

deceased, he is bound to refuse its admission to probate. A will written or procured to be written by a party who is benefited by it is not void; but the circumstance forms a just ground of suspicion against the instrument, and calls upon the Court to be vigilant and jealous; and, unless clear and satisfactory proof be given that it contains the real intentions of the deceased, will be pronounced against."

See also the "notable case," as the Chancellor appropriately calls it, of *Barry v. Butlin*, reported in the same volume of *Moo. P.C.* at p. 480, and also in 1 *Curt.* 537, a judgment of Parke, B. (Lord Wensleydale), by a slip of the pen ascribed to Lord Hatherley in *Lamoureux v. Craig* (1914), 49 *S.C.R.* 305, at p. 340, and discussed by the Chancellor in *Loftus v. Harris* (1914), 30 *O.L.R.* 479.

In *Mitchell v. Thomas* (1847), 6 *Moo. P.C.* 137, it was held: "Where a testamentary disposition is propounded under circumstances of suspicion; as where the party propounding it was the drawer, and was benefited by it, and it was executed at a time when the testator was of doubtful capacity; without any evidence of instructions previously given, or knowledge of its contents; the party propounding it must prove that the testator knew and approved of the contents of the instrument."

On the application of the rules laid down in these cases, I hold that the defendant has failed to satisfy the onus cast upon him.

The evidence is somewhat conflicting, but it does not preponderate in the defendant's favour, but rather the other way.

The attending physician was in Court, having been subpoenaed, I presume, by one or both of the parties. There seemed to be a curious reluctance about calling him. The plaintiff's counsel evidently expected the defendant to call him; but, when the defendant's counsel closed his case without doing so, the plaintiff asked leave to put the doctor in the box. I allowed him to be called, expecting that he would give material aid in the disposition of the case, as he was one of the subscribing witnesses and had made the affidavit of execution.

But his evidence was extremely disappointing and unsatisfactory. It is in effect as follows: "She suffered from heart disease, Bright's disease, and dropsy in consequence of these. Morphia and strychnine administered as heart stimulants. She said she was going to leave money for missions in the North-West and one or two beds in the hospital." (I shall revert to this statement hereafter). "I don't remember saying to Miss Stephens that the will was not worth the paper it was written