

and submitted that the house, which was worth more than \$6,000 and more than \$7,258.43, was given to the plaintiff in full satisfaction of her claim as a creditor and of the legacy of \$6,000. This defendant also asserted a set-off of \$2,165.05.

The other adult defendants made the same submission upon the facts; and the infant defendant submitted his rights to the Court.

The learned Judge found as a fact that the house was not purchased by the deceased for himself and his wife but for himself personally. The conveyance of it was made upon his own motion.

The advances made by the plaintiff were not intended to be gifts but loans. The plaintiff did not seek to recover the amount as a legacy under the will, but as a debt due to her, and she did not ask to be paid the debt and the legacy, but only the debt.

There could be no ademption, because no facts were disclosed upon which ademption could take place. It was said that the conveyance of a half interest in the house satisfied the debt due from the husband. But there was nothing to justify such a presumption; the evidence from the documents was all the other way; and the plaintiff swore (her statement was accepted) that the conveyance was never intended to be a payment of the debt due to her; that he had never asked her to accept it as such, and that it never was so accepted. The debt, therefore, remained. There was no question of satisfaction of a legacy—the plaintiff was not suing for a legacy; the so-called legacy was a direction to pay the debt due to her—no part of it had been paid.

The cases cited for the defendants had no application: *In re Pollock* (1885), 28 Ch.D. 552; *In re Fletcher* (1888), 38 Ch.D. 573; *Tuckett-Lawry v. Lamoureaux* (1902), 3 O.L.R. 577.

Judgment for the plaintiff for the sum claimed, less the set-off, agreed upon at \$1,853.43, with interest; all costs out of the estate.

ROSE, J.

MARCH 8TH, 1919.

LONG v. GAGE.

Sale of Goods—Action for Price—Question of Fact—To whom Sale Made and Credit Given—Evidence—Finding of Referee—Agent—Election—Assignment of Claim—Action by Assignee—Absence of Notice of Assignment—Addition of Assignor as Party Plaintiff—Costs—Items of Account—Appeal from Report.

Appeal by the defendant from the report of SNIDER, Co. C.J., to whom the action was referred for trial; and motion by the plaintiffs for confirmation of the report.