

H. E. Rose, for the applicants.

W. E. Middleton, for the other adult defendants.

M. C. Cameron, for the infant defendants.

S. H. Bradford and W. H. Harris, Port Perry, for plaintiff.

THE MASTER:—The plaintiff in her writ of summons asked only to have the last will and testament of John Samells, dated 8th October, 1906, declared null and void, as well as all preceding wills of said John Samells. In the statement of claim she makes two additional claims. The first is that her father, the said John Samells, in his lifetime promised that if she would work for him so long as he desired her services, he would give her an equal share with her brothers and sisters of his property at his death. She alleges that she performed the work as requested by her father, and is therefore entitled to such equal share.

The will is not produced. It may be assumed that her allegation is correct, that it only gave her \$500, while the value of the estate is probably about \$25,000. The plaintiff is one of 7 children of the deceased. The plaintiff also alleges that defendant John Samells jr., who is one of the executors, after the making of the will of 8th October, which was the day before the testator's death, by undue influence procured from his father certain notes of his, given to his father, to a large amount, so depleting the estate.

Some of the defendants are moving against the statement of claim, on the grounds: (1) that these two last claims are an undue extension of the indorsement on the writ; and (2) that in any case they are causes of action which cannot be united with each other, or with the claim as indorsed on the writ.

If the claim to have it declared that plaintiff's father died intestate, for want of testamentary capacity, succeeds, the Court will order administration.

Until this initial question has been decided, the other two claims cannot be prosecuted.

The first can only be usefully made against the executors if the will is established. If the wills are set aside, the plaintiff would share equally with her brothers and sisters on the intestacy, and her claim would be merged and satisfied. At any rate, it can only be made against the duly appointed personal representative of the deceased, and at pre-