

The action was brought by the daughter and administrator of the estate of Ralph Nicholson, deceased, against her brother Edward Nicholson, to set aside a conveyance to him from his father of land in the district of Muskoka and an assignment from his father to him of a mortgage on land. The conveyance and assignment were both dated 23rd May, 1896, and Ralph Nicholson died on 11th March, 1898, at the age of 82.

The referee found in favour of defendant.

O. M. Arnold, Bracebridge, for plaintiff.

E. E. A. DuVernet, for defendants.

BRITTON, J.—With great respect, I am unable to agree with the learned official referee in his conclusion that the conveyance of the farm and the assignment of the mortgage should stand. If it were merely a question of deciding upon conflicting testimony, I should hesitate before differing from the trial Judge, but it seems to me that upon the undisputed evidence, indeed upon the evidence of defendant himself, he has not satisfied the onus cast upon him of shewing how the transaction can be supported. . . . It appears that as long ago as 1888 defendant stood in a very confidential relation to his father in dealing with his father's money. . . . It was practically conceded on the argument by counsel for defendant that what was done by Ralph was improvident, and if attacked in his lifetime could not have been supported. It gave all he had; there was no power of revocation—no provision for the old man's maintenance in sickness or health, or for his burial. It has been found by the official referee (with which finding I wholly agree) that the conveyance and assignment were prepared and executed without being read over to Ralph and without his having any independent advice.

The defendant in his statement of defence set up that the conveyance and assignment were made for good consideration, viz., labour performed, money and food furnished, and services rendered for 25 or 30 years prior thereto.

I do not think the transaction can be upheld either as a gift or one for adequate consideration.

The only cases I need refer to are: McCaffrey v. McCaffrey, 18 A. R. 599; Waters v. Donnelly, 9 O. R. 391; Fry v. Lane, 40 Ch. D. 312; Beemin v. Knapp, 13 Gr. 398.

The appeal should be allowed, and the conveyance of the land and the assignment of the mortgage should be declared void and be cancelled.