

The
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No. 7

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

OCTOBER 15TH, 1918.

SELLERS v. SULLIVAN.

Will—Testamentary Capacity—Undue Influence—Circumstances Surrounding Preparation and Execution of Document Propounded as Will—Suspicion—Evidence—Onus—New Trial.

Appeal by the defendants Maria Sullivan and George Garniss from the judgment of MASTEN, J., 12 O.W.N. 365, in favour of the plaintiffs, in an action to establish a certain testamentary writing as the last will and testament of Thomas Garniss, deceased.

The appeal was heard by MULOCK, C. J. Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

Hugh Guthrie, K.C., S.-G. Can., for the appellants.

William Proudfoot, K.C., for the defendant Joseph J. Sellers, respondent.

R. Vanstone, for the plaintiffs, respondents.

MULOCK, C.J. Ex., read a judgment in which he said that the document propounded by the executors was dated the 10th August, 1916; by it the testator purported to give Joseph J. Sellers, one of the executors, plaintiffs, and in his individual capacity a defendant, \$6,000, to his niece Elizabeth Brewer \$100, and the remainder of his estate to his brother George Garniss and his sister Maria Sullivan in equal shares. Sellers was married to a niece of the testator, who was a bachelor. He died on the 13th August, 1916, at the age of 85. His estate was of the value of between \$10,000 and \$12,000. The testator had made two wills of earlier dates than the one propounded. By the later of the two he bequeathed his whole estate to his brother and