

BOYD, C. APRIL 18TH, 1914.

\*MURPHY v. LAMPHIER.

*Will—Action to Establish—Evidence—Onus—Testamentary Capacity—Procurement of Will by Others—Stealth, Haste, and Contrivance—Executors Propounding Will—Costs.*

Action by the executors named in what purported to be the last will of Jane Lamphier, who died on the 30th September, 1913, aged eighty years, to establish the will, which was dated the 25th May, 1912.

The alleged will disposed of all the property of the testatrix, in general words. The chief assets of the estate were a farm of 200 acres and an hotel property at Erindale.

There were four previous wills: the first dated the 26th October, 1903; the second, the 28th December, 1905; the third, the 11th October, 1909; and the fourth, the 22nd July, 1911.

The fifth will, now sought to be established, provided that all property, real and personal, should be sold and divided equally among all the children of the testatrix and Hannah Lamphier, a daughter-in-law. No provision was made for the husband of the testatrix, who survived her; and the executors named were the solicitor who drew the will and Joseph Murphy, brother of Hannah, the daughter-in-law.

The provisions of this will differed widely from those of all the previous ones.

The action was tried without a jury at Toronto.

J. G. O'Donoghue, for the plaintiffs.

J. W. Bain, K.C., for the defendants.

BOYD, C., set out the facts at length, commented on the evidence, and referred to *Blewitt v. Blewitt* (1833), 4 Hagg. Ecc. 410, 464; *Marsh v. Tyrrell* (1828), 2 Hagg. Ecc. 84, 112, 122; *Simpson v. Gardner's Trustees* (1833), 11 Ct. of Sess. Cas. 1049, 1052; *Ingram v. Wyatt* (1828), 1 Hagg. Ecc. 384; *Dodge v. Meech* (1828), 1 Hagg. Ecc. 612, 617; *Menzies v. White* (1862), 9 Gr. 574, 576; *Boughton v. Knight* (1873), L.R. 3 P. & D. 64, 72; *Birkin v. Wing* (1890), 63 L.T.R. 80, 82; *Cranvel v. Sanders* (1619), Cro. Jac. 497; *Harwood v. Baker* (1840), 3 Moore P.C. 282; *Banks v. Goodfellow* (1870), L.R. 5 Q.B. 549, 568; *Jarman on Wills*, 6th ed. (1910), vol. 2, pp. 2213,

\*To be reported in the Ontario Law Reports.