

money lent. See the cases referred to in Story on Agency, 9th ed., secs. 239 to 260; Broom's Legal Maxims, 7th ed., p. 356 et seq.; Lyell v. Kennedy, 14 App. Cas. 437.

Defendant pleads that the transaction in respect of which the advance was made was an illegal one. He seems to have abstained from proving it to be so, if in truth it were an illegal dealing. The law presumes in favour of legality, and the transactions in question here are, on the evidence before us, fully covered by the presumption.

MEREDITH, C.J.—I agree that the judgment appealed from is erroneous and must be reversed.

In my opinion, plaintiff's right to recover may be supported upon the express agreement of defendant, upon which plaintiff relies, to repay the money which plaintiff paid to Smith on 1st April to prevent defendant's stock being sold out; and, independently of the express agreement, on the implied promise to repay plaintiff the money which he had paid as money paid by him for the use of defendant. . . .

Appeal allowed with costs, and judgment to be entered for plaintiff for \$200 with costs.

MACMAHON, J., concurred.

STREET, J.

NOVEMBER 24TH, 1904.

CHAMBERS.

# RE McDougall.

*Will—Construction—Bequest to Wife—Limited Power of Disposal—Summary Application under Rule 938—Scope of.*

Motion by Ellen McDougall, administratrix with the will annexed, for an order declaring construction of the will of her deceased husband, and whether she alone was entitled under the will to the estate of the testator, or whether her children were entitled to share in it.

The will was dated 23rd August, 1903, and the testator died on 21st September, 1903.

The will was as follows: "This is my last will and testament. I bequeath to my wife all that I possess with full power to dispose of part or the whole as she and the children may think wisest and best at any time."

He appointed no executor, and letters of administration with the will annexed were granted to his widow on 29th December, 1903.

He left real estate of the value of \$6,000, and personalty about \$1,150, and six children, five of whom are infants.