

RIDDELL, J.:— . . . The statement of claim alleges that the late Joseph Madill, being under the influence of his pastor, the Rev. Mr. McC., was, while he was in a weak and enfeebled condition of body and mind, induced by him to make a will; that this will was so made by Joseph Madill when he was not of testamentary capacity; that the will was not properly executed; and that the provisions of the said will were ineffectual in law.

I may say at once that there is no foundation for the claims as to undue influence, irregularity of execution, and incapacity of the legatees.

The only question is, whether the testator was, at the time, of testamentary capacity. Considerable evidence was given, of a more or less vague character, indicating a failure of physical and mental power; and Dr. N., the attending physician, gave more specific evidence—Dr. M. being then called as an expert to give his opinion upon the evidence of Dr. N. The defendant McC., being called, gave a very detailed account of the circumstances under which the will was drawn; and it is admitted that, if he is to be believed, the decedent was of testamentary capacity, and the will must stand. The plaintiff, recognizing this fact, called a number of neighbours to testify that from the reputation of McC. they would not believe him on oath. Some of these witnesses spoke from dealings they had had themselves, but others fulfilled the conditions of such evidence. Several of these witnesses belonged to a malcontent section of the reverend witness's church, and some seem to have had business dealings with him. He appears to have been agent for Roller Bearing and other stocks, and to have sold some of these to his friends. Even with the altered meaning of the word, it seems as unwise now as it was 1900 years ago for those sent to preach to carry "scrip"—many cases in the Courts have shewn the danger of serious trouble arising from ministers dealing with such precarious merchandise, and this both to themselves and others.

I did not and do not place much reliance on this character evidence—much of it was clearly given gladly and with a desire to injure the minister; and I thought that much of it was given without a thorough understanding of the foundation upon which such evidence should be based.

At all events, from the conduct and demeanour of Mr. McC. in the box, I was and am convinced that he was telling the truth.