

off financially. She was disappointed and so expressed her feelings, that her brother had not provided for her by will. She stood in the place of mother to the then child Christina, and there was love by each for the other.

Christina McArthur says that desiring to make her Aunt Sarah feel at ease in regard to her maintenance and support during her life, on or about June 8th, 1911, made the arrangement with her aunt that she, Christina, would give to the Aunt Sarah \$2,500 in money and would assign to her a mortgage, viz., a mortgage made by Wm. Sparrow to the late Alexander McLean, upon which for principal and interest there was about the sum of \$2,000 unpaid, upon the condition that Sarah McLean would by will give and bequeath the sum of \$4,500 to the children of her—Christina McArthur. This Sarah McLean did not do, but died intestate. It was made perfectly clear by the evidence that the money was paid over, and the mortgage was transferred. No other consideration for payment of money or transfer of the mortgage was proved. The evidence of Christina McArthur was corroborated, and I find the agreement set up proved. If a gift of the money and mortgage is suggested, the onus would be upon the defendant McLean, to establish it. It was not established, but negatived. The money and mortgage were not, in my opinion, payment or settlement of any claim by Sarah against the estate of her brother. The only intimation of any such claim, by Sarah, was that she felt sure a will would be found and if found, it would contain a bequest to her of \$2,000. In conversation with her Aunt Christina, Sarah spoke of being entitled to a wife's share, as she had in place of a wife kept the home and cared for the child—and she apparently thought her brother worth about \$6,000, one-third of which would be the \$2,000 that her brother had, in her opinion, named in a will.

That Sarah would be willing to bequeath all she got from Christina, to Christina's children, is extremely probable, for the only others were her brothers, both elderly men of large means, and unmarried. The plaintiffs are entitled in my opinion to maintain this action. The mother, however, is a party defendant and will be bound by the judgment in this action. She consents to be made a party plaintiff if necessary.

The judgment will be for the plaintiffs for \$4,500 with costs payable out of the estate.