

having shown up children is often a better
that business-purposes as a matter
of the relations of such parent and
child. Unless kindly consideration
is shown by an action
is reasonably sure to ensue.

"In this case the second wife was apparently lacking in wisdom, and as an indiscreet if not mischievous talebearer made needless trouble between the father and his children. On the other hand, by her attention to his physical comfort and by her faithful ministrations to his necessities through a somewhat prolonged and trying illness, she won his gratitude and affectionate regard.

"But while her influence apparently aided in the estrangement of parent and children, the evidence does not clearly show that she either could or did in any proper legal sense unduly influence her husband in the testamentary disposition of his property.

"He appears to have been a man of intelligence and strength of purpose, accustomed to the direction and control of other men, and to have been in full possession of his mental powers when the instrument in question was executed. There is nothing in the manner, appearance or testimony of the appellee in this case to make it reasonable to infer that she could dominate and control the will of such a man on Sept. 22, 1904.

"Within the six months preceding the last-mentioned date, the testator had made another will, differing in the disposition of his estate not very materially from the later one. He prepared full memoranda with his own hands for each, and each instrument was executed under such circumstances and with such deliberation as in no way to suggest that they were not his voluntary and untrammelled acts. The Court finds nothing in either instrument which is inconsistent with the view that they represent the deceased's own will and purpose alone.

"The omission in the second will of the son Abbott as executor and trustee was due in part at least to a misapprehension, if not a misrepresentation, of a certain conversation between him and the appellee. But the resulting misunderstanding between father and son was of short duration, and thereafter the old condition of friendly intercourse and personal confidence continued unbroken till the father's death.

"Under these circumstances it is noteworthy that the testator never made any change in the second will as to the executor or trustee. And it may be fairly inferred that he felt that the arrangements he had made in those respects were the best under all the circumstances.

"It is significant, as bearing upon the question of the wife's undue influence that in the present instrument he withdrew the power to use the principal of the estate for her support. In the first will the trustees were authorized to give her any of the principal, if they thought it necessary for her comfort. In that particular the second will is less favorable to her.

"In my judgment, therefore, the appellants have failed to sustain the burden of showing that the instrument in question was prepared and executed as the result of the undue influence of Elvira A. Butler.

"The Court, therefore, finds and decides that the instrument in writing, bearing date the 22d day of September, 1904, and purporting to be signed by said Lucius M. Butler, was duly executed by the said Butler as and for his last will and testament, that at the time of its execution he was of sound and disposing mind and memory, that he was not unduly influenced in the making thereof by the said Elvira A. Butler, or by any other person, and that said instrument is the last will and testament of said Lucius M. Butler."