

advice, executed the conveyance in question. The plaintiff did not have independent advice or any advice as to the execution of the deed.

The solicitor was retained and paid by defendant.

The witness was a stranger to plaintiff. The solicitor for the defendant took what was told him and apparently did not think it any part of his duty to advise the plaintiff. The defendant had good reason to at least suspect from the plaintiff's conversation about her brother and sister, that the plaintiff's mental condition was such, that a man ought not to accept a valuable gift from her. A short time after the execution of the deed the plaintiff left the home of defendant.

She realized that she had done something to her prejudice and wanted her brother to find out what she had signed. Upon the trial her memory seemed almost a blank as to this transaction.

I find that the plaintiff when she signed the conveyance was not capable of appreciating, and did not appreciate the effect, nature and consequence of her executing it. The giving away of this property to her nephew, to whom she was under no obligation, and from whom she had no reason to expect favours, was not a deliberate, well-considered act of the plaintiff. The plaintiff was feeble-minded. She was forgetful. Considering that the present alleged gift did not take effect until after death, and, notwithstanding the fact, that plaintiff had another house and \$2,000 in money, the act was an improvident one.

The case of *Kinsella v. Pask*, 12 D. L. R. 522, is in point, and many cases bearing upon this are there collected. Following that case as I am bound to do, the plaintiff must succeed. The cases are not distinguishable. There will be judgment for the plaintiff setting aside the conveyance and directing the defendant to re-convey to the plaintiff.

In default of such re-conveyance there will be a declaration that the plaintiff is as against the defendant, the absolute owner of the property.

Judgment will be with costs if demanded by plaintiff.

Twenty days' stay.