

DIVISIONAL COURT.

DECEMBER 10TH, 1910.

*FINN v. ST. VINCENT DE PAUL HOSPITAL.

Gift—Undue Influence—Absence of Independent Advice—Pressure — Duress — Ante-Nuptial Agreement — Absence of Writing—Statute of Frauds.

Appeal by the plaintiff from the judgment of the Junior Judge of the County Court of Leeds and Grenville, dismissing the action, which was brought by Mary Josephine Finn, widow of Paschal Finn, deceased, to recover from the defendants \$500, being part of the sum of \$1,000 payable to her under a benefit certificate or policy issued by the Catholic Order of Foresters on the life of Paschal Finn.

The certificate as issued named the father and brother of the deceased as beneficiaries.

The defendants alleged that the plaintiff agreed with Finn that, in consideration of his marrying her and appointing her sole beneficiary, she would, on his death, pay to the defendants \$500, one-half of the \$1,000. The plaintiff denied that agreement.

For some years before his death, Paschal Finn was in feeble health and was in the defendants' hospital as a non-paying patient, operating the elevator without remuneration. The benefit certificate was in the keeping of the Mother Superior.

The plaintiff and the deceased were Roman Catholics, and the marriage ceremony was performed on the 25th January, 1909, by the parish priest, the Very Rev. Dean Murray, at the hospital, the deceased being very ill and confined to his bed. On the same day, the financial secretary of the Order obtained the certificate from the Mother Superior, and had it changed by Paschal Finn so as to make the plaintiff sole beneficiary. On the 28th January he died.

The plaintiff, after the death, executed a power of attorney (irrevocable) in favour of Mr. Botsford, a solicitor, who collected the \$1,000, and paid \$500 thereof to the plaintiff, and the remaining \$500, after deducting the amount of certain expenses, to the defendants.

There was evidence that some persuasion had been used to induce the plaintiff to do this, and Dean Murray admitted that he had said to her, "Do your duty, and do not damn your soul for money."

*This case will be reported in the Ontario Law Reports.