

cheque. This case was afterwards affirmed by the Divisional Court, but on other grounds as hereafter mentioned.

In Chalmers' Bills of Exchange (5th ed.,) p. 182, it is said that, apart from something special in the contract, it seems that a bill of exchange is not revoked by the death of the drawer ; but, strange to say, perhaps, this point cannot be said to have been conclusively settled. *Trunkfield v. Proctor*, supra, would appear to establish, as far as a single judge can do so, that the authority of a drawee of a bill of exchange (other than a cheque) to accept and pay, is not revoked by notice of the death of the drawer (and by analogy neither would be revoked by countermand to the drawer) ; but it will be noticed that though the Divisional Court agreed with Falconbridge, C.J.K.B., that the instrument there in question was a bill of exchange, yet they were unable to agree with him that there had been an effectual delivery of it to the payee, and they treated it, in effect, though a bill of exchange in form, as being in the nature of an equitable assignment, or declaration of trust, although s. 53 of the Bills of Exchange Act declares that a bill of exchange of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof.

In a recent case in England arising out of a contract for the supply of refreshments at one of the Coronation reviews which was put off owing to His Majesty's illness, a cheque had been given in part payment of a sum payable under the contract which subsequently became impossible of performance. Payment of the cheque was stopped before it had been negotiated, and the payee then brought an action on the cheque, and it was held by Ridley, J., he could not recover ; that the stopping of the payment of the cheque remitted the parties to their original rights under the contract as if the cheque had never been given, and as the payee could not recover under the original contract neither could he recover on the cheque : *Elliott v. Crutchley* (1903), 2 K.B. 476. It will be noticed in this case that the rights of no third parties had intervened. If the cheque had been transferred to a bona fide holder for value the drawers would have remained liable to him on the cheque notwithstanding they had stopped its payment : *McLean v. Clydesdale Bank* (1883), 9 A.C. 95. That being the case, the language of Ridley, J., when he says that the effect of stopping payment of a cheque given in respect of a debt is "as though the cheque had never been given," and that "the debt remains in