

initiative as to the disposal of her property. I thought it unfortunate that his attention had not been called to the testamentary operation then in course of completion, and his judgment obtained as to what had occurred that morning. Doubtless, the condition in which the patient was found, between giving the instructions and the execution of the will, was due to some exhaustion occasioned by the effort to make known her wishes, which she had thought out before; but she was quite able to rouse herself or be roused to attend to the final act of signature after the consulting doctor had departed.

The facts that the beneficiaries had not in any manner intervened to shape the provisions of the will, and that the family physician was fully satisfied that the testatrix knew what she was doing, and intended to do as she did with her property, may serve to explain why the opinion of the other medical man was not sought as to her capacity to make a will.

There was no justification for imputing undue influence in the obtaining of this will; there was some justification for alleging insufficient capacity, in view of the opinion of the doctor called in contemporaneously with the completion of the will. But, upon the evidence taken, I had and have no doubt that the will is in every respect a valid instrument.

The whole amount of the estate is under \$6,000. So far as the costs arose from alleging undue influence, the plaintiff should pay them. As to the rest of the costs, the question is, should the plaintiff be relieved from their payment? For I cannot agree that these costs of litigation should be borne by the estate. The common law rule is, that the loser is to pay the costs; the equity rule is, that the costs are in the inherent power of the Court to deal with . . . *Corporation of Burford v. Lenthall*, 2 *Atk.* 551, 552.

In testamentary and other causes, these rules may be blended, with this result, that costs may properly be ordered to follow the result unless good reason appears to disturb this direction. . . . Was the plaintiff justified in claiming judicial investigation into the making of the will? . . .

The plaintiff had no expectation of any benefit from the deceased; he relied apparently upon the opinion of the occasional physician, upon what that physician himself recognises as a far from thorough examination; he charges undue influence rashly, and makes but a futile attempt to prove a lack of sufficient capacity, by the examination of experts whose conclusions fail to take into account the well-proved and the real facts of the transaction. . . .