

price therein stated was that agreed upon, and that L. had not produced the clear and absolute evidence necessary to rebut such presumption.

Held, per Gwynne, J., that in this case no such presumption was raised by the retention of the invoice.

Appeal allowed with costs.

Fitzpatrick, Q.C., for the appellant.

Languedoc, Q.C., & *Dorion*, for the respondent.

25 January, 1897.

ADAMS V. McBEATH.

British Columbia.]

Will—Undue influence—Evidence.

A. brought an action in the Supreme Court of British Columbia, to set aside the will of his uncle in favour of M., a stranger in blood to the testator, alleging that its execution was obtained by undue influence of M. at a time when the testator was mentally incapable of knowing what he was doing. The evidence at the trial showed that A. and the testator corresponded at intervals between 1878 and 1891, and the earlier letters of the latter expressed his clear intention to leave his property to A., while in the latter that intention seemed to be modified if not abandoned.

The circumstances attending the testator's last illness and the execution of his will were as follows: He was 84 years old and lived entirely alone. A neighbour not having seen him go out for two or three days notified one of his friends, who got into the house and found him lying on the floor where he had fallen in a fit, and lain for three days. He sent for a doctor and meanwhile did what he could himself to aid him. When the doctor came he pronounced the testator to be nearing his end, and M., who was notified or heard of the matter, came and had him conveyed to his own house. The next day M., according to his own testimony, at the testator's request, went to a solicitor whom he instructed to draw a will for the testator in his (M's) favour. The solicitor prepared the will, brought it to the house where the testator was, read it over to him, and asked him if he understood it, and having answered that he did the testator executed the will which the solicitor and M.'s brother-in-law witnessed. M. was present all the time the solicitor was in the house. The