

Council, said: "The rules of law according to which cases of this nature are to be decided do not admit of any dispute so far as they are necessary to the determination of the present appeal. The rules are two: The first, that the onus probandi lies in every case upon the party propounding a will, and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. The second is, that if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded is the true will of the deceased.

In *Tyrrell v. Painton* (1894), P. D. p. 151, Lord Justice Lindley, applying the rule laid down in *Barry v. Butlin*, said that the same principle was laid down and acted upon in *Fulton v. Andrew* and *Brown v. Fisher*. Further on in his judgment he says: "The rule is not in my opinion confined to the single case in which a will is prepared by or on the instructions of the person taking large benefits under it, but extends to all cases in which circumstances exist which excite the suspicion of the Court, and whenever these circumstances exist and whatever their nature may be, it is for those who propound the will to remove such suspicion and to prove affirmatively that the testator knew and approved of the contents of the document.

Now this is the law governing cases of this kind such as I am now considering. The circumstances under which the will now propounded was prepared and signed are such as to excite the gravest doubt and suspicion, and this doubt and suspicion is not to my mind removed by the evidence and it has not been affirmatively established that testatrix knew and approved of the contents thereof, and I am not judicially satisfied that the will of the 28th February, 1908, is the true will of the deceased, and I therefore pronounce against it and refuse probate thereof, and I pronounce in favour of the will of the 19th September, 1904, which has been duly proved in solemn form as already stated, and the same is accordingly admitted to probate.