

G. H. Watson, K.C., and R. Ruddy, Millbrook, for plaintiff.

A. B. Aylesworth, K.C., and J. J. Maclellan, for defendant.

FALCONBRIDGE, C.J.—The features of this case distinguish it from my decision in the case of *Fisher v. Fisher*, noted in the *Globe and Mail* and *Empire* newspapers of February 19th, 1901, and cases therein cited. Here there was no sign of coercion, and Mr. White, who had performed some casual legal services for deceased, though hardly to be called her solicitor, testified, as did also Miss Good, that Mrs. Thorn-dyke gave her instructions clearly, and knew what she was doing, and refused to take a bond from the defendant for her maintenance, saying that she could trust William. The deceased had, in 1897, remitted the interest then due, and there is abundant evidence that for years she had intended to give this mortgage to William. The transaction is to be looked upon as bounty and not bargain, and is one that deserves to be upheld. I dismiss the action, but without costs.

R. Ruddy, Millbrook, solicitor for plaintiff.

Robertson & Maclellan, Toronto, solicitors for defendant.

LOUNT, J.

JANUARY 2ND, 1902.

CHAMBERS.

CHEVALIER v. ROSS.

Amendment—Pleading—Diligence in Moving—Rule 312.

Appeal by plaintiff from order of local Master at Cornwall refusing leave to plaintiff to amend the statement of claim by increasing the amount claimed for extras in paragraph 3 by \$79.33, making \$199.90, instead of \$120.57, and to amend the reply by inserting the words "does not" before the word "accepts," and striking out the "s" from that word.

J. H. Moss, for the plaintiff.

I. F. Hellmuth, for defendants.

LOUNT, J.—The plaintiff clearly made a mistake in not claiming the larger amount, and has used reasonable diligence in moving to amend after discovering his error, nor will defendant be injured by allowing the amendment. This is a case to which Rule 312 applies with full force: see *Cropper v. Smith*, 20 Ch. D. at p. 710; *Williams v. Leonard*, 16 P. R. 544; 17 P. R. 73; *Emery v. Webster*, 9 Ex. 242.

I allow the appeal, but without interfering with the disposition of costs by the Master, and give leave to plaintiff to amend as he may be advised. The defendant may withdraw