

MULOCK, C.J.Ex.

APRIL 29TH, 1919.

HORNE v. HUSTON AND MERCHANTS BANK OF  
CANADA.

*Gift—Deposit of Money in Savings-bank Account to Credit of Intended Donee—Instructions to Bank not to Notify Donee until after Death of Depositor—Evidence—Intention—Parting with Control of Fund—Present Irrevocable Gift, not Gift of Testamentary Nature.*

Action by the administrator with the will annexed of the estate of Louisa J. Bement, deceased, for a declaration that certain moneys deposited by her in the Merchants Bank of Canada were moneys of the estate and payable to the plaintiff as administrator.

See the note of Horne v. Huston and Canadian Bank of Commerce (1918), ante 93.

The action was tried without a jury at Sandwich.

J. H. Rodd and R. S. Rodd, for the plaintiff.

A. St. George Ellis and P. R. Pococke, for the defendants.

MULOCK, C.J.Ex., in a written judgment, said that on the 1st May, 1916, the deceased personally deposited with the defendant bank, at Windsor, to the credit of her brother, the defendant Huston, \$10,000, handing the amount to the bank-manager, who, on her instructions, filled up a deposit-slip, with the date, the full name of the defendant Huston, the amount, and this memorandum: "Full address and instructions will follow. Do not notify." He then handed to her a savings deposit-book, with number 2219, and a credit of \$10,000. He also opened an account in the ledger with the same number, shewing \$10,000 to the credit of Huston. About a month later, the deceased called at the bank and gave the manager Huston's address and signature, and certain instructions, upon which the manager entered the address in the ledger, with a description of Huston as "brother of Mrs. Louisa J. Bement," adding these words: "Deposited by Mrs. Bement. She desires the fact to be kept from him until after her death." And, at the head of the account: "Most particular. Do not notify." About a year later, the deceased called at the bank for the purpose of having \$500 taken from the deposit and sent to Huston for his own use. The manager informed her that she had no control over the fund. She appeared to be satisfied with this view of the situation, and then arranged with the manager that the bank should send Huston a draft for \$500, she in his name giving a