

DIVISIONAL COURT.

DECEMBER 28TH, 1912.

TAYLOR v. YEANDLE.

Parent and Child—Deed from Mother to Daughter—Action to Set Aside—Absence of Secrecy—Absence of Undue Influence—Burden of Proof on Recipient—Necessity of Separate and Independent Evidence—Difference in Case Where Deed Attacked after Death of Donor.

Appeal by plaintiff from the judgment of BOYD, C., of Oct. 15, 1912, in an action by an administratrix, to set aside a conveyance as invalid and as having been obtained by the fraud and undue influence of defendant, etc. At the trial the action was dismissed with costs.

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

R. S. Robertson, for the plaintiff.

G. G. McPherson, K.C., for the defendant.

CLUTE, J.:—The action was brought to set aside a deed dated 20th February, 1907, made by the late Eleanor Doherty, who died on the 7th March, 1911, to her daughter, the defendant. The deed was attacked chiefly upon the ground that it was a gift from the mother to the daughter, and that there was not sufficient evidence to support it without relying upon that of the daughter, which could not be looked at for that purpose.

In *Lavin v. Lavin*, 27 Gr. 567, which was strongly relied upon, reference is made to the judgment of Lord Romilly, in *Walker v. Smith*, 29 Beav. 396, where he is reported as saying: "I am of opinion that in all these cases you must not take into account the evidence of the recipient himself. The gift must be established by separate and independent evidence, and if there was separate and independent evidence here I could uphold the gift." Spragge, C., further says that he followed this decision in *Delong v. Mumford*, 25 Gr. at p. 90.

On referring to *Walker v. Smith*, it will be seen that this was a case between solicitor and client, where the testatrix had made a will, prepared by the solicitor, by which she gave legacies of \$500 each to the solicitor, his wife and his son and daughter, and the residue to her sisters, and appointed the soli-