on certain terms; and an order was made adding the administratrix as a party.

There was evidence on which the learned trial Judge could find that the Livingston defendants had it in their power to exercise a great influence over the deceased, and that the three gifts attacked were obtained when the defendants and each of them occupied that position. It is not necessary to the setting aside of such gifts on the ground of undue influence, that there should be proof of the exercise of undue influence. Undue influence is presumed, and it rests upon the donee to rebut that presumption by proving that the transaction was righteous and was fairly conducted as between strangers; that the grantor was not unduly impressed by the influence of the grantee; and by satisfying the Court that the grantor, knowing and appreciating the effect of the transaction, acted voluntarily and deliberately, free from the influence of the grantee: Halsbury's Laws of England, vol. 15, p. 420; Delong v. Mumford (1878), 25 Gr. 586; Vanzant v. Coates (1917), 39 O.L.R. 557, 40 O.L.R. 556.

In the case at bar, the Livingstons had failed to rebut the presumption and to satisfy the other requirements of the rule; and the trial Judge had found that undue influence was in fact exercised and that these gifts were all the result of the exercise of such influence. On that branch of the case, the finding of the trial Judge was sustained; and, the plaintiff being now before the Court as personal representative of the deceased, the gifts inter vivos should be set aside.

The will was executed in manner provided for by the Wills Act, and the trial Judge had found that the deceased did not lack mental capacity. It was contended that undue influence was not to be presumed, and that the will must stand unless it was produced by fraud or coercion, and Baudains v. Richardson, [1906] A.C. 169, 185, was cited. But, in the circumstances of the case at bar, those supporting the will were required not only to prove due execution and mental capacity, but to satisfy the Court that the document propounded was understood and appreciated by the testatrix, and was in truth the expression of her desire.

The Livingstons failed in their cross-appeal because they did not establish a case for the application of the rule in the Baudains case, and because, even if the rule in the Baudains case were applied, there was evidence upon which the trial Judge could find (as he did) against the Livingstons on the question of fact whether the will expressed the conscious desire of the deceased.

Reference to authorities, especially Fulton v. Andrew (1875), L.R. 7 H.L. 448, and Tyrrell v. Painton, [1894] P. 151, 157.

The appeal should be allowed and the cross-appeal dismissed, both with costs, except in so far as the costs of the appeal had been