

tion competent to make a will, the disease is, as has been described, a fluctuating one; and there may be, in the course even of the second stage, days on which he is quite capable of appreciating the amount and nature of his property, the claims of those whom he may or may not benefit by his will, and the nature of the business that he is transacting."

The legal practitioners who drew and witnessed the wills are men of good standing in their profession, and men who are very well able to determine whether a man making a will appears to be of sufficient mental capacity. The solicitor who drew the first will was also well acquainted with the testator.

It is to be remarked also that the second will is a remarkably simple one. Nor is the first one at all complicated in its character. Neither of them is in any sense inofficious. It would not avail the plaintiff at all to destroy the second will and set up the first, because the defendant Inglis has effected a settlement with the mother of the testator, and so Mrs. Inglis would be in as good a position as she is with the probate of the second will. Both are attacked, but there is, of course, less question about the first than the second will.

The action must, therefore, be dismissed; but, under all the circumstances, without costs. I cannot possibly see my way to saddling the successful party with the plaintiff's costs.

LENNOX, J., IN CHAMBERS.

JANUARY 31st, 1913.

SCARLETT v. CANADIAN PACIFIC R.W. CO.

Damages—Apportionment—Fatal Accidents Act, 1 Geo. V. ch. 33, secs. 4, 9—Widow and Mother of Deceased—Separation of Husband and Wife—Basis of Apportionment—Costs and Expenses.

Application by the plaintiff, the widow and administratrix of the estate of George Scarlett, deceased, for apportionment, under secs. 4 and 9 of the Fatal Accidents Act, 1 Geo. V. ch. 33, between her and Jane Scarlett, the mother of the deceased, of the sum of \$1,000, the amount paid by the defendants as damages for the death of the deceased.

The widow and mother were the only persons entitled to share. The action was settled out of Court, before being set down for trial; the defendants paying \$1,000 for damages and \$100 on account of costs.