

# The Ontario Weekly Notes

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HIGH COURT OF JUSTICE.

BOYD, C.

APRIL 24TH, 1911.

McLELLAN v. McLELLAN.

*Donatio Mortis Causa—Gift of Cheque with Delivery of Bank Pass-book—Cheque not Presented in Donor's Lifetime—Cheque for Less Amount than Balance in Bank—Bank Protected in Payment—Invalidity as to Defendant—Doctrine of Donation—Object of Delivery of Pass-book—Intention of Depositor to Give Part Only of Deposit—Nuncupative Administration—Gift Coupled with Trust—Evidence—Costs—Bills of Exchange Act, secs. 127, 167.*

Action by executors of John McLellan against the defendant to establish their claim to a sum of money paid into Court by the Sterling Bank under the circumstances mentioned in the judgment.

I. B. Lucas, K.C., and G. Robb, for the plaintiffs.

C. R. McKeown, K.C., for the defendant.

BOYD, C.:—This is a case of unique cast and of unwonted difficulty. The immediate origin of the litigation is to be traced to an error made by the Sterling Bank, who are not parties on the record, out of which complications have arisen that may not be ended by this suit.

On November 24th, 1910, a pass-book of John McLellan with the Sterling Bank at Alton, accompanied by a cheque for \$2,750 purporting to be signed by him, was presented for payment by the defendant, which was honoured by the Bank. The defendant said he would leave the amount with the bank: he deposited another \$250 and then opened two accounts, \$2,000 in the savings department, and \$1,000 in current account, and received two pass-books with corresponding entries. The original