

MACMAHON, J.

DECEMBER 5TH, 1902.

## TRIAL.

ST. JEAN v. DANIS.

*Gift—Donatio Mortis Causa—Bank Deposit in Names of Donor and Donee—Survivorship—Evidence.*

The plaintiff sued as executor of Elmiere Champagne to recover a sum of \$385 on deposit in the Ottawa branch of the Merchants Bank of Halifax, to the joint credit of Elmiere Champagne and defendant. The defence was that the money had been deposited as the joint money of Elmiere Champagne and defendant, and now belonged to the latter as survivor. Elmiere Champagne had, in or about 1900, told the manager of the Banque Jacques Cartier, where the money had been on deposit in the same way, until that bank went into liquidation, that at her death it was to be defendant's, and she had made a similar declaration to one Deverin, her grandson, about six days before her death, saying that it was unnecessary to give defendant an order to that effect. Similar statements had been several times made by the deceased to defendant, who had charge of the bank book, the deceased being at the time of the deposit a woman of nearly eighty years of age. Of eight cheques issued against the account, four were signed by deceased and four by defendant. The deceased had in 1898 made a will bequeathing all her moneys to defendant, but this bequest had been omitted from a will made in 1901, because, as defendant alleged, the defendant had been made a joint owner.

F. H. Chrysler, K.C., for plaintiff.

George F. Henderson, Ottawa, and D. J. McDougal, Ottawa, for defendant.

MACMAHON, J.—The bank book being in possession of defendant, and Mrs. Champagne stating that the money was the defendant's, constituted a good donatio mortis causa. It was not necessary that Mrs. Champagne should require her daughter to produce the bank book in order that she might immediately return it to her again in order to make a good donatio mortis causa. See *Cain v. Moon*, [1896] 2 Q. B. 283; *O'Brien v. O'Brien*, 4 O. R. 450; *Re Weston*, [1901] 1 Ch. 680; *Re Andrews*, [1902] 2 Ch. 394; *Re Dillon*, 44 Ch. D. 76. However, the defendant's right to retain the money might preferably be placed upon the ground that, on the facts found, the money was the joint property of deceased and the defendant, and that it therefore became the property of the