

The defence taken in the answer of O'Neill, the surviving husband of the late Catharine O'Neill (formerly Catharine Drake), and of the defendants Henry Lechler and Elizabeth Fleming her brother and sister and heirs-at-law, that the deed to the complainant of the 17th of April, 1843, was a fraud upon the marital rights of O'Neill, can, if well taken, only avail the surviving husband, it being clear that if a fraud at all, it is a fraud only upon him and to be complained of only by him. And hence it follows, that if the deed is not to prevail as against the heirs-at-law, it must be upon some other ground.

The defendants do not admit the execution of this particular deed, but they do admit that the complainants' exhibits (the deed in question being one of them) are office copies as they purport to be; and it appears to me quite impossible to deny that these copies from the record are at least *prima facie* evidence of everything necessary to the validity of the instrument.

In the answer of O'Neill it is said that the grantor could neither read or write manuscript, and from this statement, which, from the fact that her mark is made to the paper appears to be true, and from the supposed want of motive for its execution, an attempt is made to establish fraud in fact, or some unfair dealing in procuring it. The attempt, however, in my opinion is entirely unsuccessful. Fraud certainly is not to be presumed; and any inference unfavorable to the deed which might be deduced from the circumstance that the grantor could neither read or write, is repelled by the certificate of the magistrates before whom her acknowledgment was made that the contents of the deed were fully explained by them to the grantor at the time.

It seems to me, therefore, quite clear that so far as the heirs-at-law are concerned, the deed in dispute is free from objection.

The case of the surviving husband, who insists that the deed is a fraud upon his marital rights with respect to the leasehold property conveyed by it upon which those rights by the marriage are supposed to have fastened, is thought to be different.