

MACMAHON, J. (after reviewing the evidence) referred to the following cases: *Waring v. Waring*, 4 Moo. P. C. 351; *Banks v. Goodfellow*, L. R. 5 Q. B. 549; *Jenkins v. Morris*, 14 Ch. D. 674, 42 L. T. N. S. 817; *Den v. Vancleve*, 2 Southard (5 N. J.) 589; *Stevens v. Vancleve*, 4 Wash. (U. S. C. C.) 267; *Greenwood v. Greenwood*, 3 Curt. Appx. xxx.; *Boughton v. Knight*, 3 P. & D. 64; *Smee v. Smee*, 5 P. D. 84; *Murfitt v. Smith*, 12 P. D. 116; *Roe v. Nix*, [1893] P. 55, 9 Times L. R. 128: and concluded:—

McGarrigle, no doubt, had an imperfect memory; he could not recollect where the furnace was while at Dr. Hilliar's; he forgot that Dr. Hilliar had paid him the principal and interest due on the VanCamp mortgage; he could not remember that the amount of the mortgage had been deposited to his credit in the Standard Bank, and asked foolish questions about it; and he forgot the amount appearing to his credit in the bank pass book. On the 28th December, 1899, in conversation with Mr. Tole, he spoke about his loss suffered in the Skinner property, the fact being that he had sold it and received the purchase money; and, although he had made his will and divided his property, he spoke of his intention to do so if he had forgotten the making of the will. And on the following day, on going to the Dillings' house, he wanted to sleep on a shelf in the pantry, and shortly afterwards he spoke of the chickens as colts and sheep, and wanted them shod.

These and other circumstances shew that he was possessed of delusions on some subjects. But the making of the impeached will was an act of his own volition. He had for some time contemplated making a new will, and had spoken to Mr. Simpson (his solicitor and executor) on several occasions of his intention to make a will; and from what transpired in Mr. Simpson's office on the 1st December, 1899, McGarrigle came there having in his mind the making of a will, and having a full knowledge and recollection of the amount of the property he possessed, and having also in his mind the manner in which it should be divided, and who he intended should take as beneficiaries under the will.

From the evidence . . . no matter what latent delusions existed in the testator's mind, they had no influence on the disposal of his property, for it is almost the same disposition that was made under the will of 1888, when no delusions affected his mind. . . .

There will be judgment for defendants declaring that the testator was at the time of the making of the will of 1st December, 1899, of sound mind, memory, and understanding, and that the said will is his last will and testament.