

RIDDELL, J.

NOVEMBER 5TH, 1910.

*MCINTEE v. MCINTEE.

*Will—Testamentary Capacity—Delusions—Proof of Existence—
Effect on Disposition of Property — Contestation of Will —
Proof in Solemn Form—Costs—Unfounded Charge of Undue
Influence.*

Action to establish the will of Mrs. McIntee, a widow. Proof of the will in solemn form was sought in the Surrogate Court of the County of Peel, and the contestation was removed into the High Court.

W. H. McFadden, K.C., for the plaintiff.

H. D. Petrie and W. V. M. Shaver, for the defendant Edward McIntee.

T. J. Blain, for the defendant J. S. McIntee.

RIDDELL, J.:—The testatrix was a widow, who died in the present year, aged about 85 or 86, and the will of which probate is asked was made on the 23rd May, 1907.

The objections taken are two in number: first, the want of testamentary capacity; and second, undue influence alleged on the part of the plaintiff, one of her sons. The latter charge is wholly unfounded—no attempt was made at the trial to support it, and it never should have been made. The former presents more difficulty.

The testatrix had had seven children: (1) Elizabeth Coulthurst, married, of Maryland, U.S.A.; it does not appear whether she is living or dead, but I made an order that she (or her representatives) should be represented by another daughter, Mrs. Montgomery; (2) John Spencer McIntee, who is a beneficiary under the will and is named as an executor therein; he did not join in applying for probate, for a reason which will appear later, and took at the trial a neutral position; (3) William James McIntee, the plaintiff; (4) Mary Victoria McIntee, an unmarried daughter, made a defendant; (5) Emeline Montgomery, wife of John Montgomery, of Montreal, who gave evidence at the trial, and repudiated any idea that she should share in the estate; (6) Edward McIntee, who now calls himself Edward McIntyre, and who is the active contestant of the validity of the will; (7) another son . . . who died some years ago . . .

* This case will be reported in the Ontario Law Reports.