.

Where Doctors Differ

Dr. Thorne, who has practised since 1898, has been professor of surgery in the University of California and a membe rof the California Board of Examiners, first met Dunsmuir in 1890, who became a patient in October, 1897. He attended him twice in October, 18 days in November, most of December and January, and at varying intervals from February to August, 1898. No visits in September or October; 4 days in November; no visits in December, 1898 or January, 1899; 12 in February, 23 in March, 7 in April, none in May; 7 in June; none in July; and last prescribed for him on August 3, 1899; and with the exception