

pneumonia, of a serious character. The will was drawn up on Saturday night between ten o'clock and two the next morning, and was signed by the deceased with a strong vigorous looking signature, nowise different from other signatures made by him when in health. The will was drawn, in a fair, legible hand, by his brother, the plaintiff William, who, although not a professional man, had been in the habit of drawing wills. The attestation clause is in the regular form, and has appended to it the undisputed signatures of one James McFadden, who was then a hired servant of the deceased, then living in his house, and of one Annie Connell, a niece of the deceased. There is an interlineation in the will, to which these persons also admittedly appended their initials in the margin. The will therefore on its face has all the requisites of a valid will. It is also undisputed that the will was signed by the deceased, and also by the two witnesses in the bedroom in which he was lying. From that time until the death of the deceased the will remained in the possession of the plaintiff William. The deceased recovered from his illness in a short time, and lived more than sixteen years afterwards, carrying on his business, and in the interval largely increased the volume of his estate. The widow testifies that some time during the following year after the will was made, she spoke to her husband, saying that she had heard he had made his will and had not left her much, and that he went on to tell her what he had left her, and others.

What we have here then is a will which, upon its face, appears to be made with all the formalities required by law, and believed by the deceased to be his will, and attacked after more than sixteen years for want of due conformity to the requirements of the law as to its execution, enjoined by sec. 12 of the Wills Act.

What that section requires is that "the signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator."

Now what the defendants say on the question of the due execution of the will is, that the signature of the testator was not made or acknowledged by him in the presence of the two witnesses; and that is the sole point, for it is not disputed that they attested and subscribed it in the presence of the testator, and it was not essential that they should have subscribed in presence of each other: Theobald, p. 30, and cases there cited.