

duary legatee. She had nothing to do with the preparation of either of these wills or of the codicil.

In October, 1908, the testatrix received an injury from a fall; she recovered, but was never able to get about as she had done before. She was under the care of a nurse, who was the sister of Frances Ferguson. In November she decided to change her will, and attempted to do so by obliterating certain portions of the will of 1906 and the codicil thereto. She then directed Frances Ferguson to take the will to a solicitor, a brother of Frances Ferguson, and ascertain from him whether or not the changes made in the will and codicil were legal, and if not to have it put in legal form. This she did, and, upon being informed that, as it stood, the changes were not legally made, he prepared a document from the will and codicil, retaining, notwithstanding their obliteration, the bequest of \$1,000 to Home Missions and \$1,000 to Mitchell, a relative. This document so prepared was taken back again to the testatrix, who upon reading it objected to the retention of these bequests, but signed it for fear of accident or sudden death, stating that it was her intention to have these changes made.

The effect of this will was further to increase the interest which Frances Ferguson would take; she became sole residuary legatee. Matters continued thus until January, when the testatrix gave instructions to Frances Ferguson to have further changes made, and instructed her to go to Hamilton to her brother for that purpose. This she did, and the will in question was executed on the 9th January, 1909. By it the gift to Mitchell was reduced from \$1,000 to \$100, and that to the Home Missions was eliminated altogether, and other legacies were reduced, thereby further increasing the interest of Mrs. Ferguson by \$2,500.

G. T. Blackstock, K.C., and T. M. Higgins, for plaintiffs.

G. H. Watson, K.C., for defendant Ferguson.

M. R. Gooderham, for the executors.

CLUTE, J. (after setting out the facts):—I find as a fact that at the time of the execution of the will the testatrix was not suffering from senile dementia, and was capable of making a will. There is no direct evidence of undue influence or of any influence exercised by the defendant Ferguson upon the testatrix. This concludes the question, unless, as was urged on behalf of the plaintiffs, having regard to the age of the deceased and her enfeebled condition, and the manner in which the will was prepared, the will ought not to stand. . . .

The will was prepared from instructions taken by Frances Ferguson, the chief beneficiary, by her brother, and was not read