

nearest bank, where the banker explained that a cheque or order upon the bank at Harrison was necessary, and drew up a form of cheque, which John took back to the house. By this time Reid was worse and unable to sign his name. The

his

cheque was produced with the name Henry x Reid written mark

in the hand of a daughter of John, and with the signatures of Owen McCabe and Mrs. John Armstrong as witnesses. It was admitted that McCabe was not present when the mark was put to it, and that he did not write his name as a witness till the next day. Reid died before seven o'clock upon the same evening. Probate of Reid's will was granted in Ontario on 17th April, 1902, and the executors claimed the money from the bank. It was also claimed by John Armstrong, and the bank paid it into Court. Upon the motion for payment out, evidence was taken upon commission in Ireland.

A. Spotton, Harriston, for the executors.

W. H. Blake, K.C., for John Armstrong.

STREET, J.—The bank pass book contained a printed condition that no part of the deposit could be withdrawn without production of the pass book. The existence of this condition made the delivery of the book, with the intention of passing the money mentioned in it, a valid *donatio mortis causa* of the money: *Brown v. Toronto General Trusts Corporation*, 32 O. R. 319; *In re Western*, [1902] 1 Ch. 680. Upon the evidence I come to the conclusion, though with some hesitation, that a gift was intended. Any evidence which is believed and is corroborated so as to comply with sec. 10 of the Evidence Act may be acted on by the Court: *Re Farman*, 58 L. T. 12; *Carnahan v. McGuire*, 15 Moo. P. C. 215; *Brown v. Toronto General Trusts Corporation*, 32 O. R. 319. Under this rule the evidence of Owen McCabe and the wife of the claimant was sufficient corroboration, although a will in favour of John witnessed by them would have failed to take effect because of the disqualification of the wife as a sufficient witness to a bequest to her husband. It seems to me it would be better to require as high a degree of evidence to prove a *donatio mortis causa* as to prove a will.

Order made for payment of the costs of all parties out of the fund, those of the executors as between solicitor and client, and for payment of the balance to John Armstrong.