

oral testimony of witnesses in the Surrogate Court, and before me, except in the evidence of James T. Delaney. This witness says that his statement in the Surrogate Court was not a true statement; and, could I accept his evidence as true, I should be obliged to decide against the will. Considering Delaney's demeanour in the box, having regard to the affidavit he made, the evidence he gave before the Surrogate Judge, his contradiction by himself and by the other witnesses, I cannot accept as true what Delaney said before me.

Upon the whole case, the attack upon the will fails.

It was a proper case for a caveat, and to ask that the will be proved in solemn form of law. When that was done, the plaintiff, desiring to go farther, could not expect to do so and have her costs borne by the estate should she fail. I do not impute to the plaintiff any understanding with the witness Delaney by reason of which Delaney has given a false statement, as I think he has. Not knowing what to do in the face of the changed attitude of Delaney, she went on with her action—and had Delaney in Court. She has failed; and the most that, under the authorities, can be done, is to relieve her from paying the defendants' costs. This I will do—and the action will be dismissed without costs.

DIVISIONAL COURT.

JUNE 28TH, 1912.

VANHORN v. VERRAL.

Damages—Personal Injuries—Negligence — Elements of Damage—Pecuniary Loss—Pain and Suffering—Increase on Appeal of Damages Awarded by Trial Judge.

Motion by the plaintiff by way of appeal from the judgment of BRITTON, J., at the trial without a jury of an action for damages for personal injuries sustained by the plaintiff, owing to the negligence of the defendant, as alleged, and for a new trial or an increase of the damages. The learned Judge awarded the plaintiff \$300, which, the plaintiff asserted, was insufficient.

The motion was heard by MEREDITH, C.J.C.P., TEETZEL and KELLY, JJ.

J. W. McCullough, for the plaintiff.

W. G. Thurston, K.C., for the defendant.

The judgment of the Court was delivered by TEETZEL, J.:—Appeal by the plaintiff from the judgment of Mr.