

a purely academic question. Even if the contention of the plaintiff should prevail, the unpaid claims of the creditors of the estate would more than absorb the whole amount available for distribution, and the plaintiff accordingly has personally no interest in the action.

No authority has been cited to the effect that the merely sentimental interest which the plaintiff might have in her late husband's creditors getting as much as possible out of the estate would form a basis or foundation for this action.

The plaintiff therefore fails as to both grounds of her action. The transaction which she impeaches with reference to the real estate was a most improper one. I do not find specifically that it was a fraudulent one, but it bears many of the earmarks of fraud.

Under all the circumstances, while I dismiss the action, I do so without costs. Thirty days' stay.

HON. MR. JUSTICE LATCHFORD.

MAY 23RD, 1913.

PRESSICK v. CORDOVA MINES LIMITED.

4 O. W. N. 1334.

Negligence—Master and Servant—Fatal Accidents Act—Fall Down Uncovered "Winze" of Mine—Statutory Duty—Contributory Negligence—Finding of Jury—No Evidence to Support—Rejection of Finding by Trial Judge.

LATCHFORD, J., in an action for the death of one of the defendant's employees, killed by a fall down a "winze" in defendants' mine, through their alleged negligence, refused to accept a verdict of contributory negligence, holding that there was no evidence to support it, and entered judgment for the plaintiff for \$1,750 damages and costs.

Action under the Fatal Accidents Act for damages for death of plaintiff's husband killed by a fall into a "winze" in defendants' mine while tightening a nut upon a drilling machine, through the alleged negligence of defendants, his employers.

F. D. Kerr, for plaintiff.

M. K. Cowan, K.C., and A. G. Ross, for defendants.

HON. MR. JUSTICE LATCHFORD:—But for the finding of contributory negligence, the plaintiff would be entitled to recover. Where a statute imposes a duty on an employer