

BRITTON, J.

AUGUST 2ND, 1913.

McDOUGALL v. PAILLE.

Gift—Sum of Money in Bank Standing to Credit of Deceased Person—Money Received from Wife of Deceased—Action by Administratrix 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 the plaintiff, deposited in a bank to the credit of the defendant. Both parties died, pendente lite, and the action was continued in the name of the present plaintiff, the administratrix of the estate of the deceased Martha Nolan, against the present defendant, as executor of the will of the deceased P. John Nolan.

The action was tried before BRITTON, J., without a jury, at Fort Frances.

G. S. Bowie, for the plaintiff.

A. D. George, for the defendant.

BRITTON, J.:—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 P. John Nolan in August, 1907. At the time of his marriage, P. 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. P. 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 P. John Nolan and Martha McDougall, but two children were born to Martha and Peter McDougall, and two children were born to P. John Nolan and his former wife.

Martha Nolan became possessed and was the owner of a large sum of money, part received by her from her former husband Peter McDougall, and part from property which became hers and was sold by her.