

on. I would not likely make such a statement." (Miss Stephens was not called.) "Her memory was not very good. I can't recollect whether the will was read over to her or not. I had no idea what was in it. Her mental condition was about the same as ever since she had a stroke about a year before." (According to Mrs. Wilson, the stroke was three years before she died). "If her husband would bring her a paper to sign, I think she would sign it. I did not hear the will read. It may have been read to her before I went in." Cross-examined: "She had lucid intervals when she was quite bright. I made affidavit of execution on the 15th January, 1911. She knew me when I came in. Her mental condition was impaired from the stroke—it varied—sometimes she was bright. I would not say myself about her mental condition. I would not contradict the nurse" (Matilda Glass, examined on commission.) Re-examined: "Nor Miss Grant" (a witness called by the plaintiff.)

A medical man who avouches a will by signing as a witness ought to be prepared to state that the person purporting to make the will had sufficient mental capacity for the purpose. See remarks on this subject in *Trusts and Guarantee Co. v. Fryfogel* (1914), 26 O.W.R. 330. They do not appear in the note in 6 O.W.N. 308.

The doctor speaks of her avowed intention to leave money for missions and beds in hospital. She told her cousin, Mary A. Grant, on the day the will was made, and after the doctor and the nurse came out, that she had left quite a sum of her money to missions.

And Miss Glass says (p. 5, questions 29 and 30) that, prior to the actual signing of the document, a remark was made between husband and wife about leaving some money to a public institution in St. Catharines and about some money for furnishing a window in the church. She also says, (p. 15, question 128): "Q. Did it appear to be of more or less passive obedience to any expression of his (the husband's) will to her as to what she ought to do and what not to do? A. Yes."

I find, therefore, against the will, and declare that the said Isabella D. Allan died intestate.

The plaintiff will have an injunction as prayed and his costs against the defendant, of course as executor only, i.e., out of estate of William B. Allan.