

can reasonably be supposed to have participated in the alleged forgery.

But is the codicil a forgery at all, or is it the work of Col. Boucher himself? The document consists of eight lines, and places the two nieces on the same footing as the deceased's children. It is objected that the document is not in his writing, and that it is full of orthographical mistakes. I have examined all the writings in the record in Col. Boucher's hand. There are a number of receipts, and a comparison of the signatures on these with the codicil shows that the writing is marvellously alike. One of the most difficult hands to imitate is the peculiar trembling observable in the writing of a man laboring under paralysis, as Col. Boucher was at this time, but the signature to the codicil is precisely the same as the others. Taking all this evidence, I come to the conclusion that the codicil was written by Col. Boucher himself, and that there has been no forgery at all.

The next question is, whether he was in a state of mind to make a will. It is well known that the peculiar disease of paralysis has a much greater effect upon the body than the mind. There is evidence in this instance of absence of will, but the Court has no hesitation in saying that the testator's mind was not seriously affected. It must be assumed that where a man has not been interdicted he was sane. Here a *conseil* had not even been named. In the absence of interdiction the Court would require evidence of what the books term hallucination, before it could set aside the codicil. Now, there is no evidence in this case of hallucination. Col. Boucher knew every one about him; he knew precisely his relations to these ladies (his nieces), and he continued to manage his domestic affairs, to sign receipts, &c., after the date of the codicil. More than this, he executed a notarial document on the 30th of April, 1861, two months after the date of the olograph codicil. The Court would stultify itself by declaring a man *déchu* from making a will, who continued to manage his own affairs, merely because he was weak and suffering from paralysis. He was a man who had accumulated a large fortune by industry, and attention to minute

particulars. He was fretful at this time, and anxious about his money, and would walk about the house with his great coat, and his stick, and his keys, but there is evidence in the record of his being a man of noble character. It appears that he called these ladies *voleuses*, and some weight has been attached to this circumstance, but this is a term easily understood in the case of a fretful, impatient man, and it is shown that he sometimes called other people by the same name. But there is a wide difference between mere fretfulness, and incapacity to make a will. There are other facts of a still more conclusive character. About three months after the date of the codicil, it was thought advisable to have Col. Boucher interdicted. He was now eighty-three years of age, and the disease was making rapid progress. Judge D. Mondelet was sent for, but it appears that that judge did not consider him even then in a state to be interdicted. On the contrary, it was judged sufficient to name a *conseil*, and Mr. Lacombe, his son-in-law, was appointed on the 24th of May, 1861. This, taken in conjunction with other circumstances, shows that he was quite competent to make the codicil three months previously. The evidence of some members of the family has to be taken with a great deal of caution, for there is evidently a great deal of feeling in the case. But even giving full effect to all that evidence, I am bound to say that there is sufficient in the record to show that Col. Boucher was *compos mentis*, and in a fit state to make a will.

It being then established that the codicil is genuine, and validly made, the third point is whether these ladies exercised any undue influence over the testator's mind in obtaining it. They were the nieces of the testator, and friendly relations had always been kept up between the families. Col. Boucher, it seems, was under obligations to their father. Certain correspondence has been produced which shows that Col. Boucher, on one occasion, when Madame Cloutier was at St. Jacques, (whither she had gone to wait on her nephew, Dr. Jacques, then sick) wrote to her more as he would write to a daughter than to a niece. For four years these ladies acted as *garde-malade* to Col. Boucher and his wife. It is