The estate consisted of $3,662.47 on deposit with a trust company.

The defendant's contention was, that the plaintiff must seek his remedy in the Surrogate Court.

Reference to Mutrie v. Alexander (1911), 23 O.L.R. 396; Belanger v. Belanger (1911), 24 O.L.R. 439; Badenach v. Inglis (1913), 29 O.L.R. 165.

Upon the last revision (R.S.O. 1914 ch. 56) of the Judicature Act, sec. 38 of the Judicature Act, R.S.O. 1897 ch. 35, was not repealed, but was continued in effect by sec. 12, which vests in the Supreme Court of Ontario all the jurisdiction formerly vested in the High Court of Justice.

The question now raised is not touched by the cases referred to.

Section 38 gave the then High Court of Justice jurisdiction "to try the validity of last wills and testaments, whether the same respect real or personal estate, and whether probate of the will has been granted or not, and to pronounce such wills and testaments to be void for fraud and undue influence or otherwise in the same manner and to the same extent as the Court has jurisdiction to try the validity of deeds and other instruments."

The defendant contended that this section did not enable a plaintiff to come before this Court to establish a will.

No doubt, the plaintiff could readily obtain relief, if entitled to it, upon a proper application in the Surrogate Court; but it was contended for the plaintiff that this Court has concurrent jurisdiction.

The precise point was determined against the defendant's contention by Spragge, C., in Perrin v. Perrin (1872), 19 Gr. 259.

The learned Judge said that it was his duty to follow this decision, leaving the defendant, if he had the courage of his convictions, to carry the case to a Divisional Court.

The motion should be dismissed; costs to the plaintiff in the cause.