

was to be contributed only in respect of right of way claims arising after the date of the agreement.

Held, affirming the judgment appealed from, that the agreement must be construed as being controlled by the provisions of the last clause thereof; that said last clause was not inconsistent with the previous clauses of the agreement and that the vendees were bound to contribute to the payment of such claims and legal expenses in respect of the right of way to the extent of the \$5,000 mentioned in the last clause.

Hague, for appellants. *Dandurand*, K.C., for respondents.

Que.]

MAYRAND v. DUSSAULT.

[April 2.

Will—Testamentary capacity—Undue influence—Fraud and artifice—Improper suggestion—Captation—Importunity—Deception by beneficiary—Concurrent findings of fact—Reversal on appeal—Practice—Revocation of former will—Onus of proof.

The promoter of a will by which he takes a benefit is obliged to produce evidence clearly shewing that, in making the will, the testator acted without improper suggestion or undue influence in the revocation of a former will. Shortly after his marriage, the testator and his wife made their wills, respectively, by which they each constituted the other general residuary legatee. A short time before the death of the testator from a wasting disease, the defendant took advantage of the testator's weakness and by artifices and improper suggestions so influenced him as to secretly procure the execution of another will by which the former will was revoked and the defendant was given the bulk of the testator's estate.

Held, reversing the judgment appealed from, that, under the circumstances, the insidious methods persistently made use of by the defendant amounted to captation and undue influence and that, in the absence of clear proof that the testator was not deceived and misled thereby, the will should be annulled.

As there were concurrent findings by the courts below against the contention that the testator was of unsound mind at the time of the execution of the second will, the Supreme Court of Canada refused to interfere on that ground.

Bisaillon, K.C., for appellant. *Mignault*, K.C., and *Bonin*, K.C., for respondent.