

The motion is refused, and, as this same point was taken by defendant on the motion in the County Court, I make the costs to him in any event. I do not see how plaintiffs could have expected to succeed. See *Warner v. Bowlby*, 9 Times L. R. 13.

CARTWRIGHT, MASTER.

MAY 26TH, 1903.

CHAMBERS.

MCDONALD v. PARK.

Parties—Joinder of Causes of Action—Action to Set aside Will and Establish Earlier Will—Different Beneficiaries—Inconvenience—Jurisdiction of High Court.

Motion by defendants other than George McDonald and the infants to strike out paragraph 4 of statement of claim and make other necessary excisions, on the grounds of (1) improper joinder of separate and distinct causes of action, and (2) that the cause of action set up in paragraph 4 could not be properly tried in this Court.

W. E. Middleton, for applicants.

C. A. Moss, for defendant George McDonald, supported the motion.

The infants were not represented.

Casey Wood, for plaintiff, shewed cause.

THE MASTER.—I think the motion should succeed. . . . This is an action to set aside a will of plaintiff's mother (which was admitted to probate on 3rd January, 1903), on ground of want of testamentary capacity on the part of the testatrix at the time of its execution in November, 1902. Of this will the defendants Duncan and Ireland are executors, and the infants take nothing under it.

The paragraph of the statement of claim which is sought to be expunged sets out a prior will, alleging same to be the last will and testament of the testatrix, and paragraph 5 of the prayer for relief asks a declaration of the Court to that effect. Of that will the plaintiff and his father, the defendant George McDonald, were named executors. The infant defendants and any subsequent issue of the defendant Ann Jane Park were devisees under this earlier will.

From this it appears that there are two separate causes of action: (1) to set aside the will of November, 1902, of which probate has already been granted; (2) to establish the will of October, 1898, as the true last will of the testatrix.