

HON. MR. JUSTICE BRITTON.

AUGUST 2ND, 1913.

McDOUGALL v. C. CLOVIS PAILLE, EXECUTOR, ETC.

4 O. W. N. 1602.

Gift—Sum of Money in Bank Standing to Credit of Deceased Person
—Money Received from Wife of Deceased—Action by Adminis-
tratrix of Wife to Recover from Estate of Deceased Husband
—Assertion of Gift from Wife to Husband—Evidence—Onus—
Corroboration—Undue Influence—Mental and Physical Weakness
of Wife.

Action originally brought by Martha Nolan against her husband, P. John Nolan, to recover a sum of money belonging to plaintiff, deposited in a bank to credit of defendant. Both parties died, *pendente lite*, and action was continued in name of present plaintiff, administratrix of estate of deceased Martha Nolan, against present defendant, as executor of will of deceased P. John Nolan.

BRITTON, J., *held*, that the onus had not been discharged by defendant to shew that the money received was a gift *inter vivos*. Wife was mentally and physically weak, suffering from a tumor in the head when she handed the money over to her husband, and could not appreciate the nature and effect of the acts, which would deprive her own children by her first husband, of the money, and enable her second husband to give it to his children, by a former wife.

Parfitt v. Lawless (1872), L. R. 2 P. & D. 462, followed.

Tried at Fort Frances without a jury.

G. S. Bowie, for plaintiff.

A. D. George, for defendant.

The plaintiff resides in the city of Winnipeg, and is a school teacher. She is the daughter of the late Peter McDougall and Martha McDougall, his wife.

Her father died in September, 1905, and her mother, Martha McDougall, married John Nolan in August, 1907.

At the time of his marriage John Nolan was a locomotive engineer residing at Winnipeg.

Shortly after the marriage Nolan and his wife left Winnipeg and took up their residence in Rainy River in the province of Ontario.

In 1910 Mrs. Nolan became sick. She suffered from a growth or tumor in the brain. The disease proved fatal, and she died on or about the 25th November, 1911.

The defendant John Nolan became ill at a later date than the beginning of the sickness of his wife, and he died in July, 1911.

No children were born to John Nolan and Martha McDougall, but two children were born to Martha and Peter