

MACLENNAN, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., OSLER and MACLAREN, JJ.A., also concurred.

NOVEMBER 14TH, 1904.

C.A.

CONNELL v. CONNELL.

Will—Execution—Testator's Signature—Conflict of Evidence as to whether Witnesses Present—Lapse of Sixteen Years—Will Drawn by Person Taking Benefit—Onus of Proof.

Plaintiffs seek probate of the will of one James Connell, who died 30th May, 1903.

The alleged will was made 9th January, 1887. Plaintiffs were two of the brothers of deceased, and the executors named in the will; and defendants were four other brothers and the widow of the testator, and others interested in his estate in case the will should be held invalid.

The action was tried before BRITTON, J., who gave judgment (3 O. W. R. 35) declaring the will to be invalid on two grounds, namely, for want of due execution according to law, and also for want of sufficient proof that the instrument propounded was the last will of deceased. Plaintiffs appealed.

J. L. Whiting, K.C., and W. E. Middleton, for appellants.

J. A. Hutcheson, K.C., for defendant Jane E. Connell, the widow.

G. H. Watson, K.C., and C. F. Maxwell, St. Thomas, for the other defendants.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.), was delivered by

MACLENNAN, J.A.—The undisputed facts are the following: The deceased at the time of the making of the alleged will was a farmer, of mature age, having a wife still living, but without children. His father was still living, and he had six brothers, including the two plaintiffs, and two or three sisters. He was a prosperous man, having accumulated a large estate, amounting at the date of the will to about \$50,000, and at the time of his death estimated at from \$70,000 to \$80,000. A few days before the making of the will he became ill with an attack of what is said to have been