

get the money when he was gone. He, however, retained the deposit receipt in his own possession, and it was found among his papers at the time of his death. The trial Judge in giving judgment said that if the deposit receipt stood unexplained so that it might be treated as evidencing the substance of the transaction, the plaintiff's contention might be sustained upon the authority of such cases as *Payne v. Marshall* (1889), 18 O. R. 488, and *Re Ryan* (1900), 32 O. R. 224. But he found as a fact that the purpose of the father was by the means there employed to make a gift to his son in its nature testamentary, and as such it could only be made effectually by an instrument duly executed as a will.

It appears to me that that is the effect of what took place here, that there was no intention to make a present gift of any part of the property in the money so on deposit to the defendant, the intention from the whole evidence being to authorise her, during her mother's lifetime, to draw from the bank such sums as might be required and that probably it was her intention that after her death the daughter should have the balance. In *Schwent v. Roetter*, 21 O. L. R. 112, *Hill v. Hill* is distinguished, it being held that in the circumstances disclosed in the *Schwent Case* that the money was during the joint lives joint property with right of survivorship. Of this the plaintiff was not able to satisfy the trial Judge, and upon the whole case I agree in the result at which he arrived.

The appeal should be dismissed with costs.