HON. MR. JUSTICE BRITTON:—John Bowman made his will on the 24th December, 1910, and on the same day died in L'Hotel Dieu hospital at the city of Kingston. On the 13th day of January, 1911, the plaintiff, Mary Mosier, who is a first cousin of the deceased, caused a caveat to be filed in the Surrogate Court of the county of Frontenac. J. McDonald Mowat was the plaintiff's solicitor in the matter. The grounds stated, on which the caveat was lodged, were that at the time when the paper writing alleged to be the last will of Bowman, purported to be executed, the said deceased was not in possession of his faculties—was not of a disposing mind, and was brought to sign the paper by undue and improper influence.

Baillie, one of the named executors, renounced probate. Rigney, the other named executor, filed in the Surrogate Court a statement of claim and asked for probate.

On the 7th May the plaintiff, by her solicitor, filed her statement, alleging want of testamentary capacity, undue and improper influence, and that the paper writing did not express the will of the testator. Upon motion made pursuant to leave of the Surrogate Judge, the matter came on for hearing. Evidence was taken—affidavit evidence and *viva voce*—and on the 14th day of March, 1911, that Court made an order that the paper then and now in question was the will of John Bowman and that the same should be admitted to probate, as "proved in solemn form of law."

On the 16th day of March, 1911, letters of probate issued. This action was commenced by plaintiff—by Mr. Mowat his solicitor on the 30th day of January, 1911, and pending proceedings in Surrogate Court nothing further was done after appearance until the 13th September, 1911, when the statement of claim was filed. In it, the fact is stated that letters of probate were granted to the defendant-executor, after proof in solemn form. The grounds of attack upon the will are precisely the same as taken in the Surrogate Court. Each defendant put in a statement of defence. No defendant asked to have proceedings in this action stayed on the ground, or pleaded as a defence, that by the order of and the grant of probate by the Surrogate Court the mental capacity of the testator to make a will, was *res judicata*. Under these circumstances I dealt with the case as if before me in the first instance. The deceased was taken ill three or four days before the day of his death. Dr. Kilborn was called in. Upon the doctor's order, the deceased was taken