1894

The Law of New York Upon Testamentary Capacity as Affected by Legislation

Glenn Monroe Dennis
Cornell Law School

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THESIS.

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THE LAW OF NEW YORK UPON TESTAMENTARY CAPACITY AS AFFECTED BY LEGISLATION.

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BY.

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GLENN MONROE DENNIS.

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CORNELL UNIVERSITY SCHOOL OF LAW.

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1894.
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In endeavoring to bring forth and to elucidate to a certain extent the almost voluminous amount of matter contained in the reports from the earliest date to the present time, I realize the comment upon each decision from a logical and critical standpoint to an ultimate harmonizing of each would be impracticable as well as uncalled for. But if by careful comparison and analysis of leading and pointed cases I can trace the law on this subject from its inception to the latest decision of today, and can bring them to a point of harmony, logically, terse and concise, I shall have attained my end. The law upon this subject consists of but few well chosen short and logical rules. Early formulated by a careful, judicious and considerate court, and while each principle has to some extent been criticised, questioned, and its reasonableness severely debated upon, yet no principle of this broad subject has ever been directly overruled or supplanted by other and later rules. And this being the fact it appears by careful study that which has puzzled the courts and taken up a great amount of their time is not a discussion of the law itself strictly, but its application to each indi-
vidual and collective sets of facts. And such law being at
times severely stretched and at others possibly to leniently
applied gives rise to some discussion of its construction and
application thereof.

In the early case of Clark v. Fisher, 1 Paige, 171, the
court laid down the rule, that a person to be capable of mak-
ing a will should be possessed of a sound and disposing mind
and memory, with sense and judgment with reference to the
situation and the amount of his property, and the relative
claims of the different persons who are or might be the object
of his bounty. The court taking into consideration the
reasonableness of the will with reference to the amount of
his property and the situation of his relatives. It appears
that the court early saw the necessity of a somewhat stringent
rule of capacity, and fully carried it into execution by
declaring, that testator must be able to distinguish his rela-
tions with reference to all claims upon him, (the testator,
and especially by taking into consideration and effect the
reasonableness of the will with reference to the amount of
his property. And it seems that the court would infer from
such situation a testamentary deficiency even though such
testator have the most sane and disposing mind.'
And such was the law until we came to the celebrated case of Stewart v. Lispenard, 26 Wend. 255. Alice Lispenard whose will was sought to be established was entirely incapable of caring for herself, and probably was an imbecile. She was in fact, in early life entirely helpless, would cry at the least thing, could not read or write, had a violent temper, but evidence showed that under good treatment she manifested signs of improvement, in that she could do little things and carry on certain work, and could understand the relation she bore to the household in general. And the court in this case, I think not only only deviated from legislative intent, but practically made the will of any person of almost any mind whatever valid, if testator was sane and had understanding to any extent whatever. And practically held imbecility of mind not to incapacitate the testator. And the court in construing the statute viz, (idiots, lunatics and persons non compos mentis, are disable from disposing of their property,) evidently saw in the expression "non compos mentis" the legislative intent to allow individuals if not totally deprived of reason and sense to dispose of their property. And the court construe "non compos mentis" I think to mean that unless testator is totally deprived of
reason he may make his will, in other words in the language of the court "do not attempt to measure the extent of the understanding of testator if he be not totally deprived of reason" and whether he is or not, even if he has a very amount of sense his will stands as a reason for his action, and he is for that purpose deemed to be "compos mentis". And the court practically holds that a man may be able to make his will and yet be unable to carry on his business.

From this decision it may be gathered that the right of testamantary disposition is inherit in the existence of every being, it is a natural right, and not one given by positive law, but merely curtails and somewhat regulated and restrained. It appears therefore from this theory to throw what I think is a very light and cloudy rule of action on testators, and allows altogether too great privileges, in fact it places no standard whatever. I think when it says that to the court does not undertake/measure extent of capacity but merely to see if any capacity whatever and how little exists, and if any then the right of testamentary disposition is to be allowed. This case is a marked deviation from the doctrine of Clark v. Fisher, which case construed (compos mentis to signify such an intellect and reason as would enable the
testator to know the relative claims and bounties of each of his heirs, and understand clearly his property interests and in fact hold that a strong degree of mind must exist.

In Clarkv. Sawyer, 2 N.Y., 499, the doctrine of Stewart v. Lispenard, is fully corroborated and followed. However, on reasoning that mere imbecility of mind does not incapacitate, if testator be not lunatic or idiot. The case of Thompson v. Thompson, 21 Barb. 107, severely criticises the doctrine of Stewart v. Lispenard, and practically says, that if we are to take the doctrine of Stewart v. Lispenard as authority, we must admit that if a person be not totally deprived of mind and reason, he may lawfully dispose of his property, and his will stands as the reasons for his actions. And the court still further declares in Thompson v. Thompson, that in deciding the Lispenard case, that the discussion of the principles by carefully prepared opinions was omitted, as the opinion was by the Senate, and all parties being busy, not a single one brought in a prepared and written opinion. And they still further declare and it corroborates my theory of the law upon this entire subject, that it was not a discussion of the law but merely an application to the facts in the given case. And no opinion was ever officially announced.
by a majority of the court, and this was by the way one of the
great reasons for the court revision in 1846. And in winding up the court says: "they are of the opinion that the
decision in the Lispeuard case has not declared or established
beyond question any principle of controlling, indisputable
authority, on the subject of testamentary capacity, and declares
that we are still free to examine the propositions contained
in the opinion of Senator Verplanck, and to inquire whether
the court in passing upon the validity of a will do not measure
the extent of the understanding of the testator, and if
not totally deprived of reason, that his will stands as a reason for his action. But nevertheless it appears from ancient writers that the great body of persons regulated by the
law are included under the terms (non compos mentis).

And Lord Coke, classified non compos mentis as:

1. Idiots,
2. Those utterly deprived by sickness.
3. Lunatics.
4. Drunkards.

And from this classification was evidently excluded any
alienation of mind which did not constitute a person a lunatic, idiot, or drunkard. And Lord Hardwicke held, that
unless testator suffered from a total disability of mind the validity of his will could not be affected. But it appears that subsequent to Coke and Hardwicke, the wisdom of the above rule, which is practically the Stewart v. Lispenard rule has been much questioned, and to use the words of the court, in Thompson v. Thompson, "And within a comparatively recent time the law has worked itself out of the state of great uncertainty on this subject and has become in a measure clear and intelligent. And English decisions as well as American, (and which I may state were entirely overlooked by the court in the Lispenard case) have questioned the rule of that decision, and made the law somewhat logical and certain. The law for more than twenty five years previous to 1855, evidently contemplates three instead of two (idiots and lunatics) states of mind, lunacy, idiocy, and unsoundness of mind, the latter being emphatically distinguished from lunacy and idiocy. And our Revised Statutes recognize this by clearly stating that there is a material difference between the first two (idiocy and lunacy) and unsoundness. 1 R.S. 719, sec. 10 marginal, and also 2 R.S. 56. And therefore, the question now is if not a lunatic or idiot had he unsound mind, the latter referring to his mental deficiency arising from disease,
infancy, old age, grief, etc., and the latter terms unsoundness of mind or non compos mentis, in its fixed legal meaning means, free from lunacy, idiocy, or unsoundness of mind, which would render testator incapable of judging rightly.

The case of Brown v. Torrey, may be said to be authority for the Lispenard case, but I think that from a critical examination of the same, that in that case the testator had capacity which was fully established by a preponderance of evidence, and the court itself says: "That while possibly recognizing the underlying principles of the Lispenard case, there is no necessity in this decision for pushing the principle to any such extent, for we have seen that testator had capacity," intimating that the Lispenard rule was severely stretched in its inception.

Watson v. Lynch, 28 Barb., 353, is possibly sometimes cited as following the Lispenard case, but I think even in this case there was evidence that testator was possessed of more than ordinary ability.

We are now about to enter upon what appears to be a new epoch in the law of testamentary capacity. We are I think about to deviate materially from the doctrine of Stewart v. Lispenard, and though we shall not entirely throw aside the
doctrines of this case, we shall at least be compelled to say that the doctrine of Stewart v. Lispenard by the best and most logical authority henceforth, and subsequent to 1862, should be followed, and should be materially modified.

The great case of Delafield v. Parish, 25 N.Y., 9, marks the new epoch. Henry Parish, the testator in this proceedings was a wealthy and highly cultured merchant of N.Y., he had made a will in 182, and afterwards in 1849, he suffered a severe attack from apoplexy, which entirely paralyzed his left side, and which left his mind impaired to the extent as claimed by contestats, that he was entirely helpless and unknowing, and was totally non compos. While the proponent claimed that the codicils made subsequent to the stroke were the work of a sound and disposing mind, and although Mr. Parish could not communicate his ideas, yet he readily understood business and carried it on. And the court held, that testator did not possess sufficient mind to make a valid and subsisting will on the following theory and principle, that in law, (I quote from opinion) the only standard as to mental capacity in all who are not idiots or lunatics, is found in the fact whether the testator is compos mentis or non compos mentis, as the terms are used in their fixed legal meaning.
And such being the rule, the question in every case is, had the testator as compos mentis, capacity to make a will, and not had he capacity to make the will produced. If compos mentis, he could make any will however complicated, and if non compos he can make no will however, not the simplest.

I think that this case while not directly overruling the Lispenard case, yet it feels itself free to establish new and radically different principles, (I quote a few words from opinion) The case of Stewart v. Lispenard has challenged much discussion in this state and has not been regarded with favor by the bench or bar. The circumstances under which it was heard and decided on the part of the court are such as to carry with it little if any weight of authority, and if that case is held good the will of a person conceded to be but slightly removed from an idiot in intellectual power, may at any time be admitted as a valid and subsisting will? This decision in Delafield v. parish, seems to have come forth to fill a long felt want in the line of legal principles on the subject of testamentary capacity. It seeks to raise the standard, to elevate the law, and to carry out the legislative intent, which never intended that a person of even slight mind should have the responsible and valuable right of testa-
mentary capacity which the doctrine of Stewart v. Lispenard, declared that it might have. It seems to be logical and reasonable that if a person has sufficient mind to make one will he ought to be able to make any will however complicated and it seems unreasonable and unjust that a person might be said to make a given a will, but not have mind enough to make any will. And the question is I think as it should be, has he compos mentis, as that word is used in its fixed legal meaning, i.e. has he sufficient mind to understand his situation, the situation of his property and of his relation, and of the position of those who are or ought to be objects of his bounty, does he sufficiently understand his business, can he carry it on in a judicious manner, can he carry on a comparatively shrewd conversation, and can he understand all these questions if answered in the affirmative, seems to bring his capacity within that rule of compos mentis established by the statutes of the State of New York.

Reynolds v. Root, 62 Barb., 251, bears out the law of Delafield v. Parish, and declares that a will however unjust and unreasonable it may be in its provisions, is valid and good if testator was compos mentis as that term is legally used. And that failure of memory does not incapacitate.
And the court says that, "no greater injustice could be done in many instances by a testator than so to dispose of his property as to be what the world would call just."

Gamble v. Gamble, 39 Barb., 373, also substantiates the theory of Reynolds v. Root, and holds that, the apparent injustice of a testator to members of his family, although evidence to be taken into consideration in examining testator's mind it is not enough of itself to invalidate the will.

Also Jackson v. Jackson, 39 N.Y., 153, says that the simple fact that the testator may have died a few minutes after making his will is merely evidence and not proof of incapacity, and he is presumed sane until proven otherwise, and that the fact that he gave ($50,000) to his second wife and only ($500) to his child is only evidence but not proof that testator was non compos.

In the case of Ean v. Snyder, 46 Barb., 230, the court substantiates the principle of Delafield v. Parish, and declares those principles a safe guide to follow in testamentary disposition, and that it is not essential for courts to extend their inquiries beyond the rules stated in that case. And they declare the true question to be was the testator compos or non compos as those words are used in their fixed
legal meaning. The court also declares the rule of Stewart v. Lispenard, to be qualified by that of Delafield v. Parish.

I know of no better synopsis of the rule in Delafield v. Parish, than that given by the court in the case of VanGuising v. VanCuren, this court after affirming and declaring anew the doctrine of Delafield v. Parish, substantially says, that it is essential that testator have such a capacity as to comprehend perfectly the condition of his property, his relation to the persons who were or should or might have been the object of his bounty, and the scope and bearings of the provisions of his will. He must in the language of the cases have sufficient active memory to collect in his mind without prompting the particulars or elements of the business to be transacted, and to hold them within his mind a sufficient length of time to perceive at least their obvious relations to one another, and be able to form some rational judgment in relation thereto. A person who has sufficient mental power to do these things is I think within the meaning and intent of the Statute of Wills, a person of sound mind and memory, and is competent to dispose of his property by will.

In the matter of the Foreman Will, 54 Barb, 274, I see the only case subsequent to the time of Delafield v. Parish,
which in any way attempts to bear up the doctrine of Stewart v. Lispenard,. The court puts forward as a rule that if the testator had capacity to make the will produced, that if he was sufficiently composentis, to make a given will, he was a person of sound mind within the statute, basing its opinion on the idea that if testator knew enough to make a very simple will in itself it was evident that he had a sane mind, and could make any other,. But the conclusion of the court as to his being able to necessarily make a more complicated one seems to be unfounded and entirely without reason, and while the case is clearly I think a modifier of Stewart v. Lispenard, yet its doctrine and reasoning from the beginning seems to be faulty, as it is very evident that a person might be able to make asingle will not complicated in any degree, and yet if called upon to do business, and make a complicated and long will, and to use and bring into effect his memory, he would utterly fail.

The case of Kinney v. Johnson, 60 Barb., 69, follows and substantiates the doctrine of Delafield v. Parish and declares that it be the law it only remains for the court to apply it to given cases as they arise, and declares that the "sound mind" required by the statute to qualify the person to
make a will cannot be satisfied by any different rule.

Smith v. Foreman, 7 Lansing, 443, qualifies entirely Delafield v. Parish, and declares that Stewart v. Lispenard, is practically overruled by saying that "To enable a person to dispose of his property by will it is not enough that he should be found to be possessed of some degree of intelligence and mind, he must in addition have sufficient mind to comprehend the nature and effect of the act he is performing, the relations he holds to the various individuals who might naturally be expected to become objects of his bounty, and to be capable of making a rational selection of them."

Coit v. Patchen, 77 N.Y., 533, declares and modifies the doctrine of Delafield v. Parish, as is also the sole will 3 N.Y.Supp., 350.

The case of Townsend v. Bogart, 5 Redfield, 93, while to a certain extent modifying Stewart v. Lispenard, fundamentally I think rests for its decision on the theory of Delafield v Parish. The decedent in the above case was very illiterate stammered badly, had bad temper, could not count more than ten, would get lost on familiar streets, although having been to school for the period of three years, yet he could not read or write, and the court held, that decedent was not of
sound and disposing mind as required by the statute, and said further that while the court did not intend to measure intelligence and define the exact amount of capacity or knowledge a decedent must have before making his will yet, it does require such a mind as to be able to distinguish his property rights and the names of those who are the natural objects of his bounty, and that he should have a memory sufficient to carry all such facts in his head and to be able to clearly see the entire situation. But nevertheless such memory and knowledge may be somewhat obscure and yet capacity may exist. In this case especially is the term compos mentis liable to mislead and in the words of the court "Not all who come within that description being competent to make a will, and further says, that in Stewart v. Lispenard, that a person being of weak understanding, so he being neither an idiot nor a lunatic is no objection in law to his disposing of his estate." Courts will not measure extent of understanding if a man be legally compos mentis, be he wise or unwise, he is the disperser of his own property, and his will stands as the reason for his own acts,. And the court further says that the term compos mentis for the purpose of enabling a person to execute a will is laid down fully in Delafield v. Parish.
Therefore while following Stewart v. Lispenard in that possible and unwise and weak mineded man may make a will as per Stewart v. Lispenard, yet nevertheless he must have sufficient knowledge and memory to understand the situation of his property and those who are the natural objects of his bounty, practically therefore coming down to the doctrine in Delafield v. Parish.


The real point in issue is testamentary capacity or incapacity at the precise date of transaction. And an instruction that testator had testamentary capacity if he had full and intelligent knowledge of his property, of those entitled to his bounty, and of the nature of his acts, and that he need no be capable of making contracts and doing business generally, does not call for too high a degree of capacity. And unsound mind produced by disease does not prevent a valid will. He may still have a disposing mind, while on the other hand loss of memory entirely destroys testamentary capacity. But mere impairment of memory does not. And the use of morphine by testator is merely evidence and does not prima facie incapacitate. Nor does extreme feeble health incapac-
incapacitate, nor does fact that testator was suffering from
epilepsy. 1 N.Y.Supp. 120; 17 N.Y., 797; 12 At.612; 12
At. 689; 38 N.W. 392; 7 N.E. 658; 5 N.E. 171; 12 N.E.236;
7 N.E. 829;.

The will of a lunatic may be admitted to probate if
shown by proof to have been made during a lucid interval.
Thus is a will established prima facie and conforms to the
consensus of authority, but there must be clear and convinc-
ing proof of lucid intervals, Gumerbault, v. Public Adm. 4
Bradford.

The will of an illeterate person who may be capricious,
easily excitable, and not only being frugal but who denies
himself comforts of life is a good one. If he thoroughly
understands the situation and if the will was made according
to his dictations exactly, and was afterwards read to him
understandingly and he acquiesced to the will it is good and

Suicide is not of itself sufficient to invalidate a will
nor is it presumptive evidence of insanity on the issue. But
suggestions of insanity would be severely and critically im-
paired, by showing that decedent was tired of this world, etc.
and took no enjoyment in it, and often expressed intentions
to remove himself from earth saying and expressing disbelief in the hereafter. In re Card, 20 St Rep.

The case of Campbell v. Campbell, holds that the principle laid down in Clark v. Fisher, and which conforms to those laid down in Delafield v. Parish is good and logical and overrules Stewart v. Lispenard, as trying merely to apply and not to argue the law.

In some extreme cases where it is apparent upon the face of the will and from all the surrounding circumstances it appears that the will is against the dictates of natural affection and is from its very conceptions unnatural in its provisions, such will is evidence of mental defect which may require explanation. In re Budlong, 126 N.Y. And again it has been held that where a testator made his will on his death bed and he was so weak physically as to be unable to make his mark without assistance, that such facts were not sufficient to invalidate the will provided that testator was rational. And it has been absolutely held and without any opposition that mere eccentricity of decedent will not invalidate. In re Merriam, 42 St.Rep.

Any proof that testator was somewhat forgetful though capable of appreciating the nature of his act and the proper
objects of his bounty, and of designating without prompting one in whose favor he wished the will drawn, is sufficient to hold wills good. And failing memory does not per se establish want of capacity, while a man's ability to transact with judgment and discretion if very strong if not conclusive evidence of capacity. And it appears that in all late cases there is recognized but the one general standard compos or non compos as that expression is used in its fixed legal meaning. In re Stewart, 36 St Rep. In re Dates, 35 St. Rep. In re Williams, 40 St. Rep. White v. Ross, 48 St. Rep. In re Finn, 54 St. Rep. In re Wheeler, 5 Miscellaneous. In re Jones, . . . . .

It has been my purpose through the comparison of cases to take each line separately, that is, to first analyze those under the general subject of unsoundness of mind. And I have thus far confined myself to this technical division. And have not touched upon the subject of insane delusions, which subject bears a close resemblance and is indeed a part of such subject of non compos mentis. And some writers have gone so far as to say that the only test of unsoundness of mind is the existence or non-existence of insane delusions. And while in a few particular cases I admit this as being the
A person may be said to be under a delusion when he concedes something extravagant to exist which has no existence whatever save in his own heated imagination. But he is incapable of being reasoned out of that conception. And the existence or noexistence of such delusions forms to a certain extent the test as to comos or non comos mentis, and it may be said that delusion in this sense of the word and insanity are convertible terms, and a will made according to and under the immediate influence of such a delusion which has not only weakened but perverted testator's judgment and understanding in relation to subjects connected with the provisions of the will, so as to exercise a controlling influence in the disposition of his property is I think not the will of a person of sound mind and understanding, on that subject on which he is supposed to exercise his powers in making the will. And as an illustration it would not be sufficient to justify the rejection of the will that a testator in other respects competent entertained the mistaken idea that one of his daughters was illegitimate if it was not the effect of an insane delus-
A person persistently believing supposed facts which have no real existence against all evidence of probability and conducting himself upon the assumption of their existence is so far as such facts are concerned under an insane delusion as if a testator at time of making his will is laboring under any such delusion in respect to those who would naturally have been the objects of his testamentary bounty, and the court can see that the dispositions were or might have been caused or affected by such delusions, such instruments would not pass as a valid will.

It is said by some writers that insane delusions consist in a belief of facts which no rational person would believe, and a person may have insane delusions as to some things and not as to others, and it makes no difference how many such delusions he may have provided they do not bear upon the subject matter of the disposition etc. Partial insanity or monomania invalidates a will without doubt which is a direct offspring thereof, though the testator's general capacity be unimpeached. And to create a delusion which will annul a will something more than an unwarranted conclusion from existing facts must be drawn by the evidence. It is necessary that the conclusions contorting the mind should be un-
founded and persisted in against all evidence indicating that the facts described had no real existence. And in Phillip v Chater, 1 Demarest, 35, the test of delusion is not whether the judge or juror would have believed such a thing but can he understand how any man in possession of his senses could have believed such a thing.

In re Smith, 53 St. Rep.
In re Lockwood, 28 St. Rep.
Leslie v. Leslie, 15 Wk. Dig.
In re Keeler, 3 Supp.
15 N.W. 545.
19 N.W., 132.
5 N.E., 130.

It is a well founded doctrine and I will lay it down absolutely that spiritualism in itself is not sufficient to invalidate a will. But to render it so it must appear that provisions of the will were made in consequence of some strange imaginative fact supposed to exist and resulting from the effects of spiritualism. 15 N.W., 578; In re Vedder, 14 St. Rep., 470.

It has been held that long continued inebriety although resulting in occasional insanity does not require proof of a lucid interval to give validity to the acts of the drunkard, as is required where general insanity is proven. But of
course where the practice has practically produced permanent derangement of mind it would be otherwise it seems. And I think that it can safely be said that neither habitual intoxication nor the actual stimulus of liquors at time of executing a will will incapacitate a testator unless the excitement be such as to deaden his faculties and pervert his judgment. And it may be safely laid down that the fact that the testator at the time of making the will was under the influence of liquor will not incapacitate him.

In re Reed, 3 Conley, 2 N.W., 1084.


The proponent of the will of an aged man for probate of is not required to prove that the testator's mental faculties were those of a man in middle life and of impaired physical power. It is enough if he has sufficient mental power to fully comprehend the nature of the act he is doing, claims of his children, and the position of his property. And it may be said there is no presumption against a will because made by a person of advanced age. Nor incapacity to make the will be inferred from an enfeebled condition of body. He simply must have sufficient intelligence to realize the mean-
Having now I think touched upon all the different phases of mental impairment which could possibly arise, and having traced them from their beginning to their fullest development it only remains for me in order to complete my intention, to, in a few words show in a clear concise and terse form the law upon this entire subject as it stands today.

The legislature early enacted into our statutes the provision that all idiots, lunatics, and persons of unsound mind should not be able to dispose of their property by will. And by so providing plainly stated that there were three classes of persons incapacitated, idiots first, lunatics second, who from the very fact of their total lack of intelligence of whatsoever order were incapacitated, and person of unsound mind. And it is upon this last exclusionary clause that the authorities hinged almost exclusively. And as I have followed from the beginning two different and distinct lines of cases, namely, The Stewart v. Lispenard doctrine, of which the theory was that the possessing of unsoundness of
mind meant total lack of mind, or else no person was incapacitated, in the Delafield v. Parish line of authority, which construed the term in the statute of unsoundness of mind to mean persons non compos mentis as those words are used in their fixed legal meaning. I have traced both line of authorities and there is but one conclusion to come to, namely, that while the theory of Stewart v. Lispehhard has not been specifically overruled and set aside it did not lay down any absolute and binding principles. It did not argue the law but merely applied it as it appeared in an offhand way to the senator court, who prepared no opinion upon it whatever. I therefore say that it left the field clear of all binding precedents, and that field was soon after taken possession of by the Delafield v. Parish line of authority, which is to my thinking the only logical rule which could be brought forth from the statute as embodying the true legislative intent. And therefore the principles laid down by that court must govern, and beyond question they do as the theory of that case is followed in a long line of cases cited from that day to the present. It was laid down therefore in Delafield v. Parish and as stated as the law of today, that to bring a testator within the provision of the statute relating to per-
sons of unsound mind, it is essential that he should have sufficient capacity to comprehend perfectly the condition of his property, his relations to the persons who were or should or might be the objects of his bounty and the scope and bearing of the provisions of his will. He must in the language of the cases have sufficient active memory to collect in his mind without prompting the particulars or elements of the business to be transacted, and to hold them in his mind as sufficient length of time to perceive at least their obvious relations to each other, and to be able to form some rational judgment in relation to them, and I may say that a testator who has sufficient mental power to do these things is within the meaning and intent of the Statute of Wills, a person of sound mind and memory, and is competent to dispose of his property by will. And the question always is was testator compos mentis or non compos as those words are used in their fixed legal meaning, and not did he have capacity, to make the will in question, but was he compos mentis, and if so he could make any will however difficult.

The test of delusion is also a valid one and is competent. The question always being did testator have or was he laboring under such a misapprehension of facts as to lead him to
make dispositions contrary to what he otherwise would, if so
then such delusion sufficiently shows insanity and mental
unsoundness it plainly appearing that if the testator was
laboring under such a delusion he could not properly under-
stand his property rights and interests of those who ought
to be objects of his bounty.

As to drunkenness, a word will suffice. It is not
sufficient to invalidate a will that it be shown that testa-
tor was an habitual drunkard or even to show he was under its
influence at time of making such disposition and it is not
necessary to show lucid intervals, it must only appear that
he understood the nature of his acts and the rights of those
who ought to be objects of his bounty.

As to spiritualism, it does not of itself invalidate the
will, and in order to so act it must be conclusively shown th
that by and through such belief testator was lead to make
such dispositions in a different manner than he otherwise
would had not the belief existed.

As to old age, there is no presumption of incapacity
by reason of old age, and in order to incapacitate it must be
shown that testator was physically to enfeebled to understand
his property rights and the interests of those who ought to
be objects of his bounty.

And with these explanations I have completed my outline of thought. I have sought to trace the New York law upon this subject from its earliest inception to the present day. And in so doing I am not unaware of the fact that repetition and quotation have been frequently and of a necessity often indulged in. But to try and state the principles especially upon this subject and not to refer constantly to the decisions for my authority could but necessarily result in a confused mass of thought unprecedented and unsubstantiated. And therefore if through this course by me followed you are able to trace the law in its course and to discover the true legislative intent as embodied in the New York Statutes, my original intention as I stated in the beginning will have been fulfilled.

Glenn Monroe Dennis.

Ithaca N.Y., May, 18, 1894.