

great part from the sale of chattels which had formed part of her husband's estate. The bank-account had stood in the joint names of herself and C. Sheppard, the plaintiff's husband. She seemed to have decided that she would end Sheppard's control over the fund, and she gave a cheque to the defendant, who was named in her husband's will as one of the executors, and told him to draw the money from the bank at Kemptville; and, when he had done that, she told him to deposit it in the joint names of himself and her half-sister Margaret Wilson, and to pay thereout the bills of her physician and nurses, her funeral expenses, and the cost of a head-stone, and to deal with the balance as directed in her husband's will.

By payments manifestly proper the account had been reduced, by the 30th November, 1919, when the pass-book was written up by the bank, to \$620.87; and the question was, whether that sum was to go to the plaintiff's half-sisters in accordance with the will of Alexander Wilson and the direction of Catherine Wilson, or whether it formed part of the estate of Catherine Wilson and was to go to the plaintiff under a will made in 1906.

The plaintiff's point was that there was here an attempt at a testamentary disposition, and that such disposition was invalid because not made in the way in which wills must be made: she said that Catherine Wilson retained in herself the right to dispose of the money in her lifetime; and she relied upon *Hill v. Hill* (1904), 8 O.L.R. 710, and *Smith v. Gosnell* (1918), 43 O.L.R. 123.

The learned Judge said that he was not at all sure that Mrs. Wilson did retain any legal right to withdraw the money from the settlement, or any power to do more than compel the defendant and Margaret Wilson to apply it for the purposes mentioned; but, even if she did retain the power to revoke the trust, the case was exactly like *Re Bellemare* (1919), 16 O.W.N. 24, and was governed by *Tompson v. Browne* (1835), 3 My. & K. 32, therein referred to: there was an executed trust which was not rendered invalid by the fact that one of the duties of the trustees was to dispose of the residue of the fund after the death of the settlor. The plaintiff's claim, therefore, failed.

There was some justification for the plaintiff insisting upon an investigation of the circumstances under which the money came into the hands of the defendant, and she ought not to be ordered to pay costs; but she should not be awarded her costs out of the fund. The action should be dismissed without costs.