

what purports to be a testamentary act on the part of an obvious incompetent. The opinion of the General Term in the Fricke matter attaches much weight to the testimony of the attorney who officiated at the execution of the will.

The attestation by professional men, either lawyers or doctors, of good character, is, therefore, presumptively a guaranty that the testator was mentally capable of executing and publishing the instrument. And this consideration suggests the prudence of having the testator's regular medical adviser, as well as the attorney drawing the will, sign as witnesses (unless, indeed, the latter be named as executor), if it be feared that opposition will be made to the probate.

The superstitious antipathy to will-making on the part of laymen finds its natural correlative in the prevailing persuasion that any will may be broken if distasteful to the heirs or next of kin. On this subject conscientious lawyers are obliged to reiterate many times in the course of a year certain legal truisms: There is no obligation, either of arbitrary law or implied contract, for the owner of property, real or personal, to devise or bequeath it to his blood relatives, or any of them.

A testator in possession of his faculties may do what he pleases with his own, save only that he cannot defeat his wife's dower in real estate, and that he must respect certain statutory prohibitions against charitable gifts and the creation of perpetuities. Undue influence does not consist in mere argument or persuasion, but in such personal ascendancy that the purpose and desire of the influencing party are substituted for those of the testator. Aphorisms might be multiplied, but the average lawyer can frame them for himself at his leisure. The truth is that a goodly percentage of will contests on the facts are without legitimate hope of success.

We do not feel called upon to decide for everybody the question of professional ethics arising when a testator has made an "unnatural" will, and a contest is proposed as a means of compelling a settlement. Legal questions as to the construction of wills are, of course, matters of legitimate controversy for practitioners. But we do believe that, on the whole, members of the bar are not as chary as they ought to be in advising contests, and that the prejudices and passions of clients are often humored when professional duty would require an uncompromising veto.

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