

The Local Judge found that three of these sums were paid out of trust funds and in breach of trust by the defendant's husband (now deceased), and were applied upon debts owing by the defendant Mary Mathieson and for her benefit, but that the payments were made "without her prior knowledge or procurement;" and for this reason the Local Judge found that she was not liable for their repayment, basing his conclusion of law upon *Ewart v. Steven* (1871), 18 Gr. 35. But that case, and others like it, are distinguishable from this, in which an insolvent husband made a purely voluntary gift of trust moneys to his wife. LENNOX, J., said that he attached no importance to the argument that John Hugh Mathieson was a constructive trustee of his wife's money as well. He was her agent, and without means of his own, as she well knew, and they were jointly engaged in reckless speculation upon borrowed money.

As to the fourth sum, \$5,230, part proceeds of a debenture of the London and Erie Company, applied in part payment of a promissory note of the husband and wife, the Local Judge found that the defendant Mary Mathieson was not liable. With that conclusion LENNOX, J., did not agree. He referred to Halsbury's Laws of England, vol. 28, p. 204, note (n.); *Barnes v. Addy* (1874), L.R. 9 Ch. 244; *Pannell v. Hurley* (1845), 2 Coll. 241. The learned Judge added that the law of Bank of Montreal v. Stuart, [1910] A.C. 120, did not alter the facts.

Appeal allowed to the extent indicated, with costs to be paid by the defendant Mary Mathieson personally.

MIDDLETON, J.

NOVEMBER 13TH, 1915.

FREEMAN v. WRIGHT.

*Master and Servant—Dismissal of Servant—Contract of Hiring
—Novation—Change in Employer — Indefinite Period —
Reasonable Notice—Damages—Costs.*

Action for damages for wrongful dismissal, tried without a jury at Hamilton.

C. W. Bell, for the plaintiff.

G. S. Kerr, K.C., for the defendants.

MIDDLETON, J., said that the plaintiff was employed as a bookkeeper in 1903, at an annual salary of \$1,000, payable monthly. This salary was from time to time increased during