

receipt therefor. This was carried out, a draft was sent, and she signed the name "H. B. Huston" to a receipt for the money, "to be charged to account 2219."

The evidence shewed that the testatrix made the deposit for the purpose of benefiting her brother and with the full intention that the fund should never be returned to her but remain his. Thus no presumption of a resulting trust in her favour arose. The deposit standing in his name alone, he became legal owner and entitled, under sec. 96 of the Bank Act, to withdraw it and to give the bank a sufficient discharge in respect thereof.

The brother did not, until after his sister's death, know of the deposit having been made; but a voluntary transfer of property to a person, without his knowing of it at the time of transfer, if made in such manner as to pass the title, vests the property in the transferee subject to his right to repudiate it on his learning of the transfer: *Standing v. Bowring* (1885), 31 Ch. D. 282; and Huston did not repudiate the deposit to his credit.

It was said that the gift was in its nature testamentary; but the evidence shewed that, at the time of making the deposit, the deceased's instructions to the banker were, simply, not to notify her brother. The plaintiff argued that the later instructions, "She desires the fact to be kept from him until after her death," controlled the nature of the gift and shewed it to be testamentary, and *Hill v. Hill* (1904), 8 O.L.R. 710, was cited. But the facts of that case were materially different. In this case the sister deposited the money in the sole name of the brother and for his exclusive benefit, she retaining no dominion over or beneficial interest in. These circumstances deprived the gift of any testamentary character. The later instructions did not take from the deposit the character of an unqualified, irrevocable, and present gift; the donor had no interest in it at the time of her death and had no testamentary control over it.

There should be judgment declaring the fund to be the property of the defendant Huston and dismissing the action with costs to be paid by the plaintiff to both defendants.