that the testator told him to draw out this money from the Bank of Hamilton and have it transferred to the testator's account in the Sterling Bank at Alton. The defendant also says that the testator told him to take and keep the Bank of Commerce money in trust for his mother. In his pleading the defendant says that this sum of money was never part of the testator's estate, but was held by the testator in trust for his mother, and that he was therefore instructed by the testator to retain the same for the mother as being her property. This claim, as to the $215, is one of the matters now in controversy, being introduced as a supplemental cause of action in addition to the main one in respect of the $2,750 from the Sterling Bank. There is no dispute now as to the amount from the Bank of Hamilton which is under control of the executors. There is a dispute on the evidence as to whether the Bank of Hamilton knew of the death before payment, but this is not now of importance.

The defendant does not contradict the account given of the payment by the officer of the Bank of Commerce. Mr. Lugsdin says the defendant told me the depositor was very sick; that he was acting for him in changing the account, and that he was taking the amount down for that purpose to the Sterling Bank at Alton. The depositor had died at 3 o'clock that morning, of which the defendant had been advised early by a special messenger, and thereupon he visited the different banks that morning.

Quoad this bank this payment is protected by the Bills of Exchange Act, sec. 167, as notice of the customer's death is not brought home to the banker. But the receipt of the money by the defendant is invalid unless he can support his claim by invoking the doctrine of donation. The same situation exists as to the other sum of $2,750, save that the executors would have recourse for that to the bank as well as the defendant, for both were in pari delicto in the misapplication of the assets of the estate. The cheque of itself had no operation as an assignment of what it called for; that is now expressly declared by the Bills of Exchange Act, sec. 127, therefore to support a donation, it must be one mortis causa, and not inter vivos. The giving of a cheque and the pass-book therewith did not amount to a completed gift inter vivos—the attempted completion by payment after death was too late and therefore inoperative. The law is well settled that the delivery of the donor's cheque on his banker which is not presented before the donor's death is not a good donatio mortis causa, because the death is a revocation of the authority to pay. There may be special circumstances which