

McDougall, and two children were born to John Nolan and his former wife.

Martha Nolan became possessed, and was the owner, of a large sum of money, part received by her from her former husband Peter McDougall, and part from property which became hers and was sold by her. Of this money at least \$4,800 was, prior to January 21st, 1911, on deposit to the credit of Mrs. Nolan in the Canadian Bank of Commerce at Rainy River. Of this money the sum of \$2,100 was drawn out of that bank upon the cheque of Mrs. Nolan and deposited to the credit of P. John Nolan in the Bank of Nova Scotia at its branch at Rainy River.

The balance of the \$4,800, viz., the sum of \$2,700, was drawn out by the wife, she getting a draft for it upon the Canadian Bank of Commerce at Belleville. This money was also received by the deceased John Nolan. Some of it was expended by him in his care for and the search for the restoration of his wife's health; but a very considerable part of it was retained by the husband. It is said that he expended money upon himself, not wisely—his habits having become bad.

This action was commenced during the lifetime of the parties, the present plaintiff suing as next friend of her mother.

The action abated by the death of John Nolan, and was revived as against the present defendant, as executor of the will of John Nolan.

Then Martha Nolan died, and the action is now continued by the plaintiff as administratrix of Martha Nolan.

An interim injunction was obtained against John Nolan drawing out and expending any more of the money.

Of the money which Martha Nolan had, there is the sum of \$3,724.81 and interest, in the Bank of Nova Scotia at Toronto, standing to the credit of P. John Nolan.

P. John Nolan was the original defendant, and this money is the subject of the present controversy.

It is hardly in dispute that the money was the money of Martha Nolan, but John Nolan asserted, and his executor now asserts, that it was given to John Nolan by his wife Martha.

To establish this gift *inter vivos*, the onus is upon the defendant. In my opinion that onus has not been satisfied.

Upon this first point, which goes to the root of the matter, the plaintiff is entitled to recover.