

W. Proudfoot, K.C., for the plaintiffs.

H. S. White, for the defendants.

RIDDELL, J.:—The late Ann Jane Anderson left an estate of about \$3,000. The executors named in a will said to have been made by her presented it for probate in the Surrogate Court of the County of Huron, but the defendants entered a caveat setting up a former will. Pleadings were delivered, in which the execution of the will propounded was disputed, as was the capacity of the deceased; undue influence was also alleged; and the former will set up.

The plaintiffs move to have the matter transferred into the High Court.

Until the decision of Mr. Justice Mabee in *Re Wilcox v. Stetter* (1906), 7 O.W.R. 65, it was considered almost as of course that a cause would be removed into the High Court where the value of the property was over \$2,000, and there was a real dispute. In that case a halt was called to this practice, and a rather more stringent rule was supposed to be laid down. This case I followed in *Re Graham v. Graham* (1908), 11 O.W.R. 700, "without expressing any independent opinion of my own;" and the Chancellor in *Re Reith v. Reith* (1908), 16 O.L.R. 168, says: "It is enough if it appears from the nature of the contest and the magnitude of the estate that the higher Court should be the forum of trial. No doubt, much is left to the discretion of the High Court Judge as to the disposal of each application."

I have had an opportunity of consulting a number of my judicial brethren, and the general consensus of opinion is, that, where a fair case of difficulty is made out so that there will be a real contest, the case should be removed, if the amount of the estate brings the case within the statute. There is one reason which has its influence in my own mind, as it has on the minds of some of my brethren. If the case is removed, the opinion of the highest Provincial Court may be taken; while, if the matter remain in the Surrogate Court, this cannot be done.

The only objection to removal is the costs—but the trial Judge has full power to award, if he sees fit, only Surrogate Court costs.

An order will go, in the usual form, removing the cause into the High Court of Justice—costs in the cause, unless otherwise ordered.