

HIGH COURT DIVISION.

MEREDITH, C.J.C.P.

JANUARY 3RD, 1916.

*LLOYD v. ROBERTSON.

Will—Action to Set aside after Probate Granted—Judicature Act, R.S.O. 1897 ch. 51, sec. 38—R.S.O. 1914 ch. 56, sec. 3—Want of Testamentary Capacity—Undue Influence—Onus of Proof—Findings of Fact of Trial Judge—Will Set aside as Regards Benefits to Parties before Court — Rights of Beneficiaries not before Court—Costs.

Action for a declaration that a certain testamentary writing signed by John Lloyd, deceased, and admitted to probate by the proper Surrogate Court, was not the true last will and testament of the deceased, and to set aside the grant of letters probate.

The action was tried without a jury at Stratford.

J. C. Makins, K.C., for the plaintiff.

J. J. Coughlin, for the defendants.

MEREDITH, C.J.C.P., said that there was but one question involved in the action, and that question was entirely one of fact: is the will in question the last will of John Lloyd, deceased?

The plaintiff attacked it on the grounds of want of testamentary capacity and undue influence; the defendants pleaded that the testator "was of sound mind and testamentary capacity;" and that the will was "not obtained by any undue influence;" and that "it is the true last will and testament" of the said John Lloyd.

Probate of the will was granted to the executors named in it, by the proper Surrogate Court, the proceedings there having been taken in common form, without notice to the plaintiff, who is one of the two sons of John Lloyd, they two being his only heirs at law and next of kin him surviving.

The proceedings in the Surrogate Court do not stand in the way of a determination here of the questions involved in this action: Judicature Act, R.S.O. 1914 ch. 56, sec. 3; R.S.O. 1897 ch. 51, sec. 38.

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