

The testatrix derived her property from a former husband; and in February, 1906, she married the present defendant, who was then a widower. She made a will in his favour on the 23rd December, 1907, which was drawn by Mr. Loftus, who had acted as her solicitor before this, as well as after. Being dissatisfied with her domestic life, she revoked this and made a will on the 6th January, 1908, in favour of Charles Merton, who had befriended her, and this was also prepared by Mr. Loftus.

It is plainly apparent from all the evidence that she had fully resolved not to give any of her property to her husband, and this for reasons fully explained by her in writing at a later date. I see no reason for supposing that this will to Merton was not a valid instrument, made by one competent, and acting as a free agent. Married women can dispose of their property as freely and fully as married men.

The learned Surrogate Court Judge detects undue influence in some amounts given to Roman Catholic charities in this will larger than those given to Protestant charities—she being a Presbyterian and Loftus a Roman Catholic. But surely this per se is not enough so to hold.

In *Parfitt v. Lawless* (1872), L.R. 2 P. & D. 462, before a strong Court composed of Lord Penzance, Pigott, B., and Brett, J., the Court refused to extend the rules adopted by Courts of Equity in relation to gifts *inter vivos* to the making of wills.

Then in 1910 the impeached will was made. As stated by the learned Judge below, "She told Mr. Loftus that Mr. Merton would not fight for her will against her husband in case of her death, and wanted to leave it to Mr. Loftus, who would fight for it."

Mr. Loftus put her off several times, but at last he saw Mr. Lewis and asked him to draw a will, as Mrs. Harris wished to leave her property, and he introduced her to Mr. Lewis.

I quote against from the judgment below: "Mr. Lewis said that she did instruct him as to the will in favour of Mr. Loftus—the manner in which it was to be drawn—but she told him that she had no relations, and that she was not going to leave anything to her husband nor to any one who would not fight for the will . . . I think she came next day and signed the will"—as drawn by Mr. Lewis.

Resting at that point, and on the facts stated, there appears to be enough to shew a good will by a competent testator. There was no weakness of mind and no undue influence exerted. She