

BIGGAR V. BIGGAR—SUTHERLAND, J.—JUNE 16.

Husband and Wife—Money Paid by Wife to Husband—Action to Recover as Money Lent—Onus—Finding of Fact of Trial Judge—Pleadings—Declaration of Right to Payment out of Proceeds of Sale of Land not Included.—Action by a married woman against her husband to recover \$5,069.50, alleged to have been lent by her to him, in three sums, in September, October, and December, 1910. The defendant alleged that the moneys were voluntarily paid by the plaintiff to him and were used for their joint benefit, and that there never was any agreement between them, express or implied, for the repayment of the moneys paid to him. The action was tried without a jury at Hamilton. SUTHERLAND, J., in a written opinion, set out the facts, and said that it was contended on behalf of the plaintiff that, having regard to the relationship of husband and wife, the onus was upon the defendant to prove the sums to have been gifts: Eversley on Domestic Relations, 3rd ed., p. 302. The learned Judge said that he was unable to come to the conclusion that the sums in question were lent by the plaintiff. It was argued on behalf of the defendant that, as the plaintiff's understanding was that the moneys were not to be repaid by him personally, but out of the proceeds of the sale of a fruit farm, when sold, the action was premature, the farm not having been sold. As to this, the learned Judge said, he felt disposed to make a declaration that the plaintiff should be entitled to repayment of the moneys or part of them when the farm should be sold; but he felt unable, on the pleadings, to do so. Action dismissed without costs. C. W. Bell, for the plaintiff. W. M. McClemon, for the defendant.

RE FITZGERALD—SUTHERLAND, J., IN CHAMBERS—JUNE 17.

Money in Court—Payment out—Persons Entitled—Absentee—Proof of Death—Intestacy.—An application for payment out of Court of the moneys, or a portion of the moneys, of the estate of Ellen Fitzgerald, deceased, paid in under the Trustee Relief Act. The learned Judge said, in a written opinion, that the proofs submitted seemed fully to warrant the payment to Garrett Fitzgerald of one-half of the moneys in Court, and to Mary Fitzgerald, David Joseph Fitzgerald, William Henry Fitzgerald, James William Fitzgerald, and Edward Fitzgerald, each of one-sixth of the balance, being five-sixths of the share belonging to the children