

S. H. Blake, K.C., E. G. Malloch, K.C., A. C. Shaw, Perth, and J. M. Balderson, Perth, for the defendants Walker, Barbara Stewart, and the Cleveland Stewarts.

W. R. Riddell, K.C., for defendant Minnie Hamilton.

J. Lorn McDougall, Ottawa, for defendant Eliza McIntyre.

G. F. Shepley, K.C., A. B. Aylesworth, K.C., and J. A. Allan, Perth, for the Attorney-General.

MACMAHON, J. (after an exhaustive review of the evidence and reference to *Sugden v. Lord St. Leonards*, 1 P. D. at pp. 76, 201, 203, 224, 225, 232; *Poulton v. Poulton*, 1 Sw. & Tr. 55; *Finch v. Finch*, 1 P. D. 371; *Battyll v. Lyles*, 4 Jur. 718; *Allen v. Morrison*, 17 N. Z. L. R. 678, [1900] A. C. 604, concluded):—There is not in this case, as there was in *Allen v. Morrison*, a presumption against the hypothesis of fraudulent abstraction. There is here, as there was in *Finch v. Finch*, *Battyll v. Lyles*, and *Sugden v. Lord St. Leonards*, evidence from which a strong inference arises that the will was fraudulently abstracted by the person (the defendant Eliza McIntyre) who declared almost immediately after the death of the testator that she had in her possession his private papers, which she said would prevent the Stewarts handling a dollar of McLaren's money.

But, although on the evidence this inference may be drawn, yet, for the reasons stated in *Finch v. Finch*, the Court is not bound to come to a conclusion one way or the other on that question.

McLaren during his last illness gave directions to the plaintiff as to the management of some of the more important matters connected with his business. He knew his illness was of a serious nature, and, had he not thought the will was still in existence, he was fully capable of giving instructions for a new will, unless he had changed his mind, and intended that the Government should, by his intestacy, become possessed of his whole estate.

The evidence satisfies me that there was no change of mind in the testator towards the beneficiaries named in the will, and from the expressions used by him up to a late period of his life his determination not to die intestate remained unaltered.

The testator was a man of education and excellent business capacity, and had full knowledge of the contents of his will, and approved of the same. There was no evidence of undue influence by the plaintiff, his solicitor, who drew the will. The provisions contained in the will emanated