

of the County of Perth, to recover three sums of money, amounting in all to \$800, at one time the property of Mrs. Isabella Johnstone, the original plaintiff, and deposited or given by her to the defendant, her husband's nephew, George Johnstone. After judgment, the original plaintiff died, and the action was revived in the name of her sole executor, Josiah Henry Frost.

In her statement of claim, the plaintiff alleged that the moneys were placed in the hands of the defendant to be repaid when required.

The defendant denied this allegation, and, by way of counterclaim, alleged that the moneys were paid to him as remuneration for services rendered; that he had rendered to the plaintiff all such services as were contemplated at the time of payment; and that, if he should be held liable to her for the moneys received by him, he was entitled to recover \$800 as payment for his services.

The County Court Judge found that the money was not a gift to the defendant or his wife; and that the plaintiff was entitled, after giving credit for certain repayments and sums owing for services rendered, to judgment for \$325 and costs. From this finding the defendant appealed.

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

J. C. Makins, K.C., for the defendant.

Glyn Osler, for the plaintiff.

MULOCK, C.J.:—From the evidence it appears that the plaintiff and her husband, being childless, adopted one Henry Frost as their son. The husband was a farmer, and died on the 21st December, 1898, owning at the time of his death a farm of 50 acres of land in the county of Perth, which he devised to the plaintiff for life, with remainder in fee to the adopted son, Frost.

The plaintiff, who at the time of her husband's death was about seventy years of age, continued for some years to reside on the farm, Frost managing it for her.

The defendant, George Johnstone, a farmer, was her nephew by marriage, being the son of a brother of her deceased husband, and resided a few miles distant from the plaintiff. He and his wife were apparently on very friendly terms with the plaintiff, and frequently assisted her in the management of the farm and household matters.