

For the purposes of this action she had visited Buffalo, but was unable to discover any record of her marriage. She gave evidence to the effect that no public records of marriages in Buffalo were kept before 1878. She could not trace the witnesses, the hotel where she was married having been destroyed, and the minister being dead. She also gave evidence that deceased had taken possession of her marriage certificate in 1878, but his son swore that he had searched through all his father's papers in vain for the certificate, or any evidence that the plaintiff had ever been the wife of A. J. Marks.

In November, 1903, nearly two years after his marriage to the defendant Susan Elizabeth Marks, deceased wrote to plaintiff Annie, stating that he had obtained her address from her sister. He then addresses her as "Dear Friend," and this correspondence continued until August, 1904, she sending in one of her letters her photograph, with "A. Frankboner" written on the back. In a letter from the deceased to her he spoke of the time "you and I were one" at Tift House in Buffalo. This is the only reference to their former relations. At the trial plaintiff's sister and cousin swore to having seen the paper supposed to be the marriage certificate, but neither witness remembered the contents of the document.

Deceased married Susan in March, 1902, at Nelson, B.C., prior to his opening up correspondence with Annie and during this period he also, when absent, wrote to Susan, but always addressed her as "my dear wife" and signed himself "your loving husband." He made his will at Nelson on the 6th of May, 1904, leaving to "my wife" \$50 per month during her lifetime payable out of his estate.

It is on this clause in the will that action was brought, it being contended that the marriage to Susan was a bigamous union and that the legacy ought, therefore, to go to Annie, who set up her alleged marriage in 1873.

Held, on appeal, affirming the decision of HUNTER, C.J. (MARTIN, J., dissenting), that there was nothing in the evidence to displace the presumption that the deceased had not committed bigamy in marrying Susan in 1902, and that she was the person designated in the will as "my wife" and "my said wife."

Whether all the evidence taken upon commission in an action shall be read at length, or read in part and stated in