

objection was made upon that score, and taking the depositions of witnesses in that way had probably not increased the expense. Examinations, when properly required, are not covered by the item "preliminary proceedings."

Item 12, relating to examinations for discovery, forms a guide by analogy for the allowance.

One allowance only should be made. The Taxing Officer treated each examination as a separate item. The counsel fees should stand as allowed. The allowance for preliminary proceedings should be reduced to \$5. The whole reduction, on the cross-appeal, should be \$13.

As success was divided, there should be no costs.

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MIDDLETON, J.

JANUARY 26TH, 1920.

\*GIFFIN v. SIMONTON.

*Will—Jurisdiction of Supreme Court of Ontario—Action for Revocation of Letters Probate, Establishment of Later Will, and Direction for Issue of Probate—Judicature Act, R.S.O. 1897 ch. 51, sec. 38—Preservation by Force of sec. 12 of Judicature Act, R.S.O. 1914 ch. 56—Construction and Effect.*

Motion by the defendant to stay the action, on the ground that the statement of claim disclosed no cause of action within the jurisdiction of the Supreme Court of Ontario.

The motion was heard in the Weekly Court, Toronto.  
W. S. MacBrayne, for the defendant.  
E. C. Cattnach, for the plaintiff.

MIDDLETON, J., in a written judgment, said that on the 25th July, 1903, William H. Simonton made a will by which he appointed the defendant his executor and made him residuary legatee. On the 17th September, 1919, Simonton died, and the defendant obtained probate of this will.

The plaintiff said that on the 30th April, 1912, Simonton made a will by which he appointed the plaintiff his executor and made him sole legatee.

In this action the plaintiff asked that the probate of the earlier will might be revoked, that the later will might be declared to be the last will, and that this Court might direct that probate should issue to him.