but so improbable under the surrounding circumstances that no man of sound mind would give them credit.

3d If the Jury find from the evidence that Rachel Leolvin was under the influence of any insane delusion or delusions permanently fixed on her mind, at the time the wills of the 30th of October 1845 or of the 6th of April 1848 or of 1847 or any of them, referred to in this case were executed by her (if the Jury shall find that the said Will or Wills were executed by her) although they shall find that the said wills or any of them was not the direct consequence or offspring of the said delusion or delusions yet it is a question for the Jury to to determine whether the intellect of the testatrix was so disordered as to have rendered her at the time of executing the said Will or Wills not of a sound and disposing mind and capable of executing a valid deed or contract.

4th. That although the Jury should find from the evidence that Rachel Leolvin was at the time she executed the Will or wills mentioned in the preceding instructions, perverted in her moral feelings or affections such perversion unless accompanied by insane delusion or delusions is not sufficient to invalidate the said will or Wills.

5th That if the Jury find from the evidence in the case that Rachel Leolvin was not at the time of executing the wills or any of them referred to in this case, of sound and disposing mind & capable of making a valid deed or contract then she was in the possession of that description of mental capacity which is required by the testamentary act of 1798 ch. 101 subch. 1 Sec. 3 & that the meaning of the words sound and disposing mind & capable of making a valid deed or contract in respect to the disposition of her property by last will and testament is that she must have had sufficient capacity at the time of executing the said will or wills to make a disposition of her estate with judgment and understanding in reference to the amount & situation of her property & the relative claims of the different persons who should have been the objects of her bounty. But the meaning of the words judgment and understanding is not that the Jury should reject the will or wills because they may believe that they were in these provisions unjust or injudicious, although the provisions of the will or wills may be considered by them in deciding the question as to the capacity or incapacity of the Testatrix.

This is explanatory of the first instruction.

The principle of law stated in the first instruction is that if the Jury find from the evidence that Rachel Leolvin was insane from disease and that such insanity was permanent continuing & not temporary in its nature, then the burden of proof was on the defendant to shew that any will executed by the said Rachel Leolvin subsequent thereto was executed by her after her recovery from such insanity or during a lucid interval, the burden of proving that the will of the 6th April 1848 was executed by Rachel Leolvin after she recovered from such insanity or during a lucid interval, if the Jury should find the existence of permanent and continuing insanity is discharged by the production in evidence of the Probate which is prima facie evidence of her capacity at the time the said will was executed (if the Jury should find such probate) and the burden of proof is then shifted and it is then incumbent on the Plff. to overcome by evidence the presumption of capacity ensuing from the probate. The objection to conforming the General principle stated in the instruction to the wills of 1845 & 1847 and excluding the will of the 6th of April 1848 on the ground of the probate is that by so doing the Court assume the existence of the probate which is a fact to be found by the Jury as stated in the defendants 5th prayer which I adopted.

As the counsel for the Plaintiff preferred that the instruction should be framed as it now stands I had no objection to modify it as it was an instruction given as a substitute for one of their prayers. In either it is my proper effect to give to the probate.

The Plaintiffs 7th prayer is rejected, and I give to the Jury the following instructions

That if the Jury find from the evidence in the case that the will of 1847 mentioned in the testimony of Mr. Scable was executed by Rachel Leolvin in the presence of three creditable witnesses who attested the same in her presence, that the said will was signed by her in their presence, when she was of sound and disposing mind & capable of making a valid deed or contract, and that the said will of 1847 contained and express clause of revocation and was intended by Rachel Leolvin to revoke all former wills and that the said Will of 1847 was destroyed by the defendant without the knowledge or consent of the said Rachel Leolvin, or was destroyed or ordered to be destroyed by her when she was not of sound & disposing mind & capable of making a valid deed and contract, then the said will of the 30th of October 1845 cannot be set up by the defendant in this case.

In rejecting the Plaintiffs 7th Prayer the court did not think it necessary to decide whether there was or was not evidence from which the could find that the will of 1847 was fraudulently destroyed by the defendant because in the opinion of the Court if the Will of 1847 was destroyed by the defendant with or without fraud, then the will of the 30th of October 1845