

R. R. Hall, for the appellant.

B. D. Hall, for the Royal Trust Company, trustees.

J. A. Worrell, K.C., for Annie Seaborn Hill, respondent.

RIDDELL, J., delivering the judgment of the Court, said that the testator made a provision in his will for his daughter Annie Seaborn Hill. A question arose as to her power of anticipation, which was dealt with by the Chancellor in *Re Hamilton* (1912), 27 O.L.R. 445; and an appeal from his decision was dismissed by a Divisional Court of the Appellate Division (1913), 28 O.L.R. 534. A reference was had before the Master at Peterborough, who reported with a form of trust-deed settling the share of Mrs Hill. The deed was duly executed, and the report became absolute by lapse of time. Upon a new originating notice, LENNOX, J. (ante 144), ruled that the question of the power of Mrs. Hill in respect of anticipation of income was concluded by the judgment of the Chancellor as affirmed.

The judgment of the Chancellor as issued did not, however, carry out what seemed to have been the real effect of the reasons. The judgment as issued did not contain a declaration that Mrs. Hill was or was not restrained from anticipation. With the logical result of the reasons for judgment, the Court, upon this appeal, had nothing to do: the formal judgment was the judgment of the Court. *Barber v. McCuaig* (No. 2) (1900), 31 O.R. 593, distinguished. The only adjudication, then, was that of the Master, which was just as binding upon the Court, unless moved against, as a judgment of the Privy Council.

It was not material that the present appellant was not a party to the former proceedings. He might possibly complain if the position of Mrs. Hill was altered to his detriment by the deed; but there was nothing to prevent him from accepting the situation and adopting the existing state of her rights.

Looking at the provisions of the trust-deed as settled by the Master, it appears that the first thing that is done is to form a trust fund out of the seven items in schedule A, and this is to be reinvested (para. 3). Then the assets in schedule B are dealt with. These are to be turned into money and paid to Mrs. Hill "for her own use and benefit." This is subject to the previous paragraphs, and can dispose of items 8 and 9 only. By para. 5, the income of the trust fund is to be paid to Mrs. Hill for her life or that of her husband, and then the trust fund ceases to pay out its annual income. Para. 6 operates as a restraint on alienation of the trust funds.