

CLUTE, J.

APRIL 10TH, 1917

## FULTON v. MERCANTILE TRUST CO.

Husband and Wife—Land Vested in Wife—Oral Agreement between Husband and Wife—Evidence—Corroboration—Statute of Frauds, R.S.O. 1914 ch. 102, sec. 10—Trust—Joint Tenancy—Survivorship—Action by Husband after Decease of Wife—Declaratory Judgment—Parties—Costs.

Annie Fulton died on the 4th November, 1916, intestate, leaving her surviving her husband, the plaintiff, but no children. The legal title to a parcel of land, purchased with the plaintiff's savings, stood at the time of the wife's death in her name; and this action was brought by the husband against the administrators of her estate and three persons appointed by the Court to represent her next of kin and heirs at law, for a declaration that the land formed no part of the estate of the wife.

The action was tried without a jury at Hamilton.

W. M. Brandon, for the plaintiff.

G. C. Thomson, for the defendant company.

W. E. Kelly, K.C., for the other defendants.

CLUTE, J., in a written judgment, said that, upon the evidence, he had no doubt that the understanding between the husband and wife was, that whichever survived should have the property—while both lived it was held for the benefit of both. A number of authorities were cited to shew that the presumption was in favour of a gift to the wife. There was no doubt about that. But the presumption might be rebutted, and it was satisfactorily rebutted by the testimony of the plaintiff, corroborated in the clearest manner by the evidence of his solicitor. The learned Judge saw no difficulty in the plaintiff's way in carrying out what was clearly the agreement between the husband and wife, acted upon for many years.

There should be a judgment declaring that the land was held in the name of the wife in trust for herself and the plaintiff as joint tenants; that the land formed no part of the estate of the wife; and that the plaintiff was entitled to the same by survivorship.

The defendant company and the other defendants were parties necessary to join in order that the plaintiff might obtain this judgment, and should have their costs paid by him.