

**In re Shawaga Estate Bogucki v. Western
Trust Company and Custodian of
Enemy Property (No. 3)***

[1944] S.J. No. 23

[1944] 2 W.W.R. 407

SASKATCHEWAN KING'S BENCH

DOIRON J.

Judgment: May 26, 1944

Counsel:

E. C. Leslie, K.C., for plaintiff.

W. G. Currie, K.C., for Western Trust Company.

S. R. Curtin, K.C., for Custodian of Enemy Property.

1 DOIRON, J. -- This is the trial of an issue. The question to be tried is whether on or about December 12, 1941, the said Mike Shawaga, now deceased, handed to the plaintiff in contemplation of his then approaching death three Canada Victory Bonds each of the value of \$50 and the hereunder mentioned pass books and thereby gave her the amounts of money therein stated:

- (1) A pass book covering Mike Shawaga's account in the savings department of the Royal Bank of Canada, Melville Branch;
- (2) A pass book covering Mike Shawaga's account in the savings department of the Canadian Bank of Commerce, Melville Branch;
- (3) A pass book covering Mike Shawaga's account in the savings department of the Bank of Montreal, Melville Branch;
- (4) A pass book covering Mike Shawaga's account in the savings department of the Bank of Montreal, Regina Branch.

2 The evidence of Annie Bogucki is that in the year 1925 she came to live with the deceased as his wife. Her husband had deserted her some time previously, and the said deceased had informd

her that he had a wife in Poland. He treated her as his wife, introduced her as such and she assumed the name of Shawaga and lived with him under those circumstances until the date of his death on December 14, 1941.

3 For some months before his death he had been unwell but able to work. On December 13, 1941, having told the plaintiff that he was quite ill, he went to Melville to consult a doctor who apparently prescribed for him. On the following day his condition became serious and he asked the plaintiff to order a car to return to Melville for further medical attention. Before leaving for Melville the deceased opened a trunk and having taken out the documents above mentioned gave them to her saying, "If anything happens to me they're yours." The plaintiff put them in her purse and says that they have been in her possession ever since. He died at the hospital at Melville a few hours later.

4 The essentials to a *donatio mortis causa* are: (1) The gift must have been made in contemplation of death; (2) There must have been delivery to the donee of the subject-matter of the gift; (3) The gift must be made under such circumstances as show that the thing is to revert to the donor in case he should recover.

5 The authorities are to the effect that while corroboration of the plaintiff's claim is not a requisite, except when statutory, clear and unmistakable proof is required, not only of an intention to give, but of an actual gift: *Hall v. Hall* (1891) 20 O.R. 684; *McDonald v. McDonald* (1903) 33 S.C.R. 145; *Kendrick v. Dominion Bank and Bownas* (1920) 48 O.L.R. 539.

6 The same rule applies to claims against estates. While corroboration is not an essential ingredient of proof the evidence of the claimant must be regarded with jealous suspicion. The Judge must sift the evidence carefully and must be satisfied of the truthfulness of the claimant: *Stuart v. Fuller* [1922] 3 W.W.R. 556; *Johnson v. Berry* [1928] 2 W.W.R. 410, 22 Sask. L.R. 402; *Youngberg v. McGirr* [1920] 1 W.W.R. 146, 13 Sask. L.R. 34.

7 As a result of a telephone call from the doctor the plaintiff followed the deceased to Melville a few hours after his departure. The same evening the plaintiff sent the following telegram to the deceased's nephew, Mike Shawaga, at Odessa: "Mike passed away 4.30 p.m. today. Heart condition come immediately to Finnie to make arrangements." This witness accompanied by his wife Lena arrived at Finnie the following morning at about nine o'clock and with the plaintiff left for Melville at about eleven o'clock, whence they returned to Finnie. On their arrival Mike Shawaga began to search for what he called Union Insurance. During this search he found three Victory Bonds of \$50 each in a drawer in a small table. He then asked the plaintiff whether there were any bank books to which the plaintiff replied that they must be in the drawer. The witness says he found two bank books in a secret drawer, the existence of which he was aware, in the same table and upon finding these books, which he identified as one Royal Bank and the other Bank of Montreal, one green in colour and the other red, the plaintiff took possession of them. The Victory Bonds were given to her by the witness in an envelope with other securities to put away in a safe place. Lena Shawaga in a general way substantiates the evidence of her husband with reference to the finding and disposal of the bonds and bank books.

8 The plaintiff specifically denies Mike Shawaga's and Lena Shawaga's evidence as to the finding of the bank books or the Victory Bonds and says they were in her continued possession from the time they were handed to her by the deceased. After the funeral the plaintiff says she came to Regina and delivered some papers to Mr. R. M. Crowe, the manager of the Western Trust Company,

having been informed that the said company were undertaking the administration of the deceased's estate.

9 Mr. Crowe was called as a witness and stated that the plaintiff had inquired about her status with regard to the estate as she had not been married to the deceased and on being informed that in his opinion she had no status she inquired whether there was not some method whereby she could put in a claim for having lived for a long time with the deceased, whereupon Mr. Crowe quite properly advised her to obtain legal advice. Letters of administration were issued to the Western Trust Company on January 30, 1942, and on February 2, 1942, her solicitors made a claim on her behalf to the bonds and the moneys represented in the pass books. This letter was the first intimation that the plaintiff claimed the bonds and money. At no time did she refer to the gift to her by the deceased to Mike Shawaga nor to his wife, Lena Shawaga, nor to Mr. Crowe, although she was anxious to make a claim for "having lived so long with the deceased." I would be inclined to look with suspicion on the evidence of Mike and Lena Shawaga on the finding of the pass books as he might have hopes of ranking as a beneficiary but it seems to me that the plaintiff would want to publish her interest in the estate at the first available instance and certainly to Mr. Crowe when she discussed with him a proposed claim.

10 I have come to the conclusion that *donatio mortis causa* has not been established by clear and unequivocal evidence required and find against the plaintiff with costs. The costs of the defendants in the first instance will be paid out of the estate.

