

Dr. M. was not recalled after the evidence of Mr. McC.; and it was admitted that he would and must say that the decedent had a disposing mind if Mr. McC. was telling the truth. The opinion of Dr. M. was based wholly or mainly upon the evidence of Dr. N., and I do not place entire confidence in the accuracy of that evidence.

If the evidence of Mr. McC. and that of Dr. N. are inconsistent, I accept the evidence of the former. In all cases I judge of the credit and weight to be given to the evidence by the conduct and demeanour of the witness.

Had I the slightest doubt as to the substantial accuracy of the evidence of Mr. McC. (which I have not), it would be removed by the evidence of the Rev. Mr. McK. (against whom there is no imputation). He gave evidence of conversations with the deceased, a few months before the will was drawn, which indicated that his mind was running in the direction the will displays.

Moreover, no benefit of any kind accrued to Mr. McC. from the provisions of the will. The suggested benefit of executor's remuneration he would equally receive if the will were drawn in any other way—and if he could be such a rascal as to have a will made by an incompetent man, the natural thing to expect would be that he would take care to have some substantial benefit for himself . . .

I find that the charges against Mr. McC. are absolutely and entirely without foundation in fact, and that the action should be dismissed.

In the exercise of my discretion, I direct that the costs of the executors and of the church be paid, between solicitor and client, by the plaintiffs and the defendants who made common cause with them, i.e., Mary Van Allen, Jennie Sorntall, Letitia McLaren, Richard Langtry, and Frederick Thornbury. Counsel for these stated at the trial that they were making common cause with the plaintiffs, and he assisted counsel for the plaintiffs throughout with suggestions. The practice of bringing actions in the name of some only of the next of kin, and making the others parties defendants, is sometimes necessary—but parties so made defendants should understand that if they make common cause with the plaintiffs, they do so at their peril as to costs and that the fact that in form they are defendants will not protect them.

My power to award costs between solicitor and client in such a case as this seems to be established by *Andrews v. Parnes*, 39 Ch. D. 133; *Sandford v. Porter*, 16 A. R. 565,