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No. 20

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B.

JULY 24TH, 1914.

DOUGAN v. ALLAN.

*Will—Invalidity—Incompetence of Testatrix—Evidence—Onus
—Testimony of Physician-witness—Declaration of Intestacy
—Injunction—Executor—Costs.*

Action for a declaration that a will signed by Isabella O. Allan, deceased, was signed when she was not competent to make a will, and that she died intestate.

The action was tried without a jury at St. Catharines.

H. H. Collier, K.C., for the plaintiff.

G. H. Kilmer, K.C., for the defendant.

FALCONBRIDGE, C.J.K.B.:—The plaintiff is a brother and one of the heirs-at-law of Isabella D. Allan, who died on the 20th December, 1910, she having on the 7th of the same month signed a will; the plaintiff asserts that, at the time she is said to have signed and executed the same, she was not of a competent and disposing mind, and was not aware of what she signed. The plaintiff further asks for a declaration that the said Isabella D. Allan died intestate. By the said will, all her real and personal estate was devised and bequeathed to her husband, William B. Allan, who died on the 27th June, 1911; the defendant is his executor.

In *Baker v. Batt* (1838), 2 Moo. P.C. 317, the head-note is as follows: "The burthen of proof of the genuineness and authenticity of a will lies on the party propounding it; and, if the conscience of the Judge is not judicially satisfied that the paper in question does contain the last will and testament of the