

# The Ontario Weekly Notes

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No. 6.

HIGH COURT OF JUSTICE.

CLUTE, J.

OCTOBER 22ND, 1909.

MALCOLM v. FERGUSON.

*Will — 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 Mary Jane Daniels in 1901, sought to set aside a subsequent will made on the 9th 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.

At the time the will was executed the testatrix was in her 90th year, and she died in the following February. The witnesses on both sides concurred in the statement that she was a woman of strong and determined will, and insistent upon having her own way.

The attack upon the will was chiefly made against the defendant Frances Ferguson, the residuary legatee, a widow and a relative of the deceased, who had resided for a number of years in a house adjoining that of the deceased. She was on very intimate terms with the deceased, was for many years in the habit of visiting her nearly every day, and sometimes twice a day; she nursed her during long periods of illness, and, when the testatrix had no servant living in the house, slept at her house many weeks at a time. In the will of 1901 Frances Ferguson was a beneficiary, receiving thereunder the house and lot occupied by the deceased. In a will made in 1906 she was given, in addition to the house and lot, the furniture and one-half of the residue, and in a codicil of 1908 a gift to Home Missions was cut down from \$2,000 to \$1,000, and a number of small legacies were cut out, she still sharing as resi-