

Letter.
the extraordinary
which the defend-
Thomas Adams.
ation" and "sup-
a good deal of
ing is a crooked
and manifestly
of deterring the
y effort to contest
the impression
it was a will made
me ago, implying
en long ago made
and that but
ntesting, after the
ctors' fees, 1891,
enses and lawyers
ntimating that all
er contest, "so all
ading significantly)
on of what little
well have added,
points of the 1891,
December, 1891,
with a semi-con-

P of these few
of Mr. Samuel
occurred at my
November, 1891,
ar good friend of
me when I could
ith me. So I will
what property he
ven years ago he
what little was left
fees and funeral
were paid and
what little was
on of it, by will,
out in my favor
it settled now and
that little was left,
truly.
"D. McBEATH."
mination of the de-
y-General brought
"what little was
\$2,000, taken out
th, \$1,300 of which
ing another house
et, that defendant
engagement to sell
for \$8,000, and
till \$8,000 in hand
ay, estimated
0 in all.
ered also that this
a man who he had
ears repeatedly, he
in answer to direct
urt.
udge that James
efore he wrote this
liams and friends of
ring and writing in
ted relatives in Liv-
ed friend, of whose
ns in the nephew's
ly informed them
that no nurse's ex-
all; and that the
gave, amounted
\$53, and the funeral
the doctor's about
and against \$2,275
d and houses—"the
ge that Thomas Ad-
ould have declined
ter, for the reason
tain dignity of as
the letter was an-
ly so, for he had just
respondents in Vic-
after Adams was
ill as to be scarcely
his charge, had made
favor absolutely.
ed to be made by
g all his blood re-
lated from 1878 down
en and expressed so
the promised recipi-
was a practical ex-
e, and who
her portions of his
emarkable economy

in this letter which
er he did not write
body else about Ad-
he did not know, he
did not know the
old man's friends,
and afterwards used
an's book.
wife wrote to tell
Mrs. Noble had
the testator "had
bol and that she
to write to them,"
the 21st December,
rite to Thomas Ad-

have him in re-
General's question
n's letter to Thomas
eance of his name
of two other rela-
on's book left by
as the necessity of
p Thomas Adams?
in that book there,
bly he was some re-
e, or something else
e being Adams, I
up them (sic) a few
of his death.
fter, in answer to a
urt, when repeating
Adams to leave his
McBeath), as far back
hen, by-the-by, the
rancisco).
obody to leave his
would say as soon
one."
he just he had no
erty to? A. "Yes,
ad no friend to leave
as soon leave it to
w of and he had no

an one place in the
witness? And yet
all on whom will
hangs.
t. Milne on the side
of the importance
ect from a medical
a dying man's bed
subject of contest.
ne fact that his evi-
one most important
he knew Adams was
e regarded him with
e his capacity to

make a free will, nor was his attention
called to it, and consequently never once
applied the exact testimony of the
medical practice prescribes as essential in
order to ascertain the exact testamentary
capacity of the dying man.
Now, what these medical tests are the
learned doctor could have ascertained
from a medical work of great repute,
"Taylor's Medical Jurisprudence," which
at page 788, speaks of no uncertain
sound—ho ya as to the tests pre-
scribed for "Wills in Senile Dementia."
—Wills made in incipient dementia,
arising from extreme age (Senile im-
becility), are often disputed, either on
the ground of mental deficiency, or of
the testator, owing to weakness of mind,
having been subjected to control and in-
fluence on the part of interested persons.
If a medical man be present when a will
is executed, he may satisfy himself of the
state of mind of a testator by requiring
him to repeat the contents of the will, and
if he has disposed of the bulk of his prop-
erty. A medical man has sometimes
placed himself in a serious position by
becoming a witness to a will without
first ascertaining himself of the actual
mental condition of the testator, either in
the case of the Duchess of Manchester,
1854. It would always be a ground of
justification if, at the request of the wit-
ness, the testator is made to repeat sub-
stantially the leading provisions of the
will from memory. If a dying or ex-
tremely old person cannot do this, or if
suggestion, there is reason to believe
that he has not a sane or disposing mind.
It has been observed on some occasions,
when the mind has been weakened by
disease or infirmity from age, that it has
suddenly cleared up before death, and
the person has unexpectedly shown a dis-
posing capacity. In Durnell v. Corfield
(Prerog. Ct., July, 1844), a case in which
an old man of weakened capacity had
made a will in favor of his medical at-
tendant, Lushington held that, to render
it valid, there must be clear proof, not
only of the factum of the instrument, but
of the testator's knowledge of its contents
("Law Times," July 27, 1844). In
West v. Sylvester (November, 1867),
Wilke, J., in pronouncing judgment
against a will propounded as that of the
deceased, an aged lady said: "At the time
she executed the will, although for
many purposes she might be said to be in
her right senses, she was nevertheless
suffering from that failure and depre-
citude of memory which prevented her
from having present to her mind the proper
objects of her bounty, and selecting those
whom she wished to partake of it."
P. 769—"Wills in Extremis"—Wills
made by persons whose capacity during
life has been never doubted, while lying
at the point of death, or, as it is called
in extremis, are usually regarded with
suspicion; and may be set aside according
to the medical circumstances proved.
Many diseases, especially those which af-
fect the brain or nervous system, directly
or indirectly, are likely to produce a dis-
order or confusion of intellect, under
which a proper disposing power is lost.
Delirium sometimes precedes death, in
which case a will executed by a dying
person thus affected would be pronounced
invalid.

In examining the capacity of a person
under these circumstances, we should
avoid putting leading questions—namely,
those which suggest the answers "yes" or
"no." Thus a dying man may hear a
document read over and affirm, in answer
to such a question, that it is in accord-
ance with his wishes, but without under-
standing its purpose. This is not satis-
factory evidence of his having a disposing
mind; we should see that he is able to
dictate the provisions of the document,
and to repeat them substantially from
memory when required. If he can do this
accurately, there can be no doubt of his
possessing complete testamentary capac-
ity. But it may be objected that many
dying men cannot be supposed capable of
such an exertion of memory; the answer
is very simple; it is better that the
person should be without a will, and his
property be distributed according to the
law of intestacy, than that, through the
failing of his mind, he should unknow-
ingly cut off the rights of those who have
the strongest claims upon him."

On Dr. Milne's first appearance
on the scene, on the 8th November, to
attend the old man in his miserable
plight in View street, after three days
and nights solitary agony, he did make
of the only close examination we have heard
of, as to Adams' physical condition. He
examined and sounded him thoroughly,
and as the result of his investigation, an-
nounced aloud his decision in the ex-
pressive verdict:—"The clock is nearly
run down,"—as though he had said—Life
may flicker awhile before extinction, but
the machinery is worn out, the old man's
days are numbered.

It is a remarkable proof of either the
extremely casual nature of the learned
doctor's diagnosis of this case, or (what is
far more likely) a prior conviction, which
his first and only examination pro-
duced on his mind, that the patient was
so far gone that no further medical aid,
beyond warmth and nursing, was possible
for one of such extreme old age and
weakness,—that the doctor never once
refers in his evidence to the chronic
malady of rheumatism, which the
"Adams' correspondence" shows, had
been for years to the old man a constant
source of the most acute pain and suffer-
ing, and to his experienced eye might
have been expected to have left some in-
delible mark on the constitution. This
is borne out by the fact that the only
utterance in all Mr. McBeath's reluctant
evidence.

Q. Did the doctor tell you he was on
his death bed, and he did not think he
would get up?

A. He said he did not think he would
get out of it. He was pretty weak. He
said it would be only a matter of time
that he would be called away anyhow.

Q. Then you expected his death at any
moment?

A. Well, yes. In fact I did not expect
he would get out of his bed.

(And yet this same witness, just a min-
ute before had testified "poor," "weak,"
"Within a day or two of his death he
was supposed to be all right." * * *

And again:
Q.—When did you make up your mind
he was going to die? A.—I never made
up my mind he was going to die; of
course he had testified "poor."

But to return to Dr. Milne. He testi-
fied in answer to Mr. Bodwell:
"It was only a few months before his

death I knew Adams by name. I was
not his attending physician. He came
into my office and presented for him-
self, once in July, 1891. I did not see him
professionally between July and his last
sickness; I think I have seen him in the
street. I was called in to see him on 9th
November, 1891."

Q.—In what condition was he then?
A.—Well, he was in a very weak con-
dition when I saw him, lying in one of the
rooms, apparently without any one to
look after him. His skin was cold, pulse
very weak, indicating want of proper
nourishment, warmth and food. In con-
versation with him. He understood
what we were saying to him quite dis-
tinctly though he was deaf, so you had
to speak loud—in a loud voice.

I prescribed for him—to put a fire in
the room, have his limbs and extremities
physically condition was improved, some-
times to stimulate circulation.

On Monday, the 10th, Mr. Kirsop
came to my office and talked about the
old gentleman. He advised that he should
be either taken to the hospital or to
McBeath's.

I don't know whether I went just then
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He had already made up his mind. *
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the best thing he could do.

I saw him next time on Wednesday
the 11th, in the afternoon, in Mr. Mc-
Beath's house. His condition was some-
what improved from the Friday, and the
second day I saw him he was more com-
fortable and resting easier. Yes, he
seemed to be quite clear mentally. I
spoke to him in a general way, and he
was quite intelligent.

Q.—You talked to him about other matters
except the illness? A.—No, nothing in par-
ticular that I can remember.

Mr. Bodwell: Now, speaking as a pro-
fessional man what do you say as to his
testamentary capacity on that day? A.—
It was quite clear as far as that would be
concerned. It was as clear to transact any
business that day and some following
days as well. I prescribed for him, gave
general directions as to his nursing.

What was the matter with the man?
Well, really, when I first saw him it
was lack of nutrition as I say, a hard
floor and lack of proper nourishment.
(Not a word about rheumatism.)

Q.—And on Wednesday (this was the
day of the will) he was still in that weak
condition, very weak pulse, so much so
that I refrained from allowing him to sit
upright in bed. I saw him again in the
afternoon, on Thursday, the 12th.

On Thursday (12) he was much the
same as on Wednesday.
Q. Mentally? Quite clear. Friday,
13th, and Saturday 14th, the same, and on
Sunday 15th the same. On Monday
16th, on Sunday 16th, of course, and the
day before, he was so completely com-
plained of considerable pain in the head; and on the
16th not quite so clear.

Within forty-eight hours of his death I
may say he was so that he understood
what I was saying to him, and the last
day he was able to transact business.
Q.—You had no occasion to be confined to his
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On the 16th and the day before he was
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he died on the 18th.

Mr. B. Now, speaking as a profession-
al man with reference to testimony, I
cannot say up to what time would you say
from your knowledge of him, was he cap-
able of making a will?

A. * * * I should say 48 to 60
hours before his death he was quite
capable of doing it, because he understood
everything that was said to him.

Q. What kind of a man was he as to
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him? A. Well, he seemed to be rather an
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who could not stand very much pain.

Can you remember anything he said
about his removal on the Monday, the
10th?

No, he consented, acquiesced and
spoke of going to McBeath's and he
thought that was the best for him to do.
He objected to going to the hospital, gave
no reason.

Dr. Milne's cross examination elicited
that the evidence he gave was entirely
from memory and, of course, liable to his
usual medical notes of the case.

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and so on, which means of course as
compared with his utter prostration and
battered condition on the fatal 8th and
9th of November.

But all the same he was dying all the
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and so on, which means of course as
compared with his utter prostration and
battered condition on the fatal 8th and
9th of November.

But all the same he was dying all the
time. "I expected he might die at any
moment" in his own frank moment, con-

firming the evidence of the doctor, who
said he was in a very weak condition
when I saw him, lying in one of the
rooms, apparently without any one to
look after him. His skin was cold, pulse
very weak, indicating want of proper
nourishment, warmth and food. In con-
versation with him. He understood
what we were saying to him quite dis-
tinctly though he was deaf, so you had
to speak loud—in a loud voice.

I prescribed for him—to put a fire in
the room, have his limbs and extremities
physically condition was improved, some-
times to stimulate circulation.

On Monday, the 10th, Mr. Kirsop
came to my office and talked about the
old gentleman. He advised that he should
be either taken to the hospital or to
McBeath's.

I don't know whether I went just then
or not to see Mr. Adams. Mr. McBeath
also came to my office. I went over and
saw Adams. Mr. McBeath was there
and I think another man (this was George
Barrett) whom I do not recollect. Adams'
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The question of his being removed to *
He had already made up his mind. *
He spoke about it and I concurred in
being the best thing he could do. I
could not give you his conversation, only
it did not take any persuasion on my
part, but merely to consent that it was
the best thing he could do.

I saw him next time on Wednesday