

\$2,700 paid by the defendant was the full and fair value of the property at that time.

The plaintiff alleges that the power of attorney under which Leo H. Johnston purported to execute the deed to the defendant was a forgery, in so far as it refers to land in Canada, and that in any case it was revoked by the death of Isabella Gilchrist Johnston before the execution of the defendant's deed.

I think that there is evidence to support the allegation of forgery. I am not satisfied that the authorities referred to by the defendant's counsel meet this case. It is easy enough to argue that crime is not to be, and good faith is to be, presumed, where there is nothing more than the fact that an alteration appears upon the face of an instrument without explanation—but here there is, to my mind, the clearest evidence that at the time this power of attorney was executed and registered there was no provision in it for sale of land in Canada. It is argued that, if Mrs. Johnston subsequently authorised or consented to the additional clause, this would be sufficient in law. Possibly it would. The difficulty I have is with the question of fact. I cannot find any evidence that this was done with Mrs. Johnston's knowledge or approval. It is a question, however, upon which an appellate Court will have the same means of forming an opinion that I have. If I have come to a proper conclusion upon this point, the question of revocation by death is of no importance.

There is, perhaps, no evidence upon which I can find as a matter of fact that Isabella Gilchrist Johnston is dead. The statements attributed to Johnston after he was arrested may or may not have been made, and, if made, may or may not be true; but, in any event, they are not evidence of his wife's death at a particular time or of his wife's death at any time. Even with the assistance of the presumption which has arisen since, through lapse of time, and drawing any inference which I may be justified in drawing from the discovery of the remains of a human being in the fall of 1908, I cannot find that there is any evidence that Mrs. Johnston was dead when the deed was executed in December, 1906. Those who allege death at a particular time or before a specific event must prove it: *In re Lewes' Trusts* (1871), L.R. 6 Ch. 356; Phipson on Evidence, 4th ed., pp. 626-7; Taylor on Evidence, 9th ed., cases collected in pars. 198 to 202; *Thompson's Trusts* (1905), 39 Ir. L.T.J. 372.

But Mrs. Johnston's relatives were in the habit of writing her and receiving letters from her from time to time. How frequently was not stated. The last communication from Mrs.