

have been their effect. The obvious meaning of the sentence to which exception is taken, when considered in connection with what precedes and follows it, is,—a total failure of memory, extending to and involving the testator's immediate family or property, is sufficient to invalidate a will; but mere weakness of understanding is not.

Where a remark is made that is erroneous, but the court can see that the rest of the instructions are so explicit and clear that the jury could not have been misled, the verdict will not be disturbed. We must regard the jurors as persons of ordinary capacity. *Cooper v. Railroad*, 49 N. H. 213.

The instructions upon the circumstance that the will was written by the executrix were proper, and sufficiently favorable to the appellants. Whatever explanation of that circumstance the jury might find necessary or unnecessary, sufficient or insufficient, it is not a matter of law that any general or special explanation was required. 1 Redf. Wills (4th ed.) *122.

Judgment on the verdict.

DOE, C. J., and STANLEY, J., did not sit.

FOLSOM v. BLOOD.

A judgment is not invalidated by the want of the attestation of the person who, at the date of the judgment, held the office of clerk of the court by which the judgment was rendered. It may be proved by a copy attested by the clerk of another court, to whose custody the record has been by law transferred, and who is the proper officer to make and certify copies thereof.

DEBT, on a Massachusetts judgment rendered by a court of common pleas that had been abolished. The judgment does not appear to have been attested by the clerk of that court. The copy produced is attested by the clerk of the superior court, to whose custody the records of the common pleas have been by law transferred, and who is the proper officer to make and certify copies thereof. The defendant moves for a nonsuit.

Copeland, for the defendant.

Caverly, of Mass., and *Knapp*, for the plaintiff.

STANLEY, J. The attestation of the judgment by the clerk of the common pleas is not indispensable. *Willard v. Harvey*, 24 N. H. 344; *Hall v. Manchester*, 40 N. H. 410; *Sumner v. Sebec*, 3 Me. 223.

If it were prescribed by statute, the statute would be directory, and other evidence of the authenticity of the record would be received. *Secombe v. Steele*, 20 How. 94, 102. The clerk of the superior court, having the custody of the records of the common pleas, is the proper officer to furnish copies of those records, and his certificate is evidence of what they are. *Carlisle v. Thompson*, 5 N. H. 411; *Mahurin v. Bickford*, 6 N. H. 567, 570, 571; *Hall v. Manchester*, *supra*; 1 Greenl. Ev., s. 506.

Motion denied.

ALLEN, J., did not sit.

MADIGAN, *Ex'r*, v. BURNS.

A bequest of "one half of all the rents, profits, and income of all my property," during the life of the legatee, is not limited in amount by a clause of the will declaring it to be the testator's will and request that his property should "be managed in the same manner as heretofore, without division."

No legal uncertainty is shown in such a bequest, and its construction is not affected by an equal division, made for several years by the testator and the legatee, of the income and proceeds of an estate which belonged to them, the legatee's share of that estate being less than one half, and that share not being set out and assigned to him.

BILL IN EQUITY, to establish the construction of the will of Mary S. Madigan, of which the plaintiff is executor, and by which the testatrix gave to her mother, Nancy Burns, the defendant, "one half of all the rents, profits, and income of all my property, both real, personal, and mixed, during her natural life," and declared it to be her will and request that her property should "be managed in the same manner as heretofore, without division."

Subject to exception, the plaintiff introduced evidence tending to show, among other things, that the defendant is the widow of Patrick H. Burns, deceased, intestate; that the testatrix was his administratrix, and only child; that, in pursuance of an agreement between the testatrix and the defendant, the defendant's dower, homestead, and distributive share of Patrick's estate were not assigned to her, and that estate was not settled in the probate court, but the income of the whole estate, and the proceeds of such parts of it as were sold, were equally divided between them as long as the testatrix lived. The plaintiff claims that the defendant is not entitled to dower, homestead, and distributive share of Patrick's estate, in addition to one half of the income of all the testatrix's property for life. The circuit