

The action was tried without a jury at Picton.
J. M. Ferguson, for the plaintiffs.
Gideon Grant, for the defendants.

LENNOX, J., in a written judgment, said that the deed was dated the 7th December, 1918, and registered on the 28th February, 1919. The grantor, at the date of the deed and when it was registered, was living with the defendant Ethelwyn and her co-defendant, Charles Wycott, a brother of the grantor, and she continued to make their house her home until her death on the 27th October, 1919.

The learned Judge, after a discussion of the evidence, said that the onus was on the defendants to establish that the grantor was not unduly influenced in making an improvident disposition of what was at the time practically all she possessed, and that the gift was the voluntary and deliberate act of a person mentally competent to know, and that she did in fact know, the nature and effect of her act. The learned Judge was of opinion that Emma Wycott, as well with regard to her ability or inability to understand and appreciate the nature and effect of what she was doing, as with reference to the situation in which she was at the date in question, was peculiarly in need of careful, competent, and independent assistance and advice; that she had not competent and independent professional assistance and advice in the making of the deed in question; and that, if it was an honest transaction on her part, the deed ought not to be allowed to stand.

The learned Judge said, however, that the evidence, coupled with all the surrounding circumstances, made it impossible for him to escape from the conclusion that one of the purposes of the grantor in making the deed was to protect herself and the property which she conveyed by it from liability for the costs of a certain litigation which was pending. It was possible, but seemed improbable, that there was some other purpose combined with this in the mind of the grantor, but that made no difference. If the design of the grantor in vesting the property in the defendant Ethelwyn Wycott was fraudulent and contrary to public policy, and the transaction was a completed one, she could not in her lifetime have obtained the assistance of the Court to get it back; and her personal representatives and heirs were in no better position. How could they, as volunteers, claim a right she had forfeited by offending against public policy?

And, if the execution of the deed was a fraudulent device, it could not be set aside on the ground of improvidence, or of want of understanding, or of lack of competent advice and proper warning.

Action dismissed without costs.