

## HIGH COURT DIVISION.

ROSE, J.

MAY 26TH, 1920.

## ROSE v. CHURCH.

*Gift—Money Withdrawn from Bank under Power of Attorney—Evidence Establishing Gift—Action by Executors of Donor against Donee—Corroboration—Money Withdrawn to Pay Claim of Donee's Husband—Withdrawal after Death of Donor—Powers of Attorney Act, R.S.O. 1914 ch. 106, sec. 3—Excessive Claim—Counterclaim—Amendment—Costs.*

Action by the executors of the will of John Hill, deceased, against Joseph Church and Ruth Church, the wife of Joseph, to recover the amounts of three cheques drawn by the defendant Ruth Church upon the testator's bank, shortly before the death of the testator, under a power of attorney given to her by the testator.

The action was tried without a jury at Simcoe.

A. G. Slaght, for the plaintiffs.

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

ROSE, J., in a written judgment, said that on or about the 14th December, 1918, Hill, who was an old man, had an attack of cerebral hæmorrhage. He could not be looked after properly in his lodgings, and the defendants offered to take him to their house. He was glad to accept their offer, and he, with professional nurses, lived with the defendants until his death on the 28th January, 1919. Early in January, a very general power of attorney was executed by Hill in favour of Ruth Church. Certain cheques for small amounts were drawn by her under this power, and were duly cashed. About them there was no question. The question was as to three cheques, one drawn on the Canadian Bank of Commerce for \$500 on the 16th January, another for \$500 drawn on the Molsons Bank on the 22nd January, each of which was payable to the order of Ruth Church, and one drawn on the Molsons Bank for \$525 on the 27th January, payable to the order of Joseph Church.

The two cheques first drawn were said to have been drawn on the instructions of Hill and to represent a sum of \$1,000 given by Hill to Ruth Church as a present. The third cheque, which was drawn just before and cashed just after Hill's death, was justified as a payment to Joseph Church for the board and lodging