

for by the defendant and the defendant's son. The will was drawn by the medical man who attended the testator.

The plaintiff's allegation was that the defendant was the confidential adviser of the testator, that the testator was wholly under the influence of the defendant, and acted without independent advice.

The trial Judge came to the conclusion that the document executed was really not the will of the deceased.

After a review of the evidence, the learned Judge said the letters probate were *prima facie* evidence of testamentary capacity, and that the onus was on the plaintiff, the person attacking the will: *Badenach v. Inglis* (1913), 29 O.L.R. 165, 172, 189. If the circumstances were such as to shift the onus to the defendant, he had satisfied it. The testimony of the medical man who drew the will put it beyond doubt that the testator was competent to give sufficiently definite and explicit instructions for the will; that he did so; and that it was drawn in accordance with his instructions.

There was nothing in the evidence to lead to any reasonable conclusion that the defendant had such influence over the testator as would have enabled him to persuade or compel the testator to make a will not in accordance with his own views or intentions, or that he sought to use or did use any such influence over him in connection with the will. There was no evidence that the defendant procured the will to be made or that it was other than the voluntary act of the testator.

The document propounded by the defendant should be upheld as the true last will and testament of the testator.

There should be no costs of the trial, but the plaintiff should pay the costs of the appeal.

*Appeal allowed.*