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IMPORTANT PROBATE COURT JUDGMENT

Delivered by Judge J. Arthur Freeze in Probate Court of Kings County, in the Matter of the Estate of the Late Archibald Seely, of the Parish of Westfield

In the Probate Court of Kings County, in the matter of the Estate and Will of Archibald Seely, late of Land's End in the Parish of Westfield in the County of Kings and Province of New Brunswick, Farmer, deceased.

Judgment of J. Arthur Freeze, Judge of the said court, upon proceedings had for proof of the alleged last will and testament of the said Archibald Seely, deceased, in solemn form:

This matter arose upon the return of the Citation dated the fifth day of February, A.D. 1925, returnable on the eighth day of April, A.D. 1925.

The Citation was issued on the petition of Alexander G. Day, of the City of Saint John, testator, and Francis Kerr, of the same place, Barrister-at-Law; the executors named in the said alleged last will and testament.

The said will is dated the sixth day of November, A.D. 1924.

A caveat was filed by Messrs. Belyea and Gilbert on behalf of Barbara Ellen Masterman, a sister of the deceased, Henry Seely, a brother of the deceased, and George R. Seely, a nephew of the deceased (he said George R. Seely being a son of George Seely, deceased brother of the deceased Testator), against the granting of letters testamentary to John Seely or to any person named in the said will as executor thereof.

This caveat bears date the twenty-first day of November, A.D. 1924, and was filed on the twenty-second day of November, aforesaid.

Another caveat was filed by Messrs. Inches, Weyman & Hazen on behalf of Mary J. Collins, Isabelle Merritt, and Maude Fitzgerald, sole surviving children of Jane Scribner, a deceased sister of the said Archibald Seely, deceased.

This caveat is against the granting of letters testamentary to John Seely or any other person named in the said will as executor thereof.

It is dated the tenth day of February, A.D. 1925, and was filed on the eleventh day of February, aforesaid.

The said Archibald Seely, the deceased testator, died on the twelfth day of November, A.D. 1924, at the age of about sixty-six years. He had never been married, and during the latter years of his life had lived alone on his farm at Land's End in the Parish of Westfield in the County of Kings, aforesaid.

He left him surviving the following next of kin: A brother, Henry Seely, a farmer in Queens County, N. B.; and three sisters, Christina Graham of Saint John, N. B., one of the two beneficiaries named in the will, the said Barbara Ellen Masterman, of the State of Maine, and Margaret Miller, whose residence and domicile are unknown.

The deceased testator left also him surviving children of deceased brothers and sisters as follows: Five children of George Seely, deceased, the said George E. Seely being one, all of whom reside in the city of Saint John, N.B., except one, who is living in Boston; six children of Richard Seely, deceased, all resident in the said city of Saint John, except one, who lives in Saint John, except one, who lives in Boston; and one in Vancouver; three children of Patterson Seely, deceased, all living in the city of Saint John, of whom one is John E. M. Seely, the other of the two beneficiaries named in the will.

John E. M. Seely aforesaid, is named in both the said caveats filed, as John Seely.

Three children of Jane Scribner, deceased, whose residence was known to the executors, but who are the caveators represented by Messrs. Inches, Weyman & Hazen, and two of whom reside in the town of Revere in the State of Massachusetts, and the other one of whom resides in Springfield, in the said State of Massachusetts.

Under the will, a small bequest was left by the deceased testator, to his sister Christina Graham, of the said city of Saint John, and all the rest, residue and remainder of his estate, was left to his nephew, the said John E. M. Seely.

The said Francis Kerr and the said Alexander G. Day, the executors named in the will, were also the witnesses to the will.

On the return of the citation on the eighth day of April, A.D. 1925, the following appearances were entered: Mr. G. Earle Logan appeared for Francis Kerr and Alexander G. Day, the executors of the will. Mr. A. B. Gilbert appeared for Barbara Ellen Masterman, Henry Seely and George E. Seely, the caveators under the caveat dated twenty-first November, 1924.

Mr. D. King Hazen appeared for Mary J. Collins, Isabelle Merritt and

Maude Fitzgerald, surviving children of Jane Scribner, the caveators under the caveat dated the tenth day of February, A.D. 1925.

Mr. J. Frank Frauley appeared for Harry Seely, a nephew of the deceased testator, and in support of the will. At this hearing the evidence of the two executors Francis Kerr and Alexander G. Day was taken in support of the will, and the further hearing of the matter was adjourned until the twenty-ninth day of April, A.D. 1925, at which time I pronounced that a prima facie case in favor of the validity of the will had been proved and established; and thereupon Dr. Kelly, surgeon of the city of Saint John, and Dr. Bearisto, the resident physician of the Saint John hospital, were called, on behalf of those opposing the will.

After the evidence of Dr. Kelly and the evidence of Dr. Bearisto was taken, Mr. Logan representing the executors, and Mr. Frauley, representing Harry Seely, and Mr. Hazen, representing the caveators, Mary J. Collins, Isabelle Merritt and Maude Fitzgerald, then declared themselves as supporting probate of the will; and Mr. Gilbert representing the caveators, Barbara Ellen Masterman, Henry Seely and George E. Seely, declared himself as opposing probate of the will.

The further hearing was then adjourned until the eleventh day of May, A.D. 1925.

In the meantime allegations were filed by Messrs. Belyea and Gilbert, proctor and advocate for the caveators, Barbara Ellen Masterman, Henry Seely and George E. Seely. The allegations are in the words and figures following, that is to say:

The said Barbara Ellen Masterman, George E. Seely and Henry Seely, by George H. V. Belyea, their proctor and advocate, allege that:

1. The said alleged last will pronounced by the said executors is not the last will and testament of the said Archibald Seely but an expression of the will and wish of John Seely, nephew of the said Archibald Seely and residuary legatee and devisee under the alleged will.

2. The said alleged will of the deceased was not prepared on instruction of the deceased.

3. The execution of the said will was obtained by the undue influence of the said John Seely, nephew of the deceased, and Ethel McAllister and her sister Annie Shanks, or one of them.

4. That the execution thereof was obtained by duress of the said John Seely and Ethel McAllister or both or either of them.

5. That the said alleged will of the deceased was not executed according to the requirements of the statutes governing the execution of wills in the Province of New Brunswick.

6. The said Archibald Seely never signed and executed, or either, said will.

On the said eleventh day of May, A.D. 1925, the evidence of the said George E. Seely and the said Henry Seely, was taken on behalf of those opposing probate of the said will, and the evidence of the said John E. M. Seely and Ethel McAllister, who were called as witnesses on proof of the said will, ten children of William Seely, deceased, four of whom reside in the said city of Saint John, three in Missoula, Montana, and another living there when last heard from, one in Boston and one in Vancouver; three children of Patterson Seely, deceased, all living in the city of Saint John, of whom one is John E. M. Seely, the other of the two beneficiaries named in the will.

Undue influence in the procuring of and in the execution of the said will is the only substantial question raised.

It will be seen that the testator died leaving a brother, three sisters, and a large number of nephews and nieces. Quite a number of these lived in Saint John. The others were scattered from the Atlantic to the Pacific in Canada and in the United States, and the whereabouts of at least one, a sister, was unknown.

John E. M. Seely, the principal beneficiary and a nephew of the deceased Archibald Seely, was left an orphan when quite young and was brought up at Land's End by his uncle the testator, and his aunt Barbara Seely, now Barbara Masterman, a sister of the testator, assisting in the work on the farm as he grew up to manhood.

Barbara Seely remained with her brother the said Archibald Seely, and brother the said John E. M. Seely, until she was about fifty years of age, when she married and left.

John E. M. Seely was then about twenty years of age and two or three years later he married and as he states, finding the farm rather small to support an additional family, he moved to another farm on the Saint John River near Westfield, about two years after his marriage; he was then about twenty-two years of age, being now about forty-two. Later on he moved to the city of Saint John to live.

George Seely endeavors to make out that John E. M. Seely and his uncle had quarrelled because his said uncle the testator would not give John E. M. Seely, a deed of the farm, and that

BLUENOSE NIGHT IN YANKEE CHURCH

Special Sunday Evening Service in First Baptist Church, Nashua, N. H., in Honor of Down Easters. —Music Was Furnished by a Male Chorus of Bluenoses.

We have received from a former resident of Kings county, a subscriber to the Kings County Record, now a resident of Nashua, N. H., a program of a special service held in Nashua, N. H., on Sunday evening, October 25th.

The service was known as "Bluenose Night," the special features of which were:

1. Sermon, "The Down East Home." 2. Talk, "Will Canada Stay British?" 3. Reading, "The Greatest Poem in the World." 4. Male chorus of Bluenoses. Deacon J. C. Tupper, choir leader.

Our correspondent writes as follows: In the First Baptist Church of Nashua, N. H., of which Dr. A. J. Archibald, N. H., is pastor, a special Sunday evening service was held in honor of "Down Easters." In the early part of the service the preacher gave four reasons why he thought Canada would stay British: (1) Because so many Canadians were British born or British ancestry; (2) because so many had been to the Empire; (3) because of the love of the Empire; (4) because of Canadian pride in the mighty Empire. This part of the service closed with the reciting of Tennyson's, "Charge of the Light Brigade."

There was a male chorus of fifteen young men made up wholly of Down Easters; those from New Brunswick were Roy Keirstead, Willard Keirstead, Ira Keirstead, Hedley Keirstead, Marshall Sharpe, Edward Erb and T. W. Birney, all from Collins, Kings county, and Archie MacRae, Allison MacRae and Lloyd Steeves, from Moncton.

The service was largely attended and the large number of Canadians present very much enjoyed it.

More than once, he wanted to be assured that if he made his will, he could alter it if he lived.

About eleven o'clock on the night of the sixth of November, 1924, Mr. Kerr was told by John E. M. Seely, that his uncle, Archibald Seely, wished to settle his business, and wanted him, Kerr, to go to the hospital at once.

John E. M. Seely got Alexander G. Day to take himself and Mr. Kerr to the hospital in his (Day's) car.

The three of them went into the ward where Archibald Seely was. Mr. Kerr asked Mr. Day to remain; but John E. M. Seely left almost immediately and remained away until the will was completely executed.

"Mr. Kerr on cross examination deposed that he had received an instruction from John as to the nature of the will he was to prepare; or I accept to be the beneficiaries; and I accept his statement here as well as elsewhere throughout his entire evidence."

After a few greetings Mr. Kerr proceeded to get his instructions. The testator told him "That he wanted things fixed up so that if he got better—they would not affect him after he got better. If anything happened he would feel everything was all right the way we had it put." He said "He wanted everything left to Jack; he had been like a son to him—helped him when he was sick and back and forth there."

He said Jack was entitled to the whole, he had been good to him and stayed by him when he was in trouble and came to help him when he needed help.

He further said that one sister might cause trouble, and he wanted to leave her a little money naming the amount. Kerr advised a will and proceeded to draw it up. As each paragraph was finished it was read to the testator, and the testator said "all right."

When it came to appointing executors, the testator asked how many were needed, and wanted to know if Mr. Day and Mr. Kerr would be all right and both consented to act.

After the will was read over to the testator, it was again read and signed. He said it was all right and that he would sign it. The testator was raised up in bed with pillows behind him and some enamel thing placed in front to put the will, both Mr. Kerr and Mr. Day standing there with him.

The testator wanted Mr. Kerr to make his mark for him, saying he was not able to make his signature. Mr. Kerr told him he could make it all right and the testator then wrote what was intended for his signature to the will, holding the pen himself.

In the opinion of the Court it is a sufficient signature.

Mr. Day and Mr. Kerr then signed as witnesses.

I find that the formalities of the Wills Act were all complied with.

Mr. Kerr who has been practicing law about twenty-five years with a considerable experience in testamentary matters, says, that in his opinion the testator was perfectly clear in his memory, mind and understanding and fully realized what he was doing.

The two doctors called by those opposing the probate of the will in no way weakened the effect of this evidence.

The sermon was on the "Down East Home" and Canadians present were reminded that if they were religious bankrupts they would not lay the blame on the old homes. For while many of the old home folk were only moderately well off, almost every child had opportunity for education, and a chance to know God. The first point was that the ideal Down East home had family prayer. That religion had a real place in the home. Second, the ideal Down East home was self-contained. That is the parents were able to keep the children in the home many evenings and make them happy there. The every night cinema with uncensored films were very destructive. Thirdly the Down East was permanent. Divorces were few because hard to obtain and people who marry mean it when they say, "Till God death shall separate us." Fourth, the ideal Down East home has been as a result of the lack of the lack of a flood of immigrants from countries where religious standards are lower. Old men in an art gallery who stood in front of a great picture of the Crucified One and said, "Bless Him I love Him." "So do I" said another man and another and another till a group had been brought together in their mutual admiration and affection for Jesus Christ. Let the parents of every home hold up Jesus Christ to their children's gaze until the children love Him and go out into the world feeling drawn to other men. That kind of reformation must begin in the home and spread out until nations are enveloped and peace and international esteem shall encircle the earth.

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LT. COL. G. S. KINNEAR NEW PRESIDENT

Sussex Officer Now Head of the New Brunswick Rifle Association With Lt.-Col. O. W. Wetmore First Vice-President.—Inter Maritime Shoot Next Year at Sussex in June

Substantial progress in the work of the N. B. Rifle Association marked reports of activities for the year presented at the annual meeting of the association held in Saint John last week. It was pointed out at the meeting that since the war the attendance at the annual shoots had gone up from 48 in 1920 to 120 in 1925, and that the cash prize list had increased from \$900 to nearly \$1,700. Several new trophies have been added since the war, including the following: The Perkins Trophy, presented by Captain Perkins, Sussex, for teams of five tyros; a challenge cup donated by Lt.-Col. O. W. Wetmore for competition among tyros; the Magee Challenge Cup, presented by Col. Murray McLaren, C. M. G., M. P., in memory of the late Major C. W. Magee, for cadets; a cup presented by Lieut.-Col. R. A. McAvity for the member of the non-permanent militia making the highest score in the grand aggregate; the cup presented by the T. Eaton Company, Ltd., to the competitor making the highest aggregate score at the 600-yard range. In addition to these trophies, the period since the war has seen the presentation of cash prizes by W. C. MacDonald, Ltd., Montreal, of over \$500.

At the meeting this year competition over the 800 and 900-yard ranges was introduced as well as competition of the 22 rifles. This latter event was very popular and will be enlarged next year. The attendance at this year's meet was the largest in the history of the association, the highest one previous being 105.

In fact, Dr. Bearisto states that the testator appeared all right to him mentally at the time he consented to the operation.

I have no hesitation in finding that Archibald Seely the testator was of sound and disposing mind, memory and understanding at the time that he executed the will.

The whole question now remaining is, whether or not undue influence was exercised on the said testator in making the will.

Mr. Belyea claims the will was made by the said testator to get rid of the importunities of John E. M. Seely and the others who were urging him to make his will.

The cancelling of the consent to the operation at the instance of John is urged as evidence of undue influence, by Messrs. Belyea and Gilbert in their factum.

In Adams vs. McBeath 27 S.C.R. page 13 (A.D. 1896) the rule as to evidence in undue influence cases, is stated thus: "In order to set aside a will on the ground that its execution was obtained by undue influence on the mind of the testator it is not sufficient to show that the circumstances attending the execution are consistent with the hypothesis that it was so obtained. It must be shown that they are inconsistent with a contrary hypothesis."

Having gone carefully over the evidence and applying this rule I cannot come to the conclusion that the circumstances attending the execution of this will were inconsistent with the hypothesis that the will was not obtained by undue influence.

Of all the relatives or Archibald Seely, John E. M. Seely, whom he had raised and who had been like a son to him, to use the old man's words, was the one to whom the testator's bounty would be most likely to go.

There is not a little of evidence adduced to show that the testator at the time prior to the making of the will, never expressed the intention of benefiting any of the caveators or any other of the numerous relatives except John E. M. Seely.

I therefore find that the will of Archibald Seely deceased, is a good and valid will.

I have confirmed in the opinion that I have drawn the proper conclusions from the evidence adduced in the present case, by the perusal of the case of Adams vs. McBeath above referred to.

That was a case in which the circumstances pointing to the probability of undue influence were very pronounced.

The beneficiary in that case was an absolute stranger in blood. The testator's two nephews toward whom he had a strong friendship and with one of whom he had for a long period of years carried on a correspondence in which he frequently expressed the intention that they should benefit under his will, there being no one else to whom he might leave his property, were both totally disinherited.

The will was drawn by a solicitor, a young practitioner, and a stranger to both the testator and the sole beneficiary, under and in accordance with the instructions of the sole beneficiary, who had told the solicitor that the testator had no relatives whatever.

The solicitor came with a prepared will to the bedside of the testator, whose condition of health was at least no better than that of Archibald Seely in the present case.

The testator was told by the beneficiary that the solicitor had

During the year the inter-Maritime shoot was held, the team from Nova Scotia winning, with New Brunswick second, and Prince Edward Island third. This shoot will be held next year in June at Sussex.

The following officers were elected: Patrons—Honourable W. F. Todd, Lieut.-Governor of New Brunswick; Colonel Commandant W. B. Anderson, C. M. G., D. S. O., commanding M. D. No. 7.

Honorary president, Colonel Murray McLaren, C.M.G., M.P.; honorary vice-president, Lieut.-Col. J. S. Frost; president, Lieut.-Col. G. S. Kinnear; 1st vice-president, Lieut.-Col. O. W. Wetmore; 2nd vice-president, Captain A. A. Dodge.

Representatives on D. R. A. Council:—Colonel Murray McLaren, C.M.G., M.P.; Captain W. W. McNairn, Sergeant A. S. Emery.

Council:—Lieut.-Col. H. C. Sparling, D.S.O., Saint John; Lieut.-Col. W. E. Forbes, Richibucto; Lieut.-Col. R. H. Arnold, Sussex; Major E. S. Hill, St. Stephen; Major J. T. McGowan, Saint John; Major W. W. McNairn, Campbellton; Lieut. G. W. Jones, Sussex; Lieut. J. E. Page, Fredericton; Lieut. R. Doose, Rothesay; Lieut. A. W. Estey, Grand Falls; Lieut. M. J. Scott, Saint John; Staff-Sgt. W. G. Lake, Saint John; Sergeant G. L. Landry, Saint John; Sergeant J. Rose, Moncton; Mr. H. M. Smith, Moncton; Mr. D. Conley, Saint John; Sergeant A. S. Emery, Saint John; Gnr. O. J. Dick, Saint John; Lieut.-Col. J. S. Frost, Saint John.

He said that the solicitor had a will prepared for him to sign. He was held up in bed contrary to the doctor's orders, by the beneficiary and his wife, who were present and assisting during the entire operation of executing the will.

The beneficiary knew of the existence of the two nephews, and that the testator had expressed his intention of benefiting them under his will.

The testator at the time of the execution of his will was in the home of the beneficiary where he had been taken by the beneficiary from his own home the day before, where he had been found in a very helpless condition.

There are other circumstances set out in the judgment in this case suggesting equally strongly the probability of undue influence, which I have not space to refer to here. Yet, notwithstanding the fact that the trial judge found that undue influence had been exercised by the beneficiary in procuring the will, and that the trial judge could not give credence to a considerable portion of the evidence of the beneficiary, the Court of Appeal of British Columbia unanimously reversed this decision of the trial judge and found the will a valid will.

This decision of the Court of Appeal of British Columbia, was sustained on appeal to the Supreme Court of Canada, of which the Honourable George E. King, the eminent jurist from this province, was a member at the time, there being only one dissenting judgment, namely that of Mr. Justice Gwynne.

The Court therefore finds that the will of Archibald Seely, deceased, pronounced for probate, is a good and valid will.

There will be no costs subsequent to the hearing on the twenty-ninth day of April, A. D. 1925, except to the proctor for the executors.

As Mr. Frauley appeared for one of the next of kin who took nothing under the will, and supported the will throughout, I cannot see that he is entitled to taxed costs.

The taxed bill of costs up to and including the twenty-ninth day of April, A. D. 1925, of those opposing the will, will be divided between Messrs. Belyea and Gilbert as representing one set of caveators and Mr. Hazen as representing the other set of caveators.

Decree accordingly.

Dated this first day of October, A. D. 1925.

J. ARTHUR FREEZE, Judge of Probate, in and for the County of Kings in the Province of New Brunswick.

INCOME TAX IN UNITED STATES FURTHER REDUCED

The United States income tax, already so much lower than Canada's, is to be further reduced. The treasury department at Washington has published the following comparison between present and proposed rates, taking for illustration the case of a married man with no dependents:

Income.	Present Law.	Suggested
\$2,000	\$ 7.50	\$ 5.00
3,000	22.50	15.00
4,000	37.50	25.00
5,000	57.50	45.00
6,000	87.50	75.00
7,000	127.50	105.00
8,000	167.50	135.00
9,000	207.50	175.00
10,000		