

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

NOVEMBER 25TH, 1918.

\*GALLAGHER v. WOODMAN.

*Will—Action to Set aside Letters Probate—Onus—Evidence—  
Testamentary Capacity—Undue Influence—Finding of Trial  
Judge—Reversal on Appeal.*

Appeal by the defendant from the judgment of MEREDITH, C.J.C.P., at the trial, in favour of the plaintiff, in an action to set aside the will of Robert Smith as having been procured by duress and undue influence.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, LATCHFORD, SUTHERLAND, and KELLY, JJ.

J. L. Whiting, K.C., for the appellant.

U. A. Buchner, for the plaintiff, respondent.

SUTHERLAND, J., reading the judgment of the Court, said that Mary Ann Gallagher, the plaintiff, was the sister of Robert Smith, who died on the 23rd December, 1916, having executed a will 5 days before, whereby he appointed W. G. Woodman, the defendant, executor, and gave to Woodman all his estate after payment of debts, funeral and testamentary expenses, and a legacy of \$1,000 to the plaintiff. The estate consisted of a farm, valued at \$2,250, and personal estate of the value of about \$1,900. Letters probate were granted to the defendant on the 4th January, 1917. The testator was unmarried and lived alone on the farm; the defendant was a neighbour and friend. The testator was very ill with cancer of the stomach when he made the will, and was cared

\* This case and all others so marked to be reported in the Ontario Law Reports.