R. G. Code, Ottawa, Robert Patterson, Carleton Place, and G. H. Findlay, Carleton Place, for plaintiff.

J. A. Allan, Perth, and C. McIntosh, Carleton Place, for defendant.

ANGLIN, J.—William Hill, deceased, owned $400 on deposit in the Bank of Ottawa to his credit. He procured from the bank a deposit receipt for this amount "payable to William Hill and John R. Hill, his son, or either, or the survivor." The understanding between William Hill and his son was that it should remain subject to the father's control and disposition while living, and that whatever should be left at his death should then belong to the son. The father's request to the bank manager, upon which the deposit receipt issued, was "to fix the money so that his son John would get it when he was done with." He told John himself that he wanted him to get the money when he (the father) was gone. He retained the deposit receipt intact in his own possession, and it was found amongst his papers at the time of his death. These facts are deposed to by the son John, the plaintiff. . . .

If the deposit receipt stood unexplained, so that I might treat its form as truly evidencing the substance of the transaction to which it owes its existence, plaintiff's contention might be sustained upon the authority of such cases as Payne v. Marshall, 18 O. R. 448, and Re Ryan, 32 O. R. 224, though in both these cases the circumstantial evidence that the survivor prior to the decease of his co-depositor was in fact a joint owner, was much stronger than the deposit receipt taken by itself would here afford.

But, upon plaintiff's own evidence, I find myself driven to the conclusion that the purpose of William Hill, deceased, was by this means to make a gift to his son, plaintiff, in its nature testamentary. As such it could only be made effectually by an instrument duly executed as a will. The father retaining exclusive control and disposing power over the $400 during his lifetime, the rights of the son were intended to arise only upon and after his father's death. This is, in substance and in fact, a testamentary disposition of the money, and, as such, ineffectual.

Neither can I regard the receipt as equivalent to a voluntary settlement, reserving to the settlor a life interest with a power of revocation: see Thompson v. Brown, 3 My. & K. 32.

I am therefore obliged to dismiss this action.