

Of this money, at least \$4,800 was, prior to the 21st January, 1911, on deposit to the credit of Mrs. Nolan in the Canadian Bank of Commerce at Rainy River. Of this money, the sum of \$2,100 was drawn out of that bank upon the cheque of Mrs. Nolan and deposited to the credit of P. John Nolan in the Bank of Nova Scotia at its branch at Rainy River.

The balance of the \$4,800, viz., the sum of \$2,700, was drawn out by the wife, she getting a draft for it upon the Canadian Bank of Commerce at Belleville. This money was also received by the deceased P. John Nolan. Some of it was expended by him in his care for and the search for the restoration of his wife's health; but a very considerable part of it was retained by the husband. It is said that he expended money upon himself, not wisely—his habits having become bad.

This action was commenced during the lifetime of the parties, the present plaintiff suing as next friend of her mother. The action abated by the death of P. John Nolan, and was revived as against the present defendant, as executor of the will of P. John Nolan. Then Martha Nolan died, and the action is now continued by the plaintiff as administratrix of Martha Nolan.

An interim injunction was obtained against P. John Nolan drawing out and expending any more of the money. Of the money which Martha Nolan had, there is the sum of \$3,724.81 and interest in the Bank of Nova Scotia at Toronto, standing to the credit of P. John Nolan. P. John Nolan was the original defendant, and this money is the subject of the present controversy. It is hardly in dispute that the money was the money of Martha Nolan, but P. John Nolan asserted, and his executor now asserts, that it was given to P. John Nolan by his wife Martha.

To establish this gift *inter vivos*, the onus is upon the defendant. In my opinion, that onus has not been satisfied. Upon this first point, which goes to the root of the matter, the plaintiff is entitled to recover.

There is really no corroboration of the statement of P. John Nolan. All the facts in connection with the transfer of the money from Martha—the sick wife—to her husband, are more consistent with there being no gift, than that there was a gift. No gift can be implied from the facts and circumstances as stated by John Nolan.

Martha Nolan was not, at the time of the alleged gift, in a state of mind to appreciate the nature and effect of the acts