

plaintiffs then inscribed *en faux* against the will produced by the defendants. The principal *moyens de faux* were as follows:—1. The will did not contain the wishes of the testator, 2. It had not been dictated by him. 3. It was made by Valois, notary, according to instructions given to him by Venance Brunet, and without the participation of the testator. 4. At the date of the will, the testator was not of sound mind, memory, and understanding, but was laboring under a disease which had deprived him of his physical and mental powers, and he was not in a state to know what he was doing. 5. The testator did not dictate any of the dispositions of the will, but they were all *dictées et nommées* to the notary by Venance and Theodore Brunet. 6. The will was not dictated to the notary in the presence of witnesses. The inscription *en faux* having been maintained by the Court below, the defendants appealed.

DUVAL, C. J., said the judges of the Court were of a different opinion from the Superior Court, and thought that the testator was of perfectly sound mind, and that the will was made properly. The testator, in his honor's view of the evidence, understood perfectly what he was saying. He was a man of few words, but this did not show that he had not well considered what he was saying.

MONDELET, J., was also of opinion that there had been no sufficient grounds shown for setting aside the will.

DRUMMOND, J., observed that here it was clearly proved that there was not a word written before the arrival of the notary. But, it was said, it was a will made interrogatively, that is, that it was made by question and answer. There was no doubt that one sort of will made by interrogatory was null; but there were two kinds of interrogatories, one leading questions, and the other direct enquiries for information. The latter was a mode of question not only permissible, but often absolutely necessary, without which it would be impossible for a notary to make a will. The judgment was as follows:—*Considérant que les intimés n'ont fait aucune preuve légale des moyens de faux par eux produits au soutien de leur inscription en faux contre le testament solennel de feu Eustache Brunet dit L'Etang,*

lequel testament était invoqué par les appelants dans leur défense à l'action des dits intimés: *Considérant que les appelants ont établi par une preuve suffisante que lors de l'exécution du dit testament le dit testateur était sain d'esprit et en état d'apprécier ses actes, et que les dispositions qui se trouvent au dit testament, loin d'avoir été écrites et mises au dit testament par le notaire Valois sur la dictation d'autres personnes par anticipation et hors la présence du testateur, ont été prononcées, déclarées et dictées par le dit testateur lui-même, comme ses dernières volontés, et écrites et rédigées par le dit notaire en sa présence et en la présence de deux temoins idoines: considérant que dans le jugement il y a erreur, &c. Judgment reversed, and inscription *en faux* dismissed.*

JOHNSON, J., concurred.

Dorion & Dorion, for the Appellants.

R. & G. Laflamme, for the Respondents.

RECENT ENGLISH DECISIONS.

Contract for Sale—Rights of Way and Water.—A. and B. were tenants of adjoining premises, under the same landlord. A. had a well upon his premises, from which B.'s premises were supplied with water by means of a pipe. Both premises, with others, were put up for sale by auction, in lots, one of the conditions being that each lot was subject to all rights of way and water and other easements (if any) subsisting thereon. A. and B. both purchased the lots of which they had been tenants. The vendor insisted that A. had purchased subject to B.'s right of water. A. filed a bill for specific performance of the contract, without any liability to such easement. *Held*, that B. had no easement or right of water, but merely a license from his landlord during his tenancy; and that A. was entitled to the relief asked. *Russell v. Harford*, Law Rep. 2 Eq. 507.

Production of Documents.—A case for the opinion of counsel, stated in reference to a separate litigation about the same subject-matter as the present dispute, and after it had arisen:—*Held*, privileged from production.