

satisfied, in such a case as this, by proof of an insane delusion such as was proved in this case—a delusion that his own wife and his son's wife desired and attempted to poison him—and then the onus shifts back to the propounder of the will—the onus of proof sufficient to satisfy the conscience of the Court that the dispositions of his property made by the testator in the will were not affected by the insane delusions.

It was not suggested that the learned Surrogate Court Judge erred in any matter of law throughout the trial; the appeal was entirely upon a question of fact, a question determined by a Judge of much experience and care, who had the benefit of hearing and seeing the witnesses. The Court could not rightly reverse his finding unless well convinced of error in it; and the Court was not convinced that the learned Judge erred in his finding in favour of the will.

It was said that the findings were based entirely upon the judgment of the Supreme Court of Canada in *Skinner v. Farquharson* (1902), 32 S.C.R. 58. What the learned Judge meant was that, acting upon the principle applied in that case, he was bound to find in favour of the will in this case—and the principle is, that when the provisions of the will itself prove that it was not affected by insane delusions, it must be found that it was not so affected.

The appeal should be dismissed.

Only one of the beneficiaries under the will being a party to the cause, no judgment should be pronounced that could prejudicially affect any of the absent beneficiaries; the judgment binds only the parties before the Court, others concerned being at liberty, if they choose, which is unlikely, to litigate the matter over again.

*Appeal dismissed with costs.*

SECOND DIVISIONAL COURT.

FEBRUARY 2ND, 1916.

MAZZARENO v. PASTINO.

*Contract—Sale of Goods—Substituted Contract—Evidence to Establish—Conflict of Testimony—Finding of Fact of Trial Judge—Credibility of Witnesses—Breach of Contract—Damages—Appeal.*

Appeal by the defendants from the judgment of the Judge of the District Court of the District of Sudbury, in favour of the