

There should be judgment for the plaintiffs upon the mortgage for the amount claimed after making the proper deductions, with costs as of an undefended action upon the mortgage, and the defendants should be allowed the costs of their defence against the plaintiffs (to be set off), the litigation having been caused by an unfounded claim.

The learned Judge desired to avoid a reference; but, if there must be a reference, the costs thereof should be disposed of by the Master, in accordance with his view as to the responsibility for the amount not being now adjusted.

LENNOX, J., IN CHAMBERS.

JANUARY 15TH, 1920.

RE MOFFATT.

*Insurance (Life)—Insurance Moneys Claimed by Wife of Assured—
Alleged Gift of Policy—Absence of Assignment—Incomplete
Gift.*

Application by W. H. Moffatt for an order for payment out of Court of moneys paid in by an insurance company.

S. F. Washington, K.C., for the applicant.

N. R. Kay, for Sarah Moffatt, wife of the applicant.

LENNOX, J., in a written judgment, said that the application was for an order for payment out to the applicant of moneys in Court, about \$1,000. If the learned Judge were able to come to the conclusion that what Sarah Moffatt, the wife of the applicant, said, was true, namely, that her husband handed the policy of insurance to her as a gift, and so expressed himself at the time, he (the learned Judge) would still not be justified in declaring that the money in question belonged to her. If it was intended as a gift, it was incomplete, and therefore ineffective in law. *Howes v. Prudential Assurance Co.* (1883), 49 L.T.R. 133, was conclusive. *Wilson v. Hicks* (1911), 23 O.L.R. 496, was a case in which the intention of a gift was beyond doubt, and the policy was assigned by a writing, although not under seal. Sarah Moffatt's evidence was contradicted by her husband, and she asked that an issue be directed. It would be foolish to try out an issue that could have no result, and an issue here would be fruitless, for the money belonged to the husband, whether his wife's statement was true or false.

There should be an order for payment out of Court to the applicant as asked.