

The plaintiff alleges that, at the times the alleged wills were executed, the said Edgar A. Badenach was not of testamentary capacity.

Edgar A. Badenach died on or about the 5th February, 1910.

On or about the 28th September, 1910, letters probate were granted by a Surrogate Court to the defendant Annetta Blanche Badenach, now Annetta Blanche Inglis, of the last will and testament which was signed on the 10th June, 1909.

It is alleged that the deceased suffered from general paretic insanity, commonly known in the profession as G.P.I. The evidence, both of experts and laymen, is, as usual in such cases, contradictory and conflicting.

Without giving any close analysis of the same, I have come to the conclusion that the plaintiff has failed to satisfy the burden of proof which admittedly lies upon him. The great contest between the different sets of medical witnesses is as to the possibility in this disease of a period of remission or what is commonly known as a lucid interval.

A medical witness for the defence, whose experience as an alienist is probably greater than that of almost any person in the Province, testified that there might exist all the symptoms which the testator is said to have displayed—difficulty of walking, want of concentration, want of control of the sphincter of the bladder, and illusions of grandeur—and still there might be capacity to make a will; that there might be remarkable periods of remission when the mental irregularities would be quite in abeyance. In this statement he is strongly corroborated by the opinion of Dr. Mercier, of London, England, which was admitted without objection, and an extract from which here follows:—

“Lastly, the validity of a will made by a general paralytic may be in dispute. It is, of course, well established that a lunatic may make a will which will be upheld by the Court. The question in every case is, whether the testator was, at the time the will was made, of disposing mind; and the mere fact that he was then the subject of general paralysis will no more invalidate the will than the fact that he was suffering from any other form of insanity. There are general paralytics in whom the prominence of delusions, and the confusion of mind, are so continuous, that at no time in the course of the disease are they of disposing mind; but such cases are by no means the rule. Apart from the relatively prolonged periods of remittance and intermittence, during which the testator may be without ques-