

LENNOX, J.

FEBRUARY 17TH, 1914.

HEDGE v. MORROW.

Title to Land—Conveyance by Husband and Attorney of Grantor—Power of Attorney—Forgery—Evidence—Death of Grantor—Presumption—Lapse of Time—Interest of Husband—Alleged Murder of Wife—Failure of Proof—Will of Grantor—Claim by Devisee—Revocation of Will by Marriage—Alternative Claim of Devisee as Heiress-at-law—Letters of Administration not Applied for—Interest of other Heirs-at-law.

Action for possession of the west half of lot A. in the 6th concession of the township of Roxborough, for a declaration of the plaintiff's ownership thereof, for damages for the unlawful cutting of wood and timber thereon, and for an account of rents and profits.

G. A. Stiles, for the plaintiff.

D. B. MacLennan, K.C., for the defendant.

LENNOX, J.:—Isabella Gilchrist was lawfully married to Leo H. Johnston, at Nome, in Alaska, on the 15th June, 1905. The plaintiff admits that a marriage was in fact duly solemnised between these parties, and that they afterwards lived together as man and wife, but contends that at the time of the ceremony Johnston could not contract a lawful marriage with Isabella Gilchrist, as he had previously married Cora Tosh, who was then and is still alive. It would be sufficient to say that there is no evidence of a previous marriage, but I may add that the evidence of Cora Tosh and Mr. Warren makes it clear that, whatever deception may have been practised upon this woman, she was not legally married to Johnston, and she does not now claim or think that she was.

The defendant obtained what purported to be a conveyance of the land in question from the owner (Isabella Gilchrist Johnston) in good faith, and paid for it the sum of \$2,700 in cash, on the 8th December, 1906. At that time the defendant was in possession of the land as tenant, and has remained in possession as owner. He should not be disturbed until the plaintiff has clearly established her title. In consideration of the purchase, the rent for the part of the current year which had elapsed was abated; and I find that, with this abatement counted, the