COOLEY, (plaintiff in the Court below), appellant, and THE DOMINION BUILDING SOCIETY, (defendant below), respondent.

Building Society—Note given as collateral security.

Held, that a note given by a buildin gsociety as collateral security for an advance to the society, is not an ordinary negotiable note, and if lost the holder is not compelled to give security before he can exact repayment of the advance.

The appellant, as sole executor and universal legatee, represented the late John Buxton, who had advanced to the Building Society $1,000, payable at the expiration of a year, with interest at 8 per cent. The Society admitted the indebtedness, but alleged that they had delivered to Buxton, as collateral security, a note for the $1,000, and that by the conditions they were entitled to get this note back before the amount was repaid. It appeared that the note could not be found among the papers of the deceased. The plaintiff offered to deposit Merchants' Bank stock to the nominal value of $1,500 in the hands of a third party, as security that the Society would not be troubled by reason of the note, but this offer was declined, and the Court below being of opinion that the security offered was insufficient, dismissed the action.

DORION, C. J., after stating the circumstances under which the action was brought, said the note here was not an ordinary negotiable note. By itself it was nothing. It was given as collateral security, and was nothing when the debt was acquitted. The appellant, therefore, could not be required to give security, but simply to give up the deposit book.

Judgment reversed.

Archibald & McCormick, for appellant.

Abbott & Co., for respondent.

Montreal, September 21, 1878.

BRAULT, Appellant, and BRAULT, Respondent.

Donation—Judicial Counsel.

Held, where a person had expressed an intention to make a particular donation, and subsequently, while afflicted with softening of the brain and of feeble intelligence, he made the donation with the assistance of a judicial counsel, that the donation was valid.

MONK, J., dissenting, observed that the appeal was from a judgment dismissing an action to set aside a donation from one brother to another, and excluding his brothers and sisters. The grounds on which the action rested were, first, that the deceased was in an unsound state of mind, secondly, that the donation had been obtained by manœuvres and undue influence. The Court below, although it was proved that the donor was suffering from the peculiar disease called softening of the brain, maintained the donation. His Honor thought it was proved beyond all doubt that for three or four years preceding the donation this man was in a state of imbecility, and was incapable of making a valid disposition. The matter was fully examined in the case of Flanigan and Sir George Simpson, which, however, differed from the present. Here the donor was in such a state of imbecility that he could not conduct his business, and his relations thought to improve the condition of things by giving him a judicial counsel. This was a mitigated form of interdiction, and the proof that the act was done in a lucid interval was on the other party. His Honor thought this appointment of a judicial counsel was for the express purpose of doing what they thought there was no chance of effecting otherwise, and of making the donation all right. The man was in a hopeless state of imbecility, and died of the disease. Under the circumstances, his Honor thought the donation should be set aside.

DORION, C. J., said that when the proof was contradictory, as to whether a person had intelligence enough to do an act, the Court must see whether the act was reasonable in itself, and if so, the Court might say that the man had sufficient intelligence to do it. In a case previously adjudged to-day, (*Chapleau* v. *Chapleau*, ante p. 473,) the testator was in *delirium tremens*, and the pretended will had been made only three days before his death. Here the circumstances were different. The donor was afflicted by a disease which did not render him mad or violent, or incapable of doing things. The act was the act of a man of feeble intelligence, but he had long before expressed the intention of doing this very thing, and was but carrying out a resolution formed years before. The donation would therefore be maintained.

M. E. Charpentier, for appellant.

C. Gill, for respondent.