

There is really no corroboration of the statement of John Nolan. All the facts in connection with the transfer of the money from Martha—the sick wife—to her husband, are more consistent with there being no gift than that there was a gift. No gift can be implied from the fact and circumstances as stated by John Nolan.

Martha Nolan was not, at the time of the alleged gift, in a state of mind able to appreciate the nature and effect of the acts which are alleged to constitute the gift. The effect would be to deprive her own children of the money and to enable her husband to give it to his children. Such a gift by her would be an improvident act, and one she would not, if in sound mind, be likely to commit.

Although it so happened that Mrs. Nolan survived her husband, her disease, which later on proved fatal, was such as to render her mentally unfit to make a will or a valid gift such as alleged.

In considering the question of burden of proof, it is important to note the difference between influence to obtain a gift *inter vivos* and influence to obtain a will or legacy.

The case of *Parfitt v. Lawless*, L. R. 2 P. & D. 462 (1872), was cited by counsel for plaintiff, and is very much in point. In that case the claim was under a will. There was no evidence to go to the jury on the question of undue influence, and the difference mentioned above is thus emphasized:—

“Natural influence exerted by one who possesses it, to obtain a benefit for himself, is undue, *inter vivos*, so that gifts and contracts *inter vivos* between certain parties will be set aside, unless the party benefited can shew, affirmatively, that the other party could have formed a free and unfettered judgment in the matter; but such natural influence may be fully exercised to obtain a will or legacy. The rules, therefore, in Courts of equity, in relation to gifts *inter vivos*, are not applicable to the making of wills.”

The many cases cited upon the argument and in the judgment in *Parfitt v. Lawless* are applicable to the case now in hand.

When the money passed from Martha Nolan to her husband she was of “feeble mental capacity and in a weak state of health.” She could easily be induced to allow her husband to have control of the money.

Upon the whole evidence in this case, the plaintiff is entitled to recover.