

have probate of the will of Hebron Harris decreed, and stated the proceedings in that action, and that an appeal thereon was still pending in the Court of Appeal. The defendant Elizabeth Harris filed a statement of defence, and at the same time served notice of this motion.

D. L. McCarthy, for applicant.

H. M. Mowat, K.C., for plaintiff, contended that, by delivering a statement of defence, defendant waived the right to object to the statement of claim, and shewed that there was no embarrassment.

THE MASTER:—In my opinion, the defendant did not waive her right to object to the plaintiff's statement of claim, as she served her notice of motion with the statement of defence. The paragraphs complained of are improperly pleaded under Rule 268, as being statements of unnecessary facts and of evidence. Order made striking out paragraphs 6, 7, 8, and 10, with leave to plaintiff to amend. Costs to applicant in any event.

MACMAHON, J.

OCTOBER 18TH, 1902.

TRIAL.

McGARRIGLE v. SIMPSON.

Will—Testamentary Capacity—Senile Dementia—Insane Delusions—Comprehension of Terms of Will—Attack on Will by Person having Accepted Benefit under it—Costs.

Action for a declaration that a certain instrument in writing executed by Cornelius McGarrigle, deceased, on the 1st December, 1899, was not his last will and testament, on the ground that he was not of testamentary capacity at that date. The testator was at this time more than seventy years of age. He could neither read nor write. He had partly lost his memory, and was considered by his employer, who was a physician, to be in an advanced stage of senile dementia. On the 1st December, 1888, he had made a will leaving all his property among his brothers and sisters. The will in question made almost the same disposition of his property, the only substantial difference being in the bequest to his brother John, which was under the first will \$4,000 and under the last will \$2,000. He was declared a lunatic on the 19th February, 1900, and died in an asylum on the 31st August, 1900.

C. H. Ritchie, K.C., and J. Baird, for plaintiff and defendants Moment and Davey.

A. J. Armstrong, Cobourg, for defendant Simpson.

H. F. Holland, Cobourg, for defendant McGee.

W. R. Riddell, K.C., for the other defendants.