Scolastica's Retreat," all her residuary personal estate applicable to charitable purposes, to be applied for the benefit of the institution subject to a provision for accumulation till the income amounted to £2,000 a year.

The plaintiffs and the defendant John Peter Kaye are the trustees of "St. John's Hospice," and the remaining defendants are the trustees of "St. Scolastica's Retreat."

On the 15th of October, 1867, the testatrix, being on her death-bed expressed a desire and intention to vest a sum of £600 in the trustees of "St. John's Hospice," for the benefit of that institution, and directions were given to her solicitor to prepare a codicil to that effect. Late the same night, believing, as she stated, that she would not live to execute the codicil, and desiring to carry her intention into effect, she verbally desired the defendant John P. Kaye to fill up for her signature a cheque for £600. He filled it up, and she immediately signed it, and handed back the cheque-book with the cheque in it to the defendant Kaye as one of the trustees of "St. John's Hospice" Before one o'clock on the morning of the 16th she died, without having executed the codicil, and consequently the cheque was not presented.

Speed appeared for the trustees of "St. Scolastica's Retreat," and contended that a cheque could not be a *donatio mortis causa*, and that it amounted only to an authority to pay which was revoked by the death of the party giving it before presentation for payment. He referred to *Tate* v. *Hilbert*, 2 Ves. Jun. 111, and *Lawson* v. *Lawson*, 1 P. W. 441.

Bagshawe, for the trusteees of "St. John's Hospice," contended that a cheque did not differ materially from other instruments which had been held to be the subjects of *donationes mortis causa*. He referred to *Bouts* v. *Ellis*, 1 W. R. 297, 4 0, 4 D. M. G. 249, 17 Beav 121; *Witt* v. *Amis*, 8 W. R. 691, 1 B & S. 108; *Amiss* v. *Witt*, 33 Beav. 619.

Lord ROMILY, R.M., without calling for a reply said:—I think it is perfectly clear, both on principle and authority, that this is not a valid gift. Whenever a *chose in action* is given to a person on a death-bed, all the interest in it passes with the possession to the donee. This is the case with bonds or I O.U.'s The principle upon wnich the case of *Amis* v. *Witt*, was decided, as regards the deposit-note, was, that the bankers held certain money at the disposal of the donor, and she, by delivery of the note, gave the right to receive that money to the donee. But when a person gives a cheque he gives nothing but an order to deliver a sum of money, and the delivery must take place in the lifetime of the donor, or, no matter in whose hands the cheque comes, there is no gift at all.

This lady, on her death-bed, gives a cheque late at night, and dies before the bank opens in the morning, so that there is no chance of it being paid in her lifetime. Now, suppose she had said I have £600 bank-notes upstairs, bring them down and give them to A., and that is not done; by itself that amounts to nothing, and that is in principle exactly what she has done. In the cases which have come before me there was always a delivery. An I. O. U., instance, is an instrument which entitled the donee on delivery to sne upon it. When the cheque is paid before the death the case is different, as in *Bouts* v. *Ellis*, but it is quite certain that a mere delivery of a cheque not acted upon does not operate as a *donatio mortis causa*.

HASTINGS COUNTY COURT.

(*Before* W. FURNER, Esq., *Judge*.)

THE SOUTH-EASTERN RAILWAY COMPANY v. AINSLIE HARWOOD.

Important Railway case.

Quære, Has the holder of a third-class ticket a right to travel by any train to which a third-class carriage is attached?

Held, that were a particular train was marked in the time bills first and second only, a holder of a third-class ticket had no right to travel by it, although a third.class carriage was attached to the train for passengers between certain other distant stations..

[45 L. T. 406, Sept. 21, 1868.]

This was action for excess railway fare, 1*s*. 10*d*.

F. A. Langham for plaintiffs; and *Philbrick* for defendant.

Langham, in opening the case, said it was an important one, although the amount sought to be recovered was small. He stated that on the 16th May Mr Harwood took a third-class return ticket from Hastings to Tunbridge Wells, which was endorsed with the usual notice that it was issued subject to the by-laws, rules, and regulations of the railway company. Defendant went to Tunbridge Wells in the morning, and in the afternoon of the same day he presented himself at the railway station, and got into a carriage of the train which left London at 2. 15. That was an excursion train, running only on Saturday, commonly called the husbands' train, because gentlemen whose families were staying at Hastings made use of it. There were first, second, and third class carriages in the train, but immediately over the time at which it was stated to arrive at Tunbridge Wells first and second class was put. When Mr Harwood got into a third-class carriage he was detected, and was asked either to pay the excess fare, which was the difference between second and third class, or leave the carriage before the train started. He declined to do either. He (*Langham*) apprehended that the company's servants might have ejected him from the carriage; but they prferred to take a milder course, and allow him to ride. He submitted that defendant was bound by the statement made in the time table, and therefore had no right in the train. It might probably be said in defence that because it was a third-class carriage Mr. Harwood had a right to travel in it; but he apprehended that it was not so, because the company might for purposes of their own put a third-class carriage on any train they run, upon special or express trains, and it could not be pretended that an ordinary third-class passenger would have a right to travel simply because there was a third-class carriage in the train. He submitted that the contract must be determined by the ticket and by the time-table which they had published, and to which his notice was drawn at the time he took his ticket. Mr. Harwood had travelled by that train in the previous month, and was then cautioned that it was not a third-class train from Tunbridge Wells to Hastings, and that he had no right to do that which he did.