

of the farm house were the two brothers, the sister and the mother.

The evidence shews that the deceased was in possession of all his faculties, of good memory and understanding, able to discuss business, though weak physically. This is the concurrent testimony of three respectable witnesses, Mrs. Lemon and her husband and her husband's cousin. Such was his condition to the last, and his death was unexpectedly sudden.

Now I will summarize what occurred according to the defendant's version of the facts. Some days before the testator left the farm he spoke to the defendant about the terms of his will, and said he wished to leave more to the defendant if he could remodel his will: on the 15th November they went over the amount of the testator's property and the defendant made it out to be \$10,700. The testator said he did not think he had more than \$9,000, and then they figured out how much interest might be realized, first on \$10,000, and then on \$7,500. The defendant said he did not care for any further benefit by a will, and testator said if he did not make a new will, he would not give it to the defendant except in cash. Next day, Wednesday the 16th November, the testator asked defendant to get the cheque book and write out a cheque, and after some figuring the amount was fixed at \$2,750: the testator signed it and gave the cheque on, and the pass-book of the Sterling Bank, to the defendant the same night. He also dictated and signed a letter of the same date to be given to the plaintiff Richard Thomas, one of the executors. He left his house and went to Lemon's next day, and on Friday the 18th November, he signed a cheque on the Bank of Hamilton in blank and one on the Bank of Commerce in blank and gave these and the two pass-books of these banks to the defendant, in order to draw all the money with accrued interest therein deposited to the testator's credit. These three cheques and the letter to Thomas and the pass-books were all held by the defendant till the morning of the 21st November, when he presented the cheques and books at the different banks. The two cheques in blank were stamped of that date, the 21st November, and filled up for the amounts with the interest, the one for \$215 and the other for \$118, and these moneys were received by the defendant. The money obtained from the Bank of Commerce was, with some of his own money, deposited to his own account at the Sterling Bank as already stated, and the money from the Bank of Hamilton after being drawn out by him was soon afterwards returned to the same bank by the defendant and placed to the credit of the executors. The defendant says