

The result is, that Mrs. Hill has "for her own use and benefit," first, the assets in schedule B, not mentioned in schedule A, and, secondly, the annual income of the trust fund formed by the assets in schedule A. The trustees remain seized of the assets in schedule A, and Mrs. Hill cannot dispose of them until her husband's death.

The appeal should be allowed; but the appellant should not be allowed costs, because he had omitted to furnish the Court with the necessary documents. The trustees to have their costs out of the fund; otherwise no costs of this appeal.

The judgment of the Court is not to issue for 30 days, in order to allow the respondent to apply, if so advised, for leave to appeal from the Master's report or take other proceedings to be relieved from the effect thereof and of her deed; if a motion is made or proceedings taken within the 30 days, there will be such a further stay as may be necessary.

HIGH COURT DIVISION.

CLUTE, J.

NOVEMBER 24TH, 1915.

BOLTON v. TYNDALL.

Mortgage—Payment by Mortgagor to Solicitor—Failure of Solicitor to Pay over to Mortgagee—Validity of Payment—Authority of Solicitor—Agency—Evidence—Onus.

Action to recover the balance due upon a mortgage made by the defendant to the plaintiff, dated the 6th October, 1905.

The action was tried without a jury at Toronto.

C. W. Plaxton, for the plaintiff.

B. N. Davis, for the defendant.

CLUTE, J., delivering judgment orally after the trial, said the mortgage was prepared by Mr. Lobb, a solicitor, and was left in the vault in his office for safe-keeping. The interest was from time to time paid by the defendant to Mr. Lobb, and by him paid over to the plaintiff. The mortgage fell due in 1910; the defendant then paid \$500 on account of the principal to Mr. Lobb, and that was paid over to the plaintiff; the time for payment of the balance was extended. Two payments were made by the