

THOMPSON V. THOMPSON—FALCONBRIDGE, C.J.K.B.—AUGUST 19.

*Will—Action to Set aside—Motion for Interim Injunction Restraining Executors from Dealing with Estate—Evidence.*]—Motion by the plaintiffs to continue an injunction granted ex parte by BRITTON, J., restraining the defendants from dealing with the estate of Thomas Thompson or taking proceedings under the letters probate. The learned Chief Justice said that the material filed on behalf of the plaintiffs disclosed a very weak case. With the exception of a statement on hearsay alleged to have been made by a Minister of the Gospel, who did not himself make an affidavit, the only real material was what was contained in the affidavit of a medical practitioner, who said that he visited the testator on the 22nd May last—the will having been made on the 20th May. The doctor says: “I verily believe that the said Thomas Thompson was not capable of making a will on the said 22nd day of May.” He did not swear that, in his opinion, the testator was not capable of making a will on the 20th. In other words, the Court was asked to draw an inference which the deponent evidently did not venture to draw. It was sworn in the affidavits filed by the defendants that the doctor visited the testator on the 19th; and it seemed strange that this fact was not mentioned in the doctor’s affidavit. It looked as though these omissions were designedly made; but the affidavits were drawn in a very slovenly fashion. For example, the plaintiff Alice Thompson was made to swear in her affidavit that “I am one of the above-named defendants.” Motion adjourned until the trial, the injunction not being continued in the meantime. Costs of this motion to be costs in the cause to the defendants in any event, unless the Judge at the trial should otherwise order. W. J. McLarty, for the plaintiffs. John King, K.C., for the defendants.