

Full Court.] RE ESTATE OF JOHN FARQUHARSON. [March 18.

Will—Proof in solemn form—Insane delusion—Where delusion established burden to shew lucid interval on party setting up will—Interested party—Evidence of corroboration—Witnesses and Evidence Act, R.S., c. 107, s. 17, not applicable.

In March, 1897, testator made a will revoking a prior will made in 1890, materially reducing the bequests made by the prior will to his wife and son, and giving away large portions of his estate to collateral relatives.

The evidence shewed that at the time of the making of the second will defendant was suffering from certain insane delusions as to the relations existing between his wife and son, and that the disposition of his estate made by such will was affected by such delusions.

Held, that the decree of the Surrogate Judge of Probate, on petition for proof in solemn form, admitting the second will to probate, must be set aside, and the will declared inoperative and void.

Per TOWNSHEND, J., GRAHAM, E. J. concurring The existence of the delusion being established, the burden rested upon the parties setting up the second will to shew that it was made during lucid interval.

Held, also, that the objection that important testimony had been given by the wife and son, who were interested parties, lost the force that it would otherwise have had, where their testimony was corroborated in all essential particulars by disinterested witnesses.

Held, also, that the provision of the Witnesses and Evidence Act, R.S. c. 107, s. 17, excluding parties from giving evidence of dealings, transactions, or agreements with the deceased on the trial of any issue joined, or on any inquiry arising in any suit, action or other proceeding in any court of justice, etc., has no application to any investigation of this kind as to questions of testamentary capacity.

C. S. Harrington, Q.C., for appellant. W. B. A. Ritchie, Q.C., for respondent.

Province of New Brunswick.

SUPREME COURT.

In Equity, Barker, J.] LAWTON SAW CO. v. MACHUM.

Partnership—Agreement—Construction—Losses—Contribution inter se.

By an agreement between plaintiffs and defendant it was provided that the defendant, who was carrying on the business of manufacturing wire fencing, should furnish machines, in which he had patent rights, for the purpose of carrying on the business of manufacturing and selling wire