

Although a good deal of the evidence was such as could be fully relied on—yet I cannot help feeling that what took place in regard to the alleged gift was vague, indefinite, and unsatisfactory.

The evidence did not establish that any undue influence was used to get the deceased to sign the check in blank.

It is true that the deceased was very sick. He died on the 8th October, 1911, after a long debilitating illness, Mrs. Keyes did not feel very kindly toward the plaintiff. She admits saying to the deceased on an occasion when he was finding fault with the plaintiff "that is the man you left your money to." The defendant Dr. Hillyer, knowing what had been done between plaintiff and deceased, and with the doctor's apparent approval, should have called in some person so that the deceased could, at least, have had independent advice before signing the blank check. The deceased did not suggest how the new account was to be opened. A paper writing was drawn up by the bank manager that the money should not be drawn unless by a check signed by both defendants. The defendants signed this. Apparently this was the manager's own suggestion for the protection of the bank.

It is not in evidence that the deceased knew anything of this.

There will be a declaration that the money on deposit in the Bank of Montreal at Bowmanville, to the credit of the defendants, is the property of the estate of the late Charles W. Munn.

There will be judgment for the plaintiff for \$530.95 with interest at rate allowed by the Bank of Montreal on deposits at Bowmanville, from 5th October, 1911.

Upon all the facts, and as I think the defendants acted in good faith, although mistaken as to their rights, the judgment will be without costs.

The judgment will be without prejudice to any claim the defendants or either of them may have against the estate of the late Charles W. Munn.

Thirty days' stay.