

The action was tried without a jury at London.
Peter White, K.C., for the plaintiff.
W. R. Meredith, for the defendant.

MIDDLETON, J., in a written judgment, said that the plaintiff, a son of the late Thomas Fraser Kingsmill, who died at London on the 21st August, 1915, claimed, as the executor of his father and the legatee of all his personal property, to recover certain goods and chattels, being generally the furniture in the residence of the deceased, from the defendant, the widow of the deceased and the step-mother of the defendant. Under the will of the deceased, the residence was given to the defendant for life, with remainder to the plaintiff.

The defendant relied upon what she alleged that the deceased said to her when he first shewed her the house, "The furniture is yours to do as you like with and make such use of as you can." Even accepting this evidence as true, the learned Judge said that he could not find an intention to give—a husband may well use such words without intending that the property in the goods shall pass to the wife. They meant no more than, "You are mistress of my house. Make such use of it and of my furniture as you see fit."

The learned Judge referred to many authorities as to alleged gifts from husband to wife, parent to child, etc., delivery and symbolic delivery of chattels.

He said that the difficulty which at one time existed by reason of the supposed unity of husband and wife was a thing of the past. Unless creditors assert the provisions of the Bills of Sale Act, there is no reason why a gift cannot be made by a husband to his wife.

The reasoning as to the alleged gift to the wife shewed that the alleged gift of the piano in the house to the defendant's daughter also failed.

The automobile now with the defendant was purchased by her, the old automobile bought by the deceased being given in part payment. The old one was of little value, and could not now be returned, so it should not be included in the judgment.

The judgment should be for the plaintiff for the recovery of the remainder of the chattels, with costs, if exacted by the plaintiff.