H. C. OF A. 1914.

BARRY v. HEIDER.

on whose statement he thought fit to rely. Whether that will be of any use to Gale is for him to determine.

With respect to Heider, as I have said, the position is entirely different, and the appeal should be dismissed.

Appeal dismissed with costs as against the respondent Heider. Judgment appealed from varied by adding to the declaration in favour of the respondents the following words:—"but subject nevertheless so far as regards the defendant Gale to a lien for £1,200 *and interest for unpaid purchase money in favour of the plaintiff." Case remitted to the Supreme Court.*

Solicitors, for the appellant, *Harold T. Morgan & Morgan.*
Solicitors, for the respondents, *Gale & Gale.*

B. L.

[HIGH COURT OF AUSTRALIA.]

JOHN LANDERS AND ANOTHER . . APPELLANTS;
PLAINTIFFS,

AND

ADA ADELINE LANDERS . . . . RESPONDENT.
DEFENDANT,

H. C. OF A. 1914.

SYDNEY, *Nov.* 25, 26, 27, 30.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Will—Probate—Testamentary capacity—Insane delusion—Drunkenness—Evidence.

Griffith C.J., Barton, Isaacs and Rich JJ.

In an action for probate the executors made a *primâ facie* case that the testator, when he gave instructions for his will and executed it, was of sound

disposing mind and memory. The defendant sought to prove that the testator was then suffering from an insane delusion. The trial Judge found that that delusion existed both before and after the making of the will, and, not being satisfied that the delusion did not operate upon the testator's mind when he made his will, he refused to grant probate.

Held, that the evidence did not justify the inference that the delusion existed when the instructions were given or when the will was executed ; and, therefore, that the executors were entitled to probate.

Decision of the Supreme Court of New South Wales (*Street* J.) reversed.

APPEAL from the Supreme Court of New South Wales.

An action was brought in the Supreme Court by John Landers and John Gillett, executors of the will of Peter Landers, deceased, against Ada Adeline Landers, his widow, asking that probate of the will should be granted to them, and that the defendant should be ordered to remove a caveat lodged by her against probate being granted to them. The material defences were that at the time the will was executed the testator was not of sound and disposing mind, memory and understanding, and that he did not know and approve of the contents of the will.

The material facts are stated in the judgments hereunder.

The action was heard before *Street* J., who found that the testator's mind, weakened by his habits of excessive drinking, had become a prey to the belief, which had no foundation in fact, that his wife was trying to poison him, and that that belief existed both before and after he made his will. The learned Judge further found that the plaintiffs had not discharged the burden which was upon them of satisfying him that when the testator made his will he was not influenced by that belief. He therefore gave judgment for the defendant.

From that decision the plaintiffs now appealed to the High Court.

Langer Owen K.C. (with him *R. K. Manning*), for the appellants.

Gannon K.C. (with him *Martin*), for the respondent.

During argument reference was made to *The Glannibanta* (1);

(1) 1 P.D., 283, at p. 287.

H. C. OF A. 1914.

LANDERS v. LANDERS.

Aitken v. *McMeckan* (1); *Brogden* v. *Brown* (2); *Davies* v. *Gregory* (3).

Cur. adv. vult.

Nov. 30.

GRIFFITH C.J. The grant of probate in this case was resisted on the ground of the incapacity of the testator. The testator, who died in May 1913, was a land owner and grazier, his estate being at a place which he called "Tourable," near the town of Coonamble in New South Wales. The total value of his property was about £6,000. The respondent is his widow, whom he married in July 1907, being then a bachelor about fifty years of age. The respondent was then a widow with three daughters, and had been the testator's housekeeper and cook for four or five years. The marriage was not a happy one, and there were no children of it.

By his will, of which the appellants seek probate, and which was executed on 6th August 1912, he gave the following legacies:—£1,500 to his brother John, £500 to his brother Michael, £500 to be divided between the living issue of his brother Michael, £250 to a sister, £500 to his wife, £500 to her youngest daughter Fanny, and £250 to the Coonamble Roman Catholic church. The residue of his estate he gave to be divided between his brothers John, Michael and William, John taking one-half and the others one-quarter each.

The main case made by the respondent at the hearing was that the testator had for some years before his death been an habitual drunkard with only occasional intervals of sobriety, and that he was actually in a drunken condition on the day of the execution of the will. That case was mainly supported by the evidence of the respondent and her three daughters. *Street* J. regarded their evidence as untrustworthy, and as to the testator's condition on the date of the will as deliberately untrue. The will was attested by Mr. Button, a solicitor who had been practising in Coonamble for seventeen years, during the whole of which time he had known the testator well, and by Dr. Belli, who had been the

(1) (1895) A.C., 310, at p. 316. (2) 2 Add., 441, at p. 444.
(3) L.R. 3 P. & M., 28.

testator's medical adviser for some years. Both of these gentlemen gave evidence, to which I will refer later more particularly. Mr. Thompson, the manager of the Bank of New South Wales at Coonamble, had known the testator, who was a customer of the bank, for some years, and described him as being very careful in business, very clear, and very cautious. He also said that the testator was sometimes under the influence of liquor, but never when he was doing business. Dr. Belli said that the testator occasionally engaged in drinking bouts, and that in those circumstances he was "like a very madman." More than once the testator was an inmate of Dr. Belli's hospital on account of excessive drinking, once from 2nd to 20th June 1912, shortly before the will was made. On the latter date he left the hospital perfectly recovered. He was not again in the hospital until 23rd March 1913, when he remained there until 1st April. Dr. Belli says that on 6th August 1912 the testator was perfectly sober.

The testator wrote a firm, clear hand. He operated upon his banking account by cheques which he signed in a firm, clear hand, and filled in in an equally firm, clear hand. Dr. Belli had observed that he could not write when he was under the influence of drink. Cheques signed and filled in by the testator contemporaneously with all the material dates in the case were produced, and on inspection appear to be written and signed in a clear, firm handwriting. Another specimen of his handwriting which was produced was written shortly before his death when he was very weak and ill. It is entirely different from his handwriting on the documents written at the material times.

One other piece of evidence given in support of the general case for the respondent should be mentioned. In December 1912 the testator was suffering from a very bad drinking bout at Manly, near Sydney, when he was attended by Dr. Thomas, who thought that he must have been practically imbecile for some years. But it was proved by the clearest evidence that that conclusion was unfounded.

The main case made by the respondent as to the testator being practically always drunk, and in particular when the will was executed, therefore failed.

H. C. OF A. 1914.

LANDERS v. LANDERS.

Griffith C.J.

There was then a subsidiary case: that the testator was labouring under an insane delusion that his wife was trying to poison him. If that fact had been established it would have shown, of course, that the testator was incapable of weighing and justly appreciating the claims of his wife to a share in his bounty. That case rested almost entirely on the evidence of the respondent and her three daughters, who stated that the testator frequently said that his wife was trying to poison him. No dates are fixed for the occasions on which these statements are alleged to have been made, except in one instance, in December 1912, when the testator was in a state of delirium. Every other occasion when they were said to have been made was in the course of a drinking bout. The evidence of the respondent and her three daughters was not corroborated except as to two or three instances. One instance was an occasion when the testator was said to have filled a bottle with liquor which he said he was going to take to town to get analyzed. It does not appear that he ever did so. One witness, who had been a guest in the testator's house, said that on two occasions she had heard the testator say that his wife was trying to poison him, once to her, and once to his wife herself. She thought that both these occasions were in 1911. Another witness, Perry, who had been in the testator's service for about twelve years, said that during the last three or four years of his life the testator often complained that his wife had poisoned him. The value of his evidence, which was to the effect that the testator was seldom sober, may be inferred from the fact that he said that he often had to wait for his wages until the testator became sober enough to make the necessary calculations. It appeared, however, from the books kept by the testator that Perry received all his wages for the last three years of his service in the form of two cheques, one of £50 odd and the other of £30 odd.

On the other hand, there was the evidence of Mr. Button as to the instructions for the will, its preparation and its execution. In that connection there are three material dates. On 13th October 1910 the testator went to Mr. Button and consulted him as to what would become of his estate if he should die intestate, saying that he was thinking of leaving his wife

nothing, because, as he said, she had materially interfered with his men and was of little or no assistance to him in managing the property, and also that he intended to provide for the respondent's youngest daughter Fanny, who, he said, had been quite as good to him as his wife. Mr. Button explained the law applicable if he died intestate. Nothing was said again on the subject of a will until 23rd March 1912, when the testator came to Mr. Button's office, and said that he had seen a story about the facility with which a divorce could be obtained in America, an example being given in which a husband obtained a divorce on the ground that his wife did not provide him with proper food when he was ill. He asked whether a divorce could be obtained on that ground in New South Wales. On being told that it could not, he asked whether he could obtain a divorce on the ground that his wife had locked him out of his bedroom, had refused to give him proper food, and to supply him and his men with meals, and had obstructed him in the management of the station. Mr. Button told him that he could not. He at that time evidently entertained feelings of strong resentment against his wife. He then told Mr. Button that he wanted to make his will, and that he had been to his bank and had obtained particulars of his assets and liabilities. He said that he would not leave his wife anything unless the law compelled him to do so. Mr. Button told him that he ought to provide for his wife according to his circumstances. The testator then said that he would leave her £100 and her daughter Fanny a similar amount. He was with Mr. Button on that occasion for over an hour, during which he gave detailed instructions as to the will, and his wife's claims were considered and discussed as I have mentioned. On 2nd April he came again to Mr. Button and asked if the will was ready, and was told it would be ready on the next day. On 3rd April he called again, read the will, which had been drawn, and made an alteration in the name of one of the executors for reasons which he gave. The importance of the interview of 23rd March and the discussion that took place place when the instructions for the will were given, is shown by the rule enunciated by Sir *James Hannen* in *Parker* v. *Felgate* (1), and approved of by

(1) 8 P.D., 171.

H. C. OF A. 1914.

LANDERS v. LANDERS.

Griffith C.J.

the Privy Council in *Perera* v. *Perera* (1), that when a man gives instructions for his will, and at that time fully understands what he is doing, then, if a will is executed which complies with those instructions, that is ordinarily sufficient to support the will. Mr. Button wrote to the testator on 27th June telling him that the will was ready for execution, but the testator did not come to Mr. Button's office until 6th August, when there was a further discussion. The will was read to him, and Mr. Button tried to persuade him to increase the gift to his wife, which he finally agreed to do, making it £500. He then said that if he gave his wife £500 he would also have to increase the legacy to his wife's daughter Fanny to £500. He also told Mr. Button that his wife had threatened to upset any will he made. At this suggestion Mr. Button thought it desirable that Dr. Belli should see him, and requested that gentleman to come to his office. An appointment was made for a later hour in the afternoon, and in the meantime the will was re-ingrossed with the altered provisions. At 5 o'clock Dr. Belli arrived, and had a long conversation with the testator. As a result he was satisfied that the testator was sober, and in perfect possession of his faculties. The will was then executed.

There is no doubt that if this evidence is believed, the testator was then perfectly sober, understood the contents of the will, and approved of them. At none of the interviews with Mr. Button was anything said or suggested as to the testator's wife trying to poison him.

The learned Judge thought on the evidence that this accusation had been frequently made by the testator, and that it could not be treated merely as wild words. He thought that, although in his sober intervals the delusion might not have dominated the testator's mind to the same extent as it did when he was drunk, yet he thought that the impression and belief remained in his mind more or less during the last three or four years of his life, and had become a sort of delusional insanity. There was no evidence, however, that the testator ever gave expression to the idea except when he was very drunk and practically delirious.

Reference was made by Mr. *Owen* to two cases in which the

(1) (1901) A.C., 354, at p. 361.

rule to be applied in weighing such facts as these is referred to. One is *Brogden* v. *Brown* (1), where the case made was one of delirium, and Sir *John Nicholl* pointed out the difference between permanent insanity, properly so called, with occasional lucid intervals, and occasional delirium with general sanity. He said that "the *apparently* rational intervals of persons, merely delirious, for the most part, are *really* such. Delirium is a fluctuating state of mind, created by temporary excitement; in the absence of which, to be ascertained by the *appearance* of the patient, the patient is, most commonly, *really* sane." He went on to point out that in the case of delirium the difficulty of proving a lucid interval is always less than in the case of permanent insanity, properly so called. In another case in the same volume, *Ayrey* v. *Hill* (2), the same doctrine was applied by the same learned Judge to a case of delirium arising from drunkenness.

The learned Judge felt himself at liberty to conclude that the idea that the testator's wife was trying to poison him had become a permanent delusion. In my opinion it is a mistake to treat the vague ravings of a drunken man as indicating any fixed belief at all. The inference that they operate upon his mind when perfectly sober so as to become a kind of delusional insanity is, at best, a mere conjecture, which cannot weigh against the positive evidence of unimpeachable witnesses corroborated by contemporaneous documents. The will itself by its contents shows that the testator considered the claims of the different persons who might be supposed to deserve consideration in the disposal of his estate. He considered his brothers, with whom as a bachelor he had lived for many years, his wife, of whom I have said all that is necessary, and her daughters. He was perfectly free to make any disposition he chose of his property. The documents show that on the days that are important his nerves must have been in a good condition. In these circumstances, although this Court is loth to interfere with the decision of the primary Judge on the facts, yet in this case it seems to me that his process of reasoning was erroneous, and that there was no evidence to warrant the conclusion that the testator did not perfectly understand the

(1) 2 Add., 441, at p. 444. (2) 2 Add., 206.

H. C. OF A. 1914.

LANDERS v. LANDERS.

Barton J.

contents of his will, or was not of sound disposing mind and memory when he made it.

I think, therefore, that the appeal should be allowed.

BARTON J. read the following judgment:—The appellants do not question any of the findings of *Street* J. on matters of pure fact as apart from the inference upon which he determined the case. The respective credibility of those witnesses whose statements were in conflict was fully considered and pronounced upon by him, and had not to be argued before us. His conclusions on that subject remain intact. The documentary evidence does not assist to support the respondent. It is a case in which this Court has as good an opportunity of arriving at a correct result as his Honor had, seeing that the question before us resolves itself into the consideration of the inference which is the most reasonable one to be drawn from facts as to which the findings are not disputed. The case most applicable is not *Dearman* v. *Dearman* (1), which was relied upon, but *The Glannibanta* (2).

His Honor appears to have considered that a delusion which is shown to affect the mind of a person during bouts of drunkenness, or in the condition which accompanies the process towards recovery, is still present, and influences his acts in relation to his property, at times when his sobriety and general capacity are beyond question. No doubt this testator, when in a drunken condition verging upon *delirium tremens*, or when the complete or, at any rate, considerable withdrawal of the supply of drink to the system left the patient nevertheless in a nervous and fanciful condition, expressed the belief that his wife had poisoned or was attempting to poison him. Two or, at most, three occasions of such statements before the making of the will were definitely deposed to; for no regard could possibly be paid to the reckless evidence of Perry. But his expressions and conduct while sober were closely investigated at the trial, and there was no trace of the existence of the delusion at such times. In fact, the unquestioned evidence on that point was conclusive, in my opinion, that no such delusion then operated or, indeed, existed. Had it been awake or alive, it could scarcely have

(1) 7 C.L.R., 549. (2) 1 P.D., 283.

failed to appear on 5th or 6th August 1912, nine months before his death, when he gave full instructions for his will and, after its preparation, executed it. There is no reason to doubt the evidence of his solicitor, Mr. Button, or of Dr. Belli, nor does his Honor seem to have discredited it in any way. To the former the testator gave full reasons for the intention which he then entertained of omitting to make any provision beyond £100 for the respondent when left a widow. His reasons may or may not have been well founded or sufficient. We cannot determine that. But it is not pretended that he made them under insane delusion, or that he did not fully believe what he said. Mr. Button persuaded him to make the sum £500. His doing so was a very clear exercise of testamentary capacity. But to have left his wife a considerable legacy while under the belief, however unfounded, that she had persistently attempted to murder him, would certainly have been strange. That of itself goes far to show that his mind was not affected in the way contended for when he disposed of his property.

I cannot take the evidence of Dr. Thomas as outweighing the strong facts deposed to by those who knew the testator's mental condition while sober, and especially by those who observed it while the disposal of his property was under consideration. Dr. Thomas never saw him till nearly five months after the execution of the will. His illness had evidently made great strides in the interval and his habits had become more intemperate, and marked by a dirtiness and a want of control of his functions which do not seem to have prevailed at any time before the execution of the will. There was, in fact, a vast difference between Landers for years before and during the time the will was made, and the same person when his continued drunkenness and the advance of disease rendered his condition open to a description by Dr. Thomas founded upon his symptoms at a late period of that downward progression. I think, without doubt, that the testamentary capacity was fully established, and that there was no evidence that the alleged delusion, if present during periods of drunkenness, was present at the times when he gave instructions for and executed his will. Indeed, I might go further and say that its absence at those times was demonstrated.

H. C. OF A. 1914.

LANDERS v. LANDERS.

Isaacs J.

I agree that the appeal should be allowed.

ISAACS J. read the following judgment:—The question on this appeal is whether the testator was wanting in that sound understanding necessary to the exercise of the power of testamentary disposition, by reason of an insane delusion that his wife was trying to take his life by poisoning him.

It is indisputable that on a very few—not more than three authenticated—occasions before he made his will, and on a very few—about three—occasions after he made his will, the testator did say something to the effect that his wife was trying to poison him. On every such occasion he was suffering greatly from the direct effects of drink, and it is a fact also that his wife was in the habit of diluting the liquor he was taking with water or tea. No occasion has been proved when he in his sober moments expressed such a notion.

His ordinary capacity for business is proved. When he originally gave instructions for his will (23rd March 1912), when he revised and altered those instructions (3rd April 1912), and when he executed the will (6th August 1912), he was perfectly sober; and on 22nd March and on both the later dates transacted commercial business and filled in and signed cheques, which *ex facie* show clear business aptitude and firmness of hand. No suggestion is made of any such idea escaping him on those important dates.

The learned primary Judge finds the belief to be an insane delusion.

I should be slow to say that the testator's belief, though unjustified by the facts, was a sign of insanity. A man whose powers of logical reasoning and balanced judgment are so disturbed by alcohol as the testator's were during his drinking bouts is not necessarily insane because his temporary beliefs while intoxicated are absurd. A recurrence of the cause may produce a repetition of the impression. But the apparent cause is the foreign substance introduced into the system, with a well known disturbing effect, and it is obviously more difficult to characterize the absurdities of a drunken man as insanity than similar absurdities having no assignable cause except a naturally

disordered brain. And this is especially cogent when, as here, we find no trace of that unfounded impression when the foreign cause is absent. The letter to Dr. McVittie is clearly susceptible of and properly referable to quite another subject. Not even the memory of the alleged delusion is shown to persist in the absence of the specific exciting cause.

It is not correct, therefore, in these circumstances to apply to the proponents' case the rule acted on in *Boughton* v. *Knight* (1). It is laid down in *Barry* v. *Butlin* (2), with reference to the proof of wills, that "the *onus probandi* lies in every case upon the party propounding a will; and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator." But, said *Parke* B. (3), in delivering the judgment in that case, "the strict meaning of the term *onus probandi* is this, that if no evidence is given by the party on whom the burthen is cast, the issue must be found against him. In all cases the *onus* is imposed on the party propounding a will, it is in general discharged by proof of capacity, and the fact of execution, from which the knowledge of and assent to the contents of the will are assumed."

The real question is: Has the onus been discharged? It was proved by Mr. Button, the solicitor who took the instructions, prepared the will in accordance with those instructions, submitted the will to the personal perusal of the testator, explained it to him, discussed the dispositions and witnessed the will, that the testator, whom he had known for a considerable time, was sober and apparently competent. Dr. Belli, his then medical adviser for some years, specially called in to consider his competency, proved the same thing, and he accepted the responsibility of attesting the will. Add to that the transaction of business already adverted to, and there is a complete *primâ facie* case of competency on the only days when competency is necessary, namely, the days when the instructions were given and the will executed. And of these days, as settled by *Perera* v. *Perera* (4), the day of instruction is the more important. The learned primary Judge, who heard the evidence of Button and Belli, believed them; and,

(1) L.R. 3 P. & M., 64.
(2) 2 Moo. P.C.C., 480, at p. 482.
(3) 2 Moo. P.C.C., 480, at p. 484.
(4) (1901) A.C., 354, at p. 362.

H. C. OF A. 1914.

LANDERS v. LANDERS.

Isaacs J.

further, disbelieved as not merely untrue, but as intentionally untrue, the evidence of the opponent and her daughter as to the actual condition of the testator at the crucial periods.

The proponents, therefore, discharged their *onus probandi*, subject to a counter-case of an affirmative nature as introducing a specific element of disqualification to destroy the *primâ facie* unclouded case established. When such a *primâ facie* case is proved, it is not enough to prove that the testator was seriously ill or of intemperate habits even up to a few days before the will was made. See *Bur Singh* v. *Uttam Singh* (1). In the present case, as soon as the apparent competency of the testator was established, there was an onus on the opposing party to show not merely the erroneous belief during drunken bouts, but that that belief even during those bouts was such as only an insane man would entertain, as having no foundation except in a disordered mind; and, further, that it was either a belief arising independently of the drink, and only manifested when drink lessened secretiveness, or was so deeply ingrained by continuous impressions during intoxication as to persist during sobriety. Otherwise there is not established the necessary sequence to connect the irrational belief with the point of time where it would conflict with and so cast suspicion upon the apparent sanity and complete competency *primâ facie* proved by the testimony on behalf of the proponents.

The evidence in support of independence or continuity of the belief is too weak in volume, in supporting data, in definiteness, and in opportunity for judgment of the witnesses who speak to it, to form any proper foundation for a conclusion of persistence. To deny on such scanty materials the testamentary capacity of an apparently competent person, rational in all other respects, and making a perfectly rational will, is dangerous. Not only, however, is the affirmative evidence weak, but what has struck me as all important from the beginning of this case is this, that the supposed persistent belief dominating the testator, and, if it existed, naturally dominating him, because it affected his own life, was never manifested in word or deed at any time when he was sober. When confiding in his legal and medical advisers, he makes

(1) 38 Ind. App., 13.

no suggestion of it, and he does not even seem to be aware that he ever expressed such a thought or that anyone said he had; no person is called who ever heard him hint at it when sober; he is not shown to have taken any precautions against poisoning, which might have been attempted in food as well as liquor; and when these powerful negative considerations are added to the weakness of the affirmative opinions—mere conjectures—I feel no doubt that, even assuming what I greatly doubt, namely, that the erroneous belief of the testator was at any time an insane delusion, the inference of persistence drawn by the learned primary Judge cannot be supported. It is merely a question of what inference should be drawn from the admitted facts; and on this we, as the Appellate Court, are in possession of the same materials as the primary tribunal, and must therefore perform the duty of expressing our own opinion. I am strongly inclined to the view that the opponent herself had no definite idea that the erroneous belief continued when the testator was sober, and therefore endeavoured to make a case that when he gave instructions for the will and afterwards executed it he was suffering from the effects of drink, and therefore subject to the hallucination.

For these reasons, I agree that the appeal should be allowed, and the will admitted to probate.

Rich J. I concur in the conclusion at which the Court has arrived.

I should not have added anything but for the remarks of my brother *Isaacs* with regard to onus of proof.

"The burthen of the proof," says Lord *Brougham*, "often shifts about in the process of the cause, accordingly as the successive steps of the inquiry, by leading to inferences decisive, until rebutted, cast on one or the other party the necessity of protecting himself from the consequences of such inferences; nor can anything be less profitable as a guide to our ultimate judgment, than the assertion which all parties are so ready to put forward in their behalf severally, that, in the question under consideration, the proof is on the opposite side": *Waring* v. *Waring* (1).

In the end the tribunal—the Court or jury—must be able,

(1) 6 Moo. P.C.C., 341, at p. 355.

H. C. OF A. 1914.

LANDERS v. LANDERS.

Rich J.

affirmatively, on a review of the whole evidence, to declare itself satisfied of the testator's competence at the time of the execution of the will: *Smith* v. *Tebbitt* (1); *Sutton* v. *Sadler* (2).

I do not think that *Street* J. disregarded this rule, although I do not agree with his Honor's finding.

The only point in the case before us is whether the delusion alleged to exist in the mind of the testator when drunk was also present in his mind when sober. The facts do not, in my opinion, lead to any such conclusion. The evidence has been referred to in the previous judgments, and I do not propose to go through it again. I am satisfied, on the whole of the evidence, that the alleged delusion did not affect the disposition of the testator's property: *Smee* v. *Smee* (3); *Hope* v. *Campbell* (4).

Appeal allowed. Judgment appealed from discharged. Probate granted. Caveat ordered to be removed. Appellants not objecting, costs of respondent up to 30th September 1913, *not including instructions for brief or of any subsequent proceedings, to be paid out of the estate.*

Solicitor, for the appellants, *J. D. Y. Button*, Coonamble, by *L. G. B. Cadden.*

Solicitor, for the respondent, *F. S. Hegarty*, Coonamble, by *Minter, Simpson & Co.*

B. L.

(1) L.R. 1 P. & M., 398, at p. 436.
(2) 3 C.B. (N.S.), 87, at p. 97.
(3) 5 P.D., 84, at p. 91.
(4) (1899) A.C., 1, at p. 7.