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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JUNE 27TH, 1916.

*LLOYD v. ROBERTSON.

Will—Action to Set aside—Want of Testamentary Capacity—Undue Influence—Onus—Findings of Fact of Trial Judge—Reversal on Appeal—Costs.

Appeal by the defendants from the judgment of MEREDITH, C.J.C.P., 35 O.L.R. 264, 9 O.W.N. 339.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

W. N. Tilley, K.C., and J. J. Coughlin, for the appellants.
Glyn Osler, for the plaintiff, respondent.

The judgment of the Court was read by GARROW, J.A., who, after setting out the facts, said that there was no explicit finding that the testator was not of testamentary capacity. The finding was that the will had been procured by the defendant Albert Lloyd, and that he had not satisfied the onus resting upon him of shewing that the paper-writing propounded contained in truth the last will of the deceased. GARROW, J.A., was, with deference, unable to agree with the finding. The will could not be said to have been "procured" by the defendant Albert Lloyd at all. The burden of proof had, upon the undisputed evidence, been fully and amply discharged.

There was no good reason why the clause of the will which bequeathed the residue to Albert should not stand as part of the will.

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