

of an estate of about \$19,000. He had three surviving children, Allan and Albert already mentioned, who were in easy circumstances, and Charles, who had not been prosperous, had made an assignment for the benefit of his creditors in 1905, and was recently employed by his brother Albert as a labourer. For some time before his death, the testator had been suffering from Bright's disease, and becoming seriously ill on the 8th October last, on the 10th October gathered his three sons about his bed so that he might arrange his estate before he died. He had some time before prepared an incomplete draft of a will, under which Allan and Albert were each to get \$5,000, and Charles was to have the use of \$5,000 as long as he lived, to be divided afterwards equally among his four daughters. At the bedside conversation each of the three sons read this draft and expressed his assent to it, although Allan said at the trial that he was not satisfied, and indicated this to his father by a "look." Instructions based upon this draft were given to a solicitor, and the will of the 11th October was prepared, but not executed till the next day, as the solicitor thought he was not in proper condition to execute it on the 11th. Under this will \$5,000 was devised to Allan and Albert as trustees for Charles and his children, and the balance of the estate, about \$14,000, was divided equally between Allan and Albert, thus effecting what was practically an equal division among the three sons, in view of previous advances made to them by their father. It was established by the evidence that Allan was much displeased with the provision made by his father for Charles and his daughters, and his views were sympathised in by Albert and other relatives who, with Allan, had constant access to the testator, who was residing with Albert at the time of his death. These persons swore that they did not urge the testator to lessen the bequest to Charles and his children, or even venture a suggestion that any change should be made in the will. On the 7th November, however, instructions were given to the solicitor by Albert to prepare a new will reducing the bequest to Charles and his family from \$5,000 to \$2,000, the difference going into the residue apportioned equally between Allan and Albert, thus increasing the share of each by \$1,500. The new will, based upon these instructions was executed on the 8th November, and is the will the validity of which is questioned in this action. After a detailed analysis of the evidence, and review of the authorities, the learned Judge came to the conclusion that both Allan and Albert were parties to the instructions which were given for the new will, and that they had not discharged the onus which lay upon