

The appeal was heard by MULOCK, C.J.Ex.D., CLUTE and SUTHERLAND, JJ.

E. G. Porter, K.C., for the plaintiff.

J. A. Hutcheson, K.C., for the defendants.

The judgment of the Court was delivered by MULOCK, C.J.:—

. . . For the defendants it was argued that, by reason of the alleged parol ante-nuptial agreement between the plaintiff and Paschal Finn, the plaintiff became legally liable to the defendants for the sum of \$500, or took the certificate in trust as to the \$500, part thereof, for the hospital. Such, however, was not, in my opinion, her position; for, assuming that such ante-nuptial agreement existed, being by parol it was void under the 4th section of the Statute of Frauds. . . .

[Reference to *Warden v. Jones*, 23 Beav. 487.]

Even if the husband appointed to his wife in pursuance of any parol ante-nuptial agreement, the benefit of such appointment passed to her free from any obligation or trust arising out of such parol agreement.

If this, then, be the correct view of the plaintiff's position, what she did was to make a gift to the hospital of \$500. This gift she attacks, and the rules applicable to the question thus raised are to be found in many authorities. . . .

[Reference to *Hoghton v. Hoghton*, 15 Beav. 278; *Hobday v. Peters*, 28 Beav. 349, 351; *Billage v. Southees*, 9 Hare 534, 540; *Cook v. Lamotte*, 15 Beav. 234, 240; *Holman v. Loynes*, 4 D.M. & G. 270, 282; *Clarke v. Hawke*, 11 Gr. 553; *Evans v. Llewellyn*, 1 Cox 333; *Alleard v. Skinner*, 36 Ch. D. 145; *Hunter v. Atkins*, 3 Myl. & K. 113, 140; *McCaffrey v. McCaffrey*, 18 A.R. 599; *Rhodes v. Bate*, L.R. 1 Ch. 252.]

The question is, whether, having regard to the principles laid down in the foregoing cases, the plaintiff is entitled to a return of the \$500.

For many years she had, as patient and employee, resided in the hospital, which was under the control of the Roman Catholic church. The Mother Superior had been the custodian of the insurance certificate, parting with it only on the day of the marriage in order to enable it to be changed in the plaintiff's favour. Finn was dying, and the Mother Superior appears to have manifested much interest in the destination of the money. On learning that some persons, including the plaintiff's brother, had obtained Finn's signature to a paper, she reported the matter to Dean Murray, adding that the plaintiff