

That medical men may know how to conduct their examinations, and in what direction to make and to press their enquiries (for a superficial enquiry is often worse than none at all), I set out the rules of law in each case.

In the case of wills it was for a long time thought to be the law that if the mind of the testator was affected by insanity at all, since the mind was supposed to be one single and indivisible entity, then, being affected, it must be unsound, and, as a consequence, testamentary capacity was wanting. As it was put, "Any degree of mental unsoundness, however slight, and however unconnected with the testamentary disposition in question, must be held fatal to the capacity of a testator." But that is not the law.

If one making a will understands what a will is, what its effects are and that he is making a will—if he understands the extent of the property he is disposing of—if he is able to comprehend, remember and appreciate the claims to which he should give effect, for example, claims of relatives, then he is far on the way to be considered competent to make a will, although he may be and may for years have been insane. Then, in the consideration of the claims to which he should give effect, there must be no disorder of the mind which poisons his affections, or which perverts his sense of right, or prevents the exercise of his natural faculties. Such would destroy or, at least, imperil his testamentary capacity.

The mere fact of the existence of delusions may not be of importance—it is not of importance if the delusion neither exercises nor is calculated to exercise any influence on the particular disposition of property, and a rational and proper will is the result. But if the insane delusion influence his will in disposing of his property and bring about a disposition of it which, if the mind had been sound, would not have made, that disposition is bad.

A medical man called upon to examine a person as to his testamentary capacity should, therefore, carefully inquire into