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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 20TH, 1916.

*BEAMENT v. FOSTER.

Will—Action to Establish—Due Execution—Testamentary Capacity—Insane Delusions not Affecting Dispositions of Property—Finding of Fact of Trial Judge—Appeal—Parties—Beneficiaries.

Appeal by the defendant from the judgment of the Surrogate Court of the County of Carleton in favour of the plaintiff, the executor named in the will of Robert Foster, deceased, in an action to establish the will, arising out of a petition for letters probate.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, J.J.

Glyn Osler, for the appellant.

A. H. Armstrong, for the plaintiff, respondent.

MEREDITH, C.J.C.P., delivering the judgment of the Court, said that the appellant was the testator's only child and heir at law, and the main ground of opposition to the will was alleged mental incapacity of the testator, it being said that he was subject to insane delusions.

The onus of proof that the document propounded is in truth the last will of a capable testator is, in the first place, upon him who propounds that will, but that onus is sufficiently satisfied by proof of the execution of the will in the manner required by law, by an apparently competent testator; and the onus then shifts to him who opposes the will, and that onus is in turn

*This case and all others so marked to be reported in the Ontario Law Reports.