

she signed, and admits that on a former examination she denied having appended her initials. McFadden says that the attestation clause was probably read over in his presence before he signed, but he did not see the deceased sign. The trial was on 3rd December, 1903, and he was shewn a letter of the previous 29th June, written by him to William Connell. In this he says he cannot see his way to make an affidavit proving the will as a subscribing witness. He says he remembers quite well signing the will, but has no recollection of seeing the deceased do so. He says he had two letters from the solicitors of two of the sets of defendants making inquiries. At the trial he says positively that the deceased did not sign in his presence, that, although that happened 16 or 17 years ago, since then he has had a good deal of thought on the matter, and his mind has been greatly revived on it. He then said he did not know the deceased's signature, never saw him sign his name, never witnessed any other document for him, no never. He is then confronted by a deed made by the deceased on 16th January, 1888, witnessed by him, with an affidavit indorsed thereon sworn by him, which he was obliged to admit, but which he had forgotten.

Upon this evidence, absolutely contradictory as between William and Martin Connell on the one side, and McFadden and Annie Connell on the other, the learned Judge says he believes the latter. He thinks the occasion was so impressive that they would be likely to remember whatever was said or done by the sick person. He thinks it not impossible that William would get the signature of his brother before the witnesses were called in, and would be satisfied with the mere signatures of the witnesses without a complete compliance with the statute, that it is conceivable that, not being a lawyer, he thought a statement of compliance with the law as good as if actually done. . . . [Further reference to parts of the evidence.]

Now, I do not think there is any substantial conflict in all these statements, no greater discrepancy than might be expected after the lapse of sixteen years. Both McFadden and Annie Connell say Martin was present when they signed—McFadden says towards the door; Annie Connell says he was present at her left. William says when the witnesses came in Martin stepped out, stepped into the other room, and Martin himself, while relating with detail all that took place, says that when the witnesses came in he followed them to the door. I think all this evidence means that while the signing was going on Martin was standing in the dining-room just outside