

law is concerned the things said to have been given here were all valid subjects of donatio mortis causa: *Brown v. T. G. T. Corp.*, 32 O. R. 319. The three requirements of such a gift are here combined: *Cain v. Moon*, *supra*, per Lord Russell, C.J., at p. 286. There is sufficient corroboration in law and in fact of the statements of the plaintiff, whose evidence I accept, and who has, in my opinion, acted in entire good faith, but he is a solicitor and had done any legal business which the donor in her lifetime had to do, and was therefore her solicitor, and she acted without having any independent legal advice.

The principle which I consider applicable to this case appears to have been clearly laid down by Sir E. Sugden in *Walsh v. Studdart*, 4 D. & War. at p. 171; and he does not deal at all with the question of corroboration because he had already asked the question: "What proof is there that this conversation ever took place?" and then he lays down, at p. 171, the principle I have referred to, on the assumption that it did take place. See also *Thompson v. Heffernan*, 4 Dr. & War. 285, as to the rules laid down respecting such alleged gifts to a clergyman in attendance; and see also *Godard v. Carlile*, 9 Price 169; *Liles v. Terry*, [1895] 2 Q. B. 679. The action will be dismissed, and as the invalidity of the gift extends as well to the pieces of paper as to the moneys of which they are the indicia, the plaintiff will be ordered to deliver to the defendant all documents relating to the title to the property. No order as to costs.

Davis & Davis, Amherstburg, solicitors for plaintiff.

Fleming, Wigle & Rodd, Windsor, solicitors for defendant.

6TH JANUARY, 1902.

DIVISIONAL COURT.

*Re THURESSON, McKENZIE v. THURESSON.*

*Mortgage—Release of Part of Land with Right of Way—Effect of—Covenant—Right of Mortgagee to Recover upon after such Release—Further Evidence.*

The release by a mortgagee, without the request of the mortgagor, of lot one, part of the mortgaged land, "together with a right of way for all purposes over lot A," said lot A extending along the rear of the other lots covered by the mortgage, as well as lot one, is such a dealing with the mortgaged property as prevents the mortgagee from recovering under the covenant for payment in the mortgage, because he cannot restore the property as originally mortgaged.