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TESTAMENTARY CAPACITY.

It is not proposed to offer any abstract discussion on this subject, but merely to say a few words suggested by the opinion of the General term of the Supreme Court in "Matter of the Will of Fricke." The principles it lays down are, of course, not new, but there seems to be a perennial necessity for their re-statement. We have been much impressed at different times by the dread average laymen have of will contests. Many hesitate to make wills, because of fear of their being "broken," and a large part of the estate consumed in lawyer's fees.

Will contests are apt to be conspicuous litigations, involving a great deal of the emotional element, and thereby securing newspaper notoriety. It is, of course, true that several wills offered for probate in this county during recent years, and purporting to pass large estates, have been contested by relatives of the testators; and many, even among intelligent laymen, do not stop to recall that most of such contests proved futile. The Tilden will case is not in point, as no doubt as to testamentary capacity was raised, and the litigation over it involved questions purely of law.

As a matter of fact, how few wills in proportion to the number offered for probate are contested, and what a small ratio of the contests are successful! That a will was drawn and witnessed by a reputable attorney is *prima facie* a strong argument in favor of testamentary capacity. A lawyer, of course, may be deceived by latent mental defects, but certainly a practitioner of conscience and standing cannot afford to become a promoter of