

was not open to question. This note was for £400 made by the manager of the National Bank, whereby the bank acknowledged to hold that sum as moneys of the donor.

[Reference to *Hewitt v. Kaye*, L.R. 6 Eq. 200; *In re Beaumont*, [1902] 1 Ch. 894; *Halsbury's Laws of England*, vol. 15, p. 432 (*e*); *Re Dillon*, 44 Ch. D. 76; *Re Weston*, [1902] 2 Ch. 680; *Re Andrews*, [1902] 2 Ch. 396.]

The particular pass-books delivered by the deceased to the defendant have not been put in evidence. One received by him from the Sterling Bank in the savings department has been proved, and I may assume that the same form was used for the other account with the deceased. The printed regulations it contains shew that interest will be allowed on the monthly balance, and that the pass-book should be presented when any business is transacted, but that a cheque will be paid, without the pass-book, if it bears the number of the account and is properly signed. The testator's cheque did not indicate the number of the account, and for the payment of this cheque the production of the pass-book was essential. These terms as to interest and payment of the numbered account are essential to the proof of the contract, and this pass-book with these terms therein was delivered with the cheque. This would, therefore, according to the decisions be a document capable of being made the subject of a *donatio mortis causa*: *Bruce v. Toronto General Trusts*, 32 O.R. 319.

Now the decisions I have quoted are all to this effect, that the gift of a banker's deposit note or pass-book with the view of giving to the donee the whole sum secured by it is a valid *donatio*. But when the intention is to give, not the whole sum deposited, but only a part, and that part is indicated by some lesser sum expressed in a cheque on the banker signed by the donor, which is handed over together with the pass-book, a different question is presented. The book is then handed over, not for the purpose of constituting the donee the owner of the whole fund but for the purpose of facilitating the payment of the part mentioned in the cheque. The substantial gift in these circumstances is the cheque, and not the pass-book, which is merely ancillary to the main purpose of the part payment: that appears to be the view taken by Fry, J., in *Re Mead*, 15 Ch. D. 651, upon which comment is made by Cotton, L.J., in *Re Dillon*, 44 Ch. D. at p. 79, where he says as to *Re Mead*: "The donor never intended to give the deposit note and the money it represented, but only to give the donee a cheque upon it." The whole subject was much discussed, with conflicting opinions, in *McDonald v. Mc-*