

than when he deals with a single and separate piece of it by way of contract (as in the case cited). Where testamentary capacity is being investigated, the testator should be of reasonably sound mind, memory, and understanding, if the disposition he makes is to be sustained. More matters have to be weighed and considered in dealing with the one case of a part than with the other as to the whole of a man's estate. But always the result arrived at by the first tribunal has to be shewn to be decidedly wrong before it will be disturbed.

Having read over carefully all the evidence taken, including the examination of the parties before an examiner—the whole forming a very large mass of testimony—I see no ground upon which to disturb the carefully considered conclusions of the Judge who heard and saw the witnesses. I would myself have come to the same conclusion that he did upon the merits and upon the capacity of the testator. He has accepted as truthful the account given by the grandchild who drew the will, and that of the son who heard the contents of the will afterwards from his father; from these sources it is evident that the testator wished to change his will, and appreciated what he was doing before, at, and after the date of execution. A natural and reasonable account is given of the way in which it came to be made at the hotel kept by one of the witnesses, and a reasonable account is given of why it was not made public at the time. The total value of the estate is said to be about \$3,000, which will be considerably diminished by the drain of this litigation—the costs of which are given to both parties out of the estate.

The changes made by this will from the earlier one, made about three years before 1911, are only in minor details, and are referable to the desire of the testator to make these changes, as shewn in various parts of the evidence. Just before this will was made, he had a quarrel with the defendant, and told her that he was not going to keep her husband in his will as executor, and he also told Mr. Weir and spoke to the witness Bardy about wanting to have all Mrs. Weir's children share, as one had been left out in the former will. In the new will this was made right, and a change was made in the executors, leaving out Jundt. The testator also wished to leave out his daughter, the defendant; but, on talking it over with Weir, who drew the will, her name was mentioned as legatee for \$100.

In the earlier will, his wife was to get \$100 a year for life; but in the new will she was only to get \$300 as a lump sum: in both the adopted son is to get \$150. In the new will, after the payments of \$300 and \$150 and \$100 to the defendant, the