

years of age, with no means of support excepting a life interest in 50 acres of land, and the money in question; nor had she any children or other near relatives upon whom she could rely to take care of her in case of sickness or inability to manage the farm. Under these circumstances, to denude herself of all her money was improvident; and, having regard to the facts, the case is one entitling her to the protection of the Court.

I do not question the right of a person of competent understanding, and who fully and intelligently appreciates what he is doing, with its probable consequences, to give away all, or a substantial part, of his property, however, unwise such an act may be; but attendant circumstances may be such as call upon the donee to prove to the satisfaction of the Court that the donor fully realised the nature of the transaction and its probable consequences, and was not unduly influenced by the donee or by confidence in him. Acting upon this principle, Courts of equity have not hesitated to set aside transactions for value, unless the party benefitting thereby has proved that everything was right, and fair, and reasonable on his part. . . .

[Reference to *Slater v. Nolan*, Ir. R. 11 Eq. 386; *Waters v. Donnelly*, 9 O.R. 401; *Beman v. Knapp*, 13 Gr. 398; *Phillips v. Mullings*, L.R. 7 Ch. 244; *Rhodes v. Bate*, L.R. 8 Ch. 253.]

Here the relationship between the plaintiff and the defendant may fairly be regarded as confidential. The defendant was her nephew by marriage; and she had come to regard herself as entitled to call upon him and his wife frequently to assist her in her various duties. To such appeals they had responded, and their evidence is, that she entertained grateful feelings towards them. Under such circumstances, the defendant was bound to shew, to the satisfaction of the Court, that the transaction in question, in order to amount to a gift, was her free act, and not the result of undue influence.

The evidence is conflicting. . . .

The plaintiff, who was examined *de bene esse*, at the commencement of her examination maintained that she had deposited money with the defendant for safekeeping; but, as the examination proceeded, her mind wandered, her answers became incoherent, and she was evidently labouring under delusions; saying that she had never possessed any money of her own—that the money she had handed to the defendant was money which she had collected from other persons for him. The defendant admitted that there was no foundation for the latter