

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

SEPTEMBER 27TH, 1916.

WAY v. SHAW.

*Evidence—Action by Personal Representative to Set aside Mortgage Made by Deceased Person—Denial of Signature of Subscribing Witness—Conflict of Evidence—Finding of Fact of Trial Judge—Appeal—Mortgage Account.*

Appeal by the plaintiffs from the judgment of BRITTON, J., 10 O.L.R. 124.

The appeal was heard by GARROW\*, MACLAREN, MAGEE, and HODGINS, J.J.A.

H. J. Scott, K.C., and E. G. Porter, K.C., for the appellants.

W. C. Mikel, K.C., and A. B. Collins, for the defendant, respondent.

HODGINS, J.A., read the judgment of the Court. He said that it was impossible to finish the consideration of the case, assisted by the able arguments of counsel, without being impressed by the want, in almost every specific instance where doubt arose, of those corroborative surroundings which it would be natural to expect.

Were it not that the matters in question had been passed upon by an experienced Judge, and that to reverse his opinion would be in fact to pronounce the respondent guilty of forgery and perjury, without the opportunity of judging him by his demeanour and bearing, there would have been considerable doubt as to

\*Mr. Justice Garrow died on the 31st August, 1916, while the appeal was standing for judgment; he had, however, expressed his concurrence in the judgment as about to be delivered.