which are alleged to constitute the gift. The effect would be to deprive her own children of the money and to enable her husband to give it to his children. Such a gift by her would be an improvident act, and one she would not, if in sound mind, be likely to commit.

Although it so happened that Mrs. Nolan survived her husband, her disease, which later on proved fatal, was such as to render her mentally unfit to make a will or a valid gift such as alleged.

In considering the question of burden of proof, it is important to note the difference between influence to obtain a gift inter vivos and influence to obtain a will or legacy.

The case of Parfitt v. Lawless (1872), L.R. 2 P. & D. 462, was cited by counsel for the plaintiff, and is very much in point. In that case the claim was under a will. There was no evidence to go to the jury on the question of undue influence, and the difference mentioned above is thus emphasised: "Natural influence exerted by one who possesses it, to obtain a benefit for himself, is undue, inter vivos, so that gifts and contract inter vivos between certain parties will be set aside, unless the party benefited can shew, affirmatively, that the other party could have formed a free and unfettered judgment in the matter; but such natural influence may be fully exercised to obtain a will or legacy. The rules, therefore, in Courts of equity, in relation to gifts inter vivos, are not applicable to the making of wills."

The many cases cited upon the argument and in the judgment in Parfitt v. Lawless are applicable to the case now in hand.

When the money passed from Martha Nolan to her husband, she was of "feeble mental capacity and in a weak state of health." She could easily be induced to allow her husband to have control of the money.

Upon the whole evidence in this case, the plaintiff is entitled to recover.

There will be judgment for the plaintiff against the defendant executor for the sum of $3,724.81, and the interest allowed by the bank.

There will be a declaration that the money in the Bank of Nova Scotia at Toronto, viz., the $3,724.81 standing there to the credit of P. John Nolan, is money belonging to the estate of Martha Nolan, and that it may be paid over to the plaintiff as administratrix of the said Martha Nolan. Payment to the plaintiff of this money will be in full satisfaction of this judgment.