

The action was tried without a jury at Kingston.

A. B. Cunningham, Kingston, for plaintiff.

J. L. Whiting, K.C., and F. M. Brown, Kingston, for defendant.

FALCONBRIDGE, C. J.—Defendant applied about 8th September, 1900, to the Surrogate Court for probate of the alleged will of Hannah Fenwick, whereupon Barnabas Dawson, a brother of deceased, and John Pope, husband of a deceased sister, lodged a caveat. Then an arrangement was arrived at whereby the defendant paid them \$1,500 as consideration for their withdrawing the caveat and agreeing to place no barriers in the way of the defendant's obtaining quiet possession of the estate. There were ten sets of heirs or next of kin, including Dawson and the children of Pope; the estate was worth about \$5,000; so that Dawson and Pope got each \$250 more than Dawson, or Pope as representing his children, would have received upon an intestacy. By this selfish and suspicious arrangement defendant obtained probate of the document and possession of the estate; but he is not in any better position by reason of the probate thus obtained, as regards onus of proof or otherwise, than if he were now originally propounding the will.

The evidence against the capacity of deceased to make a will on 8th August, 1894, rather preponderated over that offered for the defence. But on the facts and the authorities there is a clear case of undue influence. The will was drawn by a magistrate. . . . There is the significant fact that he drew and caused to be signed by Hannah Fenwick and the defendant (at the same time as the alleged will was signed) an agreement bearing even date with the alleged will, whereby deceased, "in consideration of her maintenance during her natural life and other valuable considerations," granted and assigned to defendant all her money on deposit, notes, mortgages, and furniture, being all or practically all her property. Such a paper was never prepared by any one really acting in the interest of deceased, and it sheds light on the circumstances attending the execution of the alleged will. . . .

Judgment declaring the alleged will to be void and of no effect, with costs.

A. B. Cunningham, solicitor for plaintiff.

F. M. Brown, solicitor for defendant.