

LAW JOURNAL REPORTS.

SUPERIOR COURT.

April 12.

LACOMBE ET AL. v.

DAMBOURGÈS ET AL.

Will—Olograph Codicil—Undue influence—Unreasonable dispositions—Interdiction—State of mind of testator.

The fact of a legatee being aware that the testator has altered his will in favor of such legatee, is no ground for supposing that undue influence was exerted to induce such alteration.

Where the testator was not interdicted at the time the will was made, and where there is no proof of hallucination, the presumption is that he was of sound and disposing mind.

There is nothing unreasonable or calculated to excite suspicion in the bequest by a testator of *une part d'enfans* to two nieces, who had laboriously tended and nursed him and his wife for several years prior to their decease.

This was an action brought by the heirs of François Xavier Boucher against two nieces of the deceased, for the purpose of setting aside a certain olograph codicil giving the defendants *une part d'enfans* in the estate. The conclusions of the declaration were that the defendants be summoned to declare whether they intended to avail themselves of the codicil, and to proceed to establish its authenticity; in default of which, that it be adjudged that the codicil was false and of no effect; and, in the event of the verification of the document, that the defendants be declared disentitled to the legacies by reason of the abstraction by them of moneys belonging to deceased; further, that by reason of the causes stated, it be adjudged that the will could confer no advantage on the defendants.

The plea set up the fact that during several years preceding the death of the testator, the defendants had tenderly nursed and waited upon him, at a time when none of the children remained with him. The following extract from the plea will show how the defendants came to reside with their uncle, and what followed:

"Qu'environ huit mois avant le décès de Dame Julie Olivier, femme du dit feu François Xavier Boucher, cette dernière étant alors bien malade, le dit Sr. Boucher et sa dite

dame envoyèrent quérir avec instance la dite défenderesse Dame Agathe Dambourgès, qui demeurait alors et vivait à l'aise en la paroisse de Ste. Elizabeth, comté de Joliette, sur une propriété à elle appartenant, avec sa sœur Emélie Dambourgès, l'autre défenderesse, et dans le voisinage de plusieurs autres membres de sa famille par elles bien affectionnés, et que malgré le dérangement, les inconvéniens et les désagréments tout naturels de ce déplacement, la dite Dame Agathe Dambourgès voulut bien se rendre à cette invitation des dits Sr. et Dame Boucher, chez lesquels, lors du décès de cette dernière, elle demeurait depuis environ huit mois, faisant nuit et jour auprès de celle-ci (ce qu'elle fit plus tard auprès de son dit mari) c'est-à-dire, faisant l'office de la garde-malade la plus humble, lui donnant tous les soins les plus délicats jusqu'aux plus grossiers, et accomplissant les fonctions les plus pénibles, le tout avec une attention, un zèle et un dévouement constant, dont les enfans et petits enfans des dits Sr. et Dme. Boucher n'ont jamais été capables, et n'ont jamais donné d'exemple."

As to the charge of exerting undue influence, the defendants further alleged: "que le dit testateur, lorsqu'il a ainsi fait et écrit le dit testament ou codicile olographe, en faveur des défenderesses, était parfaitement sain d'esprit, mémoire, jugement et entendement, qu'il l'a fait avec pleine connaissance de cause, qu'il est l'expression libre, vrai et sincère de ses volontés et intentions, qu'il l'a fait de son propre mouvement, sans aucune obsession ni suggestion, par et de la part des défenderesses."

MONK, J. This is an action brought by the heirs to the succession of the late Col. Boucher, of Maskinongé, against the defendants, Madame Cloutier and Madame Brunelle, two nieces of the testator, for the purpose of having a certain olograph codicil set aside. This codicil was found among the papers of the deceased, and the present action was immediately instituted by the children to have it declared that the codicil was forged, or that Col. Boucher was *non compos mentis*, not in a state of mind to make a will, or that these ladies had exercised undue influence over him; that they had robbed him of £3,000; and lastly, that the