

WILL—UNDUE INFLUENCE—HUSBAND INSTRUMENTAL IN PREPARING WIFE'S WILL—HUSBAND SOLE BENEFICIARY—ONUS OF PROOF.

*Craig v. Lamureux* (1920) A.C. 349. This was an appeal from the Supreme Court of Canada 49 S.C.R. 305. The action was brought to set aside a will on the ground that it had been procured by undue influence. The will was made by a married woman two days before her death and her husband was the sole beneficiary named therein, and he was instrumental in having the will prepared. The course of the action occasioned a great variety of opinion. Bruneau, J., who tried the action, set the will aside, on the ground that a prior will which the testatrix signed illegibly expressed her true testamentary intentions; and that she was induced to sign the will impeached on the representation that the prior will was invalid on account of the illegible signature. On appeal the Court of King's Bench dismissed the action. The Supreme Court of Canada (Fitzpatrick, C.J., dissenting) reversed the judgment of the Court of King's Bench, and set aside the will. The Judicial Committee of the Privy Council (Lord Haldane, Buckmaster and Dunedin) were unable to agree with any of the Courts below, and upheld the will on the ground that having been proved to have been duly executed by a person of apparently competent understanding and a free agent, the burden of proving that it was executed under undue influence rested on the person who so alleged, and that burden in this case had not been discharged by the plaintiff.

PROCEDURE—PARTIES—ATTORNEY-GENERAL JOINED AS A DEFENDANT—ACTION WHICH MAY AFFECT RIGHTS OF CROWN.

*Esquimalt & Nanaimo Ry v. Wilson* (1920) A.C. 358. This was an appeal from the Court of Appeal of British Columbia reversing an order of MacDonald, J., directing the Attorney General to be added as a party defendant. The action was brought to impeach the validity of a Crown grant of land made to the defendants subsequent to a prior grant of the same land to the plaintiffs, and which subsequent grant contained reservations in favour of the Crown. The defendants objected that the Crown was a necessary party and it was in consequence of this contention that the Attorney-General was ordered to be added. On the appeal they contended that he should not have been added and that the plaintiffs' proper procedure against the Crown was by petition of right, and that if the case was not one for a petition of right then no relief could be granted against the Crown.