

Donald, 33 S.C.R. 145, wherein the authority of *Re Mead* is recognised as I have construed it: See also *Re Farman*, 57 L.J. Ch. 638.

As to the sum in the Bank of Commerce, the pass-book is produced and it contains the special terms of the contract with the bank in its saving branch, and there the cheque was for the whole amount including accrued interest. According to *McDonald v. McDonald* the cheque would be in this case controlled by the delivery of the pass-book, and there would be a valid *donatio mortis causa*, if nothing more appeared in the evidence.

Hitherto I have dealt with the undisputed evidence, and the side of the case as given by the defendant, supported by his documents. But an attack was made at the hearing upon the genuineness of the testator's signature to the letter and the cheque dated the 16th November, and also to his signature to the Bank of Hamilton cheque. It was admitted, however, that the Bank of Commerce cheque was authentic. This line of impeachment was not taken in the pleadings—it was an after thought, and only by way of concession did I allow the evidence of experts to be given. It is a strong point that one of the series is surely signed by the testator, and all the cheques were acted on and honoured by the different banks, and evidence of those who knew the testator's writing was favourable. The proof of the crime of forgery rests on the accusers, and on the evidence before me, I do not think the *prima facie* case as to the documents being real is displaced.

Nor do I think the defence is established that the testator was in a dying state and incapable of doing business or of managing his affairs. But the scraps of evidence given at different stages shew that the testator was minded to do something towards readjusting the disposition to some degree, it may be slight, of his property, and that he discussed the matter with the defendant. Yet I think that the defendant acted with over-astuteness, concealed the whole truth, and by his secret way of managing things has surrounded himself with suspicion which calls for very distinct and satisfactory proof to clear away. I cannot satisfactorily make out the very truth of the scheme, but I think the testator was moved by the representations of the defendant that too much of his estate was likely to go out in "fees and succession duties"; over \$1,000 was spoken of as being so "wasted." He was advised not to change his will, but that the estate could be reduced by chequing out his ready moneys. He may have intended to give something more to the defendant,