

THE  
ONTARIO WEEKLY REPORTER

(1ST TO 11TH JANUARY, 1902, INCLUSIVE).

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FALCONBRIDGE, C.J.

4TH JANUARY, 1902.

TRIAL.

DAVIS v. WALKER.

*Donatio Mortis Causa — Solicitor — Lack of Independent Advice.*

A practising solicitor, who had done any legal business which deceased had in her lifetime required to be done, was held not entitled to receive a donatio mortis causa from deceased, who had not had any independent advice with regard to it.

Walsh v. Studdart, 4 D. & War. at p. 171, applied and followed.

Action for a declaration that plaintiff is the owner of certain money evidenced and represented by certain bank books, a mortgage, and the title paper to about 20 acres of land, with an agreement of sale of the same representing the purchase price thereon, amounting in all to about \$1,500, as a donatio mortis causa, and to have the same delivered to him by defendant, who was married to Betsy Ann Walker, deceased, late of the township of Colchester North, in the county of Essex, and is the administrator of her estate. The families of the plaintiff and deceased had been fast friends for over forty years and continually visited each other, and on the evening of 27th February, 1901, deceased, being then seriously ill, came to plaintiff's house and made the gift. The plaintiff is a barrister and solicitor practising in Amherstburg, and transacted any legal business that deceased required.

The action was tried at Sandwich.

W. R. Riddell, K.C., for plaintiff.

E. S. Wigle, Windsor, for defendant.

FALCONBRIDGE, C.J. — The rule that delivery of a chattel is essential in order to constitute a valid donatio mortis causa is satisfied by an antecedent delivery of the chattel alio intuitu to the donee: *Cain v. Moon*, [1896] 2 Q. B. 283; *Richer v. Voyer*, L. R. 5 P. C. 461. So far as the