statement. Owing to her impaired mental condition, it would not, I think, be safe to attach any weight to her evidence. The learned trial Judge, on the conflicting evidence, has found that the defendant received the money under conditions none of which satisfied him that it was either a gift or in payment for services. We are asked to reverse that finding. The defendant, on the evidence of himself and his wife, has failed, I think, to shew that the transaction was a gift. All doubt, however, on the point disappears if the evidence of Frost and his wife is to be believed. The trial Judge evidently accepted their testimony; and, therefore, an appellate Court is not entitled to discredit them.

For these reasons, I think the judgment of the learned trial Judge should be affirmed.

There is nothing in the evidence shewing any overreaching on the defendant's part, nor any design on his part to induce the plaintiff to intrust him with her money, and he seems to have been kind to her, and rendered to her services in excess of the amount allowed to him at the trial. Under these circumstances, although I think his appeal fails, he should not be visited with the costs.

CLUTE and SUTHERLAND, JJ., concurred.

RIDDELL and LEITCH, JJ., dissented, for reasons given in writing by the former.

Appeal dismissed without costs; RIDDELL *and* LEITCH, JJ., *dissenting.*

MARCH 13TH, 1913.

GALBRAITH v. McDOUGALL.

McDOUGALL v. GALBRAITH.

Contract—Construction — Dealings in Land — Partnership — Joint Venture—Division of Profits—Expenses—Advances.

Appeal by McDougall from the judgment of BRITTON, J., 3 O.W.N. 1655.

McDougall owned a lot in the Whitney district of Algoma, which he expected to become the site of a town, and he made an