

1895

CURRIE v. CURRIE.

*Feb. 23.

*May 6. *Will—Action to annul—Capacity to make—Evidence of capacity—Parties.*

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side) (1), reversing the judgment of the Superior Court in favour of the appellant.

The action was brought for annulment of a will in favour of appellant the execution of which was procured by him when, as the declaration alleged, the testator was not capable of making it. The Superior Court dismissed the action because all necessary parties had not been summoned. The Court of Queen's Bench reversed this decision and also held that the execution of the will had been procured by undue influence, and annulled it.

The Supreme Court affirmed the decision of the Court of Queen's Bench as to parties holding that the Superior Court should itself have summoned the parties deemed necessary. It also affirmed the judgment as to the will on the ground that the onus was on the party procuring the execution to prove capacity, and that he had not only failed to do so but the evidence was overwhelming against him.

Appeal dismissed with costs.

Robidoux Q.C. and McCormick Q.C. for the appellant.

deMartigny for the respondent.

*PRESENT :—Sir Henry Strong C.J., and Fournier, Taschereau, Sedgewick and King JJ.