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WILL PREPARER AS WITNESS

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Solicitor as Witness



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Probably Not

“Any view the solicitor may have formed as to the testator’s capacity must be shown to have been based on a proper assessment and accurate information or it is worthless...”

(per Christopher Pymont QC *Re Ashkettle* [2013] WTLR 1331)

A presumption in favour of validity where the solicitor is involved?

“If a properly executed will has been professionally prepared on instructions and then explained by an independent and experienced solicitor to the maker of the will, it will be markedly more difficult to challenge its validity... than in a case where those prudent procedures have not been followed”

(per Mummery LJ in *Hawes v Burgess*)

Witness of Fact



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Per Briggs J in *Key v Key*

[2010] EWHC 408

The Role of the Expert

“... affording insights into the workings of the mind otherwise entirely beyond the grasp of laymen...”

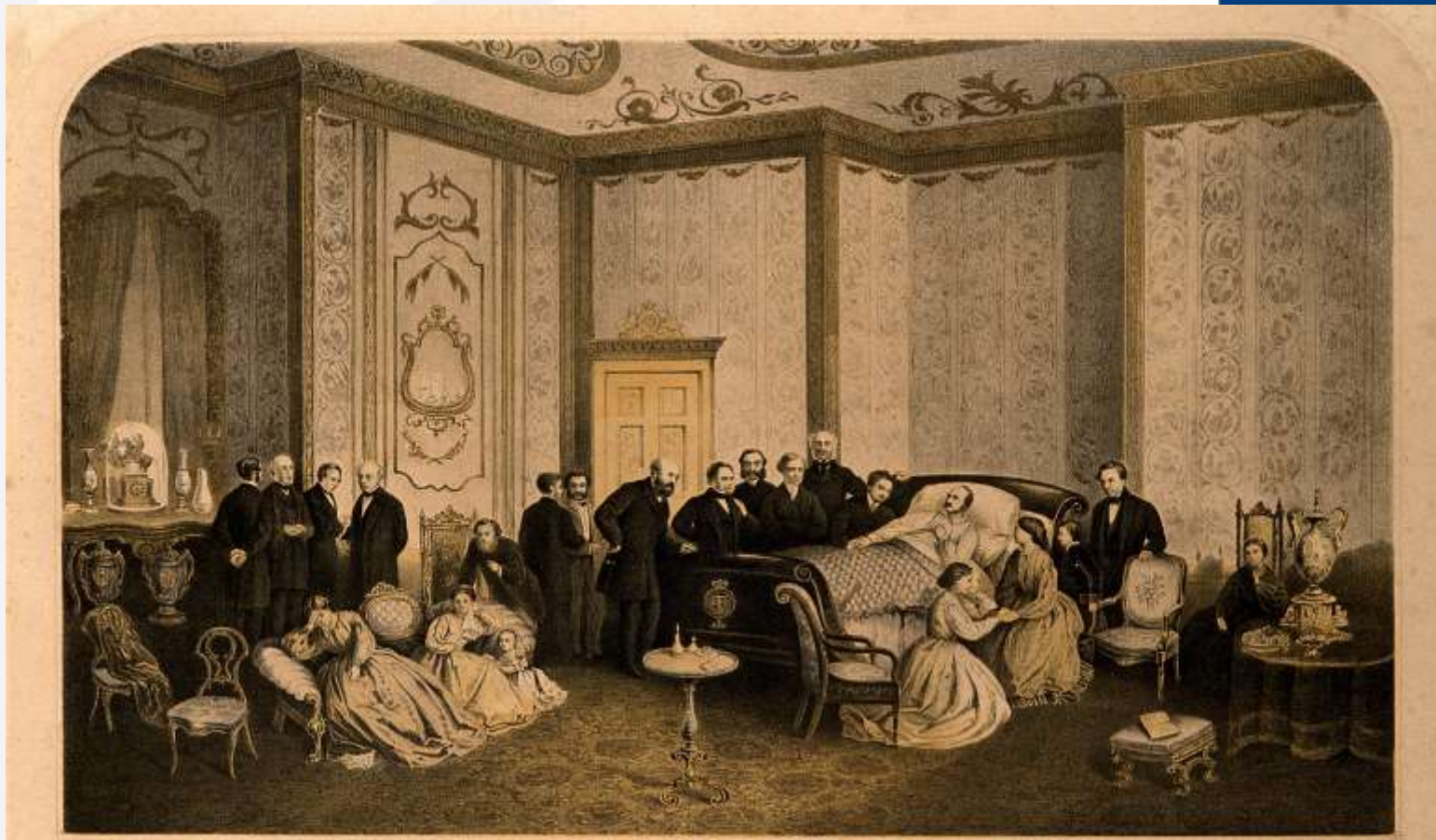
(at [98])



Some Will Appointments More Memorable Than Others



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Practice Note



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Disputed Wills 6 October 2011



Know the Correct Test!



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Banks v Goodfellow

or

MCA 2005

(or is there any difference?)



Banks v Goodfellow

(1870) LR 5 QB 549



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- (i) shall understand the nature of the Act and its effects
- (ii) shall understand the extent of the property of which he is disposing
- (iii) shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object
- (iv) that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties--that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made

“Law Society Wills and Inheritance Protocol”

“... try to establish whether the client can...”

- (a) retain the information relevant to decisions as to the disposition of the estate throughout the decision making process
- (b) use or weigh that information as part of the process of making the decisions; and
- (c) communicate these decisions

(echoing section 3(1)(b)(c) and (d) of MCA 2005)

This is the last Will of me John Banks, of Arleby
in the parish, of Plumland in the County of Cumberland Gentleman. I give devise &
bequeath to my Niece Margaret Banks Goodfellow, All my real and personal
estate and effects whatsoever. To hold the same to my said Niece her heirs Executors
administrators and assigns Subject to the payment of my just debts funeral and
testamentary expences I appoint my Friends Joseph Tolson of Newick and William
Thirlwall of Plumland Executors of my Will. In witness whereof I have hereunto
set my hand this twenty eight day of December in the Year of our Lord one thousand
eight hundred and sixty three _____ John Banks _____ Signed by the
said Testator as his last Will in the presence of us present at the same time who at
his request in his presence and in the presence of each other have subscribed our names
as Witnesses _____ James Routledge _____ Elizabeth Routledge _____

Proved at Carlisle the twenty ninth day of August
1865, by the Oaths of Joseph Tolson, and William
Thirlwall the Executors named in the Will to whom
administration was granted, _____

43.
egg.

Stevens v Vancleve

(1822) 4 Washington 267



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'But this memory may be very imperfect; it may be greatly impaired by age or disease; he may not be able at all times to recollect the names, the persons or the families of those with whom he had been intimately acquainted; he may at times ask idle questions, and repeat those which before had been asked and answered, and yet his understanding may be sufficiently sound for many of the ordinary transactions of life ...





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Lord Cranworth LC in *Boyse v Rossborough*
[1843–60] All ER Rep 610 at 613:

“.... There is no possibility of mistaking midnight from noon, but at what precise moment twilight becomes darkness is hard to determine.”



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