

England, vol. 13, p. 328, sec. 460; Noel v. Wells, 1 Lev. 235; Douglas v. Cooper, 3 My. & K. 378; Beardsley v. Beardsley, [1899] 1 Q.B. 746; Emberley v. Trevanion, 4 Sw. & Tr. 197; Concha v. Concha, 11 App. Cas. 541. The statute, however, gives jurisdiction to the High Court to try the validity of wills, even after probate has been granted. The result, therefore, is, that the grant of probate is removed from the category of judgments ad rem. The plaintiff in this action was not a party to the proceedings in the Surrogate Court, and cannot be bound by the result. . . .

[Reference to Brigham v. Fairweather, 140 Mass. 411, 416.]

And he is not shewn to have taken any part in the proceedings in the Surrogate Court so as to raise any equity against him, even if any participation could have such effect.

The plain issue in this case is, whether the deceased had, at the time of making the two wills, or either of them, testamentary capacity—there is no charge in the pleadings of undue influence, and there is no evidence of anything of the kind. . . .

[Reference to Low v. Guthrie, [1909] A.C. 278, 281, 282, 283; Barry v. Butlin, 2 Moo. P.C. 480; Fulton v. Andrew, L.R. 7 H.L. 448, 461; Banks v. Goodfellow, L.R. 5 Q.B. at p. 565; Boughton v. Knight, L.R. 3 P. & M. 64, 72, 73; Cartwright v. Cartwright, 1 Phillim. 90; Harwod v. Baker, 3 Moo. P.C. at p. 290; Wilson v. Wilson, 22 Gr. at p. 83; Sproule v. Watson, 23 A.R. 692; Bannatyne v. Bannatyne, 16 Jur. 864; Mitchell v. Thomas, 7 Moo. P.C. 137; Dufaur v. Croft, 3 Moo. P.C. 136; Boyse v. Rossborough, 6 H.L.C. 2; Sefton v. Hopwood, 1 F. & F. 578; Lovett v. Lovett, 1 F. & F. 581; Wingrove v. Wingrove, 11 P.D. 81; Browning v. Budd, 6 Moo. P.C. 430. Summary of the evidence.]

I think the appeal should be dismissed with costs.

Appeal dismissed with costs.

JUNE 25TH, 1913.

EAGLE v. MEADE.

Master and Servant—Injury to Servant—Negligence—Common Law Liability—Workmen's Compensation for Injuries Act—Accident—Evidence.

Appeal by the plaintiff from the judgment of BRITTON, J., ante 948.