

Buckingham v. Drury, 2 Eden; In re Brocklebank, 6 Ch. D. 358; Overton v. Bannister, 3 Hare 503; Valentini v. Canali, 24 Q.B.D. 166.]

It is clear that when the defendants became indebted to the infant Freeman with respect to his deposit, the mere fact of his infancy would have been no answer to an action brought by him to recover the money. . . .

It is a mere accident that, by the Rules of Practice, in an action for the recovery of a debt due to an infant, the judgment would require the money to be paid into Court for his benefit. That provision does not in any way alter the effect of the contract to repay implied upon the making of the deposit.

The contract was one beneficial to the infant. He was the custodian of his own money, and the agreement merely made the bank a temporary custodian of his funds during his will. The bank's obligation was to hand back the money to its customer or pay it to his order. Nothing in this was detrimental in any way to the interest of the infant.

But, apart from this, I think that the provisions of the Bills of Exchange Act afford a complete defence, although this operation of the section may not have been foreseen by the draftsman of the Act. Section 47 provides that "capacity to incur liability as a party to a bill is co-extensive with capacity to contract." But sec. 48 provides that "where a bill is drawn or indorsed by an infant . . . the drawing or indorsement entitles the holder to receive payment of the bill. . . ."

This provision applies to a cheque (sec. 165): and, substituting the word "cheque" for "bill," the effect is: "A cheque drawn by an infant entitles the holder to receive payment thereof." If McCullough was entitled to receive payment, then the payment must operate to discharge the defendants.

The plaintiff's counsel based his argument to a great extent upon the provisions of sec. 95 of the Bank Act; and I have postponed its consideration because it can better be dealt with in the light of the law relating to infants' contracts. That section provides that the "bank may . . . receive deposits from any person whomsoever . . . whether such person is qualified by law to enter into ordinary contracts or not, and from time to time repay any or all of the principal thereof . . . If the person making any such deposit could not, under the law of the Province where the deposit is made, deposit and withdraw money in or from the bank without this section, the total amount to be received from such person on deposit shall not at any time exceed the sum of \$500."