

## KITCHEN V. MALCOLM—BRITTON, J.—JAN. 17.

*Contract—Agreement to Supply Bye-product of Manufacture—Promise—Gift—Waiver.*]—Action to recover damages for breach of an alleged agreement to supply the plaintiff with whey and buttermilk. The action was tried without a jury at Brantford. BRITTON, J., set out the facts in a written judgment, and said that the only agreement made was for a gift of such buttermilk and whey as was the bye-product of 500 tons of cheese and butter—that is, the whey and buttermilk produced at the defendant's cheese and butter factory. There was no obligation on the part of the defendant to continue the manufacture of cheese and butter and so continue to produce whey and buttermilk. If the plaintiff ever had any right to insist upon the fulfilment of the defendant's promise to supply him with whey and buttermilk, he (plaintiff) had waived his right. Action dismissed with costs. W. S. Brewster, K.C., for the plaintiff. M. A. Secord, K.C., for the defendant.

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## CAPITAL TRUST CORPORATION V. TESKEY—BRITTON, J.—JAN. 18.

*Deed—Action by Administrators of Estate of Grantor to Set aside—Evidence—Mental Incapacity—Undue Influence—Lack of Independent Advice.*]—Action by the administrators of the estate of Mary Teskey, deceased, to set aside a conveyance of land made by her to the defendant, her son, on the 15th March, 1916. The action was tried without a jury at Ottawa. BRITTON, J., in a written judgment, after stating the facts, said that he was satisfied that the deceased, at the time of making her mark to the paper, was not of sound mind; that the disease from which she suffered had made such inroads upon her reasoning powers and her judgment that she was not capable of understanding what was intended by the paper put before her and now asserted as a valid deed. She had not the advice of her own solicitor, and she had no independent advice. It was a fair inference from the evidence that the conveyance was obtained by the defendant, and that it was so obtained when the deceased was not capable of fully understanding the nature and effect of what she was signing. Judgment for the plaintiffs as prayed, with costs. E. P. Gleeson, for the plaintiffs. G. F. Henderson, K.C., for the defendant.