

SUTHERLAND, J., said that, in addition to the "notes of haste, stealth, and contrivance" which the Chancellor found to have been incident to the execution of the alleged will in question in *Murphy v. Lamphier*, 31 O.L.R. 287, there were also "sweeping changes" therein as compared with wills previously executed by the testatrix.

The will now in question was similar in its main features to a number of wills of the testatrix previously executed by her. There were two substantial changes.

One of the witnesses to the will, James Dandie, was called. It was clear from his evidence, and indeed was admitted in argument, that the will was duly executed in accordance with the Wills Act, in so far as requisite formalities were concerned. This witness had not seen the testatrix for some time before the day on which the will was executed, and did not pretend to say that he had attempted to ascertain whether or not she was competent to make a will. She seemed to him to be quite well.

One of the executors, Patrick Lamphier, testified that his mother, the testatrix, was quite able to transact business on the day she executed the will. He was one of two sons who were the principal beneficiaries in this and in the previous wills.

The testatrix was about 80 years of age and had had severe illnesses arising from a stroke or strokes of paralysis; and, while from these causes she had mentally and physically failed to some extent, the conclusion must be that at the time she executed this will she was of testamentary capacity and that the will was duly executed.

On the question of costs, the learned Judge referred to *McAllister v. McMillan* (1911), 25 O.L.R. 1, at p. 3. He directed that the plaintiffs and the defendant Catherine Woerz should have their costs out of the estate—those of the plaintiffs as between solicitor and client. If the other parties interested in the estate agreed, the other defendants should also have costs out of the estate, fixed at \$100.

SPECTAR v. CLUTHE—CLUTE, J.—Nov. 19.

Vendor and Purchaser—Exchange of Land for Chattels—Owner of Land Replevying Chattels — Premature Action — Amendment—Specific Performance—Costs.]—Action for detention of chattels and to recover possession thereof. The plaintiff made an agreement with the defendant to exchange certain land