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# Insane Delusions Affecting Testamentary Capacity

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able sequence of his own agreement, legal proceeding not benig invoked, will interrupt the running of the statute.

The Louisiana court has held that limitation does not run against a debt secured by a pledge of property placed in the possession of the creditor by the debtor, as the pledge acts as a continuous acknowledgment of the debt.[14]

It has been suggested that if the parties provide, in express terms within the contract that such payment by the creditor is intended to act as a voluntary acknowledgment of the debt by the debtor as of the date of each payment, much of the controversy will disappear.[15]

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## INSANE DELUSIONS AFFECTING TESTAMENTARY CAPACITY

In a contest of a will, which left all testatrix's property to the National Women's Party, because of testatrix's purported insane hatred for men, the evidence showed her ability to carry on normal business relations and that her only relatives were cousins of whom she saw very little. *Held,* that testatrix suffered from an insane delusion, and that it was her insane delusions about the male that led her to leave her estate to the National Women's Party. Probate was set aside. *In re Strittmater's Estate,* 53 A. (2d) 205 (N. J. Ct. Err. and App. 1947).

It would seem that testatrix's opinion with regard to her father (a corrupt, vicious savage) and her general opinion of the male sex, was correctly called an insane delusion. There is nothing to indicate that any incident or fact in her life with her parents could give rise to her peculiar belief. No mention is made of disappointing relations with any male. Courts have defined insane delusions in many ways,[1] but the gist of all definitions seems to be that an insane delusion is

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14. Liberty Homestead v. Pasqua, 190 La. 25, 281 So. 801 (1938).
15. Payment on the part of the creditor did not serve as a voluntary act of the debtor. "Had it been intended that such a well known rule of law as the statute of limitations should not apply in its customary sense to these contracts, then express language to that effect would doubtless have been used." Zaks v. Elliott, 106 F. (2d) 425 (C. C. A. 4th 1939).

1. "An insane delusion is the spontaneous production of a diseased mind, leading to the belief in the existence of something which either does not exist, or does not exist in the manner believed, a belief which a rational mind would not entertain, yet which is so firmy fixed that neither argument nor evidence can convince to the contrary." In re Kendrick's Estate, 130 Cal. 360, 62 Pac. 605, 607 (1900); "An insane delusion is a belief in something impossible in the nature of things, or impossible under the circumstances surrounding the afflicted individual, and which refuses to yield either to evidence or reason." Scott v. Scott, 212 Ill. 597, 72 N. E. 708, 710 (1904); "A belief, however unfounded, unreasonable or extravagant, does not constitute an insane delusion if it is based upon any evidence, however slight." Schweitzer v. Bean, 154 Ark 288, 242 S. W. 63, 66 (1922); "If such a belief is entertained against all evidence and probability, and after argument to the contrary, it would afford grounds for inferring that the person entertaining it labored under an insane delusion." Medill v. Snyder, 61 Kan. 15, 58 Pac. 962, 965 (1899); "It was not * * * a delusion, for there was some evidence to sustain it." In re Sturtevant's Estate, 92 Ore. 269, 178 Pac. 192, 195 (1919); "It is well established that when a certain belief of a testator is founded on evidence, though slight and inconclusive, it is not an insane delusion." In re Johnston's Estate, 181 P. (2d) 611, 617 (Wyo. 1947); See also 1 Page, Wills, sec. 141 (Lifetime ed. 1941).

an acceptance of fact with no evidence to support it. Although the validity of this test has been questioned,[2] it is followed by the courts uniformly.[3] The Supreme Court of Wyoming, in *In re Johnston's Estate*,[4] used a similar definition to determine the presence or absence of a delusion. It was found that there was some basis in fact for Maud Johnston's belief that she had been unwanted in the family home. The facts were that while Maud was still living at home after her mother's death, a sister came into the home. The sister, fearing that her son would contract tuberculosis from Maud Johnston who had a spot on her lung, suggested that she go away for a year. Later it was agreed that Maud would live elsewhere. Her sisters contested the will on grounds of insane delusions, but the Supreme Court of Wyoming held that no insane delusion existed. In the New Jersey case, however, there seems no basis in objective fact for testatrix's belief. The conclusion that an insane delusion existed seems sound, but a person can be afflicted with an insane delusion and still possess testamentary capacity; for the insane delusion, to nullify a will, must have influenced the testatrix in the disposition of her property.[5] The only relatives mentioned in the case are some cousins, but no mention is made of their sex. If testatrix, because of loyalty toward the National Women's Party, left her estate to the Party to make sure no male got it, it would be clearly an invalid testamentary disposition if, at the same time, it was a result of her delusion-based hatred of men. A delusion or a belief may exert a force so strongly that it destroys all free agency and impels the testatrix into making her will.[6] The aversion for men could destroy all free agency and impel an execution of the will in favor of the only group where testatrix could feel sure no males would share her bounty. The fact that this will accords with testatrix's previously expressed intention is immaterial if, as here, it also was founded on the delusion.[7] Her expressed intention as to the Party receiving her estate does not prove the delusion could not have affected her testamentary disposition.

The court, however, does not specifically state how the insane delusion deprived testatrix of testamentary capacity in the instant case. A mere conclusion that it was thought that her insane delusion about the male led her to leave her estate to the Party is the reason given for the order to set aside probate. An analysis of the case, using the recognized tests of testamentary capacity, however, suggests that probate should have been allowed. The tests applied by courts to determine if insane delusions have so influenced the maker of a will as to render it invalid are numerous.[8] All are similar in respect to the requirement that unless the delusion has affected the disposition of the property, the testator is considered

2. Note, 18 Ore. L. Rev. 45 (1938).
3. Cases cited note 1 supra.
4. 181 P. (2d) 611 (Wyo. 1947).
5. In re Horton's Estate, 128 Cal. App. 249, 17 P. (2d) 184 (1932); Holmes v. Campbell College, 87 Kan. 597, 125 Pac. 25, 41 L. R. A. (N. S.) 1126, Ann. Cas. 1914 A. 475 (1912); Middleditch v. Williams, 45 N. J. Eq. 726, 17 Atl. 826, 4 L. R. A. 738 (Err. and App. 1889); In re Morley's Estate, 138 Ore. 75, 5 P. (2d) 92 (1931); Irwin v. Lattin, 29 S. D. 1, 135 N. W. 759, Ann. Cas. 1914C 1044 (1912).
6. O'Dell v. Goff, 149 Mich. 152, 112 N. W. 736, 10 L. R. A. (N. S.) 989, 119 Am. St. Rep. 662 (1907).
7. Ballantine v. Proudfoot, 62 Wis. 216, 22 N. W. 392 (1885).
8. Green, Judicial Tests of Mental Incompetency, 6 Mo. L. Rev. 141 (1941); 1 Page, Wills, sec. 132 (Lifetime ed. 1941).

competent to execute a will. Four elements form the basis for a standard of capacity, and a will cannot be invalidated because of insane delusions if the testator has the strength, clearness of mind, and memory to know, without prompting, the following: nature and extent of his property, the nature of the act he is about to perform, the names and identity of the persons who will take the objects of his bounty, and his relationship to the persons who are to take the property.[9] Some courts require further that he must be able to appreciate the relation of these factors to one another and to recollect the decision which he has formed.[10] Testatrix throughout her life carried on normal business dealings. She possessed sufficient mental alertness to work in the office of the Party. She was also a reader of books, for evidence to show her aversion of men was largely gathered from her notations on margins of books she had read. These facts, coupled with the absence of evidence that she was in a weakened condition or lacked clearness of mind and memory, certainly do not show absence of strength or clearness of mind at the time of execution of the will. Many courts held that less mental capacity is required to make a will than to carry on normal business transactions,[11] or to make a contract.[12] There was no evidence that testatrix lacked the capability to continue her business transactions, nor that she failed to possess testamentary capacity at the time of execution of the will. Testatrix knew the names and objects of her bounty. She was a member of the Party for nineteen years and was fully aware of the purposes of the Party, of whom it was composed, and to whom the property would go on her death. It is to be noticed that the test requires only that the names and identity of the objects of her bounty be known to the testatrix; it does not require that the names and identity of the relatives or possible legatees under intestacy statutes be known. In *Wintermute v. Wilson*,[13] the New Jersey Court of Errors and Appeals held that a will which excludes relatives in favor of a friend is not invalid. In *In re Johnston Estate*[14] and in other decisions[15] it has been held that excluding collateral relatives in favor of a friend does not of itself prove lack of testamentary capacity. In the light of these decisions testatrix's will in favor of the National Women's Party instead of the cousins should not in itself justify setting aside probate. This view is strengthened in the light of the fact that testatrix saw very little of her cousins in the late years of her life.

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9. Lee v. Scudder, 31 N. J. Eq. 633 (Prerog. Ct. 1879); Bishop v. Scharf, 214 Iowa 644, 241 N. W. 3 (1932); 1 Page, Wills, secs. 158, n. 3, 132 (Lifetime ed. 1941).
10. In re Heaton's Will, 224 N. Y. 22, 120 N. E. 83 (1918).
11. Kinne v. Kinne, 9 Conn. 102, 21 Am. Dec. 732 (1831); Ravenscroft v. Stull, 280 Ill. 406, 117 N. E. 602, Ann. Cas. 1918B, 1130 (1917); Bishop v. Scharf, 214 Iowa 644, 241 N. W. 3 (1932); Barnhall v. Miller, 114 Kan. 73, 217 Pac. 274 (1923); Mc Crocklin's Adm'r. v. Lee, 247 Ky. 31, 56 S. W. (2d) 564 (1933); In re Brannan's Estate, 97 Minn. 349, 107 N. W. 141 (1906); Crossan v. Crossan, 169 Mo. 631, 70 S. W. 136 (1902); In re Johnson's Will, 7 Misc. 220, 27 N. Y. S. 649 (Surr. Ct. 1894).
12. In re Holloway's Estate, 195 Cal. 711, 235 Pac. 1012 (1925); In re Weedman's Estate, 254 Ill. 504, 98 N. E. 956 (1912); Bishop v. Scharf, 214 Iowa 644, 241 N. W. 3 (1932); Ward v. Harrison, 97 N. J. Eq. 309, 127 Atl. 691 (Err. and App. 1925).
13. 28 N. J. Eq. 437 (Err. and App. 1877).
14. See note 4 supra.
15. In re Powell's Estate, 113 Cal. App. 670, 299 Pac. 108 (1931); In re Cole's Estate, 75 Colo. 264, 226 Pac. 143 (1924); Dobie v. Armstrong, 160 N. Y. 584, 55 N. E. 302 (1899); Petterson v. Imbsen, 46 S .D. 540, 194 N. W. 842 (1923); In re William's Estate, 142 Wash. 637, 254 Pac. 236 (1927).

In *O'Dell v. Goff*,[16] the Supreme Court of Michigan held that a belief in spiritualism could be so strong as to destroy testamentary capacity and that a will brought about by such a strong influence that the testator could not resist it is not his will. In the *Strittmater* case, however, it does not appear that testatrix was impelled blindly into execution of her will, nor does it appear that her interest in the Party was great enough to destroy her free agency in naming the recipient of her property. Further, a delusion which merely moves the testatrix to make a will, but does not influence or control her in disposing of her property, does not destroy testamentary capacity.[17] Conceivably, a delusion of testatrix could have reminded her of her previously expressed intention to leave her property to the Party, and in that manner have moved her to execute a will, but the contestants must go further and prove that the delusion influenced and controlled the disposition. This they seem not to have done.

It is not manifest upon what specific basis the New Jersey Court of Errors and Appeals holds that testatrix did not possess testamentary capacity. If the usual tests of testamentary capacity were used, it would seem that a contrary result should have been reached.

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16. See note 6 supra.
17. Spry v. Logansport Loan and Trust Co., 191 Ind. 522, 133 N. E. 827 (1922).