No. 13109

Supreme Court of Illinois

Roe

vs.

Taylor

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STATE OF IL

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vs

Taylor

SUPREME COURT

—OF THE—

STATE OF ILLINOIS.

THIRD GRAND DIVISION.

JOHN ROE, ELEANOR ROE, MARY FRANCES ROE, *et. al.*
Appellants.

v.

MASON TAYLOR, *Appellee.*

ARGUMENT

—BY—

EDSALL & CRABTREE.

OREGON, ILL:
J. SHARP, PRINTER, OGLE COUNTY REPORTER OFFICE.
1867.

SUPREME COURT OF ILLINOIS.

Third Grand Division.

September Term, A. D. 1867.

JOHN ROE, ELEANOR ROE, MARTHA ROE, AND MARY FRANCES ROE, BY G. BOLIVAR ROE, THEIR NEXT FRIENND, and G. BOLIVAR ROE, *et. al.*—*Appellants.*

vs.

MASON TAYLOR, *Appellee.*

Argument for Appellants.

May it Please the Court:

This was a bill in chancery, filed in the Court below, under the sixth section of the Statute of Wills, (Scates' Comp. 1,181, § 6,) to contest the validity of the will of one George Taylor, deceased, for alleged want of testamentary capacity. The bill also charged, that the will was the result or offspring of insane delusions, under which said George Taylor was alleged to have been laboring; and that the execution of the same was procured by the undue influence of G. Bolivar Roe.

The cause was tried at the June Term, 1867, of the Ogle Circuit Court, which resulted in a verdict against the validity of the will, and a decree declaring the same to be void and of no effect.

I.

The Verdict was against the evidence.

While we are convinced that the evidence clearly shows that the deceased made and executed the paper propounded as his will, with intelligence and understanding; and that the same embodies his wish and desire, as to the disposition of his property, and under the facts of the case, when viewed in the light of the salutary rules of law established by the Courts for the protection of the aged and infirm, the will ought to stand, we shall not here occupy the necessary space to discuss this branch of the case *in extenso*, but will simply refer to the evidence, the material parts of which are fully stated in the printed abstract.

II.

The Court below erred in rejecting competent evidence offered by the Appellants.

1. The paper produced as the will of the deceased, bears date, and appears to have been executed July 25, 1864. The will is sought to be impeached by the Appellee, Mason Taylor, as appears from his bill, first on account of general imbecility of the testator; second, that the will was the result of insane delusion of the deceased prejudical to him, Mason Taylor; and third, that such insane delusion was stimulated by, and that the execution of the will was procured by the undue influence of the Appellant, G. Bolivar Roe, who is the father of the other appellants of the name of Roe.

For the purpose of disproving this charge, that the execution of the will was procured by the undue influence of the father of these children, and to show that the provisions of the will so far as the same were favorable to these children, were in substantial conformity to the previous declarations and expressed purposes of the

testator, made anterior to the date of such alleged undue influence —the appellants (defendants below) offered in evidence a former will of the deceased, made September 12, 1860. (Abstract page 26, 27].

This evidence was excluded by the Court, at the instance of the appellee, to which the appellants excepted. It will be observed that by this will the sum of one thousand dollars was bequeathed to Eleanor Roe, (the mother of these children, and who died before the date of the second will,) over and above her interest in the residue of the estate, which she was to share equally with her two brothers—Mason and Samuel Taylor.

The authorities clearly establish that this was competent evidence for the purpose for which it was offered.

1. *Redfield on Wills*, p. p. 526, 546.

"And it is obvious that in cases of alleged undue influence, it must have a controlling effect upon the validity of the will, whether the testator's previous declarations of affection, and intention, confirm the will or not."

1. *Redfield on Wills*, p. 526—536.
Allen v. *Public Adm'r*, 1 Bradf. Sur. Rep. 378.
Neel v. *Potter*, 40 Penna. State Rep. 483.
Love v. *Johnson*, 12 Ired. 355.
Hughes v. *Hughes*, 31 Ala. 519.
Means v. *Means*, 5 Strobh. 167.

"And unpublished wills are admissible upon this question."

1. *Redfield on Wills*, 537.
Love v. *Johnson*, 12 Ired. 345.

2. The witness Tersey Taylor, after having been examined in chief on the part of the appellee; and after being permitted to state on her direct examination, against the objection of the appellants, her opinion that George Taylor was of unsound mind at the time of making his will; on her cross examination by the appellants was asked the following question: "Did you have any business transactions with George Taylor, or make any purchases from him, during the time you lived in his house in the summer of 1864, and about the time the

matter occurred in regard to him, to which you have referred in your direct examination? If so, state what such transactions were, and whether he understood the nature of the same, and how he conducted himself in regard thereto.

This question was objected to by the appellee, and the objection was sustained by the Court, to which the appellants excepted. (*Abs. p. p.* 35—35.) This we think was erroneous. It would seem to be sufficiently objectionable to permit this old lady, who made no pretensions to scientific or professional skill, in relation to the subject of insanity, to give her opinion of the insanity of the deceased; but when we are denied the right, upon cross examination, to test the soundness of her opinion, by showing that she, at the time she declares Mr. Taylor "was of unsound mind," had business transactions with him, and to show what such transactions were, and whether he understood the nature of the same, and how he bore himself in regard thereto, it is manifest that we are deprived of one of the most efficacious tests which the law has devised for the discovery to truth.

1 *Greenl. Ev* § 446.
Ray v. *Bell*, 24 Ills. 444, 450.

In the case last cited, the following *is held by this Court.* "The ruling of the Court in sustaining the objection made by the defendant to the question put to the witness Crane, on his cross examination by the plaintiff was wrong. Though it had no direct bearing on the merits of the contraversy, and would have disclosed only that the witness, on a former trial of the cause had been contumacious, yet it went to show the state of his feelings towards the plaintiff. Great latitude is allowed on a cross examination, as it is one of the most efficacious tests for the ascertainment of truth."

The case at bar is much stronger than the one cited above.—The subject matter of the question which was thus excluded, did have a direct bearing upon the merits of the present controversy,—that is, whether George Taylor had sufficient capacity to make the Will in question, with reason and understanding. It was a proper and fair way of showing this, (on cross examination at least,) that at about the time of the execution of the will, he engaged in other business trancactions, which he fully understood and comprehended.

III.

The Court below erred in admitting evidence offered by the appellees.

1. The witness Esther Wood (*Abs. p.* 30,) was asked the following question by the counsel for the appellee, (complainant below.)

"Did you at the time, from the peculiarities which you observed in the deceased, and which you have now testified to, form an opinion as to his mental condition as to whether it was sound or unsound, on the subject of the stealing he talked about?"

This question was objected to by the appellants on the ground that it did not appear that the witness was an expert, and competent to give an opinion upon the subject. The objection was over ruled by the Court, to which the appellants excepted; and the witness answered:

"I think I have stated that I did not think his mind sound. I think he had not his right mind, not as he had been before. I did not discover it until after his sickness."

The witness Caleb B. Boyce, on his direct examination by the appellee, was asked the following:

"*Question:*—From your acquaintance with George Taylor, and your observation of his conduct, that you have testified to, did you at the time of these conversations in 1864, consider him of sound or unsound mind?"

Which was objected to by the appellants on the ground that the witness did not appear to be an expert, and competent to give an opinion on the subject. The objection was also overruled by the Court, and the witness proceeded to answer the question as follows:

"In the summer of 1864, I considered Mr. Taylor of unsound mind. It is still my opinion." (*Abs. p.* 32.)

The same question was propounded to the witnesses, Addy, Harrison, Stinson, Chaney, Benj. Boyce, Thomas Stinson, Tersey Taylor, Luman Taylor, and Samuel Taylor, none of whom claimed to possess professional skill upon the subject of insanity; to which in succession, the same objection was made by the appellants, and overruled by the Court, and exception saved by appellants. (*Abs. p. p.* 32 to 38.)

These exceptions raise the question as to whether it is competent to show the opinion of an unprofessional witnesses in reference to the alleged insanity of the person whose state is the subject of inquiry.

1. There is undoubtedly much conflict of authority upon the subject. Many of the authorities upon either side of the question are collated and discussed in 1. *Redfield on Wills*, p.p. 137 to 146, in reference to which the author says: "This presents a considerable array of authority, sufficient we think to allow any Court to decide the question in that direction, unless it regards the true principle applicable to the case, as lying in the opposite direction." *Id.* 144.

The general rule that witnesses must speak to facts, and that mere opinions were not admissable, is too well settled to admit of discussion; and it is only on questions of science, skill, or trade, or others of similar character, that the rule is departed from, and persons of skill, generally called experts, are permitted to give their opinion in evidence. Thus, the opinions of medical men are constantly admitted as to the cause of disease, or of death, or the consequences of wounds, *and as to the sane or insane state of a person's mind*, as collected from a number of circumstances, and as to other subjects of professional skill.

1 *Greenl. Ev.*, § 440,
1 *Phil. Ev.*, (Cowen & Hill's Notes,) 778—779.

It must be conceded that the opinions of unskilled or unprofessional witnesses, are not competent to be given in evidence upon the question of insanity, unless this subject is of such a peculiar character as to form an exception to the general rules of evidence.

The question is fairly stated, and examined with great ability and research, by Mason, J., who delivered the opinion of the majority of the Court of Appeals of New York, in the case of *De Witt* v. *Barley*, 5 Seld. 371.

In that case the learned judge states the question thus: "The only question necessary to be considered, in this case is, whether the opinion of witnesses who are not medical men, and are not claimed to be experts, are admissable as evidence on the question of the capacity of the grantor of lands, when given in connection with the facts and circumstances relied on to prove the incapacity, and where the witnesses have had personal acquaintance and intercourse with the party, and state the facts on which the opinion is based." *Id.* 374.

This statement of the proposition is quite as favorable to the appellee as the facts of the present case will admit. We presume it can make no difference whether the occasion of the inquiry is, whether the party had the capacity to make a valid will, or a valid conveyance of lands. After having reviewed the authorities bearing upon the subject, at length, and having shown that the Courts in which such testimony had been admitted, had adopted the opinion of the Ecclesiastical Courts in England, without sufficient consideration of the principle upon which those decisions rested, the opinion proceeds:

"It remains to be seen whether the principles upon which such evidence has been admitted in the Ecclesiastical Courts, and in the American Courts which have adopted their rule, are sound. Such evidence is admitted under that exception to the general rule excluding opinions, which admits them where the facts are such that from their nature or number it would be impossible for the witness to bring them before the jury."

It is admitted upon the ground that positive and direct testimony is wholly unattainable to accomplish the purposes of evidence —that there is such an inability in witnesses generally, to detail the facts which furnish the evidence of insanity to their own minds, that their opinions furnish the only available evidence of the truth in

such cases. The case is held to be analogous to that of personal identity and handwriting, where the rule is well settled that opinions are admissable within the principle above stated. The cases are widely different. Where a witness deposes to personal identity, or to handwriting, he states a conclusion of the mind, which is but an opinion, we concede, but it is an opinion founded on the sense of sight alone, and where the reasoning powers are very little taxed, not much more so than in giving the color of a horse. The pronouncing an opinion upon the question of a man's sanity or insanity is a very different thing. It requires in many cases the most comprehensive knowledge of the various mental phenomena, and especially of those which characterize disordered states of the mind. It seems to me that the principle upon which the opinions of medical or scientific witnesses are admitted precludes the idea that laymen in general are competent to give an opinion in such cases. That principle is, that the phenomena which indicate unsoundness of mind, in many cases, lie so much beyond the scope of observation and experience of ordinary men, that twelve jurors, although having before them all the facts from which the witnesses are to found their opinions, may not arrive at a correct conclusion from those facts, without the aid of opinions from men of greater experience and more extensive knowledge upon that particutar subject. The reasons which lead to a distrust of the unaided conclusions of the jury in such cases, bear with equal if not with greater force against the opinions of ordinary witnesses. Thus the very authorities which allow the opinions of witnesses to be given, upon the assumed ground that the facts upon which they are based cannot be proved, declare the opinions to be entitled to little or no regard unless supported by the facts. This qualification of the rule amounts to a practical rejection of the opinions, for what is disregarded is practically rejected. I have examined most of the American cases, and several of those in the ecclesiastical courts, admitting such evidence, and the rule to be extracted from them all is, that after the witness has stated the facts and circumstaces, then his conclusion or opinion derived from and resting upon them may be given. This is recognized as the extent of this rule in the opinion in this case delivered in the Court below. It is

there said that 'the witness, after stating the facts and circumstances, may give his opinion derived from them and resting upon them for the consideration of the jury, though the opinion may have little or no weight, unless appearing to be supported by the facts and circumstances proved.' All the cases agree that the opinions of lay witnesses, based upon facts detailed by other witnesses cannot be received. These absurdities, therefore, result from the decisions admitting this species of evidence. Recognizing the general rule that opinions are not evidence, they are admitted in these cases as an exception to that rule, on the ground of the inability of the witness to communicate the facts and circumstances upon which such opinions are founded, and yet the witnesses are required to state those facts and circumstances before giving their opinion. The opinions are admitted also on the ground that the jurors may not be able without them to draw correct conclusions from the facts and circumstances, and the jurors are then instructed to give the opinions no weight 'unless appearing to be supported by the facts and circumstances.' And again, the opinions of witnesses possessing skill and science are admitted from a necessity based upon the assumed unskillfulness of the jurors, when the opinions of witnesses equally unskillful with themselves are allowed to be submitted to them as evidence to guide their judgment. A rule so fraught with contradictions ought to be more strongly forfeited by reason and authority than I find this to be, before giving it a place among our established principles of common law. It seems to me clear that when the matter is of such a nature that it may be presumed to be within the experience of men of common education, moving in the ordinary walks of life, that there is no room for the evidence of opinion; that it is for the jury to draw the inference. (7 *Cush.*, 321; *Best's Prin. of Ev.*, § 349.) The very reason upon which medical opinion is allowed in such cases forbids the idea that opinions of layman in general can be received.

"The rule which admits the opinions of layman in such cases can have no foundation upon any principle known to the law of evidence, if the opinion be limited, as it has been in all of the ad-

judged cases thus far, to stating a conclusion or opinion of the witness upon the facts detailed by himself. If we are prepared to go the whole length of the rule which obtains upon questions of identity of persons and property, and of the proof of handwriting, and say that the opinions of the witnesses in such cases shall be the controlling evidence to govern the jury, because of the inability of the witnesses from the nature and character of the facts to properly bring them before the jury, then the rule may be said to be based upon principle. This rule makes the opinion of the witness the evidence, because the facts are of such a character that they cannot be brought before the jury. The rule, therefore, in such cases, is founded in necessity, and the opinion must be the controlling evidence because of such necessity. It is sufficient to say that no court has ever given such effect to the mere opinion of laymen in cases of this kind, or placed the admission of such evidence upon this broad principle. Nor can the rule above stated with any propriety be applied to a case like the present. There is no such insuperable difficulty in describing the mental manifestations which are relied upon in any case to prove insanity as there is in cases of personal identity and handwriting. Those manifestations which usually attend a sound mind are made familiar to all by the intercourse of all classes of men, and the evidences or mental manifestations which charactize insanity, so far as they fall under the observation of men generally, are of that character which witnesses can describe or relate. They generally consist in acts or words, and frequently in both combined, and there is no more difficulty in describing or relating them to a jury than there is in many other cases where the witness is required to state the facts and circumstances, and is not permitted to give his opinion upon the conclusions to which they lead."

9 N. Y., (5 Seld.) Rep. 371, *De Witt* vs. *Barley*.

We have fully quoted from the opinion in this case for the reason that it presents the most thorough discussion of the question, upon principle as well as authotity, with which we have met; and the conclusion arrived at is, that this species of evidence is inadmissable at common law, and that while it was received in the ecclesiastical Courts of England, it was invariably rejected by the English common law courts, as well as elementary treatises upon evidence. *Id.* 387.

In the case of *Van Horn* vs. *Keenan*, 28 Ill., 449 it is said: "Persons, other than medical men, no matter how intelligent they may be, are incapable of pronouncing on the true condition of mind of any one. They are ignorant of the diagnosis of insanity or mental weakness; and so are physicians in the general practice, for the most part. No one who had made this branch of medical jurisprudence his especial study was examined in this case, and no judge ought to be satisfied with the crude opinions given by most of the witnesses. We were not satisfied with them and therefore sought the opinion of the eminent head of the Asylum for the Insane," etc.

If so little reliance can be placed upon the opinions of most physicians in general practice, it would seem that the opinions of witnesses possessing no knowledge or skill whatever upon mental diseases would tend rather to confuse a jury than to aid them in forming an intelligent verdict upon a question of mental soundness.

2. It has already been observed that the common law courts of England reject this species of evidence; while it is received in the ecclesiastical courts there.

1. *Redfield on Wills*, p. p. 139, Note 6, and 145.

The principle ground of distinction claimed to exist in the two courts, is the want of jury trials in the ecclesiastical courts. The reason why the common law courts should not transplant this rule of evidence, which obtained in the ecclesiastical tribunals were cogently expressed in the House of Lords by Coleridge, J., *Wright* vs. *Tatham*, (5 Clarke & Fin. 692). He said: "But we are pressed with the authority of the ecclesiastical courts—that this is a subject over which they have jurisdiction, and with which they are in practice very conversant. I agree in the great convenience of having but one rule of evidence in every court in which the same subject matter comes for decision; and filled as the judgment seats in those courts are and have been for many years, these decisions will be re-

ceived by no one with more respect than myself. I do not therefore presume to question the decisions referred to; but when a rule of evidence is sought to be imported thence into the courts of common law, I remember that the rules of evidence are technical; framed and wisely framed, in reference to the tribunal in which they are to be applied; *and that which may be a safe rule where the same judge decides both the law and the fact may be dangerous when the fact is entrusted to a jury.*" Our Statute is imperative that the issue *devisavit vel non* shall be submitted to a jury. *Scates' Comp.* 1181–2, § 6. Every consideration, therefore, which would induce a court of common law to exclude such evidence applies with equal force to our mode of trying this question.

Moreover: we have adopted the English common law by express Statute, (*Id.* 720,) which would include this rule of evidence. It cannot be said that the same is not of a general nature and not applicable to our circumstances; and unless it is so, the Statute declares that it "shall be the rule of decision and shall be considered as of full force, until repealed by legislative authority."

Scates' Comp. 720

If it is desirable that the common law rule of evidence should be supplanted by that which prevails in the English ecclesiastical courts upon this subject, it is the province of the legislative and not the judicial authority of the State to make the change.

IV.

The Court erred in modifying instructions asked by appellants.

The instructions numbered 3, 4, 8, and 10, which appear upon pages 40 to 42 of the printed abstract were each modified by the Court by inserting therein the words included in brackets. These instructions, we submit, fairly expressed the law applicable to the branches of the case to which they relate, and that the modifications if not positively erroneous were unnecessary and only served to make the instructions unintelligible to the jury, and to give the

jury the impression that they could not escape the conclusion that the deceased was laboring under "some insane delusion" at the time of executing the will in question.

We do not claim that the law upon this branch of the case should not be given to the jury; but we insist that it was unfair to inject this proposition, parenthetically or otherwise, into every instruction asked by appellants, without any regard to its pertinency to the subject matter.

The modification of instruction No. 8, (Abs. p. 41), we think is clearly erroneous. As we understand the law a party may be affected with some "morbid and insane delusion," and still be competent to make a valid will. The "*some morbid and insane delusion*" may not have any influence whatever in producing the will. The mere fact of the existence of insane delusion is not sufficient to invalidate the testamentary act. To have this effect "*the testamentary disposition must clearly indicate that they have been formed under a delusion.*"

1. *Redfield on Wills*, p. 85, 86.
Taylor's Med. Jur., 656.

In other words, it should affirmatively appear that the will was produced by, or the off-spring of, such delusion.

1. *Redfield on Wills*, p. p. 79, 80, 127, 128,
Dunham's Appeal, 27 Conn., 192

This modification, if it were to be attached to the instruction at all, should itself been qualified as above indicated.

V.

The Court erroneously refused instructions asked by the appellants.

1. The instruction numbered 17, (*Abs. p.* 42,) is as follows:

"The issue which the jury is to determine by their verdict is, whether the writing produced in evidence be the will of George Taylor or not."

The statute defines the issue to be submitted to the jury in a trial of this kind thus: "An issue at law shall be made up *whether the writing produced be the will of the testator or testatrix or not, which shall be tried by a jury*," etc.

Scates' Comp. p. 1182, § 6.

It would seem that words could not be more fitly chosen to paraphrase the statute and put the same in the form of an instruction than the above. It is believed that no legal objection can be urged against this instruction, and why it was refused it is difficult to perceive.

2. The following is a copy of instruction number 18 (*Abs. p.* 42,) which was also refused:

"If the jury believe from the evidence that the paper read in evidence as the will of George Taylor was reduced to writing at his request, and signed by him, or by some other person in his presence and by his direction, and attested in the presence of said Taylor, by two or more credible witnesses, at his request and in the presence of each other, then the same was executed with sufficient legal formalities to constitute a valid will, and in case the jury also believe that said George Taylor was 21 years of age and upwards, and then had sufficient mental capacity to make a will, as stated in the other instructions, the jury should find such paper to be the will of said George Taylor."

The recital of facts following the words: "If the jury believe from the evidence," contain everything essential to the valid execution and publication of a will.

Scates' Comp. 1180, § 2.
1 *Redfield on Wills*, p. 214, Note 30.

Inasmuch as George Taylor's name was at his request signed to the will be the witness Smith, it was eminently proper that the jury should be informed in the language of the statute that the same was a sufficient signing of the will.

If the facts were found by the jury to exist upon which the conclusion of the instruction was predicated, then we submit the mere formal execution of the will was legally sufficient; and the instruction should have been given. The same was so qualified as to refer the question of requsite mental capacity to make a will, to other instructions.

3. In the case of *Converse* v. *Converse*, 21 Vermont Rep., 168, it is held thet a party had testimentary capacity, if he was at the time capable of understanding the nature of the business and the elements of the will; that is, the nature and extent of his property, and the persons to whom he meant to convey it, and the mode of distribution. In another case it was held sufficient if the testator knew what he was doing, and to whom he was giving his property.

Horne v. *Horne*, 9 Iredell 99.

The learned author of *Redfield on Wills*, says (Vol. 1. p. 126, Note 25,): "This is about as acurate and brief a definition as can be given." So, it is held that neither peculiarity of character, weakness of understanding or want of capacity to transact the ordinary business of life, will disqualify one to execute a will.

Hall v. *Hall*, 17 Pick., 373.

It is enough if in the making of his will, and at the time of making it, he understands what he is doing.

1 *Jarman on Wills*, 52, 53.
Harrison v. *Rowan*, 3 Wash. C. C. Rep. 385.
Stevens v. *Vancleve*, 4 *Ib.*, 262.
Kinne v. *Kinne*, 9 Conn, 102.

The instructions numbered 20, 21, 23, and 26, (*Abs. pp.* 43, 45,) fairly state the law as established by the best considered cases and the standard text books, upon this branch of the case, and we insist that they ought to have been given.

4. The instruction No. 22, after reciting hypothetically the material points in the testimony bearing upon the question of the alleged insane delusion, concludes thus: "And if the jury believe from all the testimony that such deductions and conclusions, on the part of said testator, are but natural and consonant with said testator's former belief, and what most persons in advanced years might believe, that such evidence does not establish an insane delusion or monomonia in said testator, and the jury should find accordingly on that proposition." (*Abs. p.* 45.) It is plain that if the circumstances surrounding Mr. Taylor generated in his mind only such belief or convictions as most persons in advanced years might entertain, the same falls far short of establishing or insane delusion or monomania.

5. The following instructions asked by the appellants were also refused: "No. 24. The jury are instructed that neither advice, argument or persuasion will vitiate a will made freely and from conviction, although such will might not have been made but for such advice or persuasion."

"No. 25. That undue influence within the meaning of the law, which will invalidate a will, is that degree of influence which deprives the testator of his free agency, and makes the will more the act of the party influencing, than of the testator himself." (*Abs. p.* 45.)

No principle of law can be more firmly established upon authority than that enunciated in these instructions. In the case of *Chandler* vs. *Ferris*, 1 Harrington Rep. 454, 464, it is held that "neither advise, nor argument, nor persuasion, would vitiate a will made freely and from conviction, though such will might not have been made, but for such advice and persuasion." This rule is quoted with approbation in 1 *Redfield on Wills*, 522. This same author also says: "As it is said in Swinburne, it is certain the Courts cannot assume to measure and to guard against every species of influence which may be brought upon the testator, to give his property in a particular direction. It is only that degree of influence, which deprives the testator of his free agency, and makes the will

more the act of others than of himself, which will avoid it." *Id. pp.* 521, 532, 534.

"With respect to a will obtained by influence, it is not unlawful for a man by honest intercession and persuasion to procure a will in favor of himself or another person. Neither is it to induce the testator by fair and flattering speeches; for though persuasion may be employed to influence the dispositions in a will, this does not amount to influence in the legal sense; and whether or not a capricious partiality has been shown the Court will not enquire."

1 *Williams on Executors*, 43–4

"But the influence to vitiate an act must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of the testamentary act; further, there must be proof that the act was obtained by this coercion; by importunity which could not be resisted; that it was done merely for the sake of peace; so that the motive was tantamount to force and fear."

1 *Williams on Executors*, 44.
Gardner v. *Gardner*, 22 *Wend.* 526.
Williams v. *Goude* 1 Hagg. Eccl. Rep. 577, 581.
Willard on Executors, 91, 92.
1 *Jarman's on Wills*, 37–41.
Allen v. *Public Administrators*, &c., 1 Bradf. Sur. Rep. 378.
Farr v. *Thompson*, Cheves' Law & Eq. Rep., 37.
O'Neal v. *Farr*, Richardson, 80–84
Duffield v. *Harris*, 2 Harrington (Del. Rep.) 375–384.

Authorities might be multiplied to the same effect, but the above are deemed amply sufficient to show that these instructions correctly state the law, and that the refusal of the Court to give them was erroneous.

The influence of this error upon the verdict will be more apparent when it is observed how artfully the vague expression "*undue influence*" is insinuated into the instructions given in behalf of the appellee. The jury are nowhere told what is really meant in

law by the phrase *undue influence;* yet the instructions on the part of the appellee are so expressed, as we shall presently show, as to make the fact of its existence a controlling issue before the jury; and they are even told to infer its existence from the provisions of the will itself. It was clearly the duty of the Court to give the jury the legal definition of *undue influence.*

The rule established in this Court is, that instructions ought to be full and explicit on a given subject.

Barbour v. White, 37 Ill. 164, 170.

In the case last ~~sighted~~ cited it is said: "It is objected that these instructions leave wholly to the jury to determine what is reasonable diligence, without any information as to what the law means by that phrase, as applied to a case like the present. The exception is well taken. Although the instructions declare a correct legal principle, they might easily lead a jury estray. If unaware that the law requires a mortgagee to take immediate possession after forfeiture, the jury might suppose, under these instructions, that a week or ten days would be no unreasonable delay. We might say, since the instructions are correct, as abstract propositions, if the defendants desired the law to be more specifically laid down, they should have asked an instruction as to what amounted to reasonable diligence, but it appears that when they asked their seventh instruction, to the effect that if Beers remained in possession after maturity of the mortgage, such possession was fraudulent as to Mayher, the Court qualified the instructions by adding the same general language employed in the plaintiff's instructions. As the case must, in any event, be reversed on another ground, the Court below, at the next trial, should qualify the plaintiff's third and fourth instructions, by explaining to the jury what, in this case, reasonable diligence would be."

37, *Ill. Rep.* 170. 171.

There is certainly as much necessity for explaining to the jury the legal meaning of the phrase *undue influence*, as there is for telling them what acts amount to *reasonable diligence* in the case cited.

So it is held that instructions containing the phrase "Color of title" or "legal possession" are erroneous when they fail to define what is "color of title" &
Blanchard v Pratt 37 Ills 243

VI.

The Court erroneously instructed the jury on behalf of Appellee.

1. The following instructions were given at the instance of the appellee upon the subject of *undue influence*: No. 2. (*Abs. p.* 46.) "The jury are instructed upon the question of undue influence, that it is not alone the extent, but also the character of the influence, which the law regards in passing on the question whether such influence is unlawful, and that if the jury believe from the evidence, that at and before the time of making such will, the said George Taylor was in a condition of mind susceptable of being easily influenced or controlled, and that said will, (when judged by principles of natural justice,) makes an unjust distribution of the testator's property, among those equally entitled to the testator's bounty, and that any degree of influence, however slight, was used by any person to procure such unjust distribution; and that the will was made by reason of such influence, the law regards such influence as unlawful, and the jury should, in that case, find against the validity of said will."

No. 9. (*Abs. p.* 47.) "If the jury believe from the evidence that at and before the time of making such will, the said George Taylor was in a condition of mind susceptable of being easily influenced or controlled, and that the will itself is one giving unequal advantages to the children of defendant Bolivar Roe, and that said Bolivar Roe was in a position to have brought influence to bear upon the said George Taylor, the jury have the right to require that it should be proved with reasonable certainty that the will was the offspring of the free agency of the said George Taylor."

No. 11. (*Abs. p.* 47.) "If the jury believe from the evidence that the mental condition and circumstances of said George Taylor, at and before the time of making such will, were such as gave an opportunity for the exercise of undue influence, and the will

itself is such an instrument as indicates that the opportunity had been embraced, and influence unduely exerted, the argument will be direct from the effect to the cause best calculated to have produced it, and the presumption will be against the validity of the will, until the contrary is made to appear.

Waving for the present the objection to these instructions, to which we have adverted above, that the legal meaning of the term *undue influence* is left unexplained, we insist they otherwise grossly mistake the law.

The predominant idea which runs through those three instructions is simply this: The jury are told in effect that if they believe from the evidence, that George Taylor, at the time of making his will, was in a condition of mind susceptible of being easily influenced, or controlled, and that the will itself is one which in the estimation of the jury gave unequal advantages to the children of Bolivar Roe, that is—we presume—if the will gives to these children a greater share of property than was given to Mason Taylor—and if the jury further believe, that Bolivar Roe had an opportunity to bring influence to bear upon the testator, to procure the will to be thus made, the legal presumption arises, that such opportunity was embraced, and that the will was procured by the exercise of undue influence, on the part of Bolivar Roe, and the jury should find against the validity of the same, unless such legal presumption was rebutted by affirmative proof.

Fraud and *undue influence* in procuring the execution of a will, are nearly synonymous. 1 *Redf. on Wills*, 510. Indeed, undue influence, in its legal sense, is a species of fraud or duress. We presume it will scarcely be contended that a legal presumption of fraud would arise from the supposed facts recited in either of these instructions. It is even held to be error to submit the question of the fact of undue influence to the jury, upon evidence so slight as that upon which those instructions are predicated and *a fortiori* is it error to tell the jury from such facts, "the presumption will be against the validity of the will, until the contray is made to appear." It is held that "undue influence to avoid a will, must be such as to overcome the free agency of the testator, at the time

the instrument was made. It must be a present constraint, operating upon the mind of the testator at the time of the testamentary act. And where undue influence was charged upon the executor, and no evidence was given of any influence exerted by him over the testatrix, at the time of making her will, nor of any fraud, misrepresentation or constraint of any kind whatever in procuring a will in his favor, *it was held to be error to submit the question to the jury, whether any such undue influence had been exerted.*"

Eckert v. *Flowry*, 43 Penn. St. Rep.. 46.
1 *Redfield on Wills*, 533–4.
Earl Sefton v. *Hapgood*, 1 Foster & Finlayson, 578.
Lovett v. *Lovett*, Id., 581.

It is not pretended that any relation of special trust or confidence, such as that of attorney and client, or guardian and ward, existed between Bolivar Roe and George Taylor; and any special rule applicable to the case of a party in whose favor a devise is made, who holds such a fiduciary relation to the testator, has no bearing upon the present case. It should be observed that there is not only no affirmative proof of effort, or influence, on the part of Bolivar Roe to procuree the making of the will; but the evidence shows that the will was in fact made when he was not present, and when the testator was surrounded by disinterested persons. If a client, under such circumstances, should execute a will in favor of his attorney, there would exist no ground to suspect improper influences on the part of the attorney to procure the devise in his favor.

Wilson v. *Moran*, 3 Bradf. Sur. Rep. 172.

The full strength of the appealee's case, upon this question of undue influence, when set out in its strongest light, is that (1) the testator, at the time of making his will, was in a state of mind susceptible of being easily influenced; (2) that Bolivar Roe had an opportunity to bring influence to bear upon the testator,—that is—that he was accustomed to visit him and; (3) that the provisions of the will are more favorable to the children of Bolvar Roe than to Mason Taylor, and perhaps is not such a will as the jury thought the testator ought to have make. Upon this sup-

posed state of facts the jury are told that "the presumption is against the validity of the will until the contrary is made to appear."

The authorities establish a somewhat different, and we think a more just and sensible rule than that upon which this case was submitted to the jury.

"In examining questions of undue influence concerning a will, as in questions of capacity, the contents of the paper, and the previous indications of purpose made by the supposed testator, may, as evidence, be brought into the investigation; but they can come in only as evidence pertinent to the inquiry: Is this his will? and should not be suffered to minister to any prejudice apposed to the license of the testamentary disposition which the law allows.

"*It is no condition of this license that the provisions of the will should be such as to please the jury.* If the paper was properly executed, and the testator was of competent sanity, *and no undue influence has been established*, it is the testators will, and no tribunal is appointed on earth to enquire, *whether it ought to have been his will.* For a jury to proceed to that inquiry, or (which is the same thing,) to decide against a will because they do not like its provisions, *is a fraud upon the law, a violation of their sworn duty, and an usurpation which would never be tolerated if it were not concealed.*"

Means v. *Means*, 5 Strobh. (South Car.) Law Rep., 192.

In the case at bar this *usurpation* is not concealed, for the record shows that the jury were virtually instructed to practice it; and we presume on the authority of the case last cited, it will not be *tolerated* by this Court. The whole gravamen of these three instructions now under consideration, depends upon the proposition as to whether the provisions of the will are such as please the jury. "Thus: in instruction No. 2 the validity of the will is to depend upon whether the same" (when judged by principles of natural justice,) makes an unjust distribution of the testator's property among those equally entitled to the testator's bounty, *and that any degree of influence, however slight*, was used by any person to procure such *unjust* distribution." We have already shown that it is not "any degree of influence however slight" that will

vitiate the will. The influence, to have this effect, must be such as destroys the testator's free agency and compells him "to do that which is against his will, through favor, or the desire of peace, or some feeling which he is unable to resist, and but for which the will would not have been made as it was."

1 *Redfield on Wills*, 530. Id. 524.
Blakely v *Blakely*, 33 Alabama Rep. 611.

This modifying ~~modificating~~ clause therefore does not improve the instruction, and the doctrine announced in it is quite as erroneous as it would be if the validity of the will had been left to turn wholly upon the fact as to whether the jury approved or disapproved of the provisions of the will. In other words, we insist that an instruction is no better law because there exist two palpable errors in it than it would be had it embraced only one error.

Instructions numbered 9 and 11 are varied in language, but the same proposition is submitted to the jury, viz: as to whether they think "the will itself is one giving unequal advantages to the children of defendant Bolivar Roe" in which event they are to pronounce against the validity of the will, unless the contrary is affirmatively made to appear.

We insist that the burden of proof to show undue influence, rests upon the party affirming its existence, and that such burden is not charged by any of the supposed facts upon which these instructions are based.

1 *Williams on Executors*, 43, 44, Note 1.
1 *Redfield on Wills*, 525.
Dentoa vs. *Franklin*, 9 B. Monroe, 28.
Allen v. *Public Administrators*, 1 Bradf. 378.
Farr v. *Thompson*, Cheves' Law & Eq. (South Carolina,) Rep., 37.
Ross v. *Christman*, 1 Iredel, (Law.) 209, 212.

In the case of *Gardner* v. *Gardner*, 22 Wed., 540, before cited it is said: "These probate investigations were an every day matter with Sir John Nicoll, who fixes the *onus on the party charging undue influence, saying he must put his finger on the act showing how it was wrought.* In the case at bar the auditors say Gardner was

exposed to undue influence. The surrogate adds he *may perhaps* have labored under the terror of being sent back to the mad-house; and the chancellor says 'I must presume the mother or some one else, had persuaded the decedent to destroy the bond.' Certainly he was exposed to influence, and so is every man on a bed of sickness, or in the hands of his nurse, even though she be his wife. Are we therefore to presume that it was exerted? *Perhaps* he was afraid of being sent back—are we therefore to presume that Mrs. Gardner shook his purpose by threats of incarceration? If we proceed from exposure, into the regions of conjecture, it is difficult to perceive how great a majority of testamentary acts are to escape the imputation of undue influence. If I could presume that Mrs. Gardner, or some one else, persuaded her husband to forgive her the loan, it appears to me, with great deference, to be a perfect *non sequitur*. Was there fraud? Was there terror? Was there harrassing importunity, and a compliance for the sake of peace in the dying hour?"

Gardner v. *Gardner*, supra.

More fit words could not be chosen to set forth the manner in which the case at bar was given to the jury. The jury were, indeed, directed to proceed from *exposure* to influence into the regions of conjecture, that it had been practiced, and from that conjecture, coupled with the fact, that the will may not have been such as the jury thought the testator ought to have made, pronounce against its validity. It is held that unless there is affirmative proof of fraud or undue influence made, the contents of the will cannot be considered as evidence to prove the undue influence.

Ross v. *Christman*, 1 Iredel, (Law.) 209, 212.

2. The third instructions given on behalf of the appellee is as follows: "No. 3. When a person conceives something extravagent to exist, which has no existence whatever, save in his own heated imagination, but he is incapable of being permantly reasoned out of that conception, such a person may be said to be under a delusion; and the absence or presence of delusion, so understood, forms the true test or criterion of absent or present insanity." (*Abs.* p. 46.) This instruction may or may not embody a sound medical opinion, upon the subject to which it relates; but it is objectionable as an instruction to the jury from the Court, for the reason it is a question of *fact* and not of *law*, whether the state of mind or condition of the person recited in the first clause of this instruction constitutes insane delusion; and it is clearly a question of fact and not of law, whether the "absence or presence of delusion so understood, forms the *true* test or criterion of absent or present insanity." These are precisely the questions which the law and the practice require should be established before the jury as questions of fact, upon the examination of witnesses familiar with the characteristics of mental disease. 1 Redfield on Wills, 150, 151. In *McNaughten's* case, (10 Clark & Finlayson, 210,) Lord Brougham said in regard to the proper mode of interrogating medical experts: "You shall ask them if such a fact is an indication of insanity or not—you shall ask them upon their experience, what is an indication of insanity—you shall draw from them what amount of symptoms constitute insanity." And Lord Campbell said "The witness may give general scientific evidence on the cause and symptoms of insanity, but he must not express an opinion as to the result of the evidence with reference to the sanity or insanity of the prisoner." "The proper office of experts is to instruct the Court and jury, in the laws of a particular science or subject, in order to enable them to judge of the force and application of the testimony in the same understanding mode in which they should be able to do, if they had been before properly instructed upon the subject involved. It is, so to speak, to educate the Court and jury, by a kind of short hand process, in a particular department of science or art."

1 *Redfield on Wills*, 150, Id. 146–147.

The witness, Dr. Bunker, was examined in the present case and gave his opinion upon this very subject. (*Abs.* p. 22.) This examination, we suppose, was proper for the reason that so far as this trial was concerned, it was necessary to establish a question of fact, the characteristics and symptoms of insanity, and what facts or state of mind constitutes delusion, and whether the same is the true test of insanity.

But if it is competent for the Court to instruct the jury on these subjects, then it would be manifestly improper to examine witnesses to establish such principles of medical science as questions of fact. Neither does it change the aspect of this question that these subjects are discussed in works upon medical jurisprudence: the symptoms of mental disease still remain questions of fact to be ascertained by the testimony of witnesses, and cannot be established from medical books. *Id.*, 146–147. It is futile to examine witnesses to establish or disprove a proposition upon which it is the duty of the Court to give the jury absolute and unqualified instructions as questions of law. It is for the jury to decide questions of fact from the evidence adduced before them; and instructions which assume to decide such questions, instead of leaving them to the jury, are erroneous

Frasure v. *Zimmerly*, 25 Ills., 202.

VII.

The Court erred in overruling the motion for a new trial.

This assignment of error is broad enough to embrace those already discussed.

C. & R. I. R. R. Co. vs. *Coal & Iron Co.*, 36 Ill., 60.

But we submit this additional ground for granting a new trial. The affidavits of G. Bolivar Roe and Henry A. Mix, which appear upon p. p. 49 to 51 of the printed abstract, are sufficient to show *prima facie* that the verdict was the result of a game of chance, or

drawing lots by the jury. The testimony of O'Kane, the officer in charge of the jury, shows that one of the jurors enquired of him whether they could not thus decide the case, to which he replied: "Of course not;" but he further states that he has no knowledge as to how the jury arrived at their verdict. From the nature of the case, there are no other persons than the jurors themselves, who could rightfully have any personal knowledge upon the subject. Sound policy does not require that a party should be guilty of eaves-dropping to obtain the requisite evidence to expose such gross misconduct in the jury. And it is a disgrace to judicial proceedings that a decree should be entered and permitted to stand, upon a verdict thus found. We submit therefore, that the affidavits we have presented, although based upon information and belief merely, ought to be held sufficient to require the opposite party to rebut the *prima facie* case thus made.

While it seems to be the settled rule in this state that the affidavits of jurors cannot be received to impeach the conduct of the panel, (*Martin* v. *Ehrenfels*, 24 Ills., 187. *Reins* v. *The People*, 30 Ills. 274,) the reason for the rule does not extend to excluding such affidavits to support their verdict, and to show that the jury were not guilty of improper conduct. It is held that the affidavits of jurors may be received to support their verdict, and to exculpate the jury from the charge of misconduct.

Dana v. *Tucker*, 4 John, 486.
Smith v. *Eames*, 3 Scam., 76, 81.

In the case of *Guykowski* v. *The People*, 1 Scam., 476, 481, it is held that the affidavit of the prisoner "that John Burnsides, one of the jurors in the cause, was an alien and an unnaturalized citizen, *which fact was unknown to the defendant and his counsel until after the rending of the verdict*" was *prima facie* evidence of the truth of the statements it contains; and not being rebutted either by the juror himself or other person having a knowledge of the facts, the judgment of the Court below was reversed and a new trial was awarded. It is true that the report of this case does not show in terms that the prisoner based his affidavit upon "information and belief," but it expressly appears that he he had no

personal knowledge of the facts stated in the affidavit, and therefore if he had any knowledge whatever it must have been from information derived from some source, after the verdict, as the affidavit states: "which fact [of alienage,] was unknown to the defendant and his counsel until after the rendering of said verdict.

Guykowski v. *The People*, 1 Scam. 477.

The affidavit of a party who honestly and frankly bases his statement upon information and belief, is entitled to as much credit as if he assumed to swear from personal knowledge; while the circumstances of the case, or facts disclosed in the affidavit, are such as to show that he could not have had any personal knowledge on the subject. The law should be so administered, if possible, as not to give a reckless party who is willing to make any affidavit, in any form, an advantage over one who conscientiously guards every expression so as not to appear to swear to more than he actually knows

If the charge of misconduct against the jury had no foundation in fact, it would be an easy matter for the party in whose favor the verdict was rendered to disprove the charge made against the jury. It is to be presumed that there would be no difficulty in procuring affidavits of the jurors to exculpate themselves from any unjust imputation. Upon principle it ought to be held that where the aggrieved party has procured the best and most satisfactory evidence of which the nature of the case admits, showing misconduct on the part of the jury; and where it is in the power of the opposite party to produce competent evidence to explain the whole matter, and he fails to do so, the presumption should be against him. To hold a different rule, as long as the affidavits of jurors are not received to impeach their verdict, will leave no remedy for this flagrant abuse, sometimes practiced by jurors in determining imporiant causes by gambling or casting lots. To say that the Courts cannot judicially see,—or, which is the same thing, that they will close the door to every available means of proving such misconduct of the jury,—is but a mere affectation of judicial blindness, and is much better calculated to defeat than promote the ends of justice.

This record abounds with error, for which we submit the decree ought to be reversed and the cause remanded to be tried by a jury who shall not be erroneously instructed as to the law, and who will find their verdict from the evidence, and not as the result of a game of chance.

EDSALL & CRABTREE,
Counsel for Appellants Roe.

SUPREME COURT, STATE OF ILLINOIS,

THIRD GRAND DIVISION—SEPTEMBER TERM, A. D. 1867.

JOHN ROE ET AL., - - - APPELLANTS,

vs.

MASON TAYLOR, APPELLEE.

ARGUMENT OF JOHN V. EUSTACE,

For Appellee.

Beach & Barnard, Brief Printers, 122 & 124 Clark St., Chicago.

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CHICAGO:
BEACH & BARNARD, STEAM PRINTERS.
1867.

ARGUMENT FOR APPELLEE.

May it Please the Court:

The first point made by the appellants—namely: that the verdict in the Circuit Court, in this case, was against the evidence, is not discussed in the argument filed by appellants' counsel; and has evidently, in his opinion, little or no weight. The evidence was satisfactory to the jury and to the judge before whom the cause was tried. It may be that the one-sided abstract on file, of a not very fair bill of exceptions, may not present the evidence in such a way as to force on the mind a decided opinion of the conclusiveness of the testimony, as the testimony itself did at the trial; but the point is made with so apparent a consciousness of its weakness, that I pass to a consideration of the next point made in the argument, which is—

That the Court erred in rejecting competent evidence offered by the appellants. The evidence first referred to is, a paper purporting to be a will of the deceased, made September 12th, 1860.

The will, the validity of which was being tried, was dated July 25th, 1864.

It disposed of the estate as follows:

All property, real and personal, was to be sold at once.

Samuel Taylor was to receive one hundred dollars.

Moses Taylor was to receive fifty dollars.

The children of Samuel, and the children of his deceased daughter Eleanor, (formerly the wife of the appellant Roe,) were each to receive one hundred dollars.

Then all the rest of his estate was to be divided equally among the said children of Samuel and of Eleanor. The appellant Roe and Samuel were made executors.

The prior will, which the Court refused to admit, was dated September 12th, A. D. 1860.

The signature of the testator, and the seal, had a black ink line drawn entirely across them, and there was no evidence as to when this was done.

That will disposed of the estate as follows:

The homestead to his wife, for life, together with an annuity of fifty dollars; a certain demand of eight hundred dollars, against one Larkins; all the household and kitchen furniture, absolutely; and the use, during life, of his horse and carriage.

To his daughter Eleanor, (then the wife of Roe,) one thousand dollars.

All the remainder of his property, real and personal, to his three children, Samuel, Mason and Eleanor, in equal shares.

It made Mason sole executor.

It will be perceived that the great and radical difference between the two wills was, that the first placed Mason on the same footing with the other two children of the testator, as to the general distribution of the property, while the second cut him off with a legacy of fifty dollars. The first made Mason sole executor. The second made Taylor and Roe executors.

The first, in effect, placed the children of each of the testator's three children all on an equal footing; the second, in its effect, cut off Mason's children from any share.

Whatever impression may be derived from the bill of exceptions in this case, the facts in relation to the exclusion of said first will, are not inconsistent with the language of the bill, although they

may not be such as would, at first view, present themselves upon its reading. The counsel for Mason Taylor, desiring that some evidence might be required by the Court as to the then apparently cancelled condition of the first will, objected to its being read in evidence. The Court took the paper, looked it over, and said that it should not be read.

The reasons which led the Court to this ruling, we suppose to have been,

1st. That the instrument was then apparently cancelled, and no explanation given.

2d. That the date of the paper was so remote as to throw no light upon the issue then being tried.

3d. That the testamentary disposition made by the first will was so entirely different from that made by the second, that it furnished no evidence as to the question then being tried.

It must be remembered that the points made against the validity of the last will were,

That the testator, at the time of making it, was laboring under an insane delusion, which operated to the prejudice of his son Mason.

That Roe encouraged this delusion, and thus obtained an undue influence over the mind of the testator.

And that at the time of making the will Taylor was of unsound mind.

This prior will certainly furnished no evidence in favor of the appellants as to the first point, for in it Mason was treated as the other children were.

For the same reason, it furnished no evidence in their favor as to the second point.

Did it furnish any as to the third point?

If it did, then I concede that it might have been admissible; but it could only do so if its contents indicated similar intentions, on the part of the testator, to those exhibited in the last will. Instead of this being true, the very discrepancy between the provisions of the two papers exists; which, as we claim, was caused by the insane delusions as against his son Mason, on account of the existence of which, we satisfied the Court and the jury, that the father had lost the mental capacity requisite for the making of a valid will.

In the first will, Mason was treated by him as his other children were treated, except that the daughter, (for good and sufficient reasons, as developed in the testimony,) was given a thousand dollars in addition to her equal share; and Mason was made the sole executor of the will.

In the second one, Mason is, except as to the sum of fifty dollars, entirely cut off.

We did not dispute the father's legal right so to do; but we claimed that he was so far insane, by reason of delusion, that the alleged will was not the result of the operations of a sound mind. Surely we, and not the appellants, are the ones to complain of the exclusion of this paper.

It may, however, be very seriously questioned whether the paper was, in any view, admissible. The authorities cited in the argument for appellants will, on examination, be found only to show that, in one case, another will, made eight years before, making a different disposition of the testator's property, was received, as tending to support the claim of undue influence; and, in another case, that it was held that an unpublished will was admissible upon the question of the capacity to understand the second one, and how far it was the result of free will, by tending to show the previous purposes of the testator.

In this case, I submit to the Court, that the radical differences existing between the two papers are so great as to prevent the first

one from having any tendency to establish the issue that was upon trial, and that it was therefore properly rejected by the Court.

The only other matter of evidence as to which it is contended by the appellants there was error on the part of the Court below in excluding, is, that the Court sustained an objection made to the asking of the following question, propounded on cross-examination to Mrs. Thirza Taylor: "Did you have any business transactions "with George Taylor, or make any purchases from him, during "the time you lived in his house, in the summer of 1864, and "about the time the matter occurred in regard to him to which "you have referred in your direct examination? If so, state what "such transactions were, and whether he understood the nature "of the same, and how he conducted himself in regard thereto."

The bill of exceptions details the testimony of this witness. She had lived in the house of the deceased for about a year prior, and up to, the date of his death; and during all that time had had the charge and care of him. She testifies that when she had lived there but two weeks, she formed the opinion that he was insane; and states the circumstances which led her to this conclusion. She then details his sayings and doings for the year, and is finally asked the general question propounded to nearly all the witnesses, viz: "From your acquaintance with George Taylor, and your "observation of his conduct that you have testified to, did you, at "the time of these conversations in 1864, consider him sound or "of unsound mind?"

This contested will was executed, it will be borne in mind, on July 25th, 1864, (and not 1865, as stated in appellants' argument,) and the said George Taylor died on the 5th day of February, A. D. 1865.

The question for trial then was, was George Taylor of sound and disposing mind on the 25th day of July, 1864.

This question put to the witness, on cross-examination, is: "Did "you have any business transactions," etc., "with Taylor *during*

"*the time you lived in his house in the summer of* 1864," etc; and the witness having already sworn that she lived in his house during all the time for nearly a year prior to his death, she had, therefore, of course lived there during all that time; and the question should have been limited to transactions happening on or before the date of the will, July 25th, 1865.

Nor does that part of this cross-question which attempts to fix the time as being "and about the time the matter occurred in regard to him to which you have referred in your direct examination," make the time any more definite, because she had referred to matters occurring during all that year, both before and after the date of the alleged will.

The question was also objectionable, for the reason that this very reference to "the time the matter occurred in regard to him to which you have referred in your direct examination," furnished no information to the witness as to what particular "matter" was referred to. She had testified to a host of matters, the notes of her testimony as to which matters cover six pages of cap paper.

But the real reason why the question was objected to, and why the objection was maintained by the Court, was, that the appellants had consumed hours of the time of the Court, when they commenced the case, in proving that in many little matters of every-day business, the deceased had exhibited no evidence of insanity. Thus, they had spent some time over the proposition that he had sold a load or two of wood; that he had exhibited sufficient intelligence to enable him to go to a harness-maker's shop and purchase a strap, without showing any evidence of insanity; and now they had asked this witness, the very question before this one that was objected to, whether she had bought any property from him, and she replied that she had bought a couple of dresses. Then came the objected-to question, asked in connection with this same proposition as to the purchase of the dresses, and followed by the question, "Did you and Mr. Taylor have any trouble in negotiating these little trades?" And thereupon the Court, of its own volition, says: "I will rule out the whole matter about the trades."

It was not claimed that the question was asked for the purpose of testing the credibility of the witness as to the opinion that she had formed; nor even to attack it by showing that she had herself made some purchases of deceased, and had either treated him as sane, or had taken advantage of his imbecility; but simply, as it appeared, for the same purpose which they had already spent so much time on as to weary the Court, of showing that he was able to make a judicious sale of a couple of dresses, as if that tended to disprove the correctness of the position taken by the party contesting the validity of the will; which was, not that the man was a victim of general insanity, but that, as to certain of his relatives, he was laboring under an insane delusion, which affected, not his general conduct, but only his capacity as to them, of exercising a sound and disposing mind.

The third point made by the appellants, presents the proposition whether the following questions, propounded in the same terms to most of the witnesses sworn on behalf of the contestants, was properly allowed by the Court, viz:

1st. "Did you, at the time, from the peculiarities which you "observed in the deceased, and which you have now testified to, "form an opinion as to his mental condition, as to whether it was "sound or unsound, on the subject of the stealings he talked "about?"

2d. "From your acquaintance with George Taylor, and your "observation of his conduct, that you have testified to, did you, "at the time of these conversations in 1864, consider him of sound "or unsound mind?"

The proposition thus presented is not, as stated by appellants' counsel, "whether it is competent to show the opinion of an unprofessional witness in reference to the alleged insanity," etc.; but whether the opinions of men not claimed to be experts, or of medical skill, is admissible as to insanity, when given in connection with the facts and circumstances relied on to prove the insanity, and where the witnesses have had personal intercourse with the party, and state the facts on which the opinion is based.

Mr. Redfield, in his work on the Law of Wills, (pp. 140–146,) shows that the right to ask for this opinion, in connection with the recital by the witness of the facts upon which the opinion was based, has been recognized by the Courts of Pennsylvania, Connecticut, Indiana, Tennessee, Georgia, Ohio, North Carolina, Vermont, Alabama, Missouri and Maryland, and by the United States Court, in New Jersey.

That, on the other hand, the rule is held different only "in "New York, by a divided Court, and in Massachusetts, by an ev- "ident departure from what has been elsewhere regarded as the "real point decided by the early cases in that State."

The appellants' counsel, in the argument of this, his third point, cites an expression made use of by this Court in the case of *Van Horn* v. *Keenan*, (28 Ills., 449,) that "persons, other than medical "men, no matter how intelligent they may be, are incapable of "pronouncing on the true condition of mind of any one. They "are ignorant of the diagnosis of insanity or mental weakness; "and so are physicians in the general practice, for the most part. "No one who had made this branch of medical jurisprudence his "especial study was examined in this case, and no judge ought to "be satisfied with the crude opinions given by most of the wit- "nesses. We were not satisfied with them, and therefore sought "the opinion of the eminent head of the Asylum for the insane," etc.

The counsel then argue that if so little reliance is to be placed upon the opinions of most physicians in general practice, that non-medical men should not be allowed to testify to their opinions at all.

That case was a bill filed to enjoin the sale of mortgaged premises, on the ground that the mortgagor had been rendered imbecile by habitual drunkenness, and that the mortgagee had taken advantage of his condition, and obtained the mortgage without consideration.

The opinion of "the eminent head of the Asylum for the In-

"sane," coincided with that of the judge who heard the case; and the Supreme Court affirmed the decree.

I submit that the language used by the Court was not intended as a decision, either that "persons, other than medical men, are "incapable of pronouncing on the true condition of mind of any "one," or that any discrimination was made by the law, in the matter of the admissibility of the testimony of physicians, between those who had and those who had not, made this branch of medical jurisprudence their especial study.

As to this last proposition, I beg leave to refer the Court to the following paragraph from Redfield, page, 153, par. 29:

"But the Courts do not yet seem prepared to make any discrim- "ination between the different members of the medical profession "in regard to giving testimony, as experts, upon the subject of "insanity. It was accordingly held that any practicing physician "is competent to express an opinion, as an expert, on a medical "question." (*Livingston* v. *Commonwealth*, 14 Gratton, 592, and other cases cited.) And the question seems to have been distinctly passed upon in a recent case in Massachusetts. THOMAS, J., here said: "We think the settled practice in this Common- "wealth has been, to admit the opinion of educated, practicing "physicians, upon subjects of mental science," and after adverting to the fact that some of the departments of the profession had become specialties, the learned judge adds: "But this fact does "not render incompetent upon this subject the testimony of other "physicians, who must necessarily have less experience. The dif- "ference is in the weight of testimony, rather than in the compe- "tency of the testimony."

And in the next paragraph, he says: "It has been decided "often, that medical experts may express a direct opinion upon "the sanity of the testator, where they have had an opportunity "to form such opinion from personal examination or acquaint- "ance."

It is next claimed by appellants' counsel, that while the Ecclesiastical Courts of England admit the opinion of non-medical witnesses, based upon their own knowledge of the facts, yet that the Courts of Law in England hold the contrary rule; and that, therefore, such rule is a part of the common law in force in this State.

And in the case cited, *Wright* v. *Totham*, (5 Clarke & Fin., 692,) the reason why the rule was held differently in the two kinds of Courts, was, that it was safe enough to establish the one rule in the Ecclesiastical Courts, *because there was no jury* in that Court; but that it would never do to so hold it in a lower Court, where "it "would be dangerous when the fact *is entrusted to a jury*."

Now, if it be true, that in adopting the common law, we also adopted every rule of evidence, it yet remains to be shown by the appellants' counsel, (his authorities do not show it,) that this rule prevailed in the Common Law Courts of England at any time prior to 4th James, 1st.

But I apprehend that the reason assigned for the not holding the rule in these Common Law Courts, was, in plain English, that it was a good rule in Courts where there was no jury to be fooled, is not such a one as will commend itself very strongly to this Court, especially in a case where a jury is only called to aid the conscience of the chancellor.

The counsel say that it cannot be said that this rule is not "of "a general nature, and not applicable to our condition."

I had always supposed that these words in our statute, (Scates' Comp., 720,) referred to "all statutes or acts of the British Parlia- "ment," etc.

In *Penny* v. *Little et al.*, (3, Scam., 305,) DOUGLASS, J., says: "From that period, (4th James, 1st,) we must look to American "legislation and the reports of American Courts, for improve- "ments and modifications of the common law; and in adopting "the common law of England, we adopt it with those improve- "ments and modifications."

I submit then, that this Court has the right to decide this proposition, as the Courts in nearly every State in the Union have done; although the Common Law Courts of England have been afraid to rule the same way, for fear that jurors might not have intelligence enough properly to decide a case on this kind of testimony.

The fourth point made by appellants' counsel is, that the Court erred in modifying their instructions, Nos. 3, 4, 8 and 10.

It is not claimed, except as to instruction number eight, that the modifications were wrong in their law; but the counsel thinks "it "was *unfair* to inject this proposition" into every instruction they asked for, "without any regard to its pertinency to the subject "matter."

Your Honors will see, on reading these instructions, that in every case the modification was pertinent to the subject matter; was law, and was inserted by the Court, with the intention, very properly, to prevent the jury from being misled by the instructions, as written originally.

As to the modification to instruction number eight, it will be seen that the instruction, as originally written, is properly divisible into two parts; the first one undertakes to define what it is that constitutes the "possessing a sound and disposing mind and "memory, within the meaning of the law," and it is to this part of the instruction that the modification was applied. As written, it told the jury that this possessing was established whenever it appeared that the testator "had an understanding."

1. Of the nature of the business.
2. Of the property to be disposed of.
3. Of the persons who were the natural objects of his bounty.
4. Of the manner in which he wished to distribute.

The Court said that "an understanding" of these things did constitute the possession of testamentary capacity, "unless affected "with some morbid or insane delusion as to some or one of them."

The appellant says that the Court should have added, in substance, "which delusion was the moving cause of the testamentary "disposition made."

To this I answer, that the Court had already, in appellants' instruction number four, given precisely the instructian now asked for, and had, in that, already told the jury that a man might make a valid will, even although laboring under an insane delusion, "unless such insane delusion entered into and caused him to make "some of the provisions of the will."

It is unnecessary to discuss the proposition whether this qualification be the law. Lord BROUGHAM, in *Waring* v. *Waring*, (6 Moore,) Privy Council cases, took the ground that any person laboring under a delusion, or monomania, to any extent, or upon any subject, is not to be regarded as competent to execute a valid will. But conceding the qualification to be the law, the appellants had the full benefit of it, in their fourth instruction.

But I claim that this instruction number eight, without the modification, was calculated to mislead the jury. What is meant by "had an understanding?" If it meant only that the man *knew* that he was making a will; *knew* that he owned a farm; *knew* his children's names; *knew* that he was about cutting one of them off; if this was what was meant, I submit that this kind of knowledge or "understanding" does not establish testamentary capacity. But that "understanding," in order to constitute such capacity, must be a rational, sensible understanding, not merely of the existence of these four things, but of all their relations to each other, and of the consequences of his determination and act. In other words, that there can be no such "understanding" in a mind which, as to any of these propositions, is then laboring under some morbid and insane delusion—and this was precisely what the modification, made by the Court, told the jury, in effect,

that "understanding" cannot be predicated of the operations of a mind which is, at the time, so deluded that it is impossible for it to form a correct judgment, or, in other words to "understand."

The appellants' next point is, that the Court erred in refusing his instruction number eighteen, (Abs., p. 42,) which was as follows:

"If the jury believe, from the evidence, that the paper read in "evidence as the will of George Taylor, was reduced to writing "at his request, and signed by him, or by some other person in "his presence and by his direction, and attested in the presence "of said Taylor, by two or more credible witnesses, at his request, "and in the presence of each other, then the same was executed "with sufficient legal formalities to constitute a valid will, and "in case the jury also believe that the said George Taylor was "twenty-one years of age and upwards, and then had sufficient "mental capacity to make a will, as stated in the other instruc-"tions, the jury should find such paper to be the will of the said "George Taylor."

The counsel argue that this instruction was merely designed to inform the jury that a signing by another person, at the request of the testator, was a sufficient signing of the will.

To this I reply:

First. That such was not the design of the instruction; that its evident intention was to induce the jury to believe that if the will was formally right, then it was a valid will, if Taylor was twenty-one years of age, and then had sufficient mental capacity to make a will, "as stated in the other instructions."

Second. That the purpose for which it is claimed, as above, that the instruction was drawn, was not a matter for the jury, but for the Court. It was for the Court alone, to say whether the will was, as to matters of *form*, made in conformity to the requirements of the statute.

Third. It assumes that the Court had "stated in the other in-
"structions," that Taylor had sufficient mental capacity to make a will—a thing which the Court had not "stated in the other in-
"structions."

Fourth. If it was the intention to say to the jury that, if the execution of the will was formally correct, then it was a valid will, if the testator was twenty-one years of age and had sufficient mental capacity, its words should have been, "and if they also
"believe that said Taylor was twenty-one years of age and up-
"wards, and that he then had sufficient mental capacity to make
"a will, *as such capacity is defined in the other instructions*," or words to that effect.

The next point made is as to the refusal of instructions numbered 20, 21, 23 and 26, involves the question as to what constitutes testamentary capacity.

No. 20 asserts the doctrine that if a man knows his property, and to whom he desires to will it, this is enough.

No. 21. That if Taylor "had sufficient reason to comprehend,
"and did comprehend the nature of the transaction in which he
"was engaged, and that he intended to dispose of his property to
"the persons and in the manner stated," that this is enough.

No. 23. That it is sufficient that the testator knows what he is doing, and to whom he is giving.

No. 26. That if he knew what he was doing, and to whom he was giving, then the jury should find for the will, if it was properly executed.

The general doctrine of all the four, then is, that if Taylor knew that he was making a will; knew his property, and knew to whom he was giving it, that these things established testamentary capacity.

I submit that all this may be the law, when it is affirmed as the acts of a sane person; but a man laboring under a mental delu-

sion as to the subject matter of any one of these propositions, can not be said *to know*, and that a failure or inability to form a rational judgment as to any one of them, presents an insuperable objection to the validity of any pretended will; that when a testator, by reason of an unhinged and perverted judgment, is incapable of forming a rational judgment as to the natural objects of his bounty, he cannot rightfully be said to *know* those objects.

In Greenwood's case, (1 Add., 279; 3 Add., 79; Redf. on Wills, p. 73,) the testator was confessedly restored to his usual mental soundness, in regard to all subjects, and every person, except his brother, who, happening in some way to be mixed up with his insane fancies, while the paroxysm was upon him, he could never afterwards believe had not attempted to poison him, and disinherited him accordingly.

In *Lucas* v. *Parsons*, (21 Geo., 640,) the testator, during an attack of insanity, was most unfavorably impressed, and without any adequate cause, against his eldest son, and being, subsequently, in all respects restored to his reason, except in regard to this impression against his son, which he still retained, made his will, disinheriting the son, as the result of that impression, and it was held the instrument ought not to stand.

In *Florey* v. *Florey*, (24 Ala., 241,) where an insane delusion existed in the mind of the testator, in regard to the principal legatee being his son, the will being the offspring of this insane delusion, it was held invalid.

In *Jenckes* v. *Smithfield*, (2 R. I., 55,) where the testator was proved to have entertained an insane delusion towards one member of his family, sometime before the making of the will; he must be shown to have recovered therefrom, before the date of the will, if the will be obnoxious to the presumption of having been produced or affected, by any such delusion, or it will be held invalid.

In *Johnson* v. *Moore*, (1 Litt., 371,) it was held that where a man is insane in reference to his nearest relations and the disposition

of his estate, he is incapable of making a will, notwithstanding he may be of sound mind in other respects.

Now, in all these cases, there is nothing to show but what the testators knew they were making wills, knew their property and knew to whom they were giving it; and if the doctrine claimed by appellant be true, in each case the wills should have been held good.

The doctrine claimed may be the law, as a general rule, but cases of partial insanity furnish the exceptions to it.

Under the fifth point, made by counsel for the appellant, namely, that the court erroneously refused certain of their instructions.

The first instruction *said* to have been refused was, " The issue " which the jury is to determine by their verdict is, whether the " writing produced in evidence, be the will of George Taylor or " not."

Unquestionably this was the only issue; and equally unquestionably the jury so understood, for their verdict was in these words, " We, the jury, find the paper given in evidence before us, " is not the will of George Taylor."

No instruction *conflicting* with this one was given.

The jury could not, therefore, have been united as to the issue, even it this instruction was not given.

Every instruction given on either side contained in itself evidence that this was the only issue in the case.

But I deny that this instruction was refused.

There was no reason why it should have been refused; there was no question between counsel as to what the issue was; there could be no other issue, under the law; all the evidence in the case was directed to this single point.

I have had no opportunity since the appellant's argument was furnished to me, to examine the record in this Court. I do not know whether it shows this instruction refused or not. But I have before me, and propose to forward to the clerk of this Court, together with this argument, and ask to have the same filed in this case, if not inconsistent with the rules of this Court, a certificate under the hand and seal of the clerk of the Ogle Circuit Court, dated the 19th day of November, 1867, showing two things; first, that the record in this case was made up by, or under the direction of one of the attorneys who tried this case on the part of the present appellant in the court below, (a practice which I submit, very respectfully, ought not to be sanctioned by this Court); and secondly, said certificate shows that said instruction was *not* marked either given or refused. I shall also, at the same time, forward a certificate from the judge who tried this case, as to whether said instruction was refused; and I ask the Court to take the same into consideration when disposing of this point.

In reference to appellant's instructions numbered 24 and 25, to undue influence, and the authorities cited in that connection, I propose to attempt a reply to his argument while considering his next point—

Which is (6th) that the Court erroneously instructed the jury on behalf of appellee:

First, in giving instructions numbered 2, 9 and 11.

Instruction No. 2 is as follows: " The jury are instructed upon " the question of undue influence, that it is not alone the extent, " but also the character of the influence, which the law regards in " passing, on the question whether such influence is unlawful; and " that if the jury believe, from the evidence, that at and before the " time of making such will, the said G. T. was in a condition of " mind susceptible of being easily influenced or controlled, and " that said will (when judged by principles of natural justice) " makes an unjust distribution of the testator's property among " those equally entitled to the testator's bounty, and that any de-

" gree of influence, however slight, was used by any person to
" procure such unjust distribution, and that the will was made by
" reason of such influence, the law regards such influence as un-
" lawful, and the jury should, in that case, find against the validi-
" ty of said will."

To show that this instruction correctly states the law, I refer to the case of *Kevill* v. *Kevill* (and note by Mr. Redfield), decided in the Court of Appeals in Kentucky, and published in the *American Law Register*, December, 1866, and which note is hereinafter inserted at large.

Instruction No. 9 was as follows: " If the jury believe, from the
" evidence, that at and before the time of making such will, the
" said G. T. was in a condition of mind susceptible of being easily
" influenced or controlled, and that the will itself is one giving un-
" equal advantages to the children of the defendant Roe, and that
" said Roe was in a position to have brought influence to bear upon
" the said G. T., the jury have the right to require that it should
" be proved with reasonable certainty that the will was the off-
" spring of the free agency of the said G. T."

In further support of the doctrine stated in this instruction, I cite 1 Redfield on Wills, page 105, " It seems to be the result of
" all the cases, English and American, that intellectual feebleness
" alone will not disqualify one for making a will. But there is a
" large class of cases where the testaments of aged people come
" in controversy, that the element of undue influence, imposition
" and fraud, is mixed up with the weakness and imbecility of
" mind of the testator. In such cases, courts and juries should be
" reasonably watchful to see that no improper influence has been
" exercised in the production of an unjust or unequal distribution
" of the testator's property. In other words, that if the will was
" executed at a time when the testator was in a condition of mind
" susceptible of being easily controlled, and the will itself is one
" giving unequal advantages towards parties in a position to have
" brought their influences to bear upon the testator, the triers of
" its validity have a right to require those thus exposed to sus-

" picion, to prove, with reasonable certainty, that the will was the
" offspring of the free agency of the testator."

The 11th instruction was, " If the jury believe, from the evi-
" dence, that the mental condition and circumstances of said G.
" T., at and before the time of making such will, were such as
" gave an opportunity for the exercise of undue influence, and the
" will itself is such an instrument as indicates that the opportuni-
" ty had been embraced, and influence unduly exerted, the argu-
" ment will be direct, from the effect to the cause best calculated
" to produce it, and the presumption will be against the validity
" of the will, until the contrary is made to appear."

In support of this instruction, I cite Vol. 2. Part 2, Leading Cases in Equity (Hare & Wallace's notes), page 65, and sub notes to *Huguenin* v. *Boseley*. Also 3d Vol. p. 144-6

See also 1 Redfield, p. 515, par. 14,
2 " p. 516, " 15,

And Mr. Redfield's note to the case in American Law Magazine, as follows:

" The fact that the foregoing case seems to assume ground in
" some respects different from those maintained in the majority of
" cases, involving similar questions, will not render it of less in-
" terest to the profession. A somewhat extended and careful
" study of cases bearing upon analogous questions, and large
" experience in the trial of similar cases, has convinced us that it
" is not practicable to lay down any general rule in regard to
" them which will not require frequent and marked modifications
" in its practical application.

" The learned judge places great reliance upon two facts, as tend-
" ing to show that there was no satisfactory proof of *undue* in-
" fluence in the case: 1. That the testator, although more than
" seventy years old, was possessed of abundant capacity to execute
" a will of the character in question, understandingly, when left to
" his own free will and voluntary action. 2. That although his
" wife had confessedly very controlling influence upon his mind, in

And Court vs Coll, 2 Walsh 522-542 - Where this identical language is used —

" matters of trivial concern, the evidence failed to show any in-
" stance of such influence of a sinister character, ' *in any impor-*
" *tant matters.*' It is also stated, as the result of the evidence, that
" in *all important matters* the testator was a man of sound judg-
" ment and strong self-will. Considerable reliance is also placed
" upon the fact that the testator dictated the will in such a man-
" ner as to show evident capacity and the most unquestionable
" freedom of action. It is confessedly true that these considera-
" tions have an important bearing upon the question of *undue* in-
" fluence in the factum of a will.

" But there are two species of influence in the production of a
" will which may properly be regarded as undue. One where the
" testator is a mere passive instrument in the hands of those who
" produce the will; the other, where he lacks that active control
" in the affairs of his household which enables him, with reasona-
" ble firmness, to resist the importunities, and especially the dicta-
" tion and offensive annoyance of those about him, who desire to
" control the disposition of his estate, and where he is consequent-
" ly driven by the dread of such silent, but intolerable grievances,
" to make such a will as he understands will alone give him quiet
" and peace.

" In regard to the former species of influence, this case is cer-
" tainly free from all question, and it would rather seem that most
" of the argument of the Court is directed towards rebutting any
" inference of that species of influence. But in regard to the oth-
" er kind of influence, it does not appear to us the case is equally
" free from all doubt.

" The testator was aged, and unquestionably, to some extent,
" infirm both in body and mind; he was living with a second wife,
" who clearly had very marked influence over him; he made a
" will, giving most of his property to the children of the second
" marriage, to the virtual disinheritance of those of the first mar-
" riage.

" Here, then, was a clear case of an unequal, and, on general

" principles of natural justice, an unjust distribution of property
" among those equally entitled to the testator's bounty. The will,
" then, was of that character, which if produced by any extraneous
" influence, such influence would be regarded as *undue influence.*
" For it is not the extent, but the character of the influence, which
" the law regards as unlawful. A wife or a child has the legiti-
" mate right to influence the husband or parent to the extent of
" doing justice, and although it should be shown that without such
" influence, the will would not have been made, or would have
" been differently made, it will, nevertheless, be valid if it be not
" in any marked degree unequal and unjust. But the same degree
" of influence, when exerted to produce a vicious result—an un-
" equal or unjust distribution of the estate among those equally
" entitled—would be held unlawful, or what the law denominates
" ' *undue influence.*'

" We have examined the authorities and the principles involved
" in this and kindred inquiries, in the first part of our work on
" Wills, (Sec. 38, pp. 507–538,) where it is shown that undue in-
" fluence partakes partly of the nature of fraud; and if the person
" in favor of whose influence the will is made, either for his own
" benefit or that of others, is conscious, as a person of common ex-
" perience and wisdom must be presumed to have been conscious,
" that an unjust result was being obtained in having the will made
" as it was, and such result is secured by personal solicitation or
" influence of any kind, although not by words or by any distinc-
" tive and definable acts, still, if such result is attained through
" the agency of other minds than that of the testator, the will can-
" not be maintained. This is well illustrated by

" *Gilbreath* v. *Gilbreath*, 4 Jones' Ep. 142;
" *Dean* v. *Negley*, 41 Penn. St. 312;
" *Floyd* v. *Floyd*, 3 Strobh. 44;
" *Woodward* v. *Jones*, Id. 552;
" *Means* v. *Means*, 5 Id. 167.

" The cases bearing upon this point are too numerous to be here
" referred to. They are cited very much in detail in the treatise
" above referred to.

" The precise degree of proof required to establish undue influ-
" ence, it is not easy to define. It is generally held that a will
" proved to have been understandingly executed, although in fa-
" vor of a stranger, to the exclusion of near relatives, is *prima fa-*
" *cie* valid, and that those who oppose the will must show distinct
" grounds upon which it should be set aside.

" *Sechrest* v. *Edwards*, 4 Met. (Ky.) R. 163.

" But in a later case in this same State, (*Harrel* v. *Harrel*, 1
" Duvall, 203,) it is said: Gross inequalities in the dispositions
" of the instrument, where no reason for it is suggested either in
" the will or otherwise, may change the burden and require expla-
" nation on the part of those who support the will, to induce the
" belief that it was the free and deliberate offspring of a rational,
" self-poised and clearly-disposing mind. But it must appear,
" either by direct proof or reasonable presumption, that the will is
" not that of the testator, freely and understandingly made. The
" character of the will, as applied to the testator's character and
" surroundings, may show this as fully as more direct and express
" testimony. But, in general, no doubt there should be proof of
" distinct effort, (and under such circumstances as to raise the pre-
" sumption that it became successful,) to produce a different will
" from what the testator would otherwise have made, in order to
" invalidate the instrument."

" But in cases where the testator is confessedly under the con-
" trol and influence of the principal legatee, and especially if the
" testator were laboring under infirmity or disability, as if his
" mind were enfeebled, or he were dificient in one or more of the
" important senses, or if he were deaf and dumb, or blind, or un-
" able to read writing from defect of education, the Courts have
" very justly exercised great circumspection to have it appear by
" satisfactory proof that the instrument was understandingly
" made; and in many cases it has been determined by Courts of
" authority that, in this class of cases, if the will is unequal, and
" especially if it is unnatural, by the disinheritance of the children
" of the testator, it cannot be maintained, unless the proof removes
" all reasonable doubt or suspicion in regard to it having been

" freely and understandingly made by the testator. By this we
" do not, of course, understand that the Courts making such dec-
" larations of the rule of evidence, intend to require exactly the
" same measure of proof in such cases as in criminal cases. But
" where the facts surrounding any claim tend to excite just sus-
" picion that there is something factitious in its character, that
" implication should be entirely removed. And so long as any
" claim is presented in a questionable guise, to any extent, it
" ought not to receive the endorsement of the Courts, until that
" characteristic is satisfactorily explained and removed. These
" views are abundantly and ably maintained by the opinion of the
" Court in *Watterson* v. *Watterson*, 1 Head. 1."

In the case of *Van Horn* v. *Keenan*, (28 Ills., 451,) this Court passed upon very similar propositions to those involved in the case at bar. In that case, the Court was called upon to decide as to the validity of a mortgage made by Keenan, at a time when it was shown that by reason of long continued drunkenness, his mental condition was such that he might have been easily imposed upon; and that advantage was taken of his imbecile mental condition, to procure the execution of a mortgage, for the giving of which no consideration was shown.

I ask the attention of this Court, also, to the portions of the opinion of Dr. McFarland, referred to in the opinion delivered by the Court in that case; and also to that portion of the opinion as delivered by the present Chief Justice of the Court, in which he says: "These circumstances force the mind to conclude that, " though Keenan was neither insane, or lunatic, or distracted, he " was in such a mental condition as to deprive him of the free " exercise of his reason, and quite open to any advances his friend " and protector might make upon him. * * * * A Court of " Equity, it is true, will not set aside a contract from the simple " fact that the intellectual capacity of one party to it is below that " of the average of mankind, unless fraud and deceit is proved; " but it will do so, when all the facts and circumstances enforce " the belief, that from imbecility of mind, one of the contracting " parties has been circumvented or overcome by artifice or cun-

" ning, and from these infer fraud. * * * * We cannot but " think, from all the facts in the case, that Keenan was not, at the " time of the execution of the note and mortgage, of sound mind, " and concur with the Court below, in the opinion that they should " be regarded as void."

See also *Gass* v. *Gass*, (3 Humph., 278,) the Court said: "If a " testator acts under a delusion which is the result of a disordered " mind amounting to insanity, and the delusion influences the tes- " tator in the execution of his will, it will be sufficient to ~~grant~~ avoid his " his will."

The third instruction was, " when a person conceives something " extravagant to exist, which has no existence whatever; but he " is incapable of being permanently reasoned out of that concep- " tion, such a person may be said to be under a delusion; and the " absence or presence of delusion, so understood, forms the true " test or criterion of absent or present insanity."

It is objected to this, that what constitutes delusion is a question of *fact* and not of law, and that whether the absence or presence of such delusion forms the true test or criterion, etc., is also a question of fact.

Redfield says, (p. 67,) "the belief in the existence of mere illu- " sions, or hallucinations, creatures purely of imagination, such as " no sensible man would believe in, are *unequivocal evidences of* " *insanity*."

Burrill's Law Dictionary, in defining insanity says: " Delusion " is said to be the true test of insanity. Sir John Nicoll, 3 Ad- " dams' R., 79.

The first part of the instruction is merely a *definition* of delusion. This is a matter of law and not of fact, and is copied *verbatim* from the decision of *Stanton* v. *Wetherwax*, (16 Barb., 259.)

The case of *Frasure* v. *Tymmerly*, (25 Ills., 202,) cited by appellants' counsel, only decides that the Court should have left it to

the jury to say whether a certain horse was purchased for the purpose of being taken to Kentucky, instead of assuming, as it did in its instruction, that such purpose had been proved.

The seventh point made by the counsel for appellants is, that the Csurt erred in refusing a new trial.

And the specification is, that the affidavits filed in reference to the mode by which it was alleged that the jury came to a verdict, furnished evidence on the strength of which the verdict should have been set aside.

Those affidavits were, one by Roe, that he had been informed and believed that the verdict had been determined by lot, and one by his attorneys, to the effect that he had been talking with three of the jurors, "from all of whom affiant learned the fact" that the verdict had been obtained as the result of some game of chance, and that he believed that the sheriff knew a good deal about it which he could be made to tell if he could be sworn; and thereupon, the sheriff being sworn, said that he had attended the jury from the time they went out till they returned, and he knew nothing about any game of chance; true, he said, that sometime during the night, one of the jurors asked him whether they couldn't decide by lot; and this question, doubtless asked in jest, was probably the foundation of the whole story, which this defeated litigant and his enraged attorney magnified into a decision of the case by a game of chance.

The counsel concede that the affidavit of a juror will not be received to impeach a verdict; but according to their doctrine, if a defeated party will swear that he "is informed and believes" that there was misconduct, then unless every juror is sworn to prove the contrary, the verdict ought to be set aside.

If such chance diposal of the case had, in fact been made, and shown to the Court, the verdict doubtless would have been set aside; but this Court has lately, much I may say to the gratification of the bar at large, expressed, in emphatic terms, its opinion of some lawyers who are perpetually witnesses in their own cases,

it is not to be presumed that the voluntary affidavit of the attorney of the defeated party, which sets up no fact as to the information which he received, but merely his conclusions as derived from his following up of the jurors after their discharge, especially when the officer who had exclusive charge of the jury is sworn, and testifies to no misconduct. Verdicts would be of little value if they could be thus easily disturbed.

Since writing that portion of this argument in reference to appellants' seventeenth "refused" instruction, Judge HEATON, before whom this case was tried, has written a certificate, which is attached to the copy of all the instructions in this case, made and certified by the Clerk of the Circuit Court, nnder date of November 19th, 1867.

I ask the Court for leave to refer to said certificate, in which Judge HEATON states that instruction was, in substance, given to the jury, but whether read from the original paper he does not remember; that he did state to the jury the issue, as stated in said instruction; and that, according to his recollection, this instruction, (which the clerk certifies is not marked either given or refused,) was so written as to appear to be a part of number eighteen, which number eighteen was refused.

The evidence in this case satisfied the Court and the jury that the will offered in evidence was not the act of a sound mind. It established that the testator was a man far advanced in life, and suffering from physical disease of a character likely to affect his mind; and that it did so affect it that he became the victim of an insane delusion—an idea which the evidence showed was unreasonable, and unsupported by any facts; that after the death of his wife, he conceived the notion that the family who lived on his farm, and with whom he lived, were "stealing his sheets and pillow cases," and that his son Mason, and that son's wife, were "encouraging them in it." This idea of "stealing," haunted him from that time until his death. He raved about it in the house, on the public roads, at the stores and in his neighbors' houses. Was he conversing on any of the ordinary topics of the day, let the name of that son be mentioned, or the names of the Dayton

family, and his mind was at once unhinged. It showed that his son Mason—who was one of the most respectable men of the County, and who, while a boy, had been, as the witness testified, "the idol of the family," and as a man had been his father's trusted counselor—was made the object of his father's hate, and the victim of his insane ravings. It showed this man Roe doing nothing to dissipate these idle fancies, but of a sudden becoming obsequiously attentive to the old man. It showed that, whenever the old man had seen him, he come back to his home raving about the stealing of his sheets and pillow cases. It showed his declaration that he would have no peace with Roe until he had made another will. It showed him going, not to the attorney who had done his business heretofore, but to the attorney who managed this case for this man Roe, to have a will drawn. And it showed him, while this pretended will was being drawn, talking with the scrivener about the stealing of sheets and pillow cases.

The jury which tried this case, and the judge who presided at the trial, and who rendered the decree, had this advantage over this court, that they not only heard all the testimony, but they swore the witnesses; they heard this man Roe, but they saw him too; and could ~~prove~~ his manner and deportment throughout the trial, and while on the witness stand, ~~will~~ determine how much credibility was to be attached to his testimony.

The jury rendered a verdict, and the verdict was such a one as commended itself to the judgment of the court, or else the judge, in whose aid only this jury was empannelled, would, verdict or no verdict, have entered a decree maintaining the will—or at least refused a different one.

Satisfied that, despite the many obstacles that there often are in the way of obtaining an impartial jury and an honest verdict, and despite the effects of interviews with jurors, after rendition of their verdict, even and exact justice has been meted out, I submit this case to the consideration of the Court.

JOHN V. EUSTACE,

Attorney for Appellee.

SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

September Term, 1867.

JOHN ROE, ELEANOR ROE, MARY FRANCIS ROE, *et. al.*
Appellants.

vs.

MASON TAYLOR, *Appellee.*

Abstract of Record.

EDSALL & CRABTREE, Att'ys for Appellants.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

September Term, A. D. 1867.

JOHN ROE, ELEANOR ROE, GEORGE ROE, MARTHA ROE AND MARY FRANCIS ROE, by G. BOLIVER ROE, their next friend, and G. BOLIVER ROE, and others,
Appellants,
vs.
MASON TAYLOR, *Appellee.*

Appeal from Ogle.

ABSTRACT OF RECORD.

Placita, Summons and return. 1

The Appellee, Mason Taylor, on the 12th day of July, 1866, filed his bill of complaint in the Circuit Court of Ogle County, stating: That he was one of the heirs at law of George Taylor, deceased, who departed this life on or about the 5th day of Febru- 4 5

ary, 1865, in the said County of Ogle, seized and possessed of real and personal property situate therein. That at the time of his death the said George Taylor left him surviving heirs at law as follows, to wit: The said Mason Taylor and Samuel Taylor, his sons, 6 and John Roe, Martha Roe, Mary Francis Roe, George Roe, and Eleanor Roe, his grand-children, sons and daughters of Eleanor Roe, who was a daughter of said George Taylor, deceased, and died in his life-time; That the said persons last named were the only heirs at law of said George Taylor, deceased; That afterwards, on the fourth day of March, 1865, one Bolivar Roe presented to the County Court of said Ogle County, a certain paper writing, said to have been executed by the said George Taylor, as his will; That such proceedings were afterwards had in said County Court of Ogle County, that said paper writing was ordered to be taken as the will of said George Taylor, and was admitted to probate, and ordered to be spread upon the records of said Court, and was and is in the words and figures following, to wit:

7 "Know all men by these presents: That I, George Taylor, "of the County of Ogle and State of Illinois, do make and publish "this my last will and testament:

"First.—I order that all my just debts be paid by my execu- "tors hereinafter mentioned.

"Second.—I will that as soon as practicable after my decease, "my estate, both real and personal, shall be sold and the proceeds "distributed as follows: To my son Samuel Taylor I give the sum "of one hundred dollars ($100). To my son Mason Taylor I give "the sum of fifty dollars ($50). To the five children of my deceased "daughter, Eleanor Roe, (wife of Boliver Roe,) or to such as may "be in life at my decease, and to the children of my said son Samuel "I give the sum of One Hundred dollars each.

"Third.—It is further my wish and will that whatever may re- "main of my estate after the payment of the above bequests, shall "be divided equally among my said grand-children, the sons and "daughters of my said son Samuel and my daughter Eleanor Roe, "share and share alike.

8 "Fourth.—I hereby make, constitute and appoint my said son- "in-law, Boliver Roe, and my son Samuel Taylor, to be the exec-

"utors of this my last will and testament; and I hereby authorize "and empower my said executors to sell and convey, with good "and sufficient deeds of conveyance any real estate of which I may "die seized; the same to be sold by them to the best practicable "advantage for the benefit of my estate.

"In Witness Whereof, I have hereunto set my hand and seal "the 25th day of July, A. D. 1864.

his
"GEORGE ✕ TAYLOR, [SEAL]
"Attest: M. W. SMITH. mark.

"The above instrument, consisting of two half sheets "of paper, was, at the date thereof, signed, sealed and published "and declaired by the said George Taylor, as and for his last will "and testament, in presence of us, who at his request and in his "presence, and in the presence of each other, have subscribed our "names as witnesses thereto.

"JOHN SHARP, Oregon, Ogle Co., Ills.
"W. W. BENNETT, Oregon, Ogle Co., Ills.
"M. W. SMITH, Oregon, Ogle Co., Ills."

That at the time of making such will, and for a long time prior 9
thereto, said George Taylor was partially insane, which said partial insanity was the cause of his making said will; That mentally he was almost wholly imbecile, and was subject to delusions as to the characters, motives, and actions of his relatives and friends, and of a character unfavorable to them, and was subject to be easily and unduly influenced against his said relatives and friends, and particularly against complainant, Mason Taylor, by designing persons; and complainant charges that said Bolivar Roe, seeking to obtain an advantage thereby to his children, mentioned in said will as the 10
children of said Eleanor Roe, and the grand-children of said George Taylor, deceased, did stimulate and encourage said delusion in the mind of said George Taylor, deceased, and did, before the making of the will and while deceased was so mentally prostrated, exercise an undue influence over him, for the purpose of prejudicing his mind against his other relatives and heirs at law, and particularly against complainant, and his family, and their friends and other persons who were trusted by complainant as persons worthy to

care for and board said deceased, with a view of exciting a dislike in deceased to such parties with the hope that such dislike would extend itself to complainant, and for the purpose of procuring the making of a will by the said George Taylor which should give to the children of said Bolivar a greater share of the estate of said George, than they would be entitled to as heirs at law,and that said Bolivar did, by such undue influence, procure the making of the
11 pretended will aforesaid. That at the time when the will purports to have been executed, said George Taylor was not of sound mind, but on the contrary was of unsound mind and memory, aud was incapable of making any valid devise, of any of his property, and complainant charges that the paper writing so presented to the County Court of Ogle County, and admitted to probate as the last will of George Taylor deceased, by order of said Court on the fourth day of March, 1865, was not the last will of the said George Taylor, deceased.

That the grand-children of deceased, mentioned in said will, as the sons and daughters of Samuel Taylor, are Eliza Taylor, George Taylor, Julia Taylor, and Mason Taylor, and that they as well as the sons and daughters of said Eleanor Roe, in said will mentioned, are all infants.

Prays that the said Samuel Taylor, John Roe, Martha Roe, Mary Frances Roe, George Roe and Eleanor Roe, Eliza Taylor, George
12 Taylor, Julia Taylor, Mason Taylor, (son of said Samuel,) and the said Bolivar Roe, may be made parties defendant to the bill and that they be summoned to be and appear before the said Ogle County Circuit Court, on the first day of the next term thereof, to answer all and singular the matters contained in the bill, the answer of defendants to be without oath, the oath being expressly waived. That the Court order an issue to be made up, whether the writing so admitted to probate is the will of said George Taylor, deceased, or not, and that if it appear that such writing is not his will, complainant prays that by decree of the said Court, the proceedings in the said County Court admitting said paper to probate be annulled, cancel-
13 led, and set aside, and that the said paper be declared not to be a will, but that it be cancelled and annulled, and also prays general relief.

Order of Court appointing George P. Jacobs Guardian *ad litem* for all of the defendants except Bolivar Roe and Samuel Tay- 14
lor, and that defendants be ruled to answer in sixty days.

Demurrer of Bolivar Roe to bill, which was overruled by the Court, and leave is given defendant Roe to answer by July 18,1866. 15
16

Answer of defendant Bolivar Roe admits the decease of George 17
Taylor, and that he left property as stated in the bill, and that Ma- 18
son was one of his sons, and that the parties named in the bill would have been the heirs at law of the said George Taylor had he died intestate. Denies that he presented the will of George Taylor, deceased, to the County Court of Ogle County as alleged in the 19
bill, and denies that he ever had charge or custody of said will,but states that said will was presented to said County Court as he believes by one Samuel Taylor, and that the same was in fact the last will and testament of the said George Taylor, deceased, and was duly executed by him, and that such proceedings were had in said County Court that the same was ordered to be taken as the 20
last will and testament of said George Taylor, and admitted to probate, and ordered to be spread upon the records of said Court; and also admits that said will was truly set forth in said complainant's bill.

Denies that at the time of making the will said George Taylor was partially insane as alleged in the bill; and also denies that any such partial insanity entered into and was the cause of his making the same, or that for a long time previous to and at the time of the making of the said will the said George Taylor was mentally almost wholly imbecile, or subject to delusions as to the character, motives and actions of his relatives aud friends, or easily influenced against them, particularly against said complainant as alleged in the bill.

Denies that he was seeking to obtain an advantage as alleged 21
in the bill, or that for that purpose he stimulated and encouraged delusions in the mind of said George Taylor, deceased; and denies that before the making of the will he exercised an undue influence over the mind of said deceased for the purpose of obtain-

ing such will to be made as alleged in the bill, and further denies that he procured the making of the will.

Further answering says he believes that at the time of the making of the said will said George Taylor was of sound mind and memory, and fully capable of making and executing a valid devise of any or all of his property, and that the said writing so presented to the County Court of said Ogle County was and is the last will and testament of said George Taylor, deceased.

Says further, that on the 4th day of March, 1865, while the
22 matter of admitting said will to probate was pending in said Ogle County Court, he refused to take upon himself the executorship of said will, although named therein as executor, and under his hand and seal executed a written refusal of such executorship, and renounced his right to qualify as executor of said last will. Refers to a copy of his refusal and relinquishment marked "Exhibit A," and asks that it be taken as a part of such answer.

Says that he has not now, and does not claim or pretend to have any right, title or interest in and to the estate of said George Taylor, deceased, either real or personal, but disclaims all right, title and interest in and to the same or any part thereof.

23 Denies all undue influence in the said bill charged, which
24 answer is sworn to. Copy of "Exhibit A" referred to in answer
25 and the Clerk's certificate thereto attached.

26 Answer of guardian *ad litem*, George P. Jacobs, for infant defendants, filed August 6, 1866.

27 Motion by complainant's solicitor to strike the jurat to Roe's answer from the files.

29 Replication to the answer of guardian *ad litem*, and replication to answer of defendant Bolivar Roe filed, August 7, 1866.

32 Leave given to Sheriff to amend return on summons.

35 Order, on July 1, 1867, that a jury be impannelled "to try "the issue whether the writing produced be the will of said George "Taylor, deceased or not, as an issue at law, and thereupon come

"a jury," etc., and the trial proceeds from day to day, until the 13th day of July, 1867, when the jury returned the following verdict: "We the jury find the paper given in evidence before us "is not the will of George Taylor;" whereupon the defendants enter a motion for a new trial.

Afterwards, on the 16th of July, 1867, the Court overrules 39
the motion for a new trial, and renders a decree to the effect that the said paper writing so aforesaid admitted to probate in the said County Court of Ogle County, as the last will and testament of George Taylor, late of said County, deceased, is not the will or 40
testament of the said deceased, but that the said paper is decreed to be void and of no effect, as such will, and that any and all letters testamentary issued to the persons named in such paper as executors be revoked and cancelled; that said executors be and were thereby decreed to pay the costs of this proceeding, including fees of all witnesses sworn and examined on such trial, out of the estate of said George Taylor, deceased, in their hands, and surrender the rest and residue of said estate in their hands as such executors, to such person or persons as are or shall be entitled by law to receive the same. To which decree the defendants then and there excepted, and the defendants were allowed fifteen days in which 41
to file bill of exceptions.

And the defendants prayed an appeal, which was allowed on defendant Boliver Roe entering into bond in the penal sum of three hundred dollars, conditioned according to law, with John Roe or Henry A. Mix as security; the same to be filed within fifteen 42
days from date of decree.

THE BILL OF EXCEPTIONS. 43

The defendants below, to maintain the issue on their part, introduced the following testimony and evidence:

MORTIMER W. SMITH testified:

That he was acquainted with the late George Taylor, of said County, his first acquaintance with him began some twelve or thirteen years ago; either here in town (Oregon) or at his house; saw him every few months up to the time of his decease—generally in
44 town. I generally spoke to him when I saw him; saw him several times in the year preceeding July, 1864. Do not recollect the distinct times, but I had a conversation with him not long before he came for his will. He applied to me to draft his will some two years ago I think. I think the first business he introduced when he came was the drawing of his will. He appeared as usual. I think it was not more than a few weeks before, that I saw him. His directions to me are shown in the will. He said he wanted his will drawn; I sat down; he sat by me and told me what he wanted. I wrote at his dictation. I used my own language to convey his ideas. I would know the instrument. [Instrument afterwards offered in evidence as the will of George Taylor presented to witness.] This is it. Yes, sir, this is the will. It is in my writing. I wrote his name and he made his mark. The name was written at his instance; I can't say whether he or I held the pen to make the mark. He had hold of the pen.—
45 The other witnesses to the will were John Sharp and Wm. W. Bennett. They were both present when I signed the will. We all signed it in his presence and in the presence of each other, and in my presence. Mr. Taylor requested us all to sign as witnesses. I don't recollect the particular style in which he dictated the will. I presume the arrangement of it was my own. I read it to Mr. Taylor after it was made, before it was signed. No alterations were made after. Think I had done business for Mr. Taylor before, such as acknowledging a deed or something of the kind. I did not see but Mr. Taylor's mind was in the same condition it had been ever since I had known him. I regarded him as of sound mind and memory. He seemed to recollect distinctly. As far as I could discover he had a thorough understanding of his property. Seemed to understand how he wanted his property disposed of. In town I usually saw him in the street or in places of business. I always spoke with him when I met him; presume I always spoke of his health; politics were generally talked of, and the war, by him.—

Mr. Taylor always appeared to be an eccentric man. I did not discover other eccentricities at that time than at others. He was a man of strong mind. His mind outlasted his body. He was much broken in health—it so appeared to me. I never saw any 46
evidence of incoherency in his mind. I don't know of any one coming to town with him when the will was drawn; he came to my office alone; my impression is he came in a buggy. I think he told me whom he wanted to be legatees, and what he wanted to give them. He wished the persons named as executors in the will appointed as such: told me he wanted to will his property mainly to two families of children—of his daughter and son Samuel. Don't know whether he mentioned the names of the children or not. He named the parents: wanted his property sold after his death, and out of the first proceeds realized he wanted certain bequests paid in money. The first one was to Samuel Taylor—then to Mason Taylor. The balance, when realized, he directed should be divided equally between children of his daughter Eleanor Roe, (wife of Bolivar Roe,) and children of his son Samuel Taylor. I think he said Mrs. Roe was dead. He spoke of his own wife that had died, It is three years instead of two since the will was drawn. My recollection is that we spoke of specific property; he probably mentioned some things; think he gave the area of some tracts of 47
land—mentioned the number of acres of the tracts. Don't remember his enumerating any other tracts than those pertaining to the will. I had not the least difficulty in finding out his wishes—they were very definite in his mind. Think he named the number of grand-children—not certain. I have the number six in my mind, but whether from that fact I can't say. Think he knew by name his grand children—particularly those of Roe, and that they were talked of in a familiar manner. Have a more distinct recollection of mentioning names than number. I appended Taylor's name at his instance. The mark was made with his assistance. I never made a mark without the assistance of the person. He was very tremulous—was feeble; physically he was shattered; his eccentricities were mainly physical; there was a general feebleness; his eyes apparently were very weak; he tried to keep out the light and yet kept them open a little to see. His hands trembled and features twitched; there was a little labor in speaking; spoke briefly, and abruptly; he [illegible]

ways had been so. Spoke of his health—don't remember what he said. The will was drawn on the day it purports to have been dated.

18 Cross Examination.

The will was drawn July 25, 1864. He talked of his reason for cutting off Mason. Don't recollect the reason. He seemed to be under the impression that he had been unfairly dealt with, and misused. Think he was disposed to talk about it. The more prominent one was a difficulty between Mason's wife and himself on account of some clothing he had lost. Don't recollect that he gave as a reason that Mason's wife or Dayton's wife stole clothing. He said Mrs. Mason Taylor had taken things that belonged to him.—Think it was bed clothing. Don't remember anything else he said of Mrs. Taylor. The idea that he was cutting Mason off did not occur to *me* until the contesting of the will. I did not get the idea that he was acting from his feelings. The idea that he was cutting Mason off did not occur to me. I thought it was all understood.—I don't know whether or not he gave a reason in response to a question of mine. Think other reasons were talked of. I think I may have been misled in the Probate Court as to his giving a larceny as the reason of cutting Mason off. Don't know whether he spoke of Rollin Dayton. I presume he did. I had the benefit of
19 his opinion of Dayton on another occasion. Don't know that I gave any other reason in the Court below. Have a recollection that other things were talked of. I don't know that he spoke of the larceny in response to my question, but it may have been. I think I saw Taylor between February 1864 and the time of making the will, but not positive. Think he came in shortly before to acknowledge a deed. Can't say the deed was after February, 1864. I don't recollect going to his house to electioneer for office. Think I went there when taking the census in 1855. Don't recollect doing any business for him but making a deed. Think when he acknowledged the deed he also talked of other things. I can't say as to any *special* time I saw him. Think I saw him several times that season. Think I recollect of his making his mark to the will. Recollect standing by the table and he standing by me when the mark was made. I was the in then business of making abstracts.—I did not know from recollection of the area of his tracts of land.

I don't think I had the charts then. Recollect of areas being spoken of in connection with land. The question of area was discussed. I think he spoke of the areas of certain tracts of land.—It was not material to the business on hand to discuss areas. Dur- 50
ing the drawing of the will he stopped to talk, and spoke of land and the number of acres. Do not know whether the number was correct. Don't recollect making any inquiry—presume I did—as to Mason's being cut off. Can't say how the question of larceny came up. It made an impression on my mind. I told him there must be some mistake about it. Didn't think Mrs. Taylor would do it. Think I know that sheets and pillow-cases were the articles. Think he stated so. I think he insisted that Mason was connected with some of his injuries. The only injury I remember was the stealing. Don't know whether it was that or not. He said something about going somewhere or not going. I can't call to mind that Mrs. Dayton's name was mentioned. Don't know that Rollin's was—it may have been. Taylor must have been in my office about two hours. Most of the time I was preparing his will. We may have talked while making the will. He may have continued the conversation on other subjects than the will. My impression is that we were generally alone while drawing the will. Think others came in. We did not avoid conversation when others came in, except on the will.

Re-Direct Examination. 51

I don't recollect that Mr. Taylor tried to write his name when the will was executed. I begin to recollect stating such a circumstance in the Court below—if so, it was true. Don't just recollect what the articles were, whether clothing or bed-clothing. My impression is that it was bed-clothing, but whether from recollection or not I can't say. He said he had received ill-treatment from Mason and his wife. I recollect that I did not recollect below from what member of his family he had received ill-treatment. Know now that it was Mason.

Question :—You state in your cross examination that something was said by the testator about going somewhere. Do you or not recollect of his stating that Mason and John Hewlett had gone down to Samuel's and left him, or language to that purport—if so, state

fully what you now recollect of the testator's saying. [Question objected to. Objection sustained. Defendants then and there excepted.] I think the statement as to some one going some where was made, and made about Mason, or some one involved in the
52 will, but don't recollect what names were used. He considered it a cause of complaint. Think I recollect that he spoke of it complainingly. Can't say that I remember who it was,or where he was to go, or did go. Don t remember what I elicited by any question. My recollection is that there was a complaint more general than I have stated. I don't recollect that sheets or pillow cases were spoken of by Mr. Taylor during that conversation ; but if I was going to mention anything, I should say sheets and bed clothes, and perhaps towels. I only remember it was clothing.

JOHN SHARP testified as follows:

[The paper writing alleged to be the will of George Taylor was presented to witness.] I have seen this instrument before. This is my signature. I saw the instrument executed. Mr. Taylor had hold of the pen while Mr. Smith wrote the name. I signed it at the request of Mr. Taylor. I saw all the witnesses sign it. I was in the office some fifteen or twenty minutes at that time. There was some conversation. The will was read over I think when I was
53 there. I am not positive. George Taylor took part in the conversation. There was some conversation in regard to the will. Don't recollect particulars. Taylor said something as to some treatment that he imagined he had received from his children. My impression is he thought some of his children hadn't treated him right. Can't say whom he mentioned. Can't recollect the grievances he named. He appeared to understand what he was about. Couldn't say whether he made any remark as to the will after it was executed. As far as I could see there was nothing unusual about him. I only had a casual acquaintance with him before that. I may have conversed with him before, but not that I remember. My impression was that for a man of his age he was sane and of good mind.—Couldn't say that he enumerated any of his property while I was there. Saw no excitement about the old man. He seemed all right. When the will was read he made no objection. My belief then was that he was of sound mind and memory for a man of his age. I

think the latter part of the will—the witnessing part—was written while I was there.

CROSS-EXAMINATION. 54

My acquaintance with George Taylor was: I simply knew him when I met him, for several years. Had never spoken to him that I know of. I happened into the office. Neither Smith nor Taylor called me in. Think I was going to the office—not certain of that. I took part in the conversation. My impression is something was said of some one stealing his sheets and pillow-cases. Can't say that was the reason of making his will. I got the impression that he thought he was ill-treated. Don't know that he said who stole the clothes. Can't say that he spoke of Mason or connected him or Mason's wife with stealing the clothes. All the ill-treatment I remember was about the stealing. I think when the will was signed Taylor sat by the table, and Smith took hold of the pen. My remembrance is that Smith wrote the name.

RE-DIRECT EXAMINATION.

I think sheets and pillow-cases were mentioned. So long ago I can't say positively. Think he spoke of ill-treatment, but that is the only specific thing mentioned.

JOHN ROE testified as follows:

My profession is practicing medicine. I have been practising 55
40 years and also farming. I knew George Taylor late of this County. Got acquainted with him in 1838. Came to this County in the Spring of 1835. I have known Mr. Taylor from the time we got acquainted ever since, except from 1845 to 1850, when I was in Chicago. Have seen him frequently since—two or three or a half dozen times a year. I often went by his house. Part of the time I lived about two and a half miles from him and for the last three or four years of his life, some five miles. I recollect calling on Mr. Taylor, in the latter part of the winter of 1864, in relation to some wood. I called to buy some wood. Found him in the house, sitting by the stove, reading a newspaper. The common courtesies of the day were passed. Told him what I came for—that I understood he was selling wood,and I came to see if I could buy some of him. He said: "No,

I have got none to sell." He said they acted so like damned hogs
56 that he said he wouldn't sell any more, and he would stick to it.—
I said no more about buying wood. He said one man had put so
much on his wagon that he broke it down and he was damned glad
of it. First time I ever heard him use bad language. I told him
we needed some wood out on the prairie or we would freeze. He
said had said it and would stick to it. I think I next saw him in
February, 1864, about the time of his sickness. My son called me
in and said if I wanted to see Mr. Taylor to come in, for the doctor
said he would die. I went in. The old gentleman was asleep and
I did not waken him. I said I would call again when I returned,
and did so. Found his pulse accelerated. He said they had been
giving him morphine and gin. I told them I didn't think he would
die that time, and left. I next saw him in the last of April or first
of May, 1864. I was riding by and saw him in the yard splitting
kindling wood. He saw me and came to the fence. I then had
his grandson living with me. He said, 'How is George?' I said
George is very well. He said George was a very fine boy. I told
him George was a fine healthy child. He asked me where I was
57 going. Told him to Mt. Morris to see Mrs. Farwell, and I think
he said he didn't know her. Oh, yes you do! said I,—Henry Far-
well, that used to live south of Daysville. Said he, "I thought
they had all gone to Chicago." I told him that they had all gone
but Jackson, and he was living at Mt. Morris. Farwell was plant-
ing corn when I got to Mt. Morris. I saw Taylor between these
two times—I think it was in April. I saw a pile of posts in the
yard and went to see if I could buy them. Found Taylor in the
house. He had a room where he generally staid and read. He read
a great deal. I asked if he would sell the posts that lay out in the yard.
"No," said he, "I had those posts made for my own use. I have
got 80 rods of fence to put up this spring, if I can get anybody to
do it, and I want to use them." Passing over the conversation
when I was going to Mt. Morris, the next time I saw him he came
to Billy Rice's when I was there. It was the latter part of May, I
think, from the conversation I had as to the corn then growing.—
It was a mile and three-quarters from his residence. The old gen-
58 tleman came on foot. They appeared surprised at his walking.—
He said he felt better when he stirred about. He was excited on

the war. Said he hoped to live until the rebellion was put down, and
then he would be ready to die. Rice offered to hitch up his team
and take him home, but he said he could walk. He talked of Gen-
erals, &c. He had his favorites—it was his theme, about the Gen-
erals and the war. He was blowing up Grant for not being at Pitts-
burg Landing. Found fault with Buel and said he might as well
have been there as where he was. He told me matters that I did
not know about the war. He was well posted in the events of the
war—always reading. He objected to being taken home—said he
could walk. He took tea—his hands trembled and Rice poured out
the tea for him. I think the corn had been plowed once or twice:
Rice said the corn was too thick. Once when I had been to meet-
ing during the same summer, Taylor got in and rode with myself
and wife. He talked of the preacher, &c. I don't know whether
that was before or after I saw him at Rice's. I saw him at Stinson's
that summer—the one that lived on the road. The old man came
and we talked about the war. I left him there. He said he heard
some of them were sick and he came over to see. I was with him
half an hour—not more. Think he talked of other subjects than
the war. There was some lady there I heard he wanted to court.— 59
The old man was quite jovial and cheerful. I have been a physic-
ian about forty years. Have treated patients who were insane, and
afflicted with mental disease. Treated one Van Patter, and a little
man at Daysville by the name of Reading. *H*ave read books on
insanity and mental diseases. Saw Taylor at Stinson's after I saw
him at Rice's. As to Taylor's mental condition, I think the old
gentleman was perfectly rational—only his age worked on his sys-
tem. I did not see Taylor during his last sickness. *H*e told me
that he was troubled with his water. *H*e had a tremulous motion.
I think it was a nervous irritation, whether from tobacco, opium or
morphine. *H*e had a twitching of the face. Think the nerves of
his mouth twitched when I first saw him, and when I first became ac-
quainted with him.

CROSS-EXAMINATION.

I don't know how long Mrs. Taylor died before Taylor. Mrs.
Taylor told me that he took gin and morphine. It was not his wife
but one who lived in the family. I am not positive whether his wife 60

was alive then; I think I know the year. I don't forget everything I know. I believe it was not his wife told me he took morphine.—I might be mistaken as to the year, but don't think I am. I don't think the other conversations took place differently from what I stated them. I think I am right as to the year, that it was in 1864. I don't think Mrs. Taylor, (George's wife,) was living when I went for the wood. I remember that she was not alive when I went for the posts. I attended Reading about a month. Attended him for insanity. It was about the time of the Millerite excitement. I won't fix the date. It was the first excitement. Don't recollect the year of it. Recollection is not very good as to dates. Attended Van Patter about 1840. Don't recollect the time. After I came from Chicago they brought a lady to me from Grand Detour to be treated for insanity. I had one such patient in California. Reading died. I think Van Potter got well. Almost every doctor's book you pick up treats of insanity. I have read Dr. Gunn a number of years ago. It is an allopathic work. Don't know how much of it is devoted to
61 that subject. I have also read Beach's Eclectic Practice, Curtis', of Cincinnati, and Comfort, of Philadelphia. Have read Ewell.—Never read a work altogether on insanity. It is my opinion that the tremulousness came from nervous irritation. Paralysis usually comes from diseases of the brain. It leaves the nerves relaxed, and not rigid and tremulous. The books say it proceeds from irritation. In palsy the patient may jerk and twitch some. Taking out the brain wont produce palsy. I have sometimes found the cause in stomach. I commenced reading medicine in 1821. I never received a diploma, but a man who has practiced forty years ought to know something. I am the father of Bolivar Roe.

RE-DIRECT EXAMINATION.

I think that George Taylor died in February, 1865, which was the February following the time when I saw him at Stinson's, Rice's and the other places mentioned by me.

62 GEORG LILLY, sworn, says:

He has known the late George Taylor nineteen years. Resided not quite half a mile from him. For the last two or three years of his life saw him two or three times a week. We always

spoke together when we met. I met him very often during the summer of 1864. He was at my house that summer at different times—several times for cider, at Dr. Potter's prescription. In regard to his mental faculties, he appeared pretty much as he always did before from the time I got acquainted with him, although he got more tremulous. He was affected with tremulousness ever since I knew him, but not so much toward the last. He seemed to understand what he was about—what he wanted. I saw nothing unnatural.—I never saw anything unnatural about him.] I think I saw him two or three days before he died,—they called on me to assist the doc-
63 tor in dressing and taking him out of the bed. [Witness proceeds to give details of business tranactions and conversations with deceased.]

HARVEY JEWETT testified as follows: 64

Says he has known the late George Taylor from 1837 until his death. I saw him during the last year of his life—do not know how often. He was at my drug-store. I kept a drug store in Oregon from 1862 to 1866. In the year 1864 he was there perhaps half a dozen times. Sometimes he staid one and a half or two hours. I always conversed with him. He generally asked for a late paper, and sat down and read it. He read the Chicago *Tribune*. Made purchases of me. He got some gin perhaps twice. At other times he got a bottle of Constitution Water, and perhaps other medicines. I can't tell the exact time when he was there. He usually came to 65
town with a horse and buggy. For the ten years past I saw him about as often as in 1864. I never saw anything unusual or unnatural about him, except that he became more nervous and more tremulous. I discovered no change in his mental faculties. Discovered no want of ordinary understanding. We generally conversed on the war; that was then the general theme in the community.

On cross examination, after repeating the substance of a part of his direct testimony, the witness said: I think I paid particular attention to Taylor, as an old man and an old friend. If I had time I would sit down and talk to him. I conversed with him every time he was there.

SAMUEL ROAT, sworn, said:

I knew Mr. George Taylor for ten or fifteen years. Can't 66

tell how often I saw him during the summer of 1864. He came to get his harness mended. Had never conversed with him before. I saw him in the street and about town before that time. I never noticed anything unnatural about him. He asked me my price and paid it. I didn't suppose anything was wrong with him. I saw nothing at any time to make me suppose him insane.

CROSS-EXAMINATION.

I made a thill strap for him at that time; I never did any other work for him. I only knew him by sight.

DR. EZRA M. LIGHT, sworn, said:

I have practized medicine fifteen years. Am a graduate of Rush Medical College, and have a diploma. I was acquainted with the late George Taylor, of this County. I knew him as long as fifteen or eighteen years. I saw him often—was at his house frequently during that time. I frequently met him elsewhere, and al- 67
ways talked with him. During the year 1864 I saw him once, at least, to my recollection, in the early part of the summer; conversed with him. The important part of our subject was his own health. He kept up a connected conversation; also general conversation as to his friends. I met him at the time at Schultz's drug store. I did not prescribe for him. Met him again on the other side of the river. We talked together then. I visited him but once professionally. It was in January, 1864. His difficulty then was a retention of the urine. I don't recollect any conversations other than I spoké of after that sickness. I met him at Mr. Stinson's, I think before that. I believe George Taylor during the summer of 1864, was a man of sound mind and memory. I supposed him to be of sound mind and memory. I did not observe any thing that would give me any different idea. I have treated patients afflicted with insanity—three or four such cases—have studied works treating of insanity.

On cross examination among other things said: I only recol- 68
lect meeting Taylor twice in the summer of 1864. * * * Did not notice any evidence of insanity—my attention was not called to that point by anything out of the ordinary course. I saw

nothing unusual about him. I considered him the same man he always was. If I had examined him closely I might perhaps have come to a different conclusion.

WILLIAM SCHULTZ, being sworn, said: 69

I was acquainted with the late George Taylor; I knew him two or three years. Usually saw Mr. Taylor in my drug-store. Taylor generally stopped for half an hour or an hour, and sometimes about for half a day. He generally purchased morphine, and gin very often. During the summer and fall of 1864 he was not at my drug store so often. He was in sometimes. I almost always had some conversation with him. I never noticed anything unusual in his mental faculties. I saw he was failing—he was quite talkative and friendly. I can't say but that he always conversed rationally. He always talked in about the same way. The last year of his life he seemed failing. I knew Taylor in 1860, '61, '62, '63 and '64,—certainly three or four years. On cross examination nothing material 70
or new was elicited.

SILAS HAWTHORNE, sworn, says:

I was acquainted with the late George Taylor—knew him for twenty years before he died. Became acquainted with him in the winter of 1842—43. He used to come to my shop for work. I have lived about six miles from him for the last ten years of his life. During the last two years of his life he often called at my 71
house when coming to Oregon or going back home. He lived eight miles from Orogon. During 1864 he was at my house a number of times. Sometimes he staid longer than at others—long enough generally to get his dinner and feed his horse—sometimes longer. During the last year of his life I was at his house three or four times. I conversed with him on each occasion. He kept up a connected conversation, as in former times. He came at one time when he had broken one of the thills of the buggy. At one time his horse was lame and he wanted me to take off the shoe and see what was the matter. That was in the summer of 1864. I last saw him alive a week before he died; he made remarks as to the treatment of himself by his son Mason. I think it was in June 1864 that he made these remarks. I think he had not been to Oregon

then, nor was he going to Oregon; think we were eating dinner when he came. He said Mason had treated him with very harsh language. Had not treated him as a child ought to treat a parent. I think this was in June, 1864. Think Taylor had been to show Luman Tayler over into Boyce's neigborhood. He had walked from the Hart School-house
72 which was north of my place a mile and a half, if not more. It was in very warm weather. Am not positive but it was in July. I never saw anything unusual or unnatural about him. He appeared perfectly rational to me. Don't know anything else that was said there—we talked on other subjects.

On cross examination, among other things, he said: Don't know exactly what elicited the remark about Mason. He said Mason had not treated him as a son should. He said Mason had
73 talked hard to him. I think it was before his injury. I think Taylor was at my house more than twice in 1864. I am sure he was there at least three times. I never heard him say anything about sheets and pillow-cases. I don't recollect that he spoke of having any clothing stolen.

RE-DIRECT EXAMINATION.

I remember when Taylor came to my house to have his horse's foot examined. Am a blacksmith. At that time he talked about his property. He said Mason had enough, and he was going to leave his property to Bolivar's children—that they needed it more than Mason. I think this was in the first part of May, 1864. I suppose he meant Bolivar Roe's children. Bolivar married Mr. Taylor's daughter.

DAVID POTTER, being sworn, said:

74 I was acquainted with George Taylor twenty-nine years. I resided for the last eighteen years a little over a mile and a half from him. I used to see him frequently; during the last year or two of his life I saw him often—the last year he lived I saw him to talk with him three times. I saw him at widow Fuller's the first time in the summer of 1864. He could keep up a connected conversation. I last conversed with him on the road near my house, in September or October, 1864. His principle topic then was that he had met with a loss of some goods. We talked about half an hour. He

always appeared rational to me. I never discovered anything unnatural or unusual in his conversation.

ALFERD KONKLE, being sworn, said: 75

I was acquainted slightly with the late George Taylor. I knew him first in 1853. I saw him but not very often up to the time of his death. I bought a couple of loads of wood of him. Never had any other conversation with him. He acted rationally and in 1863 and 1864 his mental condition was good so far as I could see. Saw nothing to the contrary.

On cross examination, said his conversation with Taylor was in 1863 or 1864, not certain which.

DR. GEORGE A. BUNKER, being sworn, said:

My profession is that of a physician and surgeon. I was acquainted with George Taylor; Knew him by sight fourteen or fifteen years; have attended 76
him as a physician. I so attended him in February 1864. * * * Had conversed with him prior to that time. The disease of the old gentleman in February 1864 was weakness of the urinery organs—retention of the urine. * * * * * * * I saw him occasionally for two or three weeks—saw him every other day and sometimes every third day. Dr. Potter attended alternately with myself. * * * * The principal treatment was the use of the Catheter and diuertic medicines. I usually remained there from twenty minutes to an hour. On some occasions I conversed with him. I next saw him some time in the spring of 1864, in Oregon. I conversed with him a few moments in Bennett's store. On these occasions he could talk connectedly. On one or two occasions when I saw him he was insensible, this condition was caused by the disease—by the urea of the urine circulating in the blood; the Catheter relieved him. The comatose condition is an incident of the disease. It is common when the urine is long enough retained. Retention of the urine causes poisoning of the 77
blood. I saw Taylor again in Jewett's store. He settled with me at that time. * * * * I think I saw him in town once after that in the summer of 1864. I have practiced medicine nineteen years. Have treated some patients for insanity. Have read works on insanity—Sully on the brain, Esquirol on insanity, etc. I believe Mr. Taylor was of sound mind and memory during the summer of 1864. In all the intercourse I had with him I never saw anything to lead me to suppose his mind was unsound, more than he was rather childish. He was no more so than men of his age usually are. I never discovered anything I would call aberration of mind.

78 On cross examination, among other things, witness said:

I suppose the test of insanity is the presence of delusion. A delusion is an idea fixed in a persons mind, such as no rational being would entertain under the circumstances. Men may have delusions on certain subjects and be sane on others.

RE-DIRECT EXAMINATION.

A delusion is a belief that no sane person will entertain. If a man should hold an opinion which is untrue in fact, but which has some foundation in the circumstances, it would not be a delusion. Slight facts might convince one man when they would have no effect on another. I would not call a man insane because he believed differently from myself or on less evidence. Delusions are such as this: Where a man believes himself to be Jesus Christ
79 or supposes one leg to be made of glass; and I knew one case where a man supposed himself to be [illegible].

WASHINGTON JONES, being sworn, said:

I knew him (George Taylor) first, seventeen years old; lived in his neighborhood; about four years, three quarters of a mile—then I lived a mile from him. Went by his place to get the mail—saw him about every week, and frequently conversed with him; can't tell the number of times I saw him in 1864—it was about as often as I saw him before. On one occasion he
80 charged money for me. I never saw any thing about Taylor to make me suppose he was not sane; he could keep up a connected conversation—I saw nothing wrong about him, but he was getting older and rather feeble in body.

81 BOLIVAR ROE, sworn, said:

I am the son-in-law of George Taylor. I was personally acquainted with him from 1851. I was married December 16th, 1852. My wife's name was [illegible]. We lived between a quarter and a half mile from him. We lived within three miles from him. We then moved to [illegible] place perhaps half a mile away. We lived in [illegible] second week in July in 1858. We then moved to [illegible] now live. My wife died on the 10th day of
82 [illegible] children of our marriage. Their names and ages [illegible] Joe, the eldest, is about fourteen years old.—[illegible] years old. Next is Francis Mary, about [illegible]; then Eleanor Gray, about four or

nearly that. When we were married I received no property of any account with her from the old man. She had three cows. She claimed they came from her own property—descended from a grandfather. I had a fraction less than ninety-nine acres of land when my wife died. Eighty seven acres are under fence. On the 25th of July 1864 I had the same property. I had a team, some colts and cattle also. I was indebted. My personal property aside from my debts I don't think would amount to $200. The title of the land was in myself. * * * * Think he (Mason Taylor) had over 200 acres of land. The old gentleman had personal property, notes, &c., to the amount of $2,000, or in that neighborhood. I don't know the number of acres of his real estate—think there are 160 acres or nearly that. His prairie land 83
is worth $40, perhaps $45 per acre and the timber $60, or $65 per acre, except a slough—I think there are about 30 acres of the timber besides the slough. George Taylor had three children which were not all living, at the time of his death. They were Mason, Samuel and Eleanor my wife and mother of my children. Samuel lives in Mercer County. He has a good farmer and is well off. I have visited him—I think in 1854; he had about 360 acres I think he had the same in July 1864. Don't know what it was worth an acre. I saw Mr. George Taylor quite frequently during the last two years of his life; it would average once a week. Our object in visiting each other was on business matters and to shave him. I shaved him from about the time his wife died until he died and after his death. His last wife was called "Aunt Mary." She died two years before the old gentleman died. I seldom shaved him twice a week—generally once a week, on Friday, when he could
84 come to my place. If I had to go to his place I went when convenient to me * * * * * When he came to my place the time he said depended on whether it was meal time or not; he generally talked and read—he was great hand to read. He read more than half the daylight hours. Often read the Bible and read the Tribune. * * * He seemed to understand what he read—often repeated what he had read.—He was able to keep up a connected conversation. I never detected anything that led me to believe that he was deranged or insane or out of his mind. I saw him when Dr. Bunker attended him—I saw him when he was insensible I think. Remember when Taylor came to Oregon to get his will made.—The day before, on the Sabbath, July 24th, he spoke to me; the old gentleman said he gave Mason and Samuel their timber lots.

Complainants moved to rule this last sentence out. The Court instruct- 85
ed the jury that this is no proof of advances.

The witness proceeded: I think he told me that sometime in 1863.—On Sabbath July 24th 1864, George Taylor came to my house about dusk;

he said that he had been up to Mason's to give him a piece of his mind for not taking him down to Samuel's, and to let Kate and Jane know that they had taken Aunt Mary's clothes. He said that Mason got mad and cussed him, and told him if he didn't go off and shut up his mouth and mind his own business he would take every d——d cent of his property away from him.—And then said: It is too bad, I can't stand such treatment; I raised Mason Taylor and gave him a good part of his property. If God spares my life until to-morrow, I will go to Oregon and make my will. He then said he did not like to go to Joe to get his will made. I think he said Joe Sears. Said he had given him some business to do and he did not think he did the right thing about it. I said there are other business men in Oregon, and that Smith was a gentleman and had done business for my brother. I think Taylor went
86 away then. The next day I heard that he came to Oregon. I saw him again in about three days or it may have been the next Friday, when he came to be shaved. We had a conversation before that about going to Samuel's—but a few days before—probably between five and fifteen. He came to my place to be shaved. He said to me then: I suspicion that Mason and John have gone down to Sam's and left me, and if they have, Mason shall never have a cent of my property. He said if Mason was too good to be seen riding in the road with him, he was too good to have his property. I told him that I did not think they had gone there; that I thought they were off visiting at some place. No more was said at that time. At another time soon after that I saw the old gentleman. Said he: Damn it, they have gone. This was between the two conversations stated by me. By John was meant John Hewlett from New York State. He was Taylor's nephew. Mason and John claimed to have been down to Samuel's when they came back.

I saw him either on the Friday after he went to Oregon or sooner than
87 that. He said he had made his will. Think he told me the provisions of the will. I don't recollect distinctly when I saw him next. Some time afterward he handed me a will he had made—it may have been two or three weeks after. He said that was his old will. Said he: It is good for nothing to any one, but I want you to keep it, and if any of Mary's folks ever come here to show it to them, that they may know I was'nt going to turn Mary out on the town if I died first. Then he said: They are very violent. Said I: Who? Why Mason's people. I said: Did you tell Mason? He said he did not. He said he had told Terzy and he thought she would tell them quick enough.

[An instrument purporting to be the will of George Taylor dated September 12th, 1860, with the signature erased was presented to the witness and the witness proceeded.]

This is the document which the old gentleman gave me. I know that the old gentleman had an arrangement to go with Mason and John—know it through Mr. Taylor. He said he asked them to go with a conveyance—said they wouldn't do it.

The defendants then read in evidence the will bearing date July 25th, 88
1864, referred to by the witnesses M.W. Smith and John Sharp and which was copied in the bill, and the certificate of Probate thereon attached, and which certificate attached to said will is as follows:

"STATE OF ILLINOIS, } In County Court of said County.
OGLE COUNTY, ss. } March Term, A. D. 1865.

"Be it remembered, that on this 4th day of March, A. D 1865, personally appeared in open Court, John Sharp and Mortimer W. Smith, good and credible witnesses, who being sworn, on their oaths severally deposed and said: That they were present and saw the within named testator, George Taylor, mentioned in the within last will and testament as the signer thereof, sign the same and heard him declare said instrument to be as and for his last will and testament, and that they signed said will as subscribing witnesses 90
thereto, in the presence of and at the request of the said testator, and in the presence of each other, and that they then believed and still believe that he, the said George Taylor, at the time of signing and publishing said last will and testament was of sound mind and memory, and under no constraint, and that the said testator died on or about the 5th day of February, A. D. 1865, (and other evidence being produced for and against the soundness of mind of the said testator,) and all of said evidence having been heard and considered by the Court; said will is pronounced valid, and it is ordered that the same be admitted to probate and spread upon the records of this Court in full. Witness my hand, and the seal of said Court, at my office in Oregon, this 4th day of March, A. D. 1865.

L. S. "ALBERT WOODCOCK, Clerk,
"By JOHN WOODCOCK, Deputy."

5 cent Rev. Stamp.

GEORGE P. JACOBS, being sworn, said: 91

I knew George Taylor late of this County. [An instrument purporting to be the will of George Taylor was presented to the witness, who proceeded]: I wrote this will on the 92
12th day of September, 1860. I wrote it at the request of George Taylor. I think beyond a doubt Taylor signed it himself. I am a subscribing witness to this will. I signed it at the same time as Mr. Taylor and when it bears date.

The defendants offered further proof of the execution of said instrument, but it was waived by the plaintiff. Thereupon the defendants offered the same in evidence, of which the following is a copy, being the same instrument exhibited to the witness Jacobs on his examination:

"Know all men by these presents, that I, George Taylor, of Ogle County and State of Illinois, do make and publish this my last will and testament.

"First.—I order that all my just debts be paid by my executor hereinafter mentioned.

"Second.—I will and devise to my wife, Mary Taylor, for and during her natural life, my homestead, being the premises on which 93 I now reside, containing an area of about one hundred and nineteen acres, for her to have and to hold, to rent and enjoy, for and during her natural life. I further will and bequeath to my said wife, all the household and kitchen furniture in and about my said dwelling house, or that shall be there at the time of my demise. I also give and bequeath to my said wife an annuity of fifty dollars, to be paid by my executor hereinafter mentioned, annually, to my said wife during her natural life. The first payment to be made by my executor in one year after my decease, and annually on the same day thereafter. I further will and bequeath and devise to my said wife, and hereby quit-claim and relinquish to her all right and interest I have in and to a certain demand and claim my said wife had and possessed at the time we were united in marriage, 92 against one Lemuel Lakins, of Salem, Washington County, and State of New York, for the sum of about eight hundred dollars, which is secured by trust deed made to William Henry Lakins, on real estate situate in said town of Salem;—which, together with the household and kitchen furniture, she is to ever hold for her own use and benefit. I also bequeath to my said wife the use of the horse and carriage that I now own, to be used and enjoyed by her during her natural life.

94 "It is expressly understood by me that foregoing bequests are to be taken by my said wife in lieu of any allowance or dower that she may be entitled to under and by virtue of any of the laws of this State, and she is hereby expressly restrained from committing any manner of waste on the real property devised to her during her life, farther than the right to procure fire-wood to be used in the said homestead, on the said premises, which shall be taken from the dead, down and felled timber.

"Thirdly.—I will and bequeath to my daughter Eleanor, wife of G. Bolivar Roe, the sum of one thousand dollars, for her use and benefit, to be paid one half in one year after my decease, and the balance in two years after my decease.

"Fourthly.—I will and bequeath all the remainder and residue of my property and estate of every nature and kind, (including my homestead hereinbefore devised for life to my said wife,) to my three children—Samuel Taylor, of Mercer County, Mason Taylor, of Ogle County, and Eleanor Roe, also of said Ogle County—to be divided, share and share alike, among them.

"I hereby make, constitute and appoint Mason Taylor, of said Ogle County, executor of this my last will and testament. 95

"In witness whereof I have hereunto set my hand and seal, this 12th day of September, A. D. 1860.

GEORGE TAYLOR, [SEAL.]

[The signature—George Taylor—appears on the original to be obliterated as above. This statement is made by consent of counsel.

"The above instrument, consisting three half-sheets was at the date thereof signed, sealed and published and declared by the said George Taylor, as and for his last will and testament, in presence of us, who at his request, and in his presence and in the presence of each other, have subscribed our names as witnesses thereto.

"HENRY A. MIX, of Oregon, Ogle Co., Illinois.

"JAMES A. BUTTERFIELD, of Oregon, Ogle Co., Illinois.

"GEORGE P. JACOBS, of Oregon, Ogle Co., Illinois."

To the introduction of which complainant objected, which ob- 59
jection was sustained by the Court, and said will excluded from the consideration of the jury. To which ruling of the Court the defendants then and there excepted.

LUMAN TAYLOR, being sworn, said, among other things: 96

I knew George Taylor. The amount of Mason Taylor's property in July, 1864, was about as follows: He owned a square 160 acres, with the exception of 16 acres that Dayton owned. There was about 135 acres of prairie. Such land sold then as high as $30 per acre. It was of as good quality as that of the old gentleman. He owned considerable timber—30 or 40 acres. It was worth I think $40 per acre.

COMPLAINANT'S TESTIMONY.

96 The complainants read the deposition of Rollin W. Dayton, in which he stated, among other things, that he had known George
100 Taylor twenty years. Lived in his house and boarded with him. He commenced boarding with us about the first day of November, 1861, and quit about the first of April, 1863. His health was not
101 good. He was not able to do any labor. His health was not at all uniform. He had what he called nervous spells. These spells were very irregular in their occurrence—on an average, about once a month he had an attack of this kind, and they continued from
102 three days to one week at a time. While boarding with us had one fit of sickness—about the middle of January, 1863, and it continued about three weeks,—there was something in his conduct and actions that particularly attracted my attention. When he was first taken sick he went into his room at the usual time in the evening, and the first I knew of his being sick I found him the next morning, lying on the floor, entirely helpless, and unable to tell how he came there, and did not recognize his own son, or any of the neighbors who were present. The witness proceeded to describe
104 his conduct and condition during that sickness. Bolivar Roe was in the habit of visiting George Taylor during the time he boarded with me. Their interviews were generally private. After such interviews I had noticed something unusual in the actions and conversations of George Taylor; generally appeared crosser and more irritable than usual.

106 He told me that Bolivar Roe had told him that Mason Taylor had not used him as he ought to. Upon one occasion he threatened to strike my wife with his cane. I noticed that he could be easily excited against his friends. If any one told him a story about any of his friends after repeating it over a few times he would believe it to be true, no matter how unreasonable it might be, although he couldn't remember who told. He would not endure contradiction, and would become angry if any one attempted to reason with
107 him in regard to such stories. One of these stories was in regard to his loosing his bed clothes and pillow-cases. Mason Taylor and I are related—we are first cousins, and also brothers-in-law. George
108 Taylor on several occasions scolded and abused me, and accused me of doing things which I had not done.

The witness detailed some difficulty which had occurred about washing, and said: I know nothing about the loss of clothing or
109 breaking of dishes. I do not know for what purpose Taylor visited Roe, nor what was his avowed object in making these visits.—During most of the time prior to his sickness Taylor was able to walk to Roe's residence. After the sickness he was unable to walk
110 there while he boarded with me. I do not know of any business or service performed by Roe for Taylor during the time he boarded at my house which would render it necessary for them to visit each other. He visited his son Samuel while he lived with me—some time in the fall of 1862. He went alone in his own buggy, drawn by his own horse. At the time of this visit his health was better than usual when he went away, but was worse when he returned.
111 Samuel Taylor then lived about one hundred miles from my place of residence. George Taylor was in the habit of using ardent spirits as a medicine.

112 CATHERINE DAYTON'S deposition was read:

113 In which it was stated that she was the wife of Rollin Dayton, and that George Taylor boarded with them from the fall of 1861 until the last week of April, 1863, and the substance of her testimony was about the same as that of her husband, the last witness.

125 HIRAM WOOD sworn, among other things, said:

Knew George Taylor the last three years of his life—lived a half mile from me. Saw him often—generally once a week. Recollect when he had a severe illness, in 1864. Saw him frequently after. At times he appeared a little singular—at other times rational.—Noticed it all along after his illness.

129 ESTHER WOOD, being sworn, among other things, said:

I am wife of last witness—saw George Taylor frequently. I never noticed any change until after his sickness, in 1864, only old age. * * * Saw him at our house. He lived east —Roe lives south. We were his confidants. He generally was
130 going to Roe's when he called. He had a kind of wildness of expression he did not use to have—a nervous wildness, at times more than others. His conversation and deportment strange. He talked about property—his main topic; he thought he was losing. Said he thought they were taking it from him—taking his money, sheets and pillow cases—enlarge on it before his death—got it up to $400 or $500 that he had stolen. He said he thought Rollin Dayton got it. I don't know that he ever gave the number of sheets and pillow cases. After detailing sundry observations and conversations the witness had with George Taylor, the counsel for
131 complainants asked the following:

Question:—State whether or not in your opinion at the time George Taylor made those statements about the stealing, &c., he was laboring under a delusion?

Objected to by defendants. Objection overruled so far as to allow the witness to give an opinion of his soundness or unsoundness from the facts stated. To which ruling the defendants then and there excepted, and the counsel for the complainants asked the following:

Question:—Did you at the time, from the peculiarities which you observed in the deceased, and which you have now testified to, form an opinion as to his mental condition, as to whether it was sound or unsound, on the subject of the stealing he talked about?

Objected to by defendants on the ground that it does not appear that the witness is an expert and competent to give an opinion. Objection overruled. To which ruling defendants then and there excepted.

132 *Ans:*—I think I have stated that I did not think his mind sound. I think he had not his right mind, not as he had been before. I did not discover it until after his sickness; and the witness proceeded to state that he would lose his place in the house, &c.

DR. W. F. WELCH, being duly sworn, among other things, said: 134

I became acquainted with George Taylor the last of June or first of July, 1864. Have practiced medicine ten years. Knew George Taylor from that time until the time of his death. Saw him frequently—conversed with him—attended him in the capacity of physician sometime the first of July, 1864. He was not down sick 135 —did not visit him—prescribed for him three or four times from the first of July about three weeks. I diagnosed his case—my diagnosis was chorea giving way to paralysis—St Vitus' dance is the same disease as chorea. * * * * I observed peculiarities—his mind run off on certain subjects that would predominate. During our first acquaintance he related to me about certain persons stealing from him—sheets and pillow-cases I think. On some occasions spoke of stealing other things. Appeared to be rather excited and irritated when he spoke of the larceny. 136 * * * Have made insanity a study in connection with my business. Is part of my business. From my judgment George Taylor was not of sound mind from the time I first knew him.

On cross examination said: During his last illness he settled 140 up with me—perhaps ten days before his death. He asked me what his bill was. I told him $100 or $90. He replied, "All right." He got me to write a due bill for it. He made his mark and I think Spooner's wife signed it. Can't say how long we were settling. 141

CALEB B. BOYCE, being duly sworn, among other things, said: 142

Have known George Taylor since first recollection. First in Washington County, New York. Have known him here about thirty years. * * * * Left Payne's Point about 1857 or 1858—when I moved to Lane, now Rochelle, twelve or thirteen miles from him. * * * Frequently visited the Point —sometimes I would not go there for several months—at other times I would go there frequently. The witness proceeded to detail his observations of the conduct and manner of the deceased at length, after which complainant's counsel asked the following:

149 *Question :*—From your acquaintance with George Taylor, and your observation of his conduct that you have testified to, did you at the time of these conversations, in 1864, consider him of sound or unsound mind?

Which question was objected to on the ground that the witness was not shown to be an expert and competent to give an opinion the subject. Which objection was overruled by the Court: To which ruling the defendants then and there excepted, and the witness proceeded to answer the question, as follows:

In the summer of 1864 I considered Mr. Taylor of unsound mind. It is still my opinion.

153 GEORGE ADDY, sworn, said:

Knew George Taylor from the Spring of 1859 to the time of his death. Resided at Payne's Point—part of the time clerking, and part of the time doing business. Taylor was there very often —at least twice a week. The witness proceeded to relate conversations, with his observations of the conduct and manner of George Taylor, after which was asked the following question by the com-
156 plainant:

From your acquaintance with George Taylor, and your observations of his conduct that you have testified to, did you at the time of these conversations in 1864, consider him of sound or of unsound mind?

Which question was objected to on the ground that the witness was not shown to be an expert and competent to give an opinion
157 on the subject. Which objection was overruled by the Court. To which ruling of the Court the defendants then and there excepted, and the witness answered the question, as follows:

At the time of the summer of 1864 I considered that his mind was unsound. My opinion is the same now as then.

160 ROBERT STRINGFELLOW, sworn says:

Knew George Taylor—have seen him—saw him in Rochelle, in the summer of 1854—about the middle of July—on Circus day.

* * On that day I found him lying on the side-walk about fifteen minutes before ten. * * * Passed him and could not wait—came back—asked him what he was doing—said he fell off the side-walk carrying oats to feed his horse: Helped him up to Bump's—fed his horse, and he went into Bump's.—Think I saw him there before that.

On cross examination he said: There was an impediment in 161
the side-walk, but he had passed it ten or twelve feet.

HARRISON STINSON, being sworn, said: 162

Knew George Taylor—lived about twelve rods from him about five or six years before his death. Saw him when around almost every day. Was in my house frequently. The witness proceeded to detail his conversations with and observations of the conduct and manner of Mr. Taylor, after which the complainants asked the witness the same question previously asked the witness George Addy 164
Record page 156. To which there was the same objection made, and overruled by the Court, and exception taken by the defendants, 165
and the witness answered: I considered him of unsound mind.—I have no reason to change my opinion about it at all.

PHINEAS CHANEY, sworn, said: 167

Was acquainted with the late George Taylor. First became acquainted with him in 1838—lived until the time of his death within two or three miles of him—saw him frequently—more or less every year. The witness testified to circumstances and particulars he had observed in the conduct of deceased, after which the following:

Question by Complainant :—From your acquaintance with 168
George Taylor, and your observations of his conduct that you have testified to, did you, at the time of these conversations, in 1864, consider him of sound or of unsound mind?

Objected to on the ground that witness was not shown to be an 169
expert, &c. Objection overruled by the Court, to which ruling of the Court the defendant then and there excepted. The witness answered:

I concluded he was unsound in his mind. It is my opinion that he was.

171 BENJAMIN BOYCE, sworn, said:

That he had known George Taylor forty years. Knew him first in New York—we married sisters. The witness testified to the details of his acquaintance with him, after which the following:

174 *Question by Complainant:*—From your acquaintance with George Taylor, and your observations of his conduct, that you have testified to, did you at the time of these conversations, in 1864, consider him of sound or unsound mind?

Same objections, ruling and exception as to previous questions of this character. The witness answered:

I thought he was not sane on some points. The points were in accusing his friends of stealing. I have never changed my opinion.

178 On cross examination, among other things, said, in reference to the stealing: "I thought Taylor was probably about right about the "horse collar. I thought he had good reason to believe it. I told "him as to the money, that I had lost money, but I did not dare "charge it to any one. He said Rollin thought he would take a dol-"lar only, and he wouldn't notice it." There was nothing in the conversation about the dollar and collar that was irrational.

179 THOMAS STINSON, sworn, says:

Was acquainted with Taylor since 1840. Lived within a mile or a little over. I frequently saw him. After testifying as to the extent of his acquaintance with George Taylor, the witness was asked the following:

180 *Question by Complainant:*—From your acquaintance with George Taylor and your observations of his conduct, that you have testified to, did you, at the time of these conversations, in 1864, consider him of sound or of unsound mind?

To which question there was the same objection by defendants, ruling of the Court, and exceptions saved as to previous questions of this character.

The witness answered: In 1864 I thought his mind was rather unsound. It is still my opinion.

On cross examination said: When I say he was unsound I mean 181
that he was not a perfect man as he used to be. Think he failed faster than old men generally do. The first thing he would say, he would tell me they were robbing him. Don't recollect what else he talked of. He asked after my family. On other subjects he conversed rationally. He said the collar was in the barn and Rollin took it.

TERSEY TAYLOR, sworn, said:

Knew George Taylor sixteen or eighteen years. Lived part of the time within a mile—a little over a year; the rest of the time about a mile and a half. Lived with him when he died, and nearly a year before. The witness states at length her experience of Mr. Taylor, after which the following:

Question by Complainant:—From your acquaintance with 188
George Taylor, and your observations of his conduct that you have testified to, did you, at the time of these conversations, in 1864, consider him of sound or unsound mind?

The same objection, ruling and exception as to previous questions of this character, after which the witness answered:

I think he was of unsound mind—very much so. I formed my opinion soon after I went there. I told my husband he must be with me nights, and he was not gone much nights after we went there.

On cross examination the defendants asked the witness the fol- 193
lowing question: Did you have any business transactions with George Taylor, or make any purchases from him during the time you lived in his house, in the summer of 1864, and about the time the matter occurred in regard to him to which you have referred in

your direct examination? If so, state what such transactions were, and whether he understood the nature of the same, and how he conducted himself in regard thereto. To which question complainant objected.

The Court:—"I will rule out the whole matter about the trades."

194 To which ruling the defendants then and there excepted.

197 LUMAN TAYLOR, being sworn, said:

I knew George Taylor. Merely saw him a few times when I first came to the Country. Some twenty-two years ago I moved to the Country, and knew him until the time of his death. * *

198 * * * He began to fail first with a trembling or palsey. Can't tell how many years ago—nine or ten. I never was a close observer of people. I did not observe anything essential except that he was failing. Had a manner of gazing at people when they spoke to him. Noticed it soon after Rollin moved on his place. He was sick about one year before his death. After that we moved there, March 29th, 1864. The witness detailed his observations of the conduct and manner of the deceased, and also

200 testified to the following conversations with him: He spoke about his will. One time said Bolivar said he ought to make his will. I think he said, on another occasion, he would change his will. Said Bolivar said he ought to make his will, and asked me what I thought about it. This was, I think, the last of June. I remarked to him, if he thought he hadn't given Eleanor what he ought to, he could now give some to her children. I think he said he should give Eleanor's children more than the rest. I think $100 each, more than the rest. That is all I remember at that time. The witness,

202 also detailed other conversations in reference to his purpose to change his will. The complainant asked the following:

Question:—From your acquaintance with George Taylor, and your observations of his conduct that you have testified to, did you at the time of these conversations in 1864, consider him of sound or

203 of unsound mind?

The same objection, ruling and exception as to previous questions of this character.

The witness answered: At the time of these conversations, in 1864, I considered him of unsound mind. Formed that opinion some time after I went there. Didn't notice anything for some time. I didn't think anything particular at the time. It is my impression, and opinion still is, that he was unsound.

DR. ELIAS S. POTTER, sworn, said: 208

Was acquainted with George Taylor—became acquainted with him in the fall of 1844. In 1844 was a physician. Have been a physician ever since. I think from the Spring of 1845—it might be 1846—I considered myself George Taylor's family physician. When not at home some other one might have been called. The witness proceeded at length to detail his theories of the disease under which Taylor labored, and conversations with him, and concluded by 214 stating: I considered Mr. Taylor deluded. I considered him a monomaniac. I have one man at Payne's Point now who expects to die within thirty days—another expects to die in the poor-house. The most common form of insanity in Illinois is where the man talks rationally on other subjects. Persons laboring under general insanity often talk rationally.

And on cross examination said: The old gentleman was a 218 monomaniac, with imbecility; but all authorities would say he was laboring under *senile dementia*—premature old age, or simply old age. That I think was his case. It fits his case better than any other term—either imbecility or monomania.

FREDERICK STORING, sworn, said:

That he first knew George Taylor in 1861—saw him half a dozen times during the last year of his life. Borrowed some money of him in 1864—$20. Said Taylor forgot that he had lent it to him

SAMUEL TAYLOR, sworn, said: 216

Am a son of George Taylor, deceased, and brother of Mason. Left home in 1854, and removed to Mercer County, 112 or 115 miles away. After that I generally saw father once a year.

* * * Mason's farm—the land was worth $5,000—

his stock might be worth $1,000. I was worth at that time (July,
220 1864,) about $10,000, and personal property to the amount of $1,-
500. * * * * I had worked at home seven years,
and when we divided off we made quit-claim deeds back and
forth. I considered what I received only equitable to the work
and labor I did. I think Mason worked there about a couple of
years, and had this 180 acres. I thought he ought to have earned
that much. Mason went away before I did. He worked about
two years after of age. * * *

221 *Question by Complainant:*—From his acts and condition when at your house in 1863, state what was your opinion of his mental condition?

Objected to by defendants. Objection overruled. Defendants then and there excepted, and the witness answered, as follows:

In 1863 I considered my father of unsound mind. I am still of that opinion.

222 On cross examination said: Mason worked I think until he was twenty-four. I staid a year or two longer. The land he now owns was entered in my name—I think the timber was in father's
223 name. Don't believe there was any in Mason's name. Don't know whether more than eighty acres were in my name. The timber was deeded to him and me—about fifty each. Mason had the 130 acres—I had three forties. The old man kept 130 odd acres, timber and prairie. That was about 1848—not certain. Eleanor was about twenty-six when she married, lived at the old man's to that time, and worked to that time. She had some cows in her setting out, and some dishes, &c. I don't know the value of the traps.—They bought her some dishes—couldn't say there was anything else bought. She had two or three cows. She had $300 from her grand-father. We all had that much. * * * * *

225 ELLEN McMULLEN, being sworn, testified:

That she resided in the same family with George Taylor, in February, 1863, after the death of his wife, and states the quantity of bed-clothing the family had, etc.

EDWARD F. DUTCHER, being sworn, testified: 226

That he was acquainted with George Taylor—saw him in the summer of 1864. On two occasions—once in Oregon and once in Lane. I thought there was something singular about him. He appeared to be imbecile, and had lost his recollection.

ADELIA BULL, sworn, said she 228

Knew George Taylor. Herself and husband lived in his house and boarded him six years ago. Knew the amount of bed-clothing, etc.

W. W. BENNETT, sworn, said: 229

Had known George Taylor twenty years—saw him occasionally when he came to town, several times each year. Was a witness to a will, in Smith's office, signed by George Taylor. Smith came to the store and asked me to go over and witness the will. I then went to the office—didn't remain there more than ten minutes. Went over and right back again. I think he had been in the store that day—but could not be positive. Don't know that I could tell how often I saw him that year. Think I had seen him more than once before, in Oregon. Had no conversation except 230
in a business way. I had not formed an opinion at that time whether or not he was of sound mind. I saw him in the store on one occasion when I thought he appeared childish.

BOLIVAR ROE, was again examined by the defendants, and 231

Stated what Mr. Taylor had told him about placing money on the floor to see if it would be stolen, and to test the honesty of Rollin Dayton and Luman Taylor's wife. The witness also stated: 232

Between the time Luman Taylor went there and his death, I had no conversation with him about his will, and have detailed all that was said, from February, 1864, to the time of his death. I think I had a conversation with the old man about going to Mason's to live. There was nothing in the conversation in which I said anything about what ought to be his feelings toward his children, or his duty. * * * *

237 JOHN ELY was examined,

But his testimony was not material to the points in controversy.

238 Dr. G. A. BUNKER, was re-called,

And examined as to the character of the disease chorea, with which Mr. Taylor was afflicted.

240 Dr. H. A. MIX, called

241 And examined as to the character of the same disease.

242 JOSEPH SEARS was examined

As to what Dr. Welch testified before the Probate Court.

243 Dr. E. M. Light re-called,

And examined as to the theory of the disease with which Mr. Taylor was afflicted-

245 Which was all the evidence offered by either of the parties.

And thereupon the defendants asked the Court to give, among others, the following instructions, except as to the portions thereof included in brackets,—thus: [———]. But the Court refused to give said instructions as asked, but modified the same by including therein the words and clauses included in brackets aforesaid, to which ruling of the Court in refusing to give each of said instructions as asked, and modifying the same as aforesaid, and giving the same and each of them so modified, the defendants, by their counsel, then and there excepted.

247

No. 3.

If the jury believe from the evidence that George Taylor went to the witness M. W. Smith, and employed him to write his will, and that he then without prompting from any one present dictated to said Smith the terms of his said will, and that said Smith wrote the same accordingly, and that said Taylor, several weeks afterward

stated to Samuel Taylor the exact provisions of such will, and delivered the paper to him for safe keeping, this is strong evidence to be considered by the jury, as showing that said George Taylor was capable of making a will, [so far as his general mental capacity was concerned; yet all this may have been true, and the said Taylor affected by an insane delusion as to his son Mason, and which delusion, if it entered into the terms of the will, would render it void.]

No. 4.

If the jury should determine from the evidence that George Taylor at times had some insane delusion on some subjects, fancying things to exist that had no existence, and of whose existence he had no reasonable evidence, yet if the jury believe that at the time of 248
the alleged execution of the paper produced as his will, he had mind enough to know and appreciate his relations to the natural objects of his bounty, and to understand the general character of his property, and the character of the disposition thereof made by such will, then he had a mind sufficiently sound to make a valid will, [unless such insane delusion entered into and caused him to make some of the provisions of the will.]

No. 8. 249

A testator possesses a sound and disposing mind and memory within the meaning of the law, when he has an understanding of the nature of the business in which he is engaged, and a recollection of the property he means to dispose of, as well as the persons who are the natural objects of his bounty, and the manner in which he desires it to be distributed between them, [unless affected with some morbid and insane delusion as to some or one of them,] and the memory of such testator may be very imperfect, may be greatly impaired by age and disease; he may not at times be able to recol- 250
lect the names, the persons, or the families with whom he had been intimately acquainted; he may at times say or do idle things, and appear dull and stupid, and yet his understanding be sufficiently sound to make a valid will.

No. 10.

If the jury believe from the evidence that George Taylor went to the residence of Mason Taylor, the day before the making of his will, and while there the said George and Mason Taylor had high words, and the said George considered himself insulted and ag-
251 grieved by the treatment received from his said son Mason, and while so in anger and in a passion caused the will now submitted to the jury to be made while so feeling aggrieved, such facts [alone] will not invalidate the will, [but to do so, it must further appear that such state of aggrieved feeling was caused by the absurd belief of supposed facts, and as to the existence of which he had no evidence tending to convince a sane mind.]

254 And at the same time the defendants further requested the Court to give, with others, each of the following instructions to the jury, which said instructions the Court refused to give. To which ruling of the Court in so refusing to give said instructions and each of them, the defendants, by their counsel, then and there excepted.

No. 17.

The issue which the jury is to determine by their verdict is, whether the writing produced in evidence be the will of George Taylor or not.

255

No. 18.

If the jury believe from the evidence that the paper read in evidence as the will of George Taylor was reduced to writing at his request, and signed by him, or by some other person in his presence and by his direction, and attested in the presence of said Taylor, by two or more credible witnesses, at his request and in the presence of each other, then the same was executed with sufficient legal formalities to constitute a valid will, and in case the jury also

believe that said George Taylor was 21 years of age and upwards, and then had sufficient mental capacity to make a will, as stated in the other instructions, the jury should find such paper to be the will of said George Taylor.

NO. 19.

The fact that George Taylor in his last will did not bequeath more than $50 to his son Mason Taylor, is not a fact that can in any respect detract from the validity of said George Taylor's will.

NO. 20.

Although the jury may believe from the evidence that George Taylor had not capacity to transact the ordinary affairs of life, or was incompetent to make a valid contract, yet if they believe from the evidence that said Taylor had capacity sufficient to know his 256
property and to whom he desired to leave or will it, he had capacity to make a will, and it should stand.

NO. 21.

It is not essential that George Taylor should have been in the full possession of all his mental faculties at the time of the alleged execution of the paper read in evidence as his will, in order to render him competent to make a valid will at that time, but it is sufficient in this respect to authorize the jury to find said will to be valid, if they believe from the evidence that he then had sufficient reason to comprehend, and did comprehend, the nature of the transaction in which he was engaged, and that he intended to dispose of his property to the persons and in the manner therein stated.

NO. 22.

That if the jury believe from the evidence that George Taylor, the testator believed that Rollin Dayton stole from him a horse col-

lar, and one dollar in money, and was convinced of said larcenies from the fact that he found the said horse collar in said Dayton's
257 possession, who had it in use, and an old worthless one of said Dayton's put in the place of said stolen collar; and that he placed $21 in a drawer, and soon thereafter found but $20 in said drawer, and that Dayton lived in the house with him, and the only person that would probably have access to said drawer, and that said Taylor had for many years entertained a hatred for said Dayton, and considered him a thief and a scoundrel, all of which they are to find from the evidence. And further, if the jury believe from the evidence, that said Taylor for a time entertained the opinion that said Dayton stole from him a wooden box and a note made by Boyce & Bump; and his belief in the larceny of said box and note was from the fact that when said Dayton left his house the box was missing, and at a time before the Boyce & Bump note was gone, and the testator could not find the same for a long time, and on investigation found the box in question had been given to Bolivar Roe, and subsequently found the Boyce & Bump note, and admitted that he was mistaken in regard to those suspicions, and admitted the same and thereafter said nothing about the box and note; and if the jury further believe from the evidence that said Taylor entertained the belief that Dayton had stolen his money, and that
258 such belief was founded on the fact that he had received certain sums of money from divers persons, and had paid out sums of money, and caused the same to be figured up by witness Luman Taylor, and on such computation there was found to be some two or three hundred dollars missing and deficient, and that said Dayton lived in his house, and could have access to his money, the testator having been sick, helpless, and insensible on one occasion; if the jury so believe from the evidence; and if the jury believe from the evidence, that said testator, George Taylor, entertained the belief that said Dayton and his wife had stolen the clothing of his late wife, and his bed clothes, and that the testator entertained such belief from the fact that said clothing and bed-clothes had been placed in a box up stairs, and that the same had been under the care of said Dayton and his wife, for some two years, and that after said Dayton left the residence of said testator he examined said box containing said clothing and bed-clothes, and a large part of said articles

were gone and missing. And if the jury further belive from the evidence, that said testator had heard said Dayton's wife had or designed sending a part of said testator's deceased wife's clothing back east to her friends–and if the jury believe from all the testimony 259
that such deductions and conclusions, on the part of said testator, are but natural and consonant with said testator's former belief, and what most persons in advanced years might believe, that such evidence does not establish an insane dulusion or monomania in said testator, and the jury should find accordingly on that proposition.

NO. 23.

In order to constitute capacity to make a will, it is sufficient that the testator know what he is doing, and to whom he is giving his property at the time of the execution of his will.

NO. 24.

The jury are instructed that neither advice, argument or persuasion will vitiate a will made freely and from conviction, although such will might not have been made but for such advice or persuasion.

NO. 25.

That undue influence within the meaning of the law, which will invalidate a will, is that degree of influence which deprives the testator of his free agency, and makes the will more the act of the party influencing than of the testator himself. 260

NO. 26.

If the jury believe from the evidence that George Taylor, at the time he made his will, knew what he was doing, and to whom he was giving his property in and by his said will, and such facts established the testamentary capacity of said Taylor, and the jury

should find the paper submitted to them to be the will of said Taylor, provided they find that the same was executed and witnessed according to law.

And thereupon the complainant requested the Court to give, among others, the following instructions, to wit:

261

No. 2.

The jury are instructed upon the question of undue influence, that it is not alone the extent but also the character of the influence which the law regards in passing on the question whether such influence is unlawful, and that if the jury believe from the evidence that at and before the time of making such will, the said George Taylor was in a condition of mind susceptible of being easily influenced or controlled, and that said will, (when judged by principles of natural justice,) makes an unjust distribution of the testator's property, among those equally entitled to the testator's bounty, and that any degree of influence, however slight, was used by any person to procure such unjust distribution; and that the will was made by reason of such influence, the law regards such influence as unlawful, and the jury should, in that case, find against the validity of said will.

No. 3.

262 Where a person conceives something extravagant to exist, which has no existence whatever, save in his own heated imagination, but he is incapable of being permanently reasoned out of that conception, such person may be said to be under a delusion; and the absence or presence of delusion, so understood, forms the true test or criterion of absent or present insanity.

No. 7.

263 If George Taylor has been proved to have entertained an insane delusion toward one of his sons, sometimes before the making of his will, he must be shown to have recovered therefrom before the date of the will, if the will be obnoxious to the presumption of having been produced or affected by any such delusion, the will should be held not good.

No. 9.

If the jury believe from the evidonce that at and before the time of making such will, the said George Taylor was in a condition of mind susceptible of being easily influenced or controlled, and that the will itself is one giving unequal advantages to the children of the defendant Bolivar Roe, and that said Bolivar Roe was in a position to have brought influence to bear upon the said George Taylor, the jury having the right to require that it should be proved with reasonable certainty that the will was the offspring of the free agency of the said Goerge Taylor. 264

No. 11.

If the jury believe from the evidence that the mental condition and circumstances of said George Taylor, at and before the time of making such will were such as gave an opportunity for the exercise of undue influence, and the will itself is such an instrument as indicates that the opportunity had been embraced, and influence unduly exerted, the argument will be direct from the effect to the cause best calculated to have produced it, and the presumption will be against the validity of the will until the contrary is made to appear.

Each and every of which several instructions were given. To the ruling of the Court in giving which said instructions and each and every of them the defendants, by their counsel, then and there excepted. 266

July 11th, 1867. Jury retired to consider of their verdict, and on the morning of the 13th day of July, 1867, return into Court with the following verdict: 267

"We the jury find the paper given in evidence before us, is "not the will of George Taylor.

(Signed,) "H. C. PRESTON, Foreman."

And the said jury, and each of them being asked the question: "Was this and is this your verdict?" each of them responded in the affirmative.

Defendants entered a motion for a new trial, and as ground
268 of said motion gave the following reasons:

1st. That the Court gave improper instructions to the jury on the part of the complainant.

2nd. That the Court refused proper instructions on the part of the defendants, and changed and modified said proper instructions that were given.

3rd. That the Court erred in not permitting the will of George Taylor, made on the 12th day of September, 1860, to be read to the jury.

4th. That the Court erred in permitting the witnesses of the complainant to give their opinion as to the mental condition of said testator, not being physicians or experts.

5th. That the Court erred in permitting illegal evidence to be given to the jury on the part of the complainant, and excluding legal evidence on the part of the defendants.

6th. That the verdict of the jury is against the law and the evidence.

7th. That the verdict of the jury is not the result of an investigation of the law and evidence in this cause, but was obtained by a game of chance, and against the solemn convictions of a majority of said jurors.

And for other errors on the part of the Court, and the misconduct of the jury, and other illegal proceedings had in this cause as
269 will appear from the records and files of the same.

On the hearing of the motion for a new trial, the affidavit of G. Bolivar Roe was read, and is as follows:

[Title of cause.] "G. Bolivar Roe, first being duly sworn, on oath states that he is informed and believes that the jury in the above entitled cause, when they retired to consider their verdict, stood seven for sustaining the will of said George Taylor, and five against said will, and so remained, each of said jurors being firm in the conviction that they were right in their respective opinions, and so remained until the night of the 12th instant, when, they becoming wearied, and fearing that they would 270
be kept in custody over the Sabbath, it was agreed by and between the said seven jurors and the said five jurors, that twelve ballots representing the validity of said will, and eleven against the same, and that said twenty-three ballots should be placed in a hat, and twenty of said ballots should be drawn therefrom, and the party having the majority should prevail, and that they should abide the result, and keep the same a secret, and that in pursuance of said arrangement, said balloting was had, and resulted in drawing the said eleven ballots against the validity of said will, and nine in favor of said will, and thereupon the said jurors, relying upon said agreement, returned said verdict in the manner they did, but that the opinion of said jurors remained unchanged, of all which this affiant has been informed and verily believes.

"GILES B. ROE."

Subscribed and sworn to, &c.

At the same time was also read the affidavit of H. A. Mix, to 271
the effect following:

"[Title of Cause.] Henry A. Mix, first being sworn, upon his oath states: That he has seen and conversed with three of the jurors that tried the above entitled cause, since they were discharged from the same, from all of whom affiant learned the fact that the verdict in this cause was obtained through some game of chance, but what said game was, or the way or manner in which it was was managed or obtained, affiant was unable to learn, from the fact that said jurors had agreed, as each stated, to keep the same a secret, and would not therefore divulge the same, and that two of said jurors expressed themselves that their convictions and judgement in said cause remained unchanged, but felt themselves respectively bound by their agreement. Affiant further upon his 272

oath states, that he has seen the officer that had charge of said jury while out and during the time said agreement was made among said jurors, and at the time said balloting was had, who denies to affiant all knowlege of said agreement, and of the said balloting, that affiant has reason to believe that said officer knows more of said transaction than he is willing to disclose to affiant. Wherefore affiant requests that he may be examined in open Court.

"H. A. MIX."

"Subscribed and sworn to, &c."

And thereupon it was ordered that James O'Kane, the officer having said jury in charge, be examined in open Court, who, being duly sworn, deposed as follows:

273 "I had charge of said jury in said cause. I took charge of said jury immediately after the adjournment of Court, on Friday the 12th day of July, instant, and continued in such chargeuntil half past twelve o'clock of that night, when said jury informed me they had agreed on their verdict. I cannot say that I heard said jurors or any part of them discuss any mode or method by which they could arrive at any agreement on their verdict. I heard the jurors discussing about the will, but did not pay attention, and cannot say
274 what method they adopted in arriving at their verdict. The first evening of the 11th or morning of the 12th, one of the jurors asked me if the jury could not decide upon their verdict by lot or chance, stating that they could never agree. I informed him "Of course not." I have no personal knowledge that the jury arrived at their verdict by drawing or chance. I have stated all that I heard from the jurors on that subject while so in charge. No other person had charge of the jury after the adjourument of Court up to the time the jury agreed, but myself. JAMES O'KANE."

And whereupon the affidavit of G. Bolivar Roe was read, as follows:

[Title of Cause.] "G. Bolivar Roe, first being duly sworn, on
275 his oath states: that affiant made an affidavit in this cause, on the 13th day of this month, and which he asks to refer to and make a part of this affidavit. Affiant further, upon his oath, states that after vigilant enquiry, he is utterly unable to find any witness or per-

son by whom he can prove what transpired before the said jury at the time of the finding of this verdict, as set forth in said affidavit in this cause, except it be by one or more of said jurors; Wherefore affiant prays that one or more of said jurors may be permitted to be examined or their affidavits read. GILES B. ROE.

"Subscribed and sworn to, &c."

Defendants then asked leave to examine A. J. Weathering- and James Johnston, two of said jurors, or one of them in open Court, or that they might be permitted to read their affidavits by which they expected to prove the facts set forth in the foregoing affidavits of G. Bolivar Roe and Henry A. Mix. Which motion, being duly considered by the Court was denied, to which ruling of 276
the Court the defendants then and there excepted.

And the said motion for a new trial having been duly considered by the Court, was also overruled, to which ruling of the Court the defendants, by their counsel, then and there exceped. 277

Certificate of the Judge to bill of exceptions.

Appeal Bond. 278

Certificate of Clerk to the record. 279

1. The Court erred in rejecting competent evidence offered by the Appellants.

2. The Court erred in admitting incompetent evidence in behalf of the Appellee.

3. The Court erred in modifying instructions asked by Appellants, and in giving the same so modified.

4. The Court erred in refusing to give instructions asked by Appellants.

5. The Court erred in giving instructions in behalf of Appelee

6. The Court erred in overruling the motion for a new trial.

7. The Court erred in entering decree that the will produced was not the will of George Taylor.

EDSALL & CRABTREE, *Att'ys for Appellants.*

John Roe, Eleanor Roe, Martha Roe, George Roe, Mary Francis Roe, and G. Boliver Roe.

State of Illinois
Third Grand Division } ss.

In the Supreme Court
Of the September Term A.D. 1867

John Roe, Martha Roe, Mary Frances Roe, George Roe & Eleanor Roe by G. Bolivar Roe their next friend and G. Bolivar Roe and others, Appellants.

vs.

Mason Taylor, Appellee

Appeal from Ogle

Stipulation.

It is hereby stipulated and agreed by the respective parties, that this cause be submitted, on both sides, upon printed briefs or arguments to be filed by the respective parties on or before the 15th day of November A.D. 1867

Edsall & Babbitt
Attys for Appellants - Roe

This agreement is made with the stipulation that all questions as to the legality of the Appeal, or the Appeal Bond or as to the case being properly in Court are saved

Attys for Appellee

Attys for Appellee

No 2214

John Roe, Martha Roe,
George Roe Et al
Appellants
vs
Mason Taylor
Appellee

Stipulation to submit Cause
on printed Briefs & Arguments

Filed Sept 16. 1869.
W. M. Taylor
Clk

Appeal Bond

"Know all men by these presents that we Bolivar Roe and John Roe of the County of Ogle and State of Illinois are held and firmly bound unto Mason Taylor in the penal sum of three hundred dollars lawful money of the United States for the payment of which well & truly to be made, we bind ourselves, our heirs, executors and administrators jointly severally and firmly by these presents.

Witness our hands and seals this 17th day of July A.D. 1867

The condition of the above obligation is such that whereas Mason Taylor aforesaid the complainant did on the 16th day of July A.D. 1867 in the Circuit Court of the County of Ogle in the state of Illinois at the June Term A.D. 1867 thereof in a certain cause therein pending on the Chancery side thereof wherein Mason Taylor was complainant and John Roe, Martha Roe Mary F. Roe George Roe Eleanor Roe Bolivar Roe Samuel Taylor Eliza Taylor George Taylor Julia Taylor Lydia Taylor & Mason Taylor were defendants recover a decree that the paper writing produced was not the will of George Taylor deceased, from which decree the said Bolivar Roe has taken an appeal to the Supreme Court of the State of Illinois: Now if the above Bolivar Roe shall duly prosecute his appeal and shall pay whatever

judgment costs interest and damages that shall be adjudged against him in case said decree shall be affirmed then the above obligation to be void: otherwise to remain in full force and effect

Bolivar Roe (Seal)
John Roe (Seal)

Witness T. B. Roe }

On the back of the foregoing bond appears an indorsement as follows:

"Filed July 30th 1867
F. G. Petrie
Clerk"

State of Illinois
Ogle County ss

I Frederick G. Petrie Clerk of the Circuit Court in and for the County of Ogle and State of Illinois do hereby certify that the foregoing is a full, true and

perfect copy of the appeal bond and the indorsements on the back thereof now remaining on file in my office in the case of Mason Taylor vs John Roe, Martha Roe, Mary Frances Roe, George Roe Eleanor Roe, Rolin Roe, Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor lately pending in said Court on the Chancery side thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at my office in Oregon in said County this 9th day of October A. D. 1869

W. J. Pattie Clerk

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John Rae et al
Appellants
vs.
Mason Taylor
Appellee

Copy Appeal
Bond & Endorse
ment of filing

Filed Oct. 12. 1867
W. McTaylor Clk

State of Illinois
3d Grand Division } ss. In Supreme Court
To September Term 1867

Mason Taylor
vs
John Rae et als

And the said Mason Taylor, Appellee, comes and moves the Court to dismiss this Appeal, for the reasons hereunder stated

Atty for Appellee

1st There is no evidence in the Record that the Appeal Bond was filed in the Office of the Circuit Clerk within the time limited by the Court -

The Appeal was prayed on July 16th 1867 and allowed on condition that Bond be filed within fifteen days -

There is no evidence that it was ever filed, except the general Certifi-

-icate of the Clerk at the foot of the record
-which bears date Sept. 2nd 1867 - At
the utmost this only shows that the paper
was on file on that day -

2nd It does not appear that an
Appeal Bond was ever filed in the
office of the circuit clerk

John O. Eustace
Atty for Appellee

No. 224 -

Roe et als

vs

Mason Taylor -

Mo. to dismiss Appeal -

John O. Eustace
Atty for Appellee -

1 United States of America
State of Illinois
Ogle County s s

Pleas before the Hon Wm W. Heaton Judge of the 22nd Judicial Circuit of the State of Illinois at the June Term thereof begun and holden at Oregon within and for said County on the second monday of the month of June A. D. 1866 to wit: Monday June 11th A. D. 1866, then and there being present

Hon. Wm W. Heaton Judge
David McCartney States Attorney
James O. Kane Sheriff
F. G. Petrie Clerk

Attest F. G. Petrie Clerk

Summons

State of Illinois } The people of the State of Illinois
Ogle County s s } to the Sheriff of said County

Greeting - We command you to summon John Roe, Martha Roe. Mary Frances Roe, George Roe, Eleanor Roe and Bolivar Roe, implead with Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor, Mason Taylor if they shall be found in your County personally to be and appear before our Circuit Court on the first day of the next term thereof to be begun and holden in and for said Ogle County at the court house in Oregon on the second monday of June next to answer to a certain bill of

complaint filed in our said Court on the Chancery side thereof against them by Marion Taylor

50 Cts Rev. Stamp

and further to do and receive what our said Court shall then and there consider in that behalf, and this they shall in no wise omit. Hereof fail not; and have you then and there this writ, with an endorsement thereon of the manner in which you may execute the same.

L. S.

Witness, Frederick S. Petrie, clerk of our said Court and the seal thereof at this office, in Oregon, in said County this 24th day of April A.D. 1866.

F. G. Petrie clerk

Endorsed

Filed this 30th day of May A.D. 1866

F. G. Petrie Clerk

State of Illinois
Ogle County ss

I duly served the within writ on the within named Bolivar Roe, George Roe and Eleanor Roe by reading the same in their presence and hearing and by delivering in hand to each of them a true copy of the same, and on the within named John Roe, Martha Roe and Mary Frances Roe by leaving a true copy for each of them at their usual place of residence with Bolivar Roe he being a white person over the age of 10 years and a member

Returned by order of Court

Jas. O'Hara

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of the family and informing him of the contents of the same this 10th day of May A.D. 1866

James O'Kane
Sheriff Ogle county, Illinois.

Summons

State of Illinois } The people of the State of Illinois
Ogle county ss } to the sheriff of Mercer County
Greeting:— We command you to summon Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor, impleaded with John Roe, Martha Roe, Mary Frances Roe, George Roe Eleanor Roe and Bolivar Roe, if they shall be found in your county, personally to be and appear before our Circuit Court on the first day of the next term thereof, to be begun and holden in and for said Ogle County, at the court house in Oregon, on the second monday in June next to answer to a certain bill of complaint filed in our said Court on the Chancery side thereof against them by Mason Taylor

3 cts Rev Stamp

and further to do and receive what our said Court shall then and there consider in that behalf, and this they shall in no wise omit. Hereof fail not; and have you then and there this writ, with an endorsement thereon of the manner in which you may execute the same

Witness Frederick G. Petrie Clerk of our said Court, and the seal thereof, at his office in Oregon, in said county, this 24th day of April A. D. 1866

F. G. Petrie Clerk

50c Revenue Stamp on Summons to Ogle

Endorsed

Filed this 21 day of May A. D. 1866

F. G. Petrie clerk

State of Illinois }
Mercer County ss } This 12th day of May 1866 served the within on the within named defendants Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor by delivering to each of them a true copy of the same

John P. Clay Sheriff Mercer Co.

State of Illinois }
Mercer County } I have served the within summons by delivering a true copy of the same, to Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor the within named defendants this 12th day of May A. D. 1866

John P. Clay
Sheriff Mercer County

Bill of Complaint

State of Illinois }
Ogle County ss } In the Ogle County Circuit Court
June Term A. D. 1866
In Chancery sitting
To the Honorable William R. Heaton Judge of the

5—

2 2nd judicial circuit, etc—

Humbly complaining sheweth unto your Honor Your orator Mason Taylor. —

That he is a resident of said Ogle County; and is the son and one of the heirs at law of one George Taylor deceased —

And your Orator states further that his father, the said George Taylor now deceased departed this life on or about the Fifth day of February A. D. Eighteen hundred and sixty five - and that he died in said Ogle County —

And your orator further states that at the time of his said decease, he, the said decedent, was seized and possessed of property real and personal situate and being in the said County of Ogle.

And your orator further states that at the time of his said decease, he, the said decedent left him surviving heirs at law as follows to wit: Your orator Mason Taylor his son. Samuel Taylor a son of

said George Taylor deceased and John Roe, Martha Roe, Mary Frances Roe, George Roe and Eleanor Roe, grandchildren of him the said George Taylor deceased, being sons and daughters of Eleanor Roe a daughter of said George Taylor deceased who died in the life-time of her father, the said George.

And your orator further states that the said persons last hereinbefore named were and are the only heirs at law of the said decedent.

And your orator further states that afterward, to-wit on the Fourth day of March A. D. 1865 - one Bolivar Roe presented to the County Court of said Ogle County a certain paper writing said to be a will, and said to have been executed by the said George Taylor; And thereupon afterward such proceedings were had in the said County Court of Ogle County that the said paper was ordered to be taken as the will of said George Taylor, and the same was thereupon admitted to Probate and ordered to be spread upon the records of said County Court, and was and is in the words and figures following that is to say -

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Know all men by these presents that I George Taylor of the County of Ogle and State of Illinois do make and publish this my last will and testament.

First:- I order that all my just debts be paid by my Executors hereinafter mentioned

Second:- I will that as soon as practicable after my decease my estate, both real and personal shall be sold and the proceeds distributed as follows:

To my son Samuel Taylor I give the sum of One hundred dollars $100 To my son Mason Taylor I give the sum of Fifty dollars $50. To the five children of my deceased daughter Eleanor Roe (wife of Bolivar Roe) or to such as may be in life at my decease and to the children of my said son Samuel I give the sum of One hundred dollars each.

Third: It is further my wish and will that whatever may remain of my estate after the payment of the above bequests shall be divided equally among my said grand-children the sons and daughters of my said son Samuel and my daughter

Eleanor Roe, share and share alike

Fourth: I hereby make, constitute and appoint my said son-in-Law Bolivar Roe and my son Samuel Taylor to be the Executors of this my last will & testament and I hereby authorize and empower my said Executors to sell and convey with good and sufficient deeds of conveyance any real estate of which I may die seized the same to be sold by them to the best practicable advantage for the benefit of my estate.

In witness whereof I have hereunto set my hand and seal the 25th day of July A. D. 1864

Attest M. W. Smith George his + mark Taylor (seal)

The above instrument consisting of two half sheets of paper was at the date thereof signed, sealed and published and declared by the said George Taylor as and for his last will and testament in presence of us who at his request and ~~in~~ his presence and in the presence of each other have subscribed our names as witnesses thereto –

John Sharp Oregon Ogle Co. Ills.
W. W. Bennett Oregon Ogle Co Ills
M. W. Smith Oregon Ogle Co Ills

Your orator further states that for a long time previous to and at the time of the making of said pretended will the said George Taylor deceased was partially insane and that the said partial insanity entered into and was the cause of the making of said pretended will.

Your orator further states that for a long time previous to and at the time of the making of said pretended will the said George Taylor was mentally almost wholly imbecile and that he was subject to delusions as to the characters motives and actions of his relatives and friends of a character unfavorable to such relatives and friends & was subject to be easily and unduly influenced against his relatives & friends and particularly against your orator by designing persons and your orator states and charges that the said Bolivar Roe seeking to obtain an advantage thereby to the said John Roe, Martha Roe, Mary Frances Roe, George Roe and Eleanor Roe (who are the grandchildren of the said George Taylor deceased mentioned in said pretended will as the children of his daughter Eleanor Roe and are also the sons and daughters of said Bolivar Roe) did stimulate and encourage the

said delusions in the mind of said George Taylor deceased and did before the making of said will and while the said George was so mentally prostrated as aforesaid exercise an undue influence over the said George for the purpose of prejudicing the mind of said George Taylor deceased against his other relatives and heirs at law and particularly against your orator and for the purpose of prejudicing the mind of the said George against other persons who were relatives of your orator & his family or were employed to board and take care of the said George by your orator or with his approval or by his advice and who received the countenance & approbation of your orator as proper and trusty persons to care for the said George, with a view of exciting a dislike in the said George to such parties with the hope and expectation that from the relations existing between your orator or his family & said persons such dislike would extend itself to your orator and for the purpose of procuring the making of a will by the said George Taylor which should give the children of said Bolivar a greater share of said George's Estate than they were entitled to as heirs at law & that he, the said Bolivar, did by such undue

influences procure the making of the pretended will aforesaid—

And your orator further states that at the time when the said alleged will purports to have been executed the said George Taylor was not possessed of sound mind and memory, and that on the contrary thereof he the said George Taylor was then of unsound mind and memory and incapable, on account thereof, of making or executing any valid devise of any of his property

Your orator therefore charges that the paper writing presented to the County Court of Ogle County in said State of Illinois & purporting to be the will of George Taylor deceased, and which paper was admitted to probate, by order of said County Court made on the Fourth day of March A. D. 1863 = was not the will of the said George Taylor deceased.

Your orator therefore prays that the said Samuel Taylor, John Roe, Martha Roe, Mary Frances Roe, George Roe and Eleanor Roe heirs at law of the said George Taylor, and the said Samuel Taylor, Elisa Taylor George Taylor, Julia Taylor, Mason Taylor

(ren of said Samuel) John Roe, Martha Roe Mary Frances Roe, George Roe and Eleanor Roe as devisees under the said pretended [illegible] of the said Bolivar Roe may be made parties defendant to this bill, and that they be summoned personally to be and appear before this Honorable Court on the first day of the next term thereof then & there full, true, direct and perfect answer to make to all and singular the matters and things herein stated and charged and that as fully and particularly as if the same were here repeated and they and each of them distinctly interrogated thereto (but not upon oath, the oath of each and every of the said defendants being hereby expressly waived

And that by order of this Honorable Court an issue at law be made up, whether the said writing so admitted to probate is the will of the said George Taylor deceased or not.

And that, should it appear that the said paper is not the will of the said George Taylor deceased then your orator prays that by decree of this Honorable Court, it be ordered & decreed that the said proceedings in the said County Court admitting said paper to probate be annulled, reversed, cancelled and set aside

and that the said paper be declared not to be a will and that said paper be cancelled & annulled &

And that your orator have such further and other relief as to your Honor shall seem meet, and as in equity and good conscience he may be entitled to

And as in duty bound your orator will ever pray etc

J. Sears Solr
for Compltt
John V. Eustace
Sol and of Counsel

Mason Taylor
by J. Sears Atty &c

Endorsed
State of Illinois
Ogle County
Filed April 24th 1866
F. G. Pettis Clerk

And afterwards to wit on the eleventh day of June A. D. 1866, it being one of the days of the aforesaid term of Court, the following entry was made as appears of Court record, to wit:

Mason Taylor
— vs —
John Roe, Martha Roe, Mary Frances Roe
George Roe, Eleanor Roe & Bolivar Roe
impleaded with Samuel Taylor Eliza
Taylor, George Taylor, Julia Taylor &

Mann Taylor

And now on this day come the complainant herein by Eustace & Sears his Solicitors, and the defendants come by their Solicitor, and now George P. Jacobs is appointed by the Court Guardian ad litem for all the defendants herein except Bolivar Roe and Samuel Taylor. And thereupon it is ordered by the Court that the defendants herein be ruled to answer in sixty days from this date

United States of America
State of Illinois }
Ogle County ss }

Pleas before the Hon. Wm. D. Heaton Judge of the 22nd Judicial Circuit of the State of Illinois in vacation after the June Term thereof A.D. 1866. to wit July 18th A.D. 1866 then and there being present Hon. Wm D. Heaton Judge

F. G. Petrie clerk

Demurrer of Bolivar Roe, Defendant

State of Illinois } In Ogle Circuit Court
Ogle County ss } To the November Term A.D. 1866

In Chancery

The demurrer of Bolivar Roe defendant to the bill of complaint filed in said Court against

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him and John Roe, Martha Roe, Mary Frances Roe, George Roe, Eleanor Roe, Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor & Mason Taylor by Mason Taylor complainant.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in said complainants bill to be true in such manner and form as the same are therein set forth and alleged doth demur thereto and for cause of demurrer showeth that the said complainant hath not by his said bill set forth such a case as shows that this defendant has any interest of any nature or kind in the matter in controversy, or that if said cause could be brought to a hearing, that any decree could be rendered against this defendant.

Wherefore this defendant demands the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained

Bolivar Roe Defendant
pr Geo. P. Jacobs
his Solr

H. A. Mix
Solr & of Counsel

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Endorsed

"Filed July 12 1866
F. G. Petrie
Clerk"

And afterwards to wit on the 18th day of July A. D. 1866 it being one of the days of the said Vacation after the aforesaid June Term of Court the following entry was made as appears of Court Record, to wit

Mason Taylor
— vs — In Chancery
Samuel Taylor et al

Now on this day comes the complainant by J. V. Eustace Esq his Solicitor & the defendant Bolivar Roe comes by G. P. Jacobs his Solicitor, and now comes on to be heard the defendant Roe's demurrer to complainants bill, which being heard and considered by the Court is overruled - and thereupon on motion of said defendant Roe's solicitor Cave is given the said Roe to answer plead or disclaim herein

July 18th 1866 W. W. Heaton
Judge.

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United States of America
State of Illinois }
Ogle county ss }

Pleas before the Hon
Wm Y. Heaton Judge of the 22nd Judicial
Circuit of the State of Illinois at the November
Term thereof begun and holden at Oregon
within and for said county on the first
monday of the month of November A. D. 1866
- to wit. Monday November 5th A. D. 1866 -
then and there being present

Hon. Wm Y. Heaton Judge
David McCartney States attorney
James O Kane Sheriff
F. G. Petrie clerk

Attest
F. G. Petrie clerk

Answer and Disclaimer of Bolivar Roe

In Ogle circuit Court }
- In Chancery - }

The answer and disclaimer of
Bolivar Roe one of the defendants
to the bill of complaint of Mason

Taylor Complainant

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the complainants said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto this defendant answering saith.

That it is true that the said complainant is a resident of said Ogle County and one of the heirs of the late George Taylor, and that the said George Taylor departed this life as alleged in said bill on or about the 5th day of February A. D. 1865, and that he died in said Ogle County.

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And this defendant further admits it to be true as alleged in said bill of complaint that the said George Taylor at the time of his decease was seized and possessed of property real and personal situate in said County and he further admits it to be true that the persons alleged in said bill as the heirs at law of said Taylor would have been such heirs at law had the said George Taylor died intestate but the said George Taylor died having made and published a last will and testament as this defendant verily believes.

And this defendant further answering says that he denies that it is true that on or about the Fourth day of March A. D. 1865 this defendant did present to the County Court of said Ogle County a certain paper writing as alleged in said bill but that the last will and testament of the late George Taylor deceased, as this defendant verily believes was presented to said County Court by one Samuel Taylor about said time and that said last will and testament was never in the possession or control of this defendant which said paper writing this defendant says was in fact the last will and testament of the said George Taylor and was, as this defendant verily believes lawfully made and executed &

published by the said George Taylor in his life-
-time, and this defendant further admits that
afterwards such proceedings were had in said
County Court of Ogle County that the same was
ordered to be taken as the last will and testament
of said George Taylor & was admitted to probate
and ordered to be spread upon the Records of
said County Court and was and is in the
words and figures as set forth in the said complain-
=ants bill of complaint

This defendant further answering says
that he denies upon his best knowledge
information and belief that at the time of
the making of the said will that the said George
Taylor deceased was partially insane and
that the said partial insanity entered into
and was the cause of the making of the
said will and that for a long time previous
to and at the time of the making of said
will the said George Taylor was mentally
almost wholly imbecile and that he was
subject to delusions as to the character
motives and actions of his relatives and
friends as alleged in said bill and that
he was easily influenced against his
relatives and friends and particularly
against the said complainant

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And this defendant further answering denies as in said bill is alleged that this defendant seeking to obtain the advantage set forth in said bill and for such purpose did stimulate and encourage such delusions in the mind of the said George Taylor deceased and did before the making of said will and while the said George Taylor was mentally prostrated exercise an undue influence over the said George Taylor for the purposes, hope or expectation as set forth and alleged in the said bill of complaint, and he further denies that he procured the making of the said will as alleged in the said bill.

And this defendant further answering says that he verily believes that at the time of the making of the said will that the said George Taylor was of sound mind and memory and fully capable of making & executing a valid devise of any and all of his property. And that the said writing presented to said County Court of said Ogle County as aforesaid was and is the last will and testament of the said George Taylor now deceased —

And this defendant further answering says that on the 4th day of March A.D. 1866 while the matter of the admitting said will to probate was pending and before said County Court of said Ogle County this defendant who was named in said will as one of the executors thereof refused to take upon himself such executorship and in order that such refusal might appear of record in said County Court this defendant executed under his hand and seal a written refusal of such executorship and renounced his right to qualify as executor of said last will. A copy of said written refusal and relinquishment certified by the Clerk of said County Court is hereto annexed and asked to be taken as part hereof reference thereto being made which said copy is marked "Exhibit A"

And this defendant further answering says that he has not now and does not claim or pretend to have any right title or interest of in and to the estate either real or personal of the said George Taylor deceased or to any of the moneys arising or to arise out of said estate or any portion thereof. And this defendant disclaims all right title and interest of in and to the same and each

and every part thereof

And this defendant denies all undue influence as in said bill charged: without this that any other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well or sufficiently answered unto confessed or avoided, traversed or denied is true to to the knowledge or belief of this defendant All which matters and things this defendant is ready to aver maintain & prove, as this Honorable Court shall direct: and humbly prays to be hence dismissed with his reasonable costs & charges in that behalf most wrongfully sustained.

Mig & Jacobs
Solrs & of Counsel
for Deft Bolivar Roe

G. Bolivar Roe

State of Illinois
Ogle County ss.

Bolivar Roe first being duly sworn doth depose and say that he is one of the defendants in this cause and that he has heard the foregoing answer and disclaimer read and knows the

contents thereof and that the same is true of his own knowledge except as to the matters and things therein stated upon information and belief and as to those he believes it to be true. And further saith not

J. Balias Roe

Subscribed & sworn to before me this 4th day of August A. D. 1866

Y. J. Petris
Clerk

"Exhibit A"

Whereas I, Balias Roe of the County of Ogle and State of Illinois, was by the last will & testament of the late George Taylor of said County and State designated and named as one of the executors of said George Taylor's estate in and by said will. Which said will purports to be dated on the 25th day of July 1864 and is presented to the County Court of Ogle County for probate and not desiring to act in that capacity I do hereby refuse to accept of the said appointment of executor under said last will and testament and do hereby relinquish and forever renounce such right.

In testimony whereof I have hereunto

25 set my hand and affixed my seal this First day of March A. D. 1865.

Attest G. Bolivar Roe Esq

H. O. McDaid

State of Illinois
Ogle County ss

I Albert Woodcock Clerk of the County Court of said Ogle County do certify that the foregoing is a full, true and perfect copy of a paper writing now on file in said County Court on the Probate side thereof in the estate of George Taylor deceased and that the same was filed in said Court on the 1st day of March A. D. 1865 as appears from the records of said Court.

L. S.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at my office in Oregon in said County this 31st day of July A. D. 1866

Albert Woodcock
Clerk

Endorsed
Filed August 6" 1866
F. G. Petrie
Clerk

Mint Jacobs Solos for Roe

Answer of Guardian ad Litem
In Ogle Circuit Court
In vacation after June Term
A. D. 1866

State of Illinois
Ogle County ss

Mason Taylor
— vs —
John Roe, Martha Roe
Mary Frances Roe George
Roe. Eleanor Roe. Bolivar
Roe, Samuel Taylor. Eliza
Taylor. George Taylor. Julia
Taylor & Mason Taylor

In Chancery
"

And the said John Roe
Martha Roe, Mary Frances Roe. George
Roe, Eleanor Roe, Eliza Taylor. George Taylor
Julia Taylor and Mason Taylor infant
defendants by Geo. P. Jacobs their guardian
ad litem come and for answer unto the
bill of complaint of Mason Taylor
complainant say that they deny all and
every of the statements and allegations
contained in said bill and ask this
Honorable Court to protect their rights and to
compel the said complainant to make full
proof herein

Endorsed
"Filed Augt 6. 1866
T. J. Petrie Clerk"

Geo. P. Jacobs
Guardian ad Litem

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Motion

State of Illinois } In the Circuit Court of said
Ogle County ss } County of the November Term
A. D. 1866

Mason Taylor
— vs —
Samuel Taylor
et ale

In Chancery

And the said complainant by J. V. Eustace and J. Sears his solicitors comes and moves the Court here to strike from the files the jurat to the answer of the defendant Bolivar Roe for the reason that the oath to said answer is waived in complainants bill and the defendants required to answer without oath

J. Sears Sols for Compl

Endorsed—
Filed this 7th of August A D 1866
Fr. J. Petrie Clerk
By B. F. Sheets Dep

Replication —

State of Illinois }
Ogle County ss }

In Chancery
In the Ogle Circuit Court of
the November Term A. D. 1866

Mason Taylor

— vs —

Samuel Taylor, Bolivar Roe,
John Roe, Martha Roe,
Mary Frances Roe, George Roe,
Eleanor Roe, Eliza Taylor,
George Taylor Julia Taylor,
and Mason Taylor —

The replication of Mason Taylor Complainant to the answer of George P. Jacobs, guardian ad litem for John Roe, Martha Roe, Mary Frances Roe, George Roe, Eleanor Roe, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor infant defendants This repliant saving and reserving to himself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto saith, that he doth and will aver, maintain and prove his said Bill to be true, certain and sufficient in the law to be answered unto by the said defendants and that the answer of the said defendants is very uncertain, evasive and insufficient in the law to be replied unto by this repliant without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and

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not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; All which matters and things this repliant is ready to aver, maintain and prove as this honorable Court shall direct, and humbly prays as in and by his said Bill he has already prayed

J. Sears
Solicitor for Complainants

Endorsed —
Filed this 7th day of August 1866
F. G. Petrie Clerk
By B. F. Sheets Dty. —

Replication —

State of Illinois
Ogle County ss

In Chancery
In the Circuit Court of Ogle County aforesaid of the November Term A. D. 1866

Mason Taylor
vs
Samuel Taylor Bolivar Roe
John Roe, Martha Roe,
Mary Frances Roe George Roe,
Eleanor Roe, Eliza Taylor,
George Taylor Julia Taylor,
and Mason Taylor —

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The replication of Mason Taylor Complai=ant to the answer of Bolivar Roe one of the defendants in the above entitled cause. This repliant, saving and reserving to himself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication thereunto saith, that he does and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and notherein and hereby well and sufficiently replied unto-con=fessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain and prove as this honorable Court shall direct and humbly prays as in and by his said Bill he has already prayed.

J. Sears -

Solicitor for Complainants

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Endorsed
"Filed this 7th day of August 1866
F. G. Petrie Clerk
by B. F. Sheets Dey"

United States of America
State of Illinois
Ogle County ss

Pleas before the Hon Wm W. Heaton Judge of the 22nd Judicial Circuit of the State of Illinois at the February Term thereof begun and holden at Oregon within and for said County on the second monday of the month of February A. D. 1867 to wit, Monday February 11th 1867, then and there being present

Hon. Wm W. Heaton Judge
David McCartney States attorney
William W. O'Kane Sheriff
F. G. Petrie Clerk

Attest
F. G. Petrie Clerk

And afterwards, to wit on the 12th day of February 1867 it being one of the days of the aforesaid term of Court the following entry was made as appears of court record, to wit.

Mason Taylor
vs

John Roe, Martha Roe, Mary Francis Roe George Roe, Eleanor Roe Bolivar Roe impleaded with James Taylor Elija, Taylor, George Taylor, Julia Taylor & Mason Taylor

Continued Generally

United States of America
State of Illinois
Ogle County ss

At a Term of the said circuit Court of the County of Ogle and State of Illinois begun and holden at Oregon in and for said County on the fourth monday of June A. D. 1867, to wit. Monday June 24th A. D. 1867. the following proceedings were had, then and there being present

Hon. Wm. D. Heaton Judge
David McCartney States attorney
William D. Okane Sheriff.
F. J. Petrie Clerk

attest
F. J. Petrie Clerk

To wit on said 24th day of June A. D. 1867 it being one of the days of the aforesaid Term of Court the following entry was made as appears of court record, to wit:

Mason Taylor
— vs —
In Chancery
Appeal

John Roe, Martha Roe Mary Frances Roe George Roe, Eleanor Roe, Bolivar Roe impleaded with Samuel Taylor Eliza Taylor, George Taylor Julia Taylor and Mason Taylor

And now on this day comes the complainant herein by Eustace and Sears his solicitors and enter their motion to have the sheriff allowed to amend his return on the summons issued in this cause, which motion is allowed and the sheriff is by the court authorized to amend his return on said summons.

And afterwards to wit on the first day of July A. D. 1869, it being one of the days of the aforesaid term of court, the following entry was made as appears of Court record to wit:

Mason Taylor

— vs —

Bolivar Roe, John Roe, Martha Roe, Mary Frances Roe, George Roe Eleanor Roe, Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor

State of Illinois
Ogle County ss.

In the Ogle Circuit Court of the June Term A. D. 1869 July 1st

In Chancery

Now on this day comes again the complainant by Eustace, Hathaway and Sears his solicitors

and the said defendants John Roe, Martha Roe, Mary Frances Roe, George Roe, Eleanor Roe, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor infants by George P. Jacobs their guardian ad litem and by Pitz and Edsall their solicitors and the said defendant Bolivar Roe by Pitz and Edsall his solicitors and it appearing that all the defendants herein were duly served with summons in this cause more than ten days previous to the June Term of this Court A. D. 1866, to which term said summons was returnable and that the cause is now at issue as to all said defendants except said Samuel Taylor upon bill answer and replication the answer of said infants having been filed by their said Guardian ad-litem. and that said Samuel Taylor was heretofore at the June Term A. D. 1866 of this Court, ruled to answer said bill with which rule he has failed to comply, but made default it is ordered that as to said Samuel Taylor the complainants bill be taken for confessed, And it further appearing to the Court that the said bill of complaint is filed by the complainant as an heir at law of George Taylor late of said County deceased, and a person interested in his estate for the purpose of contesting the validity of a certain paper writing admitted to probate on the fourth day of March A. D. 1865 by the County Court of said

County of Ogle as, and for the last will and testament of said George Taylor, deceased, it is ordered that a jury come to try the issue whether the writing produced be the will of the said George Taylor deceased or not as an issue at law, and thereupon comes a jury of twelve good and lawful men to make jury in said cause, to wit- Sanford Miller, George Reaman, Herbert York, Orvis Wilson, Hastings S. Preston Andrew Worthington, Samuel P. Miller, Charles Arnold, Isaac Ring, James Johnston, Daniel Waterbury and George Field, who being duly elected by the parties, and sworn to try the issue aforesaid, the trial proceeds

And afterwards to wit on the Second day of July 1864 it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record, to wit

Mason Taylor
— vs —
John Roe, Bolivar Roe, Martha Roe, Mary Frances Roe, George Roe, Eleanor Roe, Samuel Taylor Elijah Taylor George Taylor, Julia Taylor and Mason Taylor

Appeal

And now come the jury as heretofore and the parties being present by their solicitors as heretofore the trial

proceeds.

And afterwards, to wit on the third day of July A. D. 1867, it being one of the days of the aforesaid term of Court, the following entry was made as appears of court record, to wit:

Mason Taylor

— vs —

Bolivar Roe. John Roe. Martha Roe, Mary Frances Roe, George Roe, Eleanor Roe, Samuel Taylor Eliza Taylor, George Taylor. Julia Taylor and Mason Taylor

Appeal —

And now comes the jury as heretofore and the parties being present by their solicitors as heretofore the trial proceeds.

And afterwards to wit on the eighth day of July A. D. 1867 it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record. to wit

Mason Taylor

— vs —

Bolivar Roe. John Roe. Martha Roe; Mary Frances Roe, George Roe, Eleanor Roe. Samuel Taylor Eliza Taylor George Taylor. Julia Taylor and Mason Taylor

In Chancery

And now come the jury as

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heretofore and the parties being present by their solicitors as heretofore the trial proceeds –

And afterwards to wit on the ninth day of July 1867 it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record, to wit:

Mason Taylor

— vs —

Bill

Bolivar Roe, John Roe, Martha Roe Mary Frances Roe, George Roe, Eleanor Roe, Samuel Taylor, Eliza Taylor George Taylor, Julia Taylor and Mason Taylor

And now come the jury as heretofore, and the parties being present by their solicitors as heretofore the trial proceeds.

And afterwards to wit on the tenth day of July 1867 it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record to wit:

Mason Taylor

— vs —

Bolivar Roe, John Roe, Martha Roe Mary Frances Roe, George Roe, Eleanor Roe, Samuel Taylor, Eliza Taylor George Taylor, Julia Taylor and Mason Taylor.

And now come the jury as heretofore and the parties being present by their solicitors as heretofore this trial proceeds and the jury having heard the evidence and the arguments of counsel and received their instructions from the Court retire to consider of their verdict

And afterwards to wit on the thirteenth day of July 1867 it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record, to wit

Mason Taylor

— vs —

Bolivar Roe. John Roe. Martha Roe Mary Frances Roe, George Roe. Eleanor Roe. Samuel Taylor Eliza Taylor George Taylor, Julia Taylor and Mason Taylor

Bill

Now on this day comes again the complainant and defendants by their solicitors and guardian as heretofore, and now come the jury and return their verdict into Court as follows to wit:

We the jury find the paper given in evidence before us is not the will of George Taylor

H. C. Preston Foreman

Whereupon the defendants by their solicitors enter their motion for a new trial herein.

And afterwards to wit on the sixteenth day of July A. D. 1864, it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record, to wit:

Mason Taylor

— vs —

Bolivar Roe, John Roe, Martha Roe Mary Frances Roe, George Roe, Eleanor Roe, Samuel Taylor, Eliza Taylor George Taylor, Julia Taylor and Mason Taylor

Bill

Now on this day come again the said complainant and defendants by their solicitors and guardian ad litem as heretofore, and now comes on to be heard the motion of the defendants for a new trial herein and the same being heard and considered by the Court it was ordered, that said motion for a new trial be overruled, and the Court having heard the evidence in said cause and being satisfied with said verdict and being now fully advised in the premises it is ordered adjudged and decreed, that the said paper writing, so as aforesaid admitted to probate in the County Court of Ogle County, in the State of Illinois as the last will and testament of George Taylor late of said County deceased is not the will or testament of the said deceased, but that the said paper be and is

hereby decreed to be void and of no effect as such will and that any and all letters testamentary issued to the persons named in such paper as executors be hereby revoked and cancelled. That said executors be and they are hereby decreed to pay the costs of this proceeding including fees of all witnesses sworn and examined on such trial out of estate of the said George Taylor deceased in their hands. and that surrender the rest and residue of said estate in their hands as such executors to such person or persons as are or shall be entitled by law to receive the same

W. W. Heaton Judge.

And afterwards to wit on the Sixteenth day of July A. D. 1869 it being one of the days of the aforesaid term of Court the following entry was made as appears of Court record to wit:

Mason Taylor

— vs —

John Roe, Martha Roe, Mary Frances Roe, George Roe, Eleanor Roe, Bolivar Roe, Samuel Taylor, Eliza Taylor, George Taylor, Julia Taylor and Mason Taylor —

Now on this day come again the said complainant and defendants by their Solicitors and guardians ad litem and the said defendants except to the ruling of the Court in entering the decree entered in this cause and thereupon the said defendants enter their motion in arrest of the said decree, which motion being heard and considered by the Court is overruled, to which ruling of the Court, the defendants by their counsel except, whereupon it is ordered by the Court that the said defendants be allowed fifteen days within which to file their bill of exceptions in this cause. And thereupon the said defendants pray an appeal in this cause to the Supreme Court of the State of Illinois, which prayer is allowed on Bolivar Roe entering into bonds in the penal sum of three hundred dollars, conditioned according to law with John Roe or Henry A. Gray

as security said that said bond be filed within fifteen days from this date.

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Bill of Exceptions

Seal

State of Illinois
Ogle County ss — Circuit Court of said County
June Term A. D. 1867

Mason Taylor
— vs —
Samuel Taylor, Elija Taylor,
George Taylor, Julia Taylor,
Mason Taylor, John Roe,
Eleanor Roe, George Roe,
Martha Roe, Mary Frances Roe,
and Balivar Roe

Bill of Exceptions

Be it remembered that on the trial of this cause at the June Term A. D. 1867 of said Circuit Court the said defendants having the affirmative of the issue, and to maintain the same on their part, gave in evidence to the jury the following testimony to wit:

The testimony of Mortimer W. Smith, who being produced, sworn and qualified in said cause, deposed as follows:

I was acquainted with the late George Taylor of this County. My first acquaintance with him began some twelve or thirteen years ago. I first became acquainted with him either here in town or at his house. Saw him once in a few months up to the time

of his decease - generally in town.
I generally spoke to him when I saw him. Saw him several Times in the year preceding July 1864. Do not recollect the distinct times, but I had a conversation with him not long before the Time when he came for his will. He applied to me to draft his will, some two years ago I think. I think the first business he introduced when he came was the drawing of his will. He appeared as usual. I think it was not more than a few weeks before that I saw him. His directions to me are shown in the will. He said he wanted his will drawn. I sat down. He satby me and told me what he wanted. I wrote at his dictation. I used my own language to convey his ideas. I would know the instrument.

Instrument afterwards offered in evidence as the will of George Taylor presented to the witness -

This is it. Yes sir - this is the will. It is in my writing. I wrote his name and he made his mark. The name was written at his instance. I can't say whether he or I held the pen to make the mark. He had hold of the pen. The other witnesses of the will were John Sharp and Dr. Dr. Bennett. They were both present when I signed the will. He all signed the will in his presence

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and in the presence of each other and in my presence. Mr. Taylor requested us all to sign as witnesses. I dont recollect the particular style in which he dictated the will. I presume the arrangement of it was my own. I read it to Mr Taylor after it was made, before it was signed. No alterations were made after. I think I had done business for Mr. Taylor before such as acknowledging a deed or something of the kind. I did not see but Mr. Taylor's mind was in the same condition as it had been ever since I had known him I regarded him as of sound mind and memory. He seemed to recollect distinctly As far as I could discover he had a thorough understanding of his property Seemed to understand how he wanted his property disposed of. In town I usually saw him in the street or in places of business. I always spoke with him when I met him. Presume I always spoke of his health. Politics were generally talked of and this was by him. Mr Taylor always appeared to be an eccentric man I did not discover other eccentricities at that time than at others. He was a man of strong mind. His mind outlasted his body. He was much broke

in health. It so appeared to me. I never saw any evidence of incoherency in his mind. I don't know of any one coming to town with him when the will was drawn. He came to my office alone. My impression is that he came in a buggy. I think he told me whom he wanted to be legatees and what he wanted to give them. He wished the person named as executor in the will appointed as such. Told me he wanted to will his property mainly to two families of children - of his daughter and his son Samuel. Don't know whether he mentioned the names of the children or not. He named the parents. Wanted his property sold after his death and out of the first proceeds realized he wanted certain bequests paid in money. The first one was to Samuel Taylor - then to Mason Taylor. The baland when realized he directed should be divided equally between children of his daughter Eleanor Roe, wife of Bolivar Roe, and children of his son Samuel Taylor. I think he said Mrs. Roe was dead. He spoke of his own wife that had died. It is three years instead of two since the will was drawn. My recollection is that we spoke of specific property. He probably mentioned some things. Think he gave the area of some tracts of land

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Mentioned the number of acres of the tracts
Do not remember the particular tracts.
Don't remember his enumerating any
other tracts than those pertaining to the will
I had not the least difficulty in finding out
his wishes - they were very definite in his
mind. Think he named the number of
grandchildren - not certain. I have the
number six in my mind, but whether
from that fact I can't say. Think he
by name his grandchildren - particularly
those of Roe and that they were talked
of in a familiar manner. Have a more
distinct recollection of mentioning names
than number. I appended Taylor's name at
his instance. The mark was made with
his assistance. I never made a mark
without the assistance of the person. He was
very tremulous - was feeble. Physically
he was shattered. His eccentricities were
mainly physical. There was a general
feebleness. His eyes apparently were very
weak. He tried to keep out the light and
yet kept them open a little to see. His hand
trembled and features twitched. There was a
little labor in speaking. Spoke briefly & abruptly
He always had been so - Spoke of his health
- don't remember what he said. The will was
drawn on the day it purports to have been
dated

Cross Examination

The will was drawn July 25th 1864. Her talked of his reason for cutting off Mason. Don't recollect the reason. He seemed to be under the impression that he had been unfairly dealt with and misused. Think he was disposed to talk about it. The more prominent one was a difficulty between Mason's wife and himself on account of some clothing he had lost. Don't recollect that he gave as a reason that Mason's wife or Dayton's wife stole clothes. He said Mrs. Mason Taylor had taken things that belonged to him. Think it was bed-clothing. Don't remember anything else he said of Mrs. Taylor. The idea that he was cutting Mason off did not occur to me until the contesting of the will. I did not get the idea that he was acting from his feelings. The idea that he was cutting Mason off did not occur to me. I thought it was all understood. I don't know whether or not he gave a reason in response to a question of mine. Think other reasons were talked of. I think I may have been misled in the Probate Court as to his giving a lawsuit as the reason of cutting Mason off. Don't know whether he spoke of Rollin Dayton. I presume he did. I had the benefit of his opinion of Dayton on another

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occasion. Don't know that I gave any other reason in the Court below. Have a recollection that other things were talked of. I don't know that he spoke of the larceny in response to any question, but it may have been. I think I saw Taylor between February 1864 and the time of making his will but not positive. Think he came in shortly before to acknowledge a deed. Can't say the deed was after February 1864. I don't recollect going to his house to electioneer for office. Think I went there when taking the census in 1855. Don't recollect doing any business for him but making a deed. Think when he acknowledged the deed he also talked of other things. I can't say as to any special time I saw him. Think I saw him several times that season. Think I recollect of his making his mark to the will. Recollect standing by the table and he standing by me when the mark was made. I was then in the business of making abstracts. I did not know from recollection of the area of his tracts of land. I don't think I had the charts then. Recollect of areas being spoken of in connection with land. The question of areas was discussed. I think he spoke of the areas of certain tracts of land. It was

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not material to the business on hand to discuss areas. During the drawing of the will he stopped to talk, and spoke of land and the number of acres. Do not know whether the number was correct. Don't recollect making any inquiry — presume I did — as to Mason being cut off. Can't say how the question of the larceny came up. It made an impression on my mind. I told him there must be some mistake about it. Didn't think Mrs. Taylor would do it. Think I know sheets and pillow-cases were the articles. Think he stated so. I think he insisted that Mason was connected with some of his injuries. The only injury I remember was the stealing. Don't know whether it was that or not — He said something about going somewhere or not going. I can't call to mind that Mrs. Dayton's name was mentioned. Don't know that Rollin's name was — it may have been. Taylor must have been in my office about two hours. Most of the time I was preparing his will. He may have talked while making the will. He may have continued the conversation on other subjects than the will. My impression is that we were generally alone while drawing the will. Think others came in. He did not avoid conversation when others were in except on the will

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Re-direct Examination

I don't recollect that Wm Taylor tried to write his name when the will was executed I begin to recollect stating such a circumstance in this court below - if so it was true I don't remember just what the articles were - whether clothing or bedclothing. My impression is that it was bed-clothing, but whether from recollection or not I can't say. He said he had received ill treatment from Mason and his wife. I recollect that I did not recollect below from what member of his family he had received ill treatment. Know now that it was Mason.

Question - You state in your cross-examination that something was said by the testator about going somewhere - do you or not recollect of his stating that Mason and John Hewlett had gone down to Samuels and left him, or language of that purport - if so, state fully what you now recollect of the testator's saying.

Question objected to - Objection sustained. Defendants then and there excepted.

I think the statement as to some one going down when was made and made about Mason or some one involved in the suit, but don't recollect what names

were used. He considered it a [illegible] complaint. Think I recollect that he spoke of it complainingly. Can't say that I remember who it was, or where he was to go, or did go. Don't remember what I elicited by any question. My recollection is that there was a complaint more general than I have stated. I don't recollect that sheets or pillow-cases were spoken of by Mr Taylor during that conversation; but if I was going to mention anything I should say sheets & bed-clothes and perhaps towels. I only remember ~~that~~ it was clothing.

John Sharp, being produced, sworn and qualified in said cause deposed as follows

The paper writing alleged to be the will of George Taylor was presented to the witness - I have seen this instrument before. This is my signature. I saw the instrument executed. Mr. Taylor had hold of the pen while Mr. Smith wrote the name. I signed it at the request of Mr. Taylor. I saw all the witnesses signs it. I was in the office some fifteen or twenty minutes at that time. There was some conversation. The will was read over I think when I was there - I am not positive. George Taylor

took part in the conversation. There was some conversation in regard to the will I don't recollect the particulars. Taylor said something as to some treatment that he imagined he had received from his children. My impression is that he thought some of his children had'nt treated him right. Can't say whom he mentioned. Can't recollect the grievances he named. He appeared to understand what he was about. Couldn't say whether he made any remark as to the will after it was executed. As far as I could see there was nothing unusual about him. I only had a casual acquaintance with him ~~after~~ before that. I may have conversed with him before, but not that I remember. My impression was, that for a man of his age he was sane and of good mind Couldn't say that he enumerated any of his property while I was there. Saw no excitement about the old man - He seemed all right. When the will was read he made no objection. My belief then was that he was of sound mind and memory for a man of his age. I think the latter part of the will - the witnessing part was written while I was there

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Cross-Examination

My acquaintance with George Taylor was - I simply knew him when I met him for several years. Had never spoken to him that I know of. I happened into the office Neither Smith nor Taylor called me in. Think I was going to the office - not certain of that. I took part in the conversation. My impression is something was said of some one stealing his sheets and pillow-cases. Can't say that was the reason of making his will. I got the impression that he thought he was ill treated Don't know that he said who stole the clothes. Can't say that he spoke of Mason or connected him or Mason's wife with stealing the clothes. All the ill-treatment I remember was about the stealing. Think when the will was signed, Taylor sat by the table and Smith took hold of the pen My remembrance is that Smith wrote the name.

Re-direct Examination

I think sheets and pillow-cases were mentioned. So long ago I can't say positive. Think he spoke of ill-treatment, but that is the only specific thing mentioned—

John Roe being produced, sworn and qualified in said cause deposed as follows:

My profession is practicing medicine I have been practicing for forty years, and also farming. I knew George Taylor late of this County. Got acquainted with him in 1838. Came to this country in the spring of 1835. I have known Mr. Taylor from the time we got acquainted ever since except from 1843 to 1850 when I was in Chicago. Have seen him frequently since - two or three or half a dozen times a year. I often went by his house. Part of the time I lived about two and a half miles from him and for the last three or four years of his life some five miles. I recollect calling on Mr. Taylor in the latter part of the winter of 1864 in relation to some wood - I called to buy some wood. Found him in the house, sitting by the stove, reading a newspaper. The common courtesies of the day were passed told him what I came for, that I understood he was selling wood, and I came to see if I could buy some of him. He said - No I have got none to sell. He said they acted so like damned hogs that he said he wouldn't sell any more and he

would stick to it. I said no more about buying wood. He said one man had put so much on his wagon that he broke it down and he was dammed glad of it. First time I ever heard him use bad language. I told him we needed some wood and on the prairie or we would freeze. He said he had said it & would stick to it. I think I next saw him in February 1864. about the time of his sickness. My son called me in and said if I wanted to see Mr. Taylor to come in - for the doctor said he would die. I went in. The old gentleman was asleep and I did not waken him. I said I would call again when I returned and did so. Found his pulse accelerated. He said they had been giving him morphine again. I told them I didn't think he would die that time and left. I next saw him in the last of April or first of May 1864. I was riding by, and saw him in the yard splitting kindling wood. He saw me and came to the fence. I then had his grandson living with me. He said: How is George? I said George is very well. He said George was a very fine boy. I told him George was a fine, healthy child. He asked me where I was going. Told him to Mt Moore

to see Mrs. Farwell, and I think he said he didn't know her. Oh yes you do, said I, Kenny Farwell that used to live South of Dayville. Said he, I thought they had all gone to Chicago. I told him they had all gone but Jackson, and he was living at Mt. Morris. Farwell was planting corn when I got to Mt. Morris. I saw Taylor between these two times. I think it was in April. I saw a pile of posts in the yard and went to see if I could buy them. Found Taylor in the house. He had a room where he generally stayed and read. He read a great deal. I asked if he would sell the posts that laid out in the yard. No, said he, I had those posts made for my own use. I have got 80 rods of fence to put up this spring. If I can get anybody to do it and I want to use them. Passing over the conversation when I was going to Mt Morris, the next time I saw him, he came to Billy Rice's when I was there. It was the latter part of May I think from conversation I had as to the corn then growing. It was a mile and three-quarters from his residence The old gentleman came on foot. He appeared surprised at his walking. He said he felt better when he stirred about

He was excited on the war. Said he hoped to live until the Rebellion was put down, and then he would be ready to die. Rice offered to hitch up his team and take him home, but he said he could walk. He talked of generals &c. He had his favorite. It was his theme - about the generals and the war. He was blowing up Grant for not being at Pittsburg Landing. Found fault with Buell - Said he might as well have been there as where he was. He told me matters that I did not know about the war. He was well posted on the events of the war - always reading. He objected to being taken home - Said he could walk. He took tea. His hand trembled, and Rice poured out the tea for him. I think the corn had been plowed once or twice Rice said the corn was too thick. Once when I had been to meeting during the same summer, Taylor got in and rode with myself and wife. He talked of the preacher &c. I don't know whether that was before or after I saw him at Rice's I saw him at Stinson's that summer - the one that lived on the road. The old man came there and we talked about the war. I left him there. He said he heard some of them were sick and he came over to see. I was with him

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half an hour – not more. Think he talked of other subjects than the war. There was some lady there I heard he wanted to court. The old man was quite jovial and cheerful. I have been a physician about forty years. Have treated patients who were insane and afflicted with mental disease. Treated one Van Patten, and a little man at Dayville by the name of Reading. Have read books on insanity and mental diseases. Saw Taylor at Stinson's after I saw him at Rice's. As to Taylor's mental condition, I think the old gentleman was perfectly rational – only his age worked on his system. I did not see Taylor during his last sickness. He told me that he was troubled with his water. He had a tremulous motion. I think it was a nervous irritation whether from tobacco, opium or morphine. He had a twitching of the face Think the nerves of his mouth twitched when I first saw him; and when I first became acquainted with him –

Cross-Examination.

I don't know how long Mrs. Taylor died before Taylor. Mrs. Taylor told me that he took gin and morphine. It was not his wife but one who lived in the family. I am not positive whether his wife was alive

them. I think I know the year. I don't forget everything I know. I believe it was not his wife told me he took morphine. I might be mistaken as to the year, but don't think I am. I don't think the other conversations took place differently from what I have stated them. I think I am right as to the year - that it was in 1864. I don't think Mrs. Taylor (George's wife) was living when I went for the wood. I remember that she was not alive when I went for the posts. I attended Redding about a month. Attended him for insanity. It was about the time of the Millerite excitement. I won't fix the date. It was the first excitement. I don't recollect the year of it. Recollection is not very good as to dates. Attended Van Patten about 1870. I don't recollect the time. After I came from Chicago they brought a lady to me from Grand Rapids to be treated for insanity. I had one such patient in California. Reading died - I think Van Patten got well. Almost every doctor book you pick up - it treats of insanity. I have read Dr. Gunn a number of years ago. It is an allopathic work. I don't know how much of it is devoted to that subject. I have also read

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Brachs Eclectic Practice, Curtis of Cincinnati and Comfort of Philadelphia. Have read Ewell. Never read a work altogether on insanity. It is my opinion that the tremulousness came from nervous irritation Paralysis usually comes from disease of the brain. It leaves the nerves relaxed and not rigid and tremulous. The books say it proceeds from irritation. In palsy the patient may jerk and twitch some, taking out the brain wont produce palsy. I have sometimes found the cause in the stomach. I commenced reading medicine in 1821. I never received a diploma, but a man who has practiced forty years ought to know something. I am the father of Bolivar Roe. —

Re-direct Examination

I think that George Taylor died in February 1865 - which was the February following the time when I saw him at Stinsons, Rice's and the other places mentioned by me

George Lilly being produced, sworn and qualified in said cause deposed as follows:

I was acquainted with the late George

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Taylor. Have known him nineteen years. I resided not quite half a mile from him. For the last two or three years of his life I often saw him two or three times a week. We always spoke together when we met. I met him very often during the summer of 1864. He was at my house that summer. He came different times - Several times for cider at Dr. Potter's prescription. Stayed between half an hour and an hour. I conversed with him on those occasions. In regards to his mental faculties he appeared pretty much the same as he always did before from the time I got acquainted with him, although he got more tremulous. He was affected with tremulousness ever since I knew him, but not so much as towards the last. He seemed to understand what he was about - what he wanted. I saw nothing unnatural - I never saw anything unnatural about him. I think I saw him last two or three days before he died. They called on me to assist the Doctor in dressing him and taking him out of the bed. George Addy also assisted. Not long before that I went there to see him. I was there I think

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thats or four times during his last sickness
My business is that of a joiner. I have a
shop. Taylor and myself always were on very
intimate terms - were very neighborly.
Her got a little angry at me once nine or
ten years ago about some borrowed
money. I didnit blame him, because
I couldnit pay him when I promised.
Her gotin a passion. I went to the bank
and got the money and paid him. In
the summer of 1864 I had conversa-
tions with him as to his property.
Her said he loved money as well as
ever - loved to increase his property.
Her never mentioned how much he
had. Money was pretty scarce then.

Cross Examination.

I think the conversation I referred to
was in 1864. It was after his first
sickness, Her said he had money out
and couldnit get it - So had I money
out that I couldnit get. In 1864 some
had plenty of money and some had
not. The conversation was between the
last sickness, and the one just before it.
After his first sickness he came to my
house oftener for cider. I think he came
before. When he was afoot he would come

in and rest himself. My recollection is that it was after his first sickness. I have had no difficulty with Mason sometimes I have spoken with him - sometimes not. I live nearly one mile from him. Whenever he spoke to me I spoke to him. Sometimes I spoke to him first. I have no ill-feeling towards Mason and have had none.

Harvey Jewett, being produced, sworn and qualified in said cause deposed as follows:

I was acquainted with the late George Taylor. Knew him from 1864 until his death. I saw him during the last year of his life - Do not know how often. He was at my drug-store. I kept a drug-store in Oregon from 1862 to 1866. In the year 1864, he was there perhaps half a dozen times. Sometimes he stayed one and a half or two hours. I always conversed with him. He generally asked for a late paper and sat down and read it. He read the Chicago Tribune. Made purchases of me. He got some gin perhaps twice - at another time he got a bottle of "Constitution Bitters" and perhaps other medicines. I can't tell the exact

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time when he was there. He usually came to town with a horse and buggy. For the ten years past I saw him about as often as during 1864. I never saw anything unusual or unnatural about him except that he became more nervous and more tremulous. I discovered no change in his mental faculties. Discovered no want of ordinary understanding. We generally conversed on the war, that was then the general theme in the community

Cross-Examination.

I think Taylor was at my store three or four times in the summer of 1864. I sold him gin twice. Sold him one half gallon at each time. It was the second season after opening the store. I had a fair run of business. I think I paid particular attention to Taylor as an old man and an old friend. If I had time I would sit down and talk to him. I conversed with him every time he was there.

Samuel Boat being produced, sworn and qualified in said cause, deposed as follows:

I knew Mr. George Taylor for ten or fifteen years - It was as much as that. I

cannot tell how often I saw him during the summer of 1864. He was in my shop during that summer. I don't know at what time. He came to get his harness mended. Had never conversed with him before. I saw him in the street and about town before that time. I never noticed anything unnatural about him. He asked me my prices and paid it. I didn't suppose anything was wrong with him. I saw nothing at any time to make me suppose him insane

Cross-Examination.

I made a thill strap for him at that time. I never did any other work for him. I only knew him by sight.

Ezra M. Light being produced, sworn and qualified in said cause deposed as follows:

My business is the practice of medicine. I have been so engaged for fifteen years. I am a graduate of Rush Medical College and have a diploma. I was acquainted with the late George Taylor of this County. I knew him as long as fifteen or eighteen years. I saw him often. I was at his house frequently during

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that time. I frequently met him elsewhere and always talked with him. During the year 1864 I saw him once at least to my recollection in the early part of the summer - Conversed with him. The important part of our subject was his own health. Then kept up a connected conversation. Also general conversation as to his friends. I met him at that time at Schultz's drug store. I did not then prescribe for him. Met him again on the other side of the river. We talked together then. I visited him but once professionally. It was in Jan. 1864. His difficulty then was a retention of the urine. I don't recollect any conversations other than those I spoke of after that sickness. I met him at Mr. Stinson's - I think before that - Harrison Stinson's. I believe George Taylor during the summer of 1864 was a man of sound mind and memory. I supposed him to be of sound mind and memory. I did not observe anything that would give me any difficulty. I have treated patients afflicted with insanity. I have treated three or four such cases. Have studied works treating of insanity. I have read Prof. Wharton and Stille. Our text-books all treat

of it although they do not make a specialty of it.

Cross Examination.

I only recollect meeting Taylor twice in the summer of 1864. Don't recollect who came into the store first. Probably I went in to compound medicines. Don't recollect having any particular conversation with him. I enquired of his health. Saw his pants were wet and asked as to his mine. He was a man that any one would notice at first sight because of his tremor and winking. I did not notice anything unusual. We probably conversed more than two or three minutes. I think he was there getting medicine. When I met him on the road our conversation was probably three or five minutes on general subjects. Did not notice any evidence of insanity. My attention was not called to that point by anything out of the ordinary course. I saw nothing unusual about him. I considered him the same man that he always was. If I had examined him closely, I might perhaps have come to a different conclusion.

9 William Schultz being produced, sworn and qualified in said cause deposed as follows:

I was acquainted with the late George Taylor. I knew him two or three years. I have been in business here as a druggist over seven years. I usually saw Mr. Taylor in my drug store. am in the drug business. Taylor generally stopped half an hour or an hour, and sometimes was about for half a day. He generally purchased morphine - and gin very often. During the summer and fall of 1864 he was not in my store so often. He was in sometimes. I almost always had some conversation with him. I never noticed anything unusual in his mental faculties. I saw he was failing. He was quite talkative and friendly. I can't say but that he always conversed rationally. He always talked in about the same way. The last year of his life he seemed failing. I knew Taylor in 1860-61-62-63-4 - certainly three or four years and during that time I saw him frequently.

Cross Examination.

I have no distinct recollection that Taylor was in my store in 1864. Did not see so

much of him that year. He generally stopped at Lovett's that year and I met him on the street. I think I sold to him in 1864. I am positive that I saw him and talked with to him in 1864. I always spoke to him when I saw him. Nothing unusual happens to make me remember a particular time. When his wife was living, he said that he got the morphine for her. I don't know whether it was for her, but he said so. I sold him gin. He said he used it for his many difficulties. He brought a jug and generally got half a gallon.

Re-direct Examination.

My recollection was more fresh when I testified in the Probate Court - never expected to testify again.

Silas Hawthorne, being produced, sworn and qualified in said cause deposed as follows:

I was acquainted with the late George Taylor of this County. I knew him for twenty years before he died. Became acquainted with him in the winter of 1842-43. He used to come to my shop for work. I have lived about six miles from him for the last ten years of his life.

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During the last two years before his death he often called at my house when coming to Oregon or going back home. He lived eight miles from Oregon. During 1864 he was at my house a number of times. Sometimes he stayed longer than at other times - long enough generally to get his dinner and feed his horse - sometimes longer. During the last year of his life I was at his house three or four times. I conversed with him on each occasion. He kept up a connected conversation as in former times. He came at one time when he had broken one of the thills of the buggy. At one time his horse was lame, and he wanted me to take off the shoe, and see what was the matter. That was in the summer of 1864. I last saw him alive a week before he died. He made remarks as to the treatment of himself by his son Mason. I think it was in June 1864 that he made these remarks. I think he had not been to Oregon then - nor was he going to Oregon. Think we were eating dinner when he came. He said Mason had treated him with very harsh language. Had not treated him as a child ought to treat a parent. I think this was in June 1864. Think Taylor had been to show

Lieman Taylor the way over into Bergen Neighborhood

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to Shaw

Lunan Taylor the way to Boyce's. He had walked from the Hart Schoolhouse, which was north of my place - a mile and a half good, if not more. It was in very warm weather. Am not positive but it was in July. I never saw anything unusual or unnatural about him. He appeared perfectly rational to me. Don't know anything else that was said there - We talked on other subjects.

Cross-Examination.

I recollect of hearing that the old man got hurt before his death. It was in the winter before he died. Soon after that I was up to see him. It was not then, that he spoke of Mason. Don't recollect that I swore to that fact in the Probate Court. If I said so I believed it was true. It is not my belief now. I believe the conversation was in my own house. He appeared fatigued with his walk. Am pretty positive that I did not say in the Probate Court that it was after his injury, and about that time. Don't know exactly what elicited the remark about Mason. He said Mason had not treated him as a son shou[illegible] He said Mason had talked hard to him. I think it was before his injury. I think

Taylor was at my house more than twice in 1864. I am sure he was there at least three times. I never heard him say anything about any sheets or pillow cases. I don't recollect that he spoke of having any clothing stolen

Re-direct Examination.

I remember when Taylor came to my house to have his horse's foot examined. Am a blacksmith. At that time he talked about his property. He said, Mason had enough, and he was going to leave his property to Bolivar's children - that they needed it more than Mason. I think this was in the first part of May 1864. I suppose he meant Bolivar Rice's children. Bolivar married Mr. Taylor's daughter.

Re-cross Examination.

Taylor was at my house when I came in to dinner. He had not been there very long. I never heard him mention a word about bed-clothes, or any one stealing clothing from him in my life.

David Pattie. being produced, sworn and qualified in said cause, deposed as follows

I was acquainted with George Taylor. Have

him twenty-nine years. I resided for the last eighteen years a little over a mile and a half from him. I used to see him frequently. During the last year or two of his life I saw him often. The last year he lived, I saw him to talk with him three times. I first saw him at the widow Fuller's — the first time in the summer of 1864. He could keep up a connected conversation. I had called with my wife to see Mrs. Fuller. Don't recollect the topic of our conversation. I last conversed with him on the road near my house in September or October 1864. His principal topic then was that he had met with some loss of goods. We talked about half an hour. He always appeared rational to me. I never discovered anything unnatural or unusual in his conversation.

Cross Examination.

I don't recollect that any one else was present at Mrs. Fuller's but my wife, Taylor and myself. On the road he said that the property he had lost was bedding. Don't remember whether quilts or sheets, think sheets. He never said anything about pillow-cases.

Alfred Konkle, being produced, sworn and

75 qualified in said cause deposed as follows

I was acquainted slightly with the late George Taylor. I knew him first in 1853. I saw him, but not very often, up to the time of his death. I bought a couple of loads of wood of him. Never had any other conversation with him. He acted rationally and in 1863 & 64 his mental condition was good as far as I could see. Saw nothing to the contrary.

Cross-Examination.

My conversations with Taylor were in the fall of the season, in either 1863 or 1864. Am not certain which. It was probably in October or November. I can't say which. I found him sitting in his house. I don't know anything about any injury to him. Can't say whether it was in 1863 or 4. I don't remember the time of Taylor's death. Paid little attention to the time of the transaction.

George A. Bunker, being produced sworn and examined in said cause deposed as follows:

My profession is that of a physician and surgeon. I was acquainted with George Taylor. Knew him by sight fourteen or fifteen years. Have attended him as a physician

I so attended him in February 1864. I was not intimately acquainted with him before that time. I had seen him here in town. I think I had conversed with him prior to that time. The disease of the old gentleman in February 1864 was weakness of the urinary organs, retention of the urine. Where retention is caused by inflammation it is called "cystitis". I saw him occasionally for two or three weeks. Saw him every other day and sometimes every third day. Dr. Potter attended alternately with myself. One saw him one day, and the other the next. The principal treatment was the use of the catheter and diuretic medicines. I usually remained there from twenty minutes to an hour. On some occasions I conversed with him. I next saw him some time in the Spring of 1864 in Oregon. I conversed with him a few moments in Bennetts store. On these occasions he could talk connectedly. On one or two occasions when I saw him, he was insensible. This condition was caused by the disease - by the urea of the urine circulating in the blood. The catheter relieved him. The comatose condition is an incident of the disease. It is common when the urine is long enough

retained. Retention of the urine causes poisoning of the blood. I saw Taylor again in Jewett's store. He settled with me at that time. Mr. Jewett, Dr. Potter and some others were present. I think I saw him in town once after that during the summer of 1864. I have practiced medicine nineteen years. Have treated some patients for insanity. I treated an Irishman over the River - also a man in Boone County and Pat Kenyon. Have read works on insanity. Sully on the Brain, Esquirol on Insanity - and a number of works on Medical Jurisprudence. I believe Mr. Taylor was of sound mind and memory during the summer of 1864. In all the intercourse I had with him, I never saw anything to lead me to suppose his mind unsound, more than that he was rather childish. He was not more so than men of his age usually are. I never discovered anything that I would call aberration of mind.

Cross-Examination

I saw George Taylor three times certainly, perhaps four times after his illness in 1864. I had conversations with him on two occasions at least. My attention was not called to any insanity by any indication whatever. I never heard that he was insane

I can't help but have an opinion on the subject. My opinion might have been differe or might have been strengthened by a close examination. I suppose the test of insanity is the presence of delusion. A delusion is an idea fixed in a person's mind, such that no rational being would entertain it under the circumstances. Men may have delusions on certain subjects and be sane on others so that some authors say all men are insan on some subject. A man who is insane on one subject is called a monomaniac. On other topics he might talk sanely. I know a man that thought he was Jesus Christ, but sane on other topics. When the subject of the delusion is introduced it would occupy his entire mind for the time. Other matters would be apt to be tainted with the delusion

Re-direct Examination

A delusion is a belief that no sane man would entertain. If a man should hold an opinion which is untrue in fact, but which has some foundation in the circumstances it would not be a delusion. Slight facts might convince one man, when they would have no effect on another. I would not call a man insane because he believed differently from me or on less evidence.

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Delusions are such as this - When a man believes he is Jesus Christ, or supposes one leg to be made of glass; and I know one case where a man thought he was pregnant.

Washington Jones being produced, sworn and qualified in said cause deposed as follows:

Was acquainted with George Taylor. I knew him first seventeen years ago when I first came to this country. I have lived in his neighborhood - About four years within three-quarters of a mile - then I lived about a mile from him. Since that I have lived a mile and a half from him all the time but one year, and then I resided two or three miles away. I went by his place to get the mail. Saw him about every week. Always spoke to him and frequently conversed with him. Can not name the number of times I saw him during 1864 - it was about the same number as before. At one time in 1864 I had business with Lunnan Taylor. I bought a cow of him, and could not make the change desired by Jersey (Lunnan's wife), and I got Uncle George to change it. I applied to him for a loan of money before that time - once when Dayton lived there. During the time I knew Taylor there might have been some

weeks when I did not see him. I conversed with him whenever I had a chance. I never saw anything about Taylor to make me suppose that he was not sane. He could keep up a connected conversation. I saw nothing wrong about him - but he was getting older and rather feeble in body.

Cross-Examination.

I went to Taylor to borrow money when Dayton lived there. It must have been in 1863. I think the next time I had any business with him was when I bought the cow. Don't think I was there more than half an hour then. I had bought the cow before and Inman was not at home when I went there. I paid his wife. Don't recollect that I was in any hurry. Uncle George charged the bill. He made the correct change. I don't remember that he forgot that he had the bill or the amount. Jersey wanted three dollars for the heifer. I remember that she said a good deal - more than she had any need to say. Don't remember the amount I gave him. I will swear that to the best of my recollection George Taylor did not forget the amount I gave him, or that he had it.

Question - Did you or not at Payne's Paint in the store say to George Addy and others

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that, at that time George Taylor could not make change and got all fuddled up or words to that effect?
Answer - I remember some conversation when Martin Wood was present. I do not recollect saying so. Dont remember making any such expression. I called on Mr. Taylor a few days before he died, I dont remember any business I had with him after February 1864, except those two I have spoken of. Dont remember any lengthy conversation with him, but I must have spoken to him, and conversed with him.

Polina Roe being produced, sworn and qualified in said cause deposed as follows:

I am the son-in-law of George Taylor. I was personally acquainted with him since 1857. I was married December 16th 1858. My wife's name was Eleanor Gray Taylor. He lived between a quarter and a half a mile from him. He first lived for a few months within three miles of him. He then moved to his house, and then to the place perhaps half a mile away. He lived in his house from March to the second week in July in 1863. He then moved to a place south of his, where I now live. My wife died on

the 10th day of January 1863. She left five children of our marriage. Their names and ages are as follows: John Taylor Roe, the eldest, is about fourteen years old. Mythis Marthia Ann, about twelve years old. Mythis Frances Mary, about nine. Mythe George Samuel - about seven then Eleanor Gray - about four or nearly that. When we were married I received no property of any account with her from the old man. She had three cows. She claimed they came from her own property - descended from a grandfather. I had a fraction less than ninety-nine acres of land when my wife died. Eighty-seven acres are under fence. On the 28th of July 1864 I had the same property. I had a team, some colts and cattle also. I was indebted. My personal property, aside from my debts, I don't think would amount to $200. The title to the land was in myself. I have since married. I married September 29th 1864, before the old gentleman's death. At the time he made his will, I was not married. I am not posted as to the amount of Mason Taylor's real estate. Think he had over two hundred acres. The old gentleman had personal property, notes &c to the amount of $2,000 or in that neighborhood. I do not know exactly the amount of Mason's prairie and timber

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could not guess the amount of his personal property. In July 1864 he had a stock of horses and cattle. I don't know the number of acres of the testator's real estate. I think there are One hundred and sixty or nearby that. His prairie land is worth $40, perhaps $45 and the timber $60 or $65 per acre except a slough. I think there are about sixty acres of the timber besides the slough may be more. George Taylor had three children, which were not all living at the Time of his death. They were Mason, Samuel and Eleanor my wife, and the mother of my children. Samuel lives in Macon County. He has a good farm and is well off. I have visited him. I think in 1854 he had about three hundred and sixty acres. I think he had the same in July 1864. I don't know what it is worth per acre. I saw Mr. George Taylor quite frequently during the last two years of his life. It would average once a week. Our object in visiting each other was on business matters and to shave him. I shaved him from about the Time his wife died until he died and after his death. His last wife was called Aunt Mary. She died, I think on the 9th of February 1863 – two years before the old gentleman died. I seldom shaved

him twice a week - generally once a week
Generally shaved him on Friday when he
could come to my place. If I had to go to
his place I went when convenient to me
Whenever he was able he came to my place
to be shaved - when he was not able to
come, I went to him. During most of the
time he came to my house. It was controlled
by his health and the weather. When he
came to my house the time he stayed
depended on whether it was meal-time
or not. He generally talked and read. Was
a great hand to read. He read more
than half of the daylight hours. Often
read in the Bible and read the Tribune.
Both were great favorites with him.
He seemed to understand what he read
Often repeated what he had read. He
was able to keep up a connected conver-
-sation. I never detected anything that
led me to believe that he was deranged
or insane or out of his mind. I saw
him when Dr. Brinker attended him.
I saw him when he was insensible I
think. Remember when Taylor came to
Oregon to get his will made. The day before
on the Sabbath July 24th he spoke to me.
The old gentleman said he gave Mason
and Samuel their timber lots.

5

Complainants moved to rule this last sentence out. Court says to the jury, that this is no proof of advances.
I think he told me that some time, in 1863 On sabbath July 24th 1864 George Taylor came to my house about dusk. He said he had been up to Mason's to give him a piece of his mind, for not taking him down to Samuel's, or not telling him go: and to let Kate and Jane know, that he knew that had taken Aunt Mary's clothes. He said that Mason got mad, and cursed him, and told him, if he didn't go off, and shut up his mouth, and mind his own business, he would take every damned cent of his property away from him - and then said: "This too bad, I can't stand such treatment, I raised Mason Taylor, and gave him a good part of his property. - If God spares my life until tomorrow, I will go to Oregon and make my will. He then said he didn't like to go to Joe. to get his will made - I think he said Joe Sears - Said he had given him some business to do, and he didn't think he did the right thing about it. I said there were other business men in Oregon, and that Smith was a gentleman, and had done business for my brother. I think

Taylor went away then. The next day, I heard that he came to Oregon. I saw him again in about three days or it may have been the next Friday when he came to be shaved. He had a conversation before that about going to Samuels - but a few days before - probably between five and fifteen. He came to my place to be shaved. He said one time - I suspicion that Mason and John have gone down to Sam's, and before, and, if they have, Mason shall never have a cent of my property. He said, if Mason was too good to be seen riding in the road with him, he was too good to have his property. I told him, that I did not think they had gone there, that I thought they were off visiting at some place. No more was said at that time. At another time, soon after that, I saw the old gentleman. Said he, Damn it, they have gone. This was between the two conversations related by me. By John was meant John Hewlett from New York State. He was Taylor's nephew. Mason and John claimed to have been down to Samuel's when they came back. I saw him, either on the Friday after he went to Oregon or sooner than that. He said he had made his will. I think he told

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me the provisions of the will. I dont recollect distinctly when I saw him next. Some time afterward, he handed me a will that he had made. It may have been two or three weeks after. He said that was his old will. Said he: It is good for nothing to any one, but I want you to keep it, and, if any of Mary's folks ever come here, to show it to them, that they will know I wasn't going to turn Mary out on the town if I died first. Then he said; "They are very violent. Said I - Who? Why Mason's people. I said - Did you tell Mason. He said he did not. He said he had told Jersey and he thought she would tell them quick enough. The will was the subject of our conversation.

An instrument purporting to be the will of George Taylor - dated September 12th - 1860, with the signatures erased was presented to the witness.

This is the document which the old gentleman gave me. I know that the old gentleman had an arrangement to go with Mason and John. Know it through Mr. Taylor. He said, he asked them to go with a conveyance. Said they wouldn't do it. This was before the other conversations related

The said defendants further gave in evidence to the jury an instrument of writing of which the following is a copy, being the same instrument exhibited to the witnesses Mortimer W. Smith and John Shack on their examination in said cause, together with the certificates thereto attached except a portion in brackets.

" Know all men by these presents that I, George
" Taylor of the County of Ogle and State of Illinois,
" do make and publish this my last will and
" testament.

" First = I order that all my just debts
" be paid by my Executors hereinafter mentioned.

" Secondly - I will that as soon as practic-
" =able after my decease, my Estate both Real
" and personal shall be sold and the proceeds
" distributed as follows;

" To my son Samuel Taylor I give the
" sum of One hundred Dollars, $100; To my
" son Mason Taylor I give the sum of Fifty
" Dollars ($50) To the five children of my
" deceased daughter Eleanor Roe (wife of
" Bolivar Roe) or to such as may be in life at
" my decease, and to the children of my said
" son Samuel, I give the sum of One hundred
" Dollars each.

" Third - It is further my wish and

89 " will, that whatever may remain of my
" estate after the payment of the above bequests,
" shall be divided equally among my said
" grandchildren, the sons and daughters of
" my said son Samuel and my daughter
" Eleanor Rob, share and share alike.
" Fourth = I hereby make, constitute and
" appoint my said son-in-law Bolivar Rob
" and my son Samuel Taylor to be the
" executors of this my last will and Testament,
" and I hereby authorize and empower
" my said executors to sell and convey
" with good and sufficient deeds of conveyance
" any Real Estate of which I may die seized,
" the same to be sold by them to the best
" practicable advantage, for the benefit of
" my estate.
" In witness whereof I have hereunto
" set my hand and seal this 25th day of
" July A. D. 1864.
" (Attest W.W. Smith) George his X mark Taylor (Seal)
"
" The above instrument, consisting of two
" half sheets of paper, was at the date thereof
" signed, sealed and published and declared
" by the said George Taylor as and for his
" last will and testament in presence of us,
" who at his request, and in his presence,
" and in the presence of each other have

subscribed our names as witnesses thereto

John Sharp, Oregon, Ogle Co. Ill.
Wm M. Bennett Oregon Ogle Co. Ills
M. M. Smith. Oregon, Ogle Co. Ill

Endorsed.

" Will of George Taylor
" Deed—
Filed Mch 4 1865—
Albert Woodcock Clk.
By A. O. McDaid Dep.
Recorded in Book
B of Wills Page 880
Examined.

State of Illinois } In County Court of said County
Ogle County ss } March Term A. D. 1865—

Be it remembered that on this 4th day of March A. D. 1865 personally appeared in open court John Sharp and Mortimer M. Smith good and credible witnesses who being duly sworn on their oaths severally deposed and said, that they were present and saw the within named Testator George Taylor mentioned in the within last will and testament as the signer thereof sign the same and heard him declare said instrument to be as and for his last will and testament and that they signed said will as subscribing witnesses thereto in the presence of and at

the request of the said testator and in the presence of each other, and that they then believed and still believe that he the said George Taylor at the time of signing and publishing said last will and testament was of sound mind and memory and under no constraint, and that the said testator died on or about the 5th day of February A. D. 1865, (and other evidence being produced for and against the soundness of mind of the said testator) and all of said evidence having been heard and considered by the court; said will is pronounced valid, and it is ordered that the same be admitted to Probate and spread upon the records of this Court in full.

Rec'd Stamp 5 cts

L. S.

Witness my hand and the seal of said court at my Office in Oregon this 4th day of March A. D. 1865

Albert Woodcock Clerk

By John Woodcock Deputy

George P. Jacobs Esqr. being produced, sworn and qualified in said cause deposed as follows:

I knew George Taylor late of this county. An instrument purporting to be the will of George Taylor was presented to the witness. I know this will. I wrote it on the 12th

day of Septembes 1860. I wrote it at the request of George Taylor. I think beyond a doubt Taylor signed it himself. I am a subscribing witness of this will. I signed it at the same time as Mr. Taylor, and when it bears date.

The said defendants offered further proof of the execution of the said instrument, but it was waived by said plaintiff. Thereupon said defendants further offered in evidence to the jury said instrument of writing, of which the following is a copy, being the same instrument exhibited to the witness George P. Jacobs Esq. on his examination in said cause

" Know all men by these presents that I.
" George Taylor of Ogle County and State of
" Illinois, do make and publish this my
" last will and testament.
" First= I order that all my just debts be
" paid by my executor hereinafter mentioned.
" Secondly= I will and devise to my wife
" Mary Taylor for and during her natural
" life, my homestead, being the premises on
" which I now reside, containing an area
" of about One hundred and nineteen acres
" for her to have and tohold, to rent and enjoy

for and during her natural life. I further will and bequeath to my said wife all the house-hold and kitchen furniture in and about my said dwelling-house, or that shall be there at the Time of my demise. I also give and bequeath to my said wife an annuity of Fifty Dollars, to be paid by my executor hereinafter mentioned annually to my said wife during her natural life. The first payment to be made by my executor in one year after my decease, and annually on the same day thereafter. I further will and bequeath and devise to my said wife and hereby quit-claim and relinquish to her all right and interest I have in and to a certain demand and claim my said wife had and possessed at the Time we were united in marriage against one Samuel Sakins of Salem, Washington County and State of New York, for the sum of about Eight hundred Dollars, which is secured by trust deed made to William Henry Sakins on real estate situate in said town of Salem - Which together with the house-hold and kitchen furniture she is to ever hold for her own use and benefit. I also bequeath to my said wife the use of the horse and carriage that I now own, to be used and enjoyed by her during her natural life.

It is expressly understood by me that foregoing bequests are to be taken by my said wife in lieu of any allowance or dower that she may be entitled to under and by virtue of any of the laws of this State, and she is hereby expressly restrained from committing any manner of waste on the real property devised to her during her life, farther than the right to procure fire-wood to be used in the said homestead, on the said premises, which shall be taken from the dead, down and felled timber.

Thirdly = I will and bequeath to my daughter Eleanor wife of J. Bolivar Roe the sum of One thousand Dollars, for her use and benefit, to be paid - one half in one year after my decease, and the balance in two years after my decease

Fourthly = I will and bequeath all the remainder and residue of my property and estate, of every nature and kind (including my homestead herein-before devised for life to my said wife) to my three children Samuel Taylor of Mercer County, Mason Taylor of Ogle County and Eleanor Roe also of said Ogle County to be divided, share and share alike, among them.

I hereby make, constitute and appoint Mason Taylor of said Ogle County

5 " executor of this my last will and testament.

" In witness whereof I have hereunto set my
" hand and seal this 12th day of September
" A. D. 1860

" [illegible] Taylor [illegible]

" [The signature George Taylor appears on the
" original to be obliterated as above. This
" statement is made by consent of counsel.]

" The above instrument consisting
" three half sheets was at the date thereof
" signed, sealed and published and declared
" by the said George Taylor as and for his
" last will and testament in presence of us,
" who at his request and in his presence
" and in the presence of each other have
" subscribed our names as witnesses thereto

" Henry A. Miy of Oregon Ogle Co. Illinois
" James A. Butterfield of Oregon Ogle Co. Illinois
" George P. Jacobs of Oregon Ogle Co. Illi[illegible]"

To the introduction of which the said complainant objected which objections being heard and considered by the Court were sustained and said will excluded from the consideration of the jury - to which ruling of the Court the said defendants then and there excepted.

Inman Taylor being produced, sworn and

qualified in said cause deposed as follows,

I knew the late George Taylor of Paynes Point. We were partially acquainted with each other when I first came to the country thirty years ago or more. The amount of Mason Taylor's property in July 1864 was about as follows; He owned a square One hundred and sixty acres with the exception of sixteen acres that Clayton owned - was about One hundred and thirty-five acres of prairie. Such land sold then as high as thirty dollars per acre. It was of as good quality as that of the old gentleman. He owned considerable timber - thirty or forty acres - It was worth I think forty dollars per acre. I do not know of George Taylor dividing his land. When he and the boys divided their business, they divided the land. They had worked together before that. That was about fifteen years ago. I don't know how old Mason was at the time. I think he was not an adult. He did not have the appearance of it at least. I could not tell whether his father ever gave him anything that he did not own. I don't know that the old man conveyed any land to Mason. I know that Mason, after they separated had a piece of timber that he called his own. I can't state that he had any

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Tubes before. I know these were surveyors on just before the old man's marriage. I have no personal knowledge of the old man ever dividing his property.

Cross-Examination.

I Don't know how old Mason is. Don't know as I can tell within two or three years. Should not think Mason was Thirty when the division was made, but he might have been. He was married before the division. He didn't have the appearance of being so young. He might have been Twenty five or Thirty —

Defendants rested

And that the following Evidence was offered by the Complainant to maintain the issue on his part to wit:

The deposition of Rollin N. Dayton of which the following is a copy—

State of Iowa }
Tama County }

The deposition of Rollin N. Dayton of the County of Tama and State of Iowa, a witness of lawful age, produced, sworn and examined upon his corporal oath on the seventeenth (17) day of June One thousand Eight hundred and Sixty seven at the office of H. H. Stivers in the town of Toledo in the County of Tama and State of Iowa, by one H. H. Stivers a commissioner duly appointed by a dedimus protestatum or commission issued out of the Clerk's Office of the Circuit Court of Ogle County in the State of Illinois bearing date in the name of F. G. Pettit Esq. Clerk of the said Circuit Court with the seal of said Court affixed thereto, and to me directed as such commissioner for the Examination of said Rollin N. Dayton a witness in a certain suit and matter in controversy now pending and undetermined in the

said Circuit Court wherein Mason Taylor is plaintiff and Samuel Taylor, Bolivar Roe, John Roe, Martha Roe, Mary Frances Roe, George Roe, Eleanor Roe, Elijah Taylor, George Taylor, Julia Taylor and Mason Taylor are defendants in behalf of said plaintiff as well upon the cross interrogatories of the defendants as on the interrogatories of the plaintiff, which were attached to or enclosed with the said commission and upon none others. The said Rollin H. Dayton being first duly sworn by me H. K. Stivers said commissioner as a witness in the cause previous to the commencement of his examination to testify the truth as well on the part of the plaintiff as the defendants in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated — testified and deposed as follows:

1st Interrogatory-

What is your name, age and place of residence and your relationship if any, to the other witness named in this commission

Answer

Rollin H. Dayton is my name. My age is forty four years. My residence is Orford Grand County Iowa, and the other witness named in this commission is my wife.

2d Interrogatory

Were you or not acquainted with George Taylor late of Ogle County Illinois deceased, and if yea, when, where and how long did you know him?

Answer -

I was acquainted with the said George Taylor. I have known him for about twenty years. He and I were both living in Ogle County Illinois

3d Interrogatory

Was or not the said George Taylor ever a member of your family, or boarding with you, and if yea, when where, how long and under what arrangement?

Answer -

He did board with us. He lived in his house and boarded him and his wife. It was at Taylor's Point, Ogle County, Illinois. He commenced boarding with us about the first day of November A. D. 1861. and quit boarding with us about the first of April 1863. He left his house at that time. We occupied his house and boarded him and his wife for the use of part of the house, and part of his barn and three dollars per week besides.

4th Interrogatory

If in answer to the third interrogatory you say that the said George Taylor did board with you or was a member of your family - please state what was the condition of his health during said time or if not uniform how it was at different periods and what periods during said time, and also whether or not there was anything in his conversation, actions or appearance during said period or any portion of it that particularly attracted your attention and if so what it was - what were the appearance actions and conversations and the time of each respectively. State all and every of them that you now recollect fully and particularly, and if you know state also what was the general character of his actions and conversations during the time or the different portions of the time he boarded with you or resided in your family &c

Answer -

His health was not good, he was not able to do any labor. His health was not at all uniform; he had what he called nervous spells - these spells were very irregular in their occurrence. I can not specify the exact dates or periods of their

occurred. On an average about once a month he had an attack of this kind, and they continued from three days to one week at a time as nearly as I can recollect. While boarding with us he had one fit of sickness, about the middle of January A. D. 1863, and it continued about three weeks. There was something in his conversations and actions that particularly attracted my attention. When he was first taken down sick he went into his room at the usual time in the evening and the first I knew of his being sick, I found him the next morning lying on the floor entirely helpless, and unable to tell how he came there, and did not recognize his own son or any of his neighbors who were present. After he became able to talk he was constantly talking about some one going to steal from him. This was the main part of his conversation. It was his great hobby. He would slip out of his bed onto the floor and feel around on the floor with his hands for something which he imagined he had lost. When he was getting better he would use a cup which he had to make water in to drink out of, and drink out of it just as readily as out of a

humbles kept for drinking and did not seem to know the difference between the two dishes. During this sickness and afterwards his eyes looked very wild. He was very excitable and could not endure contradiction. He could not count money or do any kind of business right. This was his condition during and after his sickness above mentioned. During the continuance of the nervous spells before his sickness he was very excitable and irritable - at other times he appeared like other people. But after his sickness he never appeared as he had before when free from the nervous spells.

5th Interrogatory

Was or not the defendant Salina Roe in the habit of occasionally visiting said George Taylor at your house, and if so, state when and how frequently and whether their interviews on such occasions (if any) were public or private and whether or not you noticed anything unusual in said George Taylor's actions or conversations immediately after such visits or any of them, and if so what it was and when and on how many occasions you noticed it.

Answer.

Bolivar Roe was in the habit of visiting George Taylor during the time said George Taylor boarded with me. He came frequently He came whenever he pleased: sometimes three or four times a week: sometimes once in two weeks. Their interviews were generally private. After such interviews I noticed something unusual in the actions and conversations of the said George Taylor. Immediately after such interviews the said George Taylor generally appeared crosser and more irritable than usual, and was complaining about everything and finding fault with his friends.

6th Interrogatory

Was or not the said George Taylor in the habit of visiting said Bolivar Roe during the time said Taylor boarded or lived with you (if he did board or live with you) and if yea how frequently and state whether or not upon any occasion immediately after such visit you noticed anything peculiar in the conversation or actions of said George Taylor and if yea what and on how many different occasions

Answer —

Immediately after such visits on most of the occasions I noticed something

peculiar in his actions and conversation of the said George Taylor. He then very often complained of the manner in which his son Mason Taylor treated him saying that he thought that he (Mason) did not visit him as often as he aught to. On most of such occasions the general tenor of his conversation was that Mason Taylor had done something which was not right.

7th Interrogatory

State, if you know, the greatest number of sheets and pillow cases that said George Taylor had at any time while he lived or boarded with (if you answer that he did board or live with you) and whether or not he still had the same when he ceased to live with you, and what was your means of knowing of this matter.?

Answer.

I know nothing at all about these matters.

8th Interrogatory -

State whether or not you ever had any conversation with said George Taylor in which he stated to you anything that he said Bolivar Roe had told him about Mason Taylor the complainant and if yea state the same fully and when and where it occured.?

Answer -

The said George Taylor did tell me something which he said the said Bolivar Roe had told him about Mason Taylor. He (George Taylor) came home from a visit to the said Balintas Roe some time during the fall of 1862 - (I can not remember the exact date, and said to me that "Bolivar Roe had told him (George Taylor) that Mason Taylor had not used him (George Taylor as he ought to"

9th Interrogatory

Do you know of any other matter or thing touching the matters in controversy in this case that may tend to the advantage of the complainant in addition to what you have already stated. If yea state the same as fully and at large as if you had been particularly interrogated in reference thereto

Answer

I heard George Taylor upon one occasion threaten to strike my wife with his cane, because she conduct or did not do something as he wished it done. I also noticed that he could be easily excited against any of his friends. If any one would tell him any story about any of his friends after repeating it over for a few times he would believe it to be true - no matter

how unreasonable it might be - although he could not remember who told. He would not endure contradiction and would become angry. if any one attempted to reason with him in regard to such stories. One of these stories was in regard to his losing his bed-clothes and pillow cases. He was told that he had more pillow cases than really belonged to him and believed it, and that my wife and Mason Taylor's stole them.

1st Cross Interrogatory

Does any relationship exist between yourself and Mason Taylor, the complainant in this case. if yea what is its nature.

Answer

Mason Taylor and I are related. We are first cousins and also - brothers - in law.

2nd Cross Interrogatory

If, in answer to the third direct interrogatory you state that George Taylor did live or board with you, please state whether or not you ever had any difficulty or altercation with the said Taylor, during the time he as lived or boarded with you, in relation to his washing, the loss of clothing, the breaking of any dish or utensil or in relation to any other matter or thing and

whether or not any ill feeling existed between yourself and the said Taylor?

Answer

The said George Taylor on several occasions scolded and abused me and accused me of doing things which I had not done and on two or three occasions I remonstrated with him in regard to such treatment. His (Taylor's) wife had agreed to pay for their (her own and Taylor's) washing — and after the death of his wife, he (Taylor) refused to pay for it and my wife (Catherine Dayton) told him she could not do it for nothing - and he then took his washing to another place. I know nothing about the loss of clothing, or the breaking of dishes. I believe there did exist some ill feeling between the said George Taylor and myself.

3d Cross Interrogatory —

If in answer to the fourth direct interrogatory you state that George Taylor's health was not good, please state during what portion of the time said Taylor lived with you (if he did live with you) he was confined to his bed by sickness, please state the number of times that he was so confined to his bed the time when each serious illness occurred and the length of its duration, state fully and minutely.

Answer

109 The said George Taylor was confined to his bed only once by sickness and his sickness continued about three weeks. It was about the last of January A. D. 1862

4th Cross Interrogatory.

If in answer to the fifth and sixth direct interrogatories you state that George Taylor and Bolivar Rod were in the habit of visiting each other, please state for what purpose said Taylor visited said Rod or what was his avowed object in visiting him, and during what portion of the time he lived with you (if he did live with you) was the said Taylor able to walk to said Rod's place of residence, and did the said Rod have any business with the said Taylor, or perform any service for him which rendered it necessary that the said Taylor and Rod should visit each other - if yea what was its nature and how often were such visits necessary.

Answer -

I do not know for what purpose the said Taylor visited the said Rod, nor do I know what was his avowed object in making those visits. During most of the time prior to his sickness mentioned he (Taylor) was able to walk to the place of residence of the said

Roe. After his sickness, he was unable to walk that distand while he continued to board with me. I do not know of any business or service performed by the said Roe for the said Taylor during the Time he (Taylor) boarded ~~at~~ with my house which would render it necessary for them to visit each other

5th Cross Interrogatory.

Please state whether or not George Taylor ever visited or started to visit his son Samuel Taylor during the Time he lived with you (if he did live with you - if yea, how often did he go, at what time and by what conveyance - was he accompanied by any one - if yea, how often and at what time. what was the state of his health when he left and when he returned, and how far did the said Samuel Taylor live from your place of residence at that Time.

Answer —

The said George Taylor did visit his son Samuel Taylor, while he, (George Taylor) lived with me. He went once - some time in the fall of 1862. He went alone in his own buggy drawn by his own horse. His health was at the Time of this visit better than usual when he went away; but was worse when he returned. At that Time Samuel Taylor live

about One hundred miles from my place of residence. I only know of the said George Taylor visiting his son Samuel Taylor by both of them having told me that he did so.

6th Cross Interrogatory.

Please state whether or not George Taylor was in the habit of using ardent spirits and did you or not ever tell Bolivar Roe that at a certain time the said Taylor had been under the influence of liquor and that it was the cause of unusual or violent actions, conversation or conduct on his part?

Answer —

The said George Taylor was in the habit of using ardent spirits as a medicine. I have no recollection of telling the said Bolivar Roe, that the said Taylor had been under the influence of liquor or that it was the cause of unusual or violent actions, conversation or conduct on his (Taylors) part.

Rollin H. Dayton

The said Complainant further offered in evidence the deposition of Catherine Dayton of which the following is a copy;

State of Iowa } The deposition of Catherine
Jasper County } Dayton of the County of Jasper

of which the following is a copy;

State of Iowa } The deposition of Catherine
Iowa County } Clayton of the County of Iowa and
" State of Iowa, a witness of lawful age,
" produced, sworn and examined upon her
" corporal oath on the eighteenth (18) day of
" June one thousand eight hundred and
" sixty seven at the office of N. H. Stivers
" in the town of Toledo, in the County of Iowa
" and State of Iowa by me N. H. Stivers a
" commissioner duly appointed by a dedimus
" Potestatum or commission issued out of the
" Clerk's Office of the Circuit Court of Ogle County
" in the State of Illinois bearing teste in the name
" of H. G. Petrie Esq. Clerk of the said Circuit
" Court with the seal of said Court affixed
" thereto, and to me directed as such com-
" missioner for the examination of the said
" Catherine Clayton a witness in a certain
" suit and matter in controversy now pending
" and undetermined in the said Circuit
" Court wherein Mason Taylor is plaintiff
" and Samuel Taylor, Bolivar Roe, John Roe
" Martha Roe, Mary Frances Roe, George
" Roe, Eleanor Roe, Eliza Taylor, George Taylor,
" Julia Taylor and Mason Taylor are defendants
" in behalf of said plaintiff as well as upon
" the cross interrogatories of the defendant as
" on the interrogatories of the plaintiff which

were attached to or inclosed with the said commission and upon none others.

The said Catherine Dayton being first duly sworn by me W. H. Stivers said commissioner as a witness in the cause previous to the commencement of her examination to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendants so far as she should be interrogated, testified and deposed as follows