

*Reasons for the Report of the Lords of the  
Judicial Committee of the Privy Council on  
the Appeal of Baudains and others v. Richard-  
son and another, from the Royal Court of  
the Island of Jersey; delivered the 27th  
February 1906.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ROBERTSON.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This was an Appeal from three Judgments of the Royal Court of Jersey (Superior Number). The substantial question on the Appeal was whether a document propounded as the will of Miss Julia Westaway and purporting to deal with her personal estate, and a codicil thereto of trivial importance, were, or were not, valid testamentary instruments. Incidental to the main question, but arising out of separate Judgments in the Royal Court, were two minor questions, one as to the joinder of parties and the other as to the rejection of evidence. The three Judgments are dated the 8th and the 9th of June and the 11th of July 1903. The last is the principal Judgment. It set aside and annulled both will and codicil.

Julia Westaway died on the 20th of September 1901 in her 82nd year, leaving personal estate of the value of 90,000*l.* and upwards. The will which was impeached bears date the 27th of April 1895, that is, six years and a half before

her death. The codicil is dated the 31st of August 1898.

Julia Westaway was the daughter of one Nathaniel Westaway, a builder in Jersey, who was in a very small way of business to start with, but a rich man when he died in 1852. He left three children—two daughters, Harriet and Julia, who lived together till Harriet's death in 1892, and a son whose name was John Nathaniel Westaway.

On the father's death there were quarrels over the division of his estate. The dispute became so violent, and the feeling in the family so bitter, that Mr. Westaway did not scruple to have his two sisters imprisoned in the public jail in order to enforce a claim which he had established at law but which they thought unjust. This he did on the 11th of October 1861. On the 1st of November following he went further. He reduced his sisters to "short commons." Bound by law to support them in prison, he refused to contribute to their maintenance more than the minimum allowance of 3*d.* a day. In less than a week Julia's health broke down. Then the sisters submitted to pay, and they were both released. But the entries in the prison books still remained, and indeed are yet extant, recording the incarceration of these two ladies and the scurvy treatment they received at a brother's hands. The indignity was never forgotten. Both the sisters were often heard to declare that Mr. John Nathaniel Westaway and his family should never have anything of theirs but what might be claimed and exacted by law. The law of Jersey, it seems, allows the free disposition of personal estate, but does not permit alienation by will of descended real estate so long as there remains issue of the ancestor who brought the property into the family. The successor in his life time may alienate descended real estate, but then his own

acquired real estate, or failing that his personal estate, becomes liable to make good the loss to the inheritance. Miss Westaway had real estate inherited from her father, some directly, some through her sister, and she had disposed of part by sale. To the extent of the proceeds of the sale and the property unsold she was aware that her brother's family had a legal claim upon her, but she was resolved—so she was in the habit of declaring—that no member of that family should ever get a penny more from her.

In pursuance of this resolve, or at any rate in accordance with Miss Westaway's declared intentions, the will of the 27th of April 1895 appears to have been made. It was little more than a repetition of an earlier will dated the 12th of April 1894. Substantially it gave in charity for the benefit of the poor the whole of her personal estate with the exception of the sum of 1,000*l.*, which was bequeathed to Elizabeth Curwood.

Elizabeth Curwood was Miss Westaway's housekeeper, attendant, and companion. She entered Miss Westaway's service on the 15th of July 1893 and remained with her to the end. Among the actors in this drama Elizabeth Curwood is made to play the leading part. In the attack upon the will her position, her character, and her conduct formed the principal topics of discussion. Her influence was represented as the turning point on which the case depended. She was evidently a rough, coarse, vulgar, domineering woman, fond of boasting and wholly devoid of education. She could not read or write nor had she ever had any training as a nurse. She was addicted to drink and occasionally, if not habitually, to the use of vile and abominable language. On the one hand she is represented as the real mistress of the house and of everything in it, including

Miss Westaway herself. Miss Westaway, it is said, fell completely under her dominion, cowed into abject submission, a mere puppet to her will. That is the case for the attack. For the defence it is maintained that Miss Westaway was alive to her servant's failings but fully determined of her own free will, in spite of remonstrances, to keep about her one who made her more comfortable than she had ever been in her whole life before. It does seem to be true that in many ways Elizabeth Curwood with all her faults was not such a bad servant for what Miss Westaway required. She was attentive to her mistress' wants. She kept her rooms clean and tidy and always took care to supply her table with good food cooked to her liking, and with fruit and other delicacies of the season. And, as one witness said, "she could be gentle and not offensive." There were stories current of gross ill-treatment and barbarous cruelty on the part of Elizabeth Curwood towards her mistress. But strange to say the three doctors—Dr. Hind, Dr. Benthif, and Dr. Bois—who attended Miss Westaway one after the other from the time Elizabeth Curwood entered her service, saw no trace or sign of ill-treatment or cruelty. Dr. Hind, a witness for the Plaintiff, who was in attendance when she first came, thought Miss Westaway was not as carefully dressed or washed as he should have wished. But he attributed that to incompetence, not to cruelty. Elizabeth Curwood, he thought, "did her best." Such a case would be "a very severe tax on the nurse." "A certain amount of firmness was necessary." It was "a difficult case for a nurse to manage." Dr. Benthif, also a witness for the Plaintiff, who succeeded Dr. Hind, thought Miss Westaway was properly treated. He learned from her own lips that she would not hear of Miss Curwood

leaving her. Miss Westaway had often expressed her satisfaction at the care which was taken of her by Miss Curwood. He believed that Miss Curwood followed to the best of her ability the directions he gave as medical adviser. He agreed with Dr. Hind in thinking that any shortcomings were due to nothing but incompetence. Miss Westaway never complained to him about cruelty. Both those gentlemen, it may be observed, owed their dismissal to Elizabeth Curwood, and certainly they were not prejudiced in her favour. Dr. Bentlif was actually turned out of the house by Elizabeth Curwood with insult and ignominy. Dr. Bois, who came last, attended Miss Westaway from the beginning of June till her death. He had exceptional opportunities of observation. He lived nearly opposite. He visited his patient every other day in July and every day in August and September. Miss Curwood appeared to him to take proper care of Miss Westaway, except that she was sometimes coarse in her language and did not appear to realize her proper position. Otherwise she took all necessary care of Miss Westaway, and she attended to all the directions he gave her. The different rooms which he saw were always clean and tidy. He never noticed anything to lead him to believe that Miss Westaway was ill-treated during the time he attended her. She never appeared to be in fear of Miss Curwood when he was present.

Elizabeth Curwood had a brother called Charles, who is described as an electrical engineer, a first-rate workman but a man of intemperate habits. He was employed by Miss Westaway to do up her house in St. Saviour's Crescent, and to repair and decorate some other houses in the Crescent which belonged to her and had been unoccupied for a long time. He did the job to her entire

satisfaction. She was proud of the result. His work was much admired. The houses, brought up to date with every modern convenience, readily found tenants. Miss Westaway considered that she was under great obligations to Charles Curwood, and allowed him to live in her house. She often praised his skill while regretting his outbreaks of intemperance. When he got drunk he generally quarrelled and fought with his sister, and then there were disgraceful scenes. His misdoings were public and notorious. On one occasion he smashed the front door with a heavy flower pot. He was so violent that he was given into custody, handcuffed, locked up and brought before the magistrate. Miss Westaway had him prosecuted, but she appeared in Court, interceded for him and paid his fine. Probably his behaviour in Miss Westaway's house and his quarrels with his sister gave rise to much of the scandal and irrelevant gossip which is reproduced in the evidence on behalf of the Plaintiff.

As regards Miss Westaway herself—reserving for the present, so far as possible, the question of testamentary capacity and the question of undue influence, the two grounds on which the will was impeached—there does not seem to be much room for difference of opinion. She was a very commonplace ordinary woman. She spoke both French and English—English by choice—but she had little education and no culture or refinement. In conversation she was discursive if not rambling. She seems to have been below the average in intellect; some thought her rather childish, others eccentric; she exacted or expected long visits from those of her acquaintances who called upon her, and, as one of the ladies who knew her best observes, “she was not a very interesting woman to speak to.” She was inclined to be ostentatious, and, though she

fancied she was looked down upon on account of her birth, she was not without a sense of her own importance. She was stubborn and obstinate and apt to stand on the defensive, or, to use a vulgar expression, to put her foot down, if she thought she was being pressed too far. For instance, a Wesleyan Minister, presuming on past favours, suggested to her one day that it would be a kind thing to give one of her houses in the Crescent to the Methodist Church. He never crossed her threshold again. At the same time she was extremely charitable. She was fond of children, very good to the poor, and liberal in bestowing her alms on any object that appealed to her compassion. She was impulsive and generous. She liked giving but disliked being asked to give. In matters of business she was punctual and exact. With the help of Mr. Roger Eykyn, the stockbroker, who seems to have been a very old friend of hers, her money matters and investments were well managed. She made no secret of the way in which she intended to dispose of her wealth. Witness after witness came forward who had heard her declare that her relations would get nothing, and that all she had would go to the poor.

The persons to whom the administration of her estate in charity was entrusted were Mr. Baudains, Mr. Peter Falla, and Mr. Thelland, who were named as executors. They were all gentlemen of good position and high character. Mr. Baudains was an advocate of repute. He was Constable of St. Hélier. He was an old friend of Miss Westaway, and she seems to have had a sincere regard and unbounded admiration for him. Mr. Falla was a solicitor of long standing and had always managed her business. Mr. Thelland, who is described as an accountant, had been at one time in Mr. Falla's office.

Assuming that Miss Westaway possessed testamentary capacity, and that her will was not procured by undue influence, the actual disposition which it was found to contain was apparently just what everybody expected. And, apart from some suggestions made in the course of the argument before this Board, which will be noticed presently, and apart from the charge put forward in the declaration in the action, no fault has been imputed to the gentlemen named as executors and trustees. Their competence and integrity are beyond suspicion. "They enjoy and deserve public confidence," says the Rector of St. Saviour, by virtue of his office a Member of the States or legislative assembly of the Island.

The Respondent John Westaway as principal heir sued the Appellants, the executors and trustees, and the beneficiaries under the will and codicil, and claimed to have the same annulled on the ground that the same were made by the late Miss Westaway to the prejudice of the Plaintiff and his co-heirs, and that at the time when Miss Westaway executed the said will and codicil she was infirm of body and weak in mind and under the undue influence of Elizabeth Curwood and Charles Curwood, that three of the Appellants, namely, Messrs. Baudains, Falla, and Thelland, allowed the said Elizabeth Curwood and Charles Curwood to exercise the said undue influence, and that the said will and codicil were not the expression of the free will of the said Julia Westaway, and for other causes and reasons which called for the annulment of the said will and codicil.

The parties proceeded in the usual way to examine witnesses before a magistrate. The depositions were reduced to writing and all questions arising on the evidence were referred to the Royal Court. The Court prefaced its



ruling by declaring that, "By the law and custom of this Island no person can be accepted as a witness in his own case, nor his heirs nor those who are partners in his quarrel, or near relatives, nor those who have similar quarrel, nor those who have prepared the case or defended it in Court or supported it or been counsel" adding that "local jurisprudence extends the exclusion at least to uncles and nephews." In accordance with this ruling the Court excluded the evidence of the three executors and the evidence of a group of persons, including the Rectors of the twelve parishes into which Jersey is divided, described generally as "parochial authorities," and their relatives. There can be no doubt that the evidence of the executors was properly excluded according to the law of the Island. The ruling of the Court in their case is supported by the high authority of Terrien and Le Geyt and is in conformity with the decisions of this Board in *La Cloche v. La Cloche*, L.R. 3 P.C. 125, and *Falle v. Godfray*, 14 A.C. 70. The parochial authorities are in a different position. They are not legatees under the will or appointed trustees or visitors of the charity. The utmost that can be said is that if the will be held valid and the trust established, the co-operation of persons in their position would probably be useful if not necessary. It is difficult to see why they should have been made parties to the action except for the purpose of shutting their mouths and the mouths of their relatives. An application was made to have them dismissed. The Royal Court (Superior Number) thought that there would have been good ground for the application if it had been made at the earliest moment and before a preliminary judgment had been rendered on another question which apparently had precedence by accident. The slight delay,

if there was anything that can be called delay, could not have prejudiced any party to the cause. Their Lordships think that the parochial authorities ought not to have been retained as parties, and consequently that their evidence and the evidence of their relations is admissible. Though it really adds nothing new to the evidence accepted by the Royal Court, it is very clear and very much to the point.

Having regard to the stage in the progress of a cause at which witnesses are summoned and examined in Jersey, and the jealousy of the law in excluding testimony from persons who may be supposed to have any connection with the parties to the controversy or any bias or leaning one way or the other, it is only fair and right that a Plaintiff should be held strictly to the case made by the pleadings, and not allowed to shift his ground. In the present case the learned Counsel for the Respondents, while disclaiming any imputation on the honour of the executors, attacked the will on the ground that they took a beneficial interest under it, and that it was prepared by Mr. Baudains and Mr. Falla themselves. In their Lordships' opinion, in the special circumstances of this case, that does amount to a charge of fraud and dishonesty, for which no foundation is laid in the pleadings. The general words at the end of the declaration do not cover it. Their Lordships, therefore, had no hesitation in ruling that that line of argument was not permissible. But having heard and considered the whole of the evidence, except of course the evidence of the three executors, their Lordships think it right to say that in their opinion there is no justification for any imputation on the conduct of Messrs. Baudains, Falla, and Thelland. There are no suspicious circumstances in this case to bring in the

wholesome rule laid down in *Barry v. Butlin*, 2 Moo. P.C. 480, and approved in *Fulton v. Andrews*, L.R. 7 E. and I. A. 448. The fact that by the law and custom of the Island executors are entitled to receive remuneration for their services is not of itself a suspicious circumstance. There is nothing in the ingenious argument founded on the clause in the will which throws on the personalty the liability to make good the loss to the inheritance occasioned by the sale of descended real estate. The real estate devised to the executors by a will of even date was plainly not intended for their own use and benefit. It was given to them on a secret trust, as the Court seems to have held when it set aside that will, mainly on the ground of the existence of such a trust which is not allowed by the law and custom of the Island.

It only remains to consider whether Julia Westaway possessed testamentary capacity, and whether the two instruments impeached in this case were the expression of her own will.

The medical evidence claims attention first.

The following questions and answers show Dr. Bois' opinion :—

“ 3444. Q. In June 1901 was Miss Westaway in your opinion capable of giving clear instructions to her lawyers for the preparation of her will, in other words, was Miss Westaway at that date capable of making a will?—A. “ She was.”

“ 3445. Q. Had Miss Julia Westaway asked you to witness a will of hers, say, in the month of June 1901, would you as a medical man have hesitated to comply with her request?—A. I would not.”

Dr. Bentlif, whose attendance began in July 1897, in answer to a question as to the first 12 months of his attendance admitted that “ she might have given instructions to her legal advisers.” Then followed this question and answer :—

“ 703. Q. Am I to understand from your last answer that she was mentally capable of making a will or, as I have stated

“before, capable of giving intelligible instructions for the preparation of such will?—*A.* Yes, I think so.”

Dr. Hind, who was in attendance at the time when the will was made, had stated at the trial about the will of realty that, if at that time he had known she had not made a will, he would have advised her to do so, provided that the will was made under the advice and with the help of Messrs. Baudains and Falla, or other such responsible lawyer, but would not have advised her to make a will trusting only to those about her. He admitted at the trial of the present case that that citation from his previous evidence was correct. Then he was asked:—“558. *Q.* Are you still of the same opinion?” He answered, “Yes.”

Besides the medical men who attended Miss Westaway regularly there was a Dr. Chappuis, who had been a tenant of hers up to the end of 1894, and had known her for 17 years. He spoke in the highest terms of her business capacity, and said he had never known a woman who had a clearer mind on the subject of her affairs than she had at the end of 1894, and that he should not have hesitated for an instant to attest her will if she had asked him to do so. His connection with Miss Westaway came to an end abruptly, because he pressed her to do some repairs to his house, and she rejoined by giving him notice to quit.

Then there was a Dr. Gaffney, who was a medical man registered in the Island, and had practised as an Army Surgeon from 1866 to 1894. He knew Miss Westaway up to the time of her death, and frequently visited her at her house in St. Saviour's Crescent. He considered her of sound mind during the years 1898 and 1899, and believed her mentally capable of making a will. He said that if Miss Westaway had asked him to attest her signature to a will in 1898 or

1899 he would not have hesitated to do so. He thought her a shrewd woman of business, but rather obstinate and disposed to have her own way.

Besides the evidence of the medical men, which is really all one way, there is the evidence of a large body of persons who testify to Miss Westaway's soundness of mind. There is the evidence of two solicitors, Mr. Piquet and Mr. Francis John Bois, two clergyman members of the States, Mr. Luce, Rector of St. Saviour's, and Mr. Balleine, Rector of the parish of St. Brelade, Mrs. Luce, wife of the Rector of St. Saviour's, the Rev. Mr. Le Coat, Pastor of the Evangelical Church in Brittany, Mrs. Le Coat, Mr. Lander, the artist, and several other persons whose position and standing make their testimony particularly valuable.

In October 1897 Miss Westaway purchased from Mr. Lander for 400*l.* an oil painting called "Assise d'Héritage," and presented it to the States. It was accepted and now hangs in the Court house. Mr. Lander swears that Miss Westaway transacted the whole business of the purchase, and that Miss Curwood had nothing whatever to do with it. He saw a good deal of Miss Westaway and paid her visits of considerable length. Indeed, he thought himself lucky if he "got off in two hours." He was asked what was her mental condition. His answer was "I never thought about it, she struck me as being quite normal." He thought her very sharp and shrewd in business.

Mrs. Luce's acquaintance with Miss Westaway began at the end of 1896 or the beginning of 1897. She frequently visited Miss Westaway and conversed with her every time she saw her. She said that Miss Westaway was quite sane and rational in her conversation in 1897, 1898, and 1899, and that from personal

knowledge she believed Miss Westaway to have been of sound mind, memory, and understanding when the will was made.

It would be tedious to go through the evidence of the other witnesses. It is all to the same effect. Some say that she was of sound mind; others say they never gave the question a thought; she was just like other people. And this evidence goes down to the date of her last illness.

The evidence of the witnesses for the Plaintiff comes from a very different class of persons. With some few exceptions it consists of the testimony of discharged servants, or servants who had discharged themselves, and other persons who had fallen out with Elizabeth Curwood or whom Elizabeth Curwood had insulted or offended. Their evidence must be regarded with suspicion in a case where so much depends on the character of the witnesses. It is difficult to imagine that any decent or trustworthy person would think of entering Miss Westaway's service while the household was being managed by a woman so objectionable and so notorious as Elizabeth Curwood. The principal persons of a better class who are witnesses for the Plaintiff are two Congregational ministers, the Rev. Mr. Skegg, and the Rev. Mr. Hagell, the superintendent of Dr. Barnardo's Home in Jersey, and a Mr. Whistler, a schoolmaster, describing himself as "an ardent amateur photographer," who frequently availed himself of Miss Westaway's kindness and took drives with her in her carriage to places of interest with his photographic apparatus. He thought Miss Westaway's mental powers during the years 1893, 1894, and 1895 were very feeble. Her talk was incoherent. It was very trying to listen to her. He thought Miss Curwood exer-

cised a sort of hypnotic influence over Miss Westaway. He said he would not have attested Miss Westaway's will in April 1895 if he had been requested to do so. He thought she was quite incapable of making any will at all. It seems impossible to place reliance on this gentleman's evidence which is contradicted, not only by the overwhelming evidence on the part of the Appellants, but by the admissions of the medical men called by the Plaintiff himself.

The Rev. Mr. Skegg had also a very low opinion of Miss Westaway's mental qualities, though not quite so low as that which Mr. Whistler entertained. Miss Westaway was not a member of the denomination to which Mr. Skegg belonged, and never worshipped in his church, but he cultivated her acquaintance with relentless assiduity. From the date of Miss Harriet Westaway's death to the time when the acquaintance was broken off in 1895 he visited her apparently no less than 80 times, and there were occasions when he called and was not admitted. He was so constant in his attendance that the Rev. Mr. Hagell was in the habit of calling him "Miss Westaway's chaplain." All went fairly well at first, but after a time, not perhaps unnaturally, Mr. Skegg grew very weary of Miss Westaway and Miss Westaway apparently grew very weary of Mr. Skegg. She "lost interest in the things which on" his "first acquaintance with her she was interested "in." They were not congenial. But although Mr. Skegg thought so little of Miss Westaway's mental condition, he had no scruple in accepting from her between 300*l.* and 400*l.* for charitable objects in which he was interested. At last he tried to interfere with Miss Westaway's domestic arrangements, and he saw her no more.

The Rev. Mr. Hagell's evidence is much to the same effect as Mr. Skegg's, though he was

not nearly so constant in his attendance. He thought Miss Westaway's conversation wearying and so incoherent that it seemed to exhibit childishness. But he accepted gifts and money from her for the Home, and had no doubt that Miss Westaway was "mentally capable of making such gifts." His friendly relations with Miss Westaway terminated in August 1894 owing to some misunderstanding about a Bazaar.

The rest of the evidence on the part of the Plaintiff is hardly worth noticing. For the most part it consists of gross and palpable exaggerations, mixed no doubt with some truth in regard to Elizabeth Curwood's behaviour. As a sample of this kind of evidence reference may be made to the incident of Charles Curwood's appearance in the Police Court which has already been mentioned. One witness, Cheucey by name, was asked :—

"Q. Do you remember an occasion when Miss Westaway was called upon to go to the Police Court as a witness? What did Miss Curwood do or say on that occasion?—A. Yes, Miss Curwood used to teach her what to say."

Teacher and pupil alike are to be congratulated on the success of the performance. We have an account of what took place in the Police Court by a reporter on the staff of the *Evening Post*, a daily paper published in the Island. The following question and answer occur in his evidence :—

"Q. When Miss Westaway gave her evidence before the Police Court on the 8th of September 1898, did you notice anything unusual about the way in which she answered the Judge's questions or anything which would have led you to suppose that she was not in the enjoyment of all her faculties?—A. The way she answered the Judge's questions showed that she thoroughly understood the case. In fact, she was cross-examined by the Judge, but answered all his questions quite clearly. This fact struck me particularly, as I had heard when the case against Charles Curwood was coming on that to a large extent she was under the influence of Miss Curwood, but I found that all her answers were given in such a way as to prove the rumours I had heard to be without foundation."



The result of the voluminous evidence in this case satisfies their Lordships that at the date of the will of April 1895 and at the date of the codicil of August 1898 Miss Julia Westaway was of sound mind, memory, and understanding.

As regards undue influence, all that can be said is that undue influence is conspicuous by absence. Influence may be degrading and pernicious and yet not undue influence in the eye of the law. The leading authority on the subject is the Judgment of Cranworth L. C. in *Boyse v. Rossborough*, 6 H. L. C. 2. It was the experience of Sir James Hannen that "there is no subject upon which there is a greater "misapprehension." The misapprehension "arises," he says, "from the particular form "of the expression." In his charge to a Special Jury in the case of *Wingrove v. Wingrove*, 11 P. D. 81, where those remarks occur, the learned President explains, very much as Lord Cranworth had explained, what is and what is not undue influence. He speaks of "influence" in its popular signification. He gives the instance of a young man caught in the toils of a designing woman or led astray by a profligate companion with the result that under the influence by which he is surrounded he persuades himself to leave his property to his mistress or the man who has been his evil genius. However shocking the case may be, however cruel to his nearest relatives, that is not undue influence. "To be undue influence in the eye "of the law," says the learned President, "there "must be—to sum it up in a word—coercion. "It must not be a case in which a person has "been induced by means such as I have "suggested to you to come to a conclusion "that he or she will make a will in a particular "person's favour, because if the testator has "only been persuaded or induced by considera-

“ tions which you may condemn, really and  
“ truly to intend to give his property to another,  
“ though you may disapprove of the act, yet it  
“ is strictly legitimate in the sense of its being  
“ legal. It is only when the will of the person  
“ who becomes a testator is coerced into doing  
“ that which he or she does not desire to do  
“ that it is undue influence.” Then his Lordship  
points out that there are different kinds of  
coercion, and concludes by saying that if the  
act is shown to be the result of the wish and  
will of the testator at the time, then, however  
it is brought about—putting aside a case of  
fraud—still it is not undue influence. “There  
“ remains,” his Lordship adds, “another general  
“ observation that I must make, and it is this,  
“ that it is not sufficient to establish that a  
“ person has the power unduly to overbear the  
“ will of the testator. It is necessary also to  
“ prove that in the particular case that power  
“ was exercised, and that it was by means of  
“ the exercise of that power that the will, such  
“ as it is, has been produced.”

In the present case it is enough to say that  
there is not a scrap of trustworthy evidence  
to prove that Elizabeth Curwood or Charles  
Curwood exercised undue influence in the legal  
sense of the term over Miss Westaway, or  
coerced her into making either the will or the  
codicil. There is abundant evidence to show  
that both the will and the codicil were the  
expression of Miss Westaway's own wishes.

Some reliance was placed on the gift in the  
will of 1895 and the earlier will of 1894 of  
£,000. to Elizabeth Curwood, as being an  
extravagant gift which no woman in Miss  
Westaway's position, of sound mind, would  
think of making to a servant who had been for  
such a short time in her service. From what  
we know of Miss Westaway's character it seems

a very natural thing for her to have done. She was very rich and impulsively generous. She had no relations to care for, only herself and the poor. She had at last found an attendant and companion to suit her who made her comfortable, more comfortable than she had ever been before, and no doubt she hoped to retain her services so long as she lived. On the other hand it can hardly be doubted that if Elizabeth Curwood had at the date of the will of 1894 importuned Miss Westaway to make a bequest in her favour, she would have been dismissed at once. If Elizabeth Curwood had sufficient power to coerce her mistress to make so large a bequest in her favour in 1894, it is certainly remarkable that she did not exercise the power attributed to her to obtain much larger bequests afterwards.

It is hardly necessary to refer to the charge against the executors of permitting Elizabeth Curwood and Charles Curwood to exercise undue influence over Miss Westaway. If it is intended as a charge of fraud and conspiracy against the executors, it is enough to say that there is not the slightest foundation for it. If it only means that the executors, or rather Mr. Baudains and Mr. Falla, did not try to induce Miss Westaway to get rid of her objectionable companion, it is not true in fact. Mr. Baudains did endeavour to persuade Miss Westaway to part with Elizabeth Curwood, but he failed just as others failed. And he knew better than anyone else how far he could properly and safely go in interfering in Miss Westaway's domestic arrangements. Mr. Hawksford, a solicitor called by the Plaintiff, admitted that Mr. Baudains could not legally have done more than he did.

For these reasons, which out of respect to the Royal Court their Lordships have deemed it necessary to give in some detail, their Lordships

thought it their duty, as they stated on the 15th of December last, humbly to advise His Majesty that the action ought to have been dismissed and that the Respondents ought to pay the general costs of the action, and the Appellants the costs occasioned by the evidence of the executors, and by the matters not proceeded with by the Appellants. Their Lordships are of opinion that the costs should be on the higher scale, but that only two sets should be allowed to the Defendants, viz., one set to the executors and the other to the remaining Defendants collectively.

The Respondents will pay the general costs of the Appeal, but the Appellants will pay a proper proportion, to be determined by the Registrar, in respect of the costs of the executors' evidence and of the matters not proceeded with by the Appellants.

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