

of Hill and his nurses and for services rendered by Joseph during the 6½ weeks that Hill spent in the defendants' house. It was not suggested that Hill authorised or was consulted with reference to this last cheque.

The learned Judge finds that there was a gift to Ruth Church of the \$1,000, and that the defendants' testimony was sufficiently corroborated by that of one Chadwick.

It was contended that, even if there was a gift, it could not be supported. Hill had confidence in Ruth Church; but there was no evidence that he was in any sense under her dominion, nor was there any possibility of a finding upon the evidence that at the time when the gift was made he was incompetent to dispose of his property, or that the gift was procured by the exercise of undue influence. If the gift could be successfully attacked, it must be because of the existence of some relationship which made it impossible for the donee to support it except by shewing that the donor had independent advice. There was no warrant for the application of the rules which govern a trustee in his dealings with his cestui que trust, or of the rules which are applied where any of the special confidential relationships like that between a physician and his patient exist. The money in the banks was not transferred to Ruth Church by the power of attorney, and she was not in law a trustee. She did perform at times some of the duties of a nurse, but only as any one in the house would have done when the regular nurse was off duty or required assistance. If there are any special rules applicable to the relationship of nurse and patient, they had no application to this case.

As to the cheque for \$525, the plaintiffs were entitled to succeed. Assuming that Ruth Church, as Hill's attorney, had authority to pay Hill's debts by cheques drawn upon his bank, such authority did not extend to pay more than was justly due by Hill; and it was quite impossible to justify a charge of over \$75 a week for the board and lodging of Hill and a nurse and for the trifling services rendered by Joseph.

Moreover, any authority which Ruth Church had to issue cheques ceased with Hill's death, and Joseph knew, although the bank did not, that Hill was dead when the cheque was presented for payment. While the bank was protected by sec. 3 of the Powers of Attorney Act, R.S.O. 1914 ch. 106, Joseph Church was not so protected, and must account to the executors for the money with interest from the 28th January, 1919. He had not counter-claimed for the payment for the board etc., but, if he was content to take \$175 on that account, he should be allowed to amend so as to claim that amount. If the amendment should be made, he should have judgment for \$175 on the counterclaim. If he