

The action was tried without a jury at Toronto.

J. M. Ferguson and J. P. Walsh, for the plaintiffs and the defendant the widow of the deceased.

J. A. Macintosh, for the defendant Mary Lackie, the mother of the deceased, and the defendant Edith Ritchie, the sister of the deceased.

E. C. Cattanach, for the Official Guardian, representing Verva Sellers, the infant daughter of the deceased.

MIDDLETON, J., in a written judgment, said that the question was, whether certain mortgage-securities standing in the name of Mrs. Lackie, her son Donald J. Sellers, and her daughter Edith Ritchie, were the property of Mrs. Lackie alone or belonged to her and her daughter and the executors of her son, as tenants in common.

The money all came from property owned by Donald Sellers, the first husband of Mrs. Lackie. On the 2nd April, 1872, he conveyed this property to one Trebilcock in trust for his wife for life, and after her death in trust for the heirs of his body by him begotten—but with the right and power to the wife to sell and convey in fee simple. She sold, and it was clear that the purchase-money became hers, and that it did not become impressed by any trust.

Donald J. Sellers, the son, was an able and successful business-man, and his mother placed every confidence in him, and relied upon him in all ways to look after her business for her. He placed the money in an account to the joint credit of his mother and his sister and himself, and, when investments were made, the securities were taken in the names of the three.

The mother never understood exactly why this was done. She said that she understood nothing of business, and thought that all he did was right, and so signed any and all documents placed before her. The sister was in much the same situation.

In these circumstances, the money and the securities representing it remained the mother's, for two reasons:

First, there never was any gift at all. The mother never intended to part with her property, nor did the son or the daughter ever intend to acquire any right in it. Whatever the transaction was and whatever the motive behind it, it was not a gift.

Second, if it amounted to a gift, it could not stand, in the circumstances disclosed. There was the highly confidential relationship between the mother and the son, and there was the greatest disparity between them—he a keen, vigorous, and aggressive business-man—she an old lady, with no business-