The plaintiff sued to recover from the estate of the deceased a sum of $1,500, representing the amount of certain bank deposits and of sums due to the deceased upon a mortgage and under an agreement for sale of a parcel of land. The plaintiff asserted that on the day before her death the deceased gave him the bank book, mortgage, and agreement, and that they were received by him as a donatio mortis causa.

The Chief Justice found that at the time in question the plaintiff was the solicitor of the deceased; and held that, having relation to that fact and the circumstances under which the alleged gift was made, it was not valid. At the time when the gift was made the deceased and plaintiff were alone; there had been no previous intimation to plaintiff or any one else of an intention to make the gift, no other or disinterested person was called in, and no advice or explanation as to the nature and effect of the proposed gift was given by plaintiff or any one else.

The appeal was heard by OSLER, MACLENNAN, MOSS, GARROW, JJ.A.

T. Langton, K.C., and W. R. Riddell, K.C., for appellant.

E. S. Wigle, Windsor, for defendant.

MOSS, J.A.—In my opinion, the judgment appealed from is right and should be affirmed. The evidence makes it clear that for many years before the transaction in question and down to the day on which it took place, the plaintiff was the trusted solicitor and business adviser of the deceased, and that the relation had never been severed. The transaction took place, therefore, during the subsistence in its fullest influence of the relation of solicitor and client. The handing over to the plaintiff of the sum of $1,500, or the placing him in possession of documents or indicia of title which would enable him to receive that sum, was an act of bounty on the part of the deceased, and none the less so because it was made with the intention, to borrow the expression of Lord Russell of Killowen, C.J., in Cain v. Moon, [1896] 2 Q. B. 283, "that it should revert to the donor in case of her recovery."

The rule of law with regard to gifts by clients to their solicitors, is much stricter than the rule with regard to other dealings between them, and it has been so from an early period. In Tomson v. Judge, 3 Drew. 306, Vice-Chancellor Kindersley, at p. 314, pointed out the difference between a gift and a purchase. . . . In O'Brien v. Lewis, 4 Giff. 221, Sir John Stuart, V.-C., expressed the rule in substantially similar terms, and his decision was affirmed by Lord Westbury, 32 L. J. Ch. 572.