

"This is to certify that I transfer the money in my name John Schwent and Magdalena Schwent in our savings bank account number S. 27 in your bank to the joint credit of myself, the sole survivor, and my daughter Magdalena Schwent to be drawn by either of us. John Schwent." The money lay wholly undisturbed in the bank until the death of John Schwent on the 5th July, 1909. He had on the 25th September, 1900, made his will, whereby he appointed his daughter Magdalena and his son Christian executors. After the death Christian claimed this money in the bank as being part of the estate. Magdalena, who had married one Roetter, claimed it as her own. The bank were allowed to pay the amount into court, less the costs, and this issue was directed, with Christian Schwent as plaintiff and Magdalena Roetter as defendant, to determine the question "which of the said parties is entitled to the above-mentioned sum of money paid into court," amounting to \$1,285.18. The real question to be decided was whether the money belonged to the executors as assets of the estate of John Schwent, deceased, or to the defendant as her own private property. The deceased had one son, the plaintiff, and four daughters, one of them the defendant.

Held, 1. Following *Re Ryan*, 32 O.R. 224, that the plaintiff should succeed unless there was some difference between the case of a wife and that of a daughter, but such a distinction had not been suggested. The issue must therefore be decided in the defendant's favour, both as to form and substance.

2. There is no necessity for another action as Con. Rule 1114 gives the trial judge the power to dispose of interpleader proceedings.

R. S. Colter, for plaintiff. *Douglas, K.C.*, and *J. A. Murphy*, for defendant.

Divisional Court, K.B.]

[May 6.]

RUSHTON v. GALLEY.

Way—Private lane—Dedication—Acceptance by municipality—Sidewalk placed and repaired by former owner—Injury to person using—Negligence—Contributory negligence—Private liability—Notice of defect—Constructive notice.

Appeal by the plaintiff from the judgment of LATCHFORD, J., dismissing the action. The plaintiff on the 24th October, 1908, met with an accident, as he alleged, by stepping into a hole in a defective sidewalk at what is called "Maderia Place," being an