

J. King, K.C., for the plaintiff's motion.

H. M. Mowat, K.C., for the defendant, contra.

HON. MR. JUSTICE RIDDELL:—Upon a careful consideration of the whole case, I can see no reason to doubt the soundness of the judgment from which it is desired to appeal, and I refuse the application with costs.

An unreported case in the Queen's Bench Division of *McDonald v. Sheppard* is nearly in point; but I do not think any authority is necessary.

This will be without prejudice to any motion the plaintiff may be advised to make for the amendment of the pleadings, etc.

HON. MR. JUSTICE RIDDELL.

MAY 28TH, 1912.

PATTISON v. ELLIOTT.

3 O. W. N. 1327.

Surrogate Court — Removal of Cause into High Court — Difficulty and Importance of Questions Arising—Value of Estate—R. S. O. (1897) c. 59, s. 34 (2).

RIDDELL, J., held that where a fair case of difficulty has been made out so that there will be a real contest, the case should be removed from the Surrogate Court to the High Court, if the amount of the estate brings the case within R. S. O. (1897) c. 59, s. 34 (2).

Re Wilcox v. Stetter, 7 O. W. R. 65.

Re Graham v. Graham, 11 O. W. R. 700, and

Re Leith v. Leith, 16 O. L. R. 168, 11 O. W. R. 883, specially referred to.

The late Ann Jane Anderson left an estate of about \$3,000. The executor named in a will said to have been made by her presented it for Probate in the Surrogate Court of the county of Huron, but the defendants entered a caveat setting up a former will.

Pleadings were delivered in which the execution of the will propounded was disputed, as was the capacity of the deceased—undue influence was also alleged—and the former will set up.

The plaintiffs moved for an order transferring the action from the Surrogate Court of Huron county to the High Court.

W. Proudfoot, K.C., for the plaintiff's motion.

H. S. White, for the defendant, contra.