

over or explained to the testatrix, and it is alleged that her eyesight was so poor that she could not read it herself.

The defendant Ferguson stated that the reason which the testatrix gave for making the new will was that she was afraid that she would be left penniless. Of course this was absurd, and it was urged on behalf of the plaintiffs that it was a delusion, or at all events shewed that she did not know what she was doing or why she was doing it. It was not clear what she did mean, if she meant anything. I rather inferred . . . that what she meant was that, owing to the increased expenses incident to her illness, her estate would be cut down so that there would not be anything left to fall into the residue after making provision for the legacies. Whether this be the correct view or not, I do not think the evidence of a nature in itself to void the will, or upon which I can declare her incompetent to make a will.

The plaintiffs relied upon . . . *Collins v. Kilroy*, 1 O. L. R. 503; *Fulton v. Andrew*, L. R. 7 H. L. 448; *Tyrrell v. Painton*, [1894] P. 151; *Boyse v. Rossborough*, 6 H. L. C. 2; *Adams v. McBeath*, 27 S. C. R. 13; *British and Foreign Bible Society v. Tupper*, 37 S. C. R. 100; *Re Elwanger's Will*, N. Y. R. Supp. Feb. 22, 1909.

None of the cases cited closely resembles the facts in this case. . . . This is a case where the onus is upon the defendant to satisfy the Court that the testatrix had full opportunity to understand and did understand the contents of the will, and that she was a free agent at the time the will was executed. . . . Although the will was not read over . . . to the testatrix, there is the evidence of the nurse, which I see no reason to doubt and which I accept, that the will was read over several times by the testatrix herself. From the peculiar characteristics of the deceased and from the evidence, I entertain no doubt that she did in fact read the will and understand it. . . . If she understood the previous wills, it would require very little mental exertion to understand this one.

The testatrix having no near relatives, it was perfectly natural that she should benefit the person from whom she had received the greatest kindness and attention. That person undoubtedly was Mrs. Ferguson. So that, whether one regards the object of her bounty or the circumstances of the preparation of the will, I am of opinion that the defendant Ferguson has satisfied the onus cast upon her of shewing, in the language of Lord Hatherley in *Fulton v. Andrews*, "the righteousness of the transaction." . . .