

While the relation exists, so long as it remains unsevered either by the solicitor having ceased to hold the position of or to act as solicitor for the donor, or possibly by the intervention of other and wholly independent advisers as to the nature and effect of the particular transaction, a solicitor cannot validly accept a bounty from his client. In *Morgan v. Minet*, 6 Ch. D. 638, Vice-Chancellor Bacon states the matter at p. 646-7. . . .

I see no reason why the rule should not apply to a *donatio mortis causa*, as much as to a gift *inter vivos*. It is not necessary to determine whether *Walsh v. Studdart*, 4 Dr. & War. 159, 2 C. & L. 423, was a case of *donatio mortis causa* or of gift *inter vivos*. The remarks of Sir E. Sugden as to the duty of a solicitor receiving a present from his client have a bearing upon the point. See especially p. 428 of the last mentioned report. The rule has been held to apply so as to exclude the ordinary presumption of a gift to a son being an advancement in a case where the son was also the solicitor of his parent: *Garrett v. Wilkinson*, 2 DeG. & S. 244. If there is to be any difference, and the case of a *donatio mortis causa* is to be likened to the case of a provision in favour of a solicitor contained in a will drawn by himself or under his instructions, then it lies upon the solicitor claiming the benefit to remove all suspicion, and to prove affirmatively that the donor was fully aware of the nature and effect of the gift, and with such knowledge approved of what was being done. In this case, if all that the plaintiff states occurred between him and the deceased had been written down by him and signed by her, the production of that paper would not have been sufficient to establish the plaintiff's case.

There is an entire absence of evidence to shew that the nature of the transaction was explained, or that the usual precautions for making sure that she fully understood what she was doing, and its effect with regard to the property she was dealing with, were adopted: *Tyrrell v. Painton*, [1894] P. 151.

I think the plaintiff has failed to establish a case for the relief he seeks.

The defendant claims by way of cross-appeal to vary the judgment of the learned Chief Justice by directing the plaintiff to pay the defendant's costs of the action, but I think no case has been shewn for interfering with the discretion exercised.

The appeal and cross-appeal should be dismissed.

GARROW, J.A., concurred in the judgment of Moss, J.A.