

ment of a deceased person. *Gann v. Gregory*, 3 D. M. & G. 777, and *In re Cuff*, [1892] 2 Ch. 229, followed. Questions submitted to the High Court, upon an originating notice, as to what documents constituted the will of a deceased person, were not answered.—*Seemle*, that there is some doubt as to the jurisdiction of the High Court under sec. 38 of the Ontario Judicature Act; a question whether a clause was properly included in letters probate as part of a will should be raised by proceedings in the Surrogate Court for revocation of the letters.—By one clause of the will the testator directed that his farm stock, implements, chattels, and effects should be sold by his executors, and the proceeds should form part of the residue of his estate, and also that all notes or mortgages held by him should be converted into cash, and the whole divided into eight equal parts and distributed as provided in the will:—*Held*, that this clause disposed of the whole residue, including cash in bank, though not specified. *Re Smith*, 1 O. W. N. 815.—MIDDLETON, J.

32. *Testamentary Capacity—Senile Dementia—Absence of Undue Influence—Onus—Principal Beneficiary Concerned in Preparation of Will—Costs.*—The plaintiffs, who were beneficiaries under a will made by an aged woman in 1901, sought to set aside a subsequent will made in January, 1909, alleging that the testatrix was suffering from senile dementia, and was incapable of making the will, and also alleging fraud and undue influence. The residuary legatee, whose conduct was attacked, was not related to the deceased, but was a neighbour, who had been intimate with and very kind to the deceased. The will attacked was prepared by a solicitor who was the brother of the residuary legatee, upon instructions given by the latter:—*Held*, upon the evidence, that at the time of the execution of the will the testatrix was not suffering from senile dementia, and was capable of making a will, and there was no influence, undue or otherwise, exercised over her.—*Held*, also, as regards the preparation of the will and the age and feeble condition of the testatrix, that the residuary legatee had satisfied the onus cast upon her of shewing the righteousness of the transaction; but, as her conduct in not calling in an independent person to prepare the will or to read and explain it to the testatrix was reprehensible; she was deprived of costs. *Malcolm v. Ferguson*, 1 O. W. N. 77.—CLUTE, J.