

MULOCK, C.J.Ex.

MAY 30TH, 1917.

*VANZANT v. COATES.

Gift—Parent and Child—Voluntary Conveyance of Land by Mother to Daughter—Fiduciary Relation—Undue Influence—Lack of Independent Advice—Public Policy.

Action by Frances R. Vanzant against George Coates, her brother, to recover possession of the north half of a lot conveyed to the plaintiffs by Elizabeth Coates, the mother of the plaintiff and defendant, on the 6th October, 1915. Elizabeth Coates died on the 23rd January, 1916. The defendant denied the validity of the conveyance to the plaintiff, and claimed title as devisee of his mother and also by possession. The conveyance to the plaintiff was in consideration of natural love and affection, other valuable considerations, and the sum of \$1.

The action was tried without a jury at Toronto.
George Wilkie, for the plaintiff.
F. Arnoldi, K.C., for the defendant.

MULOCK, C.J. Ex., set out the facts and circumstances in an elaborate written judgment. He said that Elizabeth Coates had been paralysed in her right side for two years before her death and was in her 76th year and in feeble health when she executed the deed by making her mark. The deed was procured through the instrumentality of the plaintiff. Having regard to the mother's infirmities, helplessness, and dependent condition, she was unable to refuse the daughter's appeal, and was not in a position to form an absolutely free and unfettered judgment. The deed was the result of the plaintiff's undue influence over her mother.

Reference to *Allcard v. Skinner* (1887), 36 Ch. D. 145; *Huguenin v. Baseley* (1807), 14 Ves. 273, 300; *Hoghton v. Hoghton* (1852), 15 Beav. 278; and other cases.

The gift, having been procured by the plaintiff's undue influence, could not stand; and, further, on the ground of public policy, could not stand; the plaintiff stood in a fiduciary relation to her mother at the time of the gift; and the evidence shewed that the mother had no competent and independent advice.

The deed being set aside, the defendant took as devisee.

Judgment setting aside the impeached deed and dismissing the action, with costs.