

aunt Sarah \$2,500 in money and would assign to her a mortgage, viz., a mortgage made by one Sparrow to the late Alexander McLean, upon which for principal and interest there was about the sum of \$2,000 unpaid, upon the condition that Sarah McLean would by will give and bequeath the sum of \$4,500 to the children of her—Christina McArthur. It was made perfectly clear by the evidence that the money was paid over, and the mortgage was transferred; but Sarah McLean did not make her will—she died intestate. No other consideration for the payment of the money or the transfer of the mortgage was proved.

The evidence of Christina McArthur was corroborated, and I find the agreement set up proved. If a gift of the money and mortgage is suggested, the onus would be upon the defendant McLean to establish it. It was not established, but negatived. The money and mortgage were not, in my opinion, payment or settlement of any claim by Sarah against the estate of her brother. The only intimation of any such claim, by Sarah, was that she felt sure a will would be found, and, if found, it would contain a bequest to her of \$2,000. In conversation with her niece Christina, Sarah spoke of being entitled to a wife's share, as she had in place of a wife kept the home and cared for the child, and she apparently thought her brother worth about \$6,000, one-third of which would be the \$2,000 that her brother had, in her opinion, named in a will.

That Sarah would be willing to bequeath all she got from Christina to Christina's children, is extremely probable, for the only others were her brothers, both elderly men of large means, and unmarried. The plaintiffs are entitled, in my opinion, to maintain this action. The mother, however, is a party defendant, and will be bound by the judgment in this action. She consents to be made a party plaintiff if necessary.

The judgment will be for the plaintiffs for \$4,500, with costs payable out of the estate.

The defendant McLean, without delay, gave the statutory notice requiring the plaintiffs to establish their claim, so I think that no interest should be allowed.

The amount of \$4,500, less solicitor and client's costs, if any, to be paid into Court for the plaintiffs—infants—to be invested as Court moneys, and paid out to them as they respectively attain the age of 21 years.