just; she thought it just to give it away from her husband; and the Judge, without any warrantable evidence, gives it to the husband and frustrates the wife's last will. . . .

[Reference to Barry v. Butlin (1838), 2 Moore P.C. 480, 1 Curt. 637; Fulton v. Andrew (1875), L.R. 7 H.L. 448; Connell v. Connell (1906), 37 S.C.R. 404, 408; Tyrrell v. Painton, [1894] P. 151, 159; Farrelly v. Corrigan, [1899] A.C. 563, 569; Shama Churn Kundu v. Khettromoni Dasi (1899), L.R. 27 Ind. App. 10; Bur Singh v. Uttam Singh (1910), L.R. 38 Ind. App. 13.]

There is no such rule of law as that, in case of substantial benefit to the party drawing the will or procuring it to be drawn, it is essential that the testator should have an independent solicitor or other adviser. It may be expedient to take this precaution, as it will facilitate proof, but it is not a sine qua non. In some cases it may appear that without such advice being available the will cannot stand; in others, such as this, that is not needful. The woman herself has furnished evidence to explain her conduct; and, if that were not enough, she had recourse to her friend Mr. Watkins, and she reviewed the whole situation two years after and during the incipient stage of her last illness, and confirmed what had been done.

Having, as I think, fulfilled the requirements of the two rules mentioned, the onus is cast upon the husband to prove a lack of testamentary capacity and a presence of undue influence; but therein there is signal failure.

In Barry v. Butlin, the will prepared by the solicitor of the deceased, under which he took a considerable benefit, one-fourth of the estate (the only son being excluded), was upheld, though the testator was of weak capacity and was 76 years of age. It is a case in many respects like this, as to the estrangement of the relatives and the grounds whereon that arose, and in that case no independent solicitor was employed.

The wife, no doubt, deceived and hoodwinked the husband and gave him to understand that she had made a will in his favour which had not been revoked. On faith of this he expended money and labour and materials in improving the devised land, and in fairness this should be made good to the husband and paid out of the estate and be charged upon the land.

The parties probably can arrive at a proper figure (which should be on the liberal side) without the need of a reference.

This is a case, moreover, in which the litigation has been occasioned by the conduct of the wife, and it is fitting that all costs of both parties, including appeal, should be paid out of the estate.