

ship of so much as remained on deposit at the time of his death, in the event of her surviving him. John L. Campbell predeceasing her, the fund formed no part of his estate at the time of his death.

The learned trial Judge considered himself bound by *Hill v. Hill* (1904), 8 O.L.R. 710. The facts, however, in that case were different. There a person, having money on deposit in a bank, procured from the bank a deposit receipt therefor "payable to William Hill senior" (the depositor) "and John R. Hill" (his son) "or either or the survivor." This instrument did not transfer the ownership of or any interest in the fund to the son, during the lifetime of the father, and on his death the legal estate in the fund devolved on the father's legal representative. As regards the son, the deposit receipt at most was but an incomplete gift or settlement, and, being voluntary, was not enforceable against the estate.

In the present case, the gift being complete in John L. Campbell's lifetime, I am of opinion that the defendant is entitled to retain the fund. I, therefore, with respect, find myself obliged to differ from the learned trial Judge, and think this appeal should be allowed with costs.

Having regard to the state of the pleadings, I think we should not deal with the item of \$500 referred to in the case, but reserve to the plaintiff any rights thereto to which she may consider herself entitled.

SUTHERLAND, J.:—I agree.

LEITCH, J.:—I agree.

RIDDELL, J., delivered a written opinion in which he reached the same result. He referred to and distinguished *Hill v. Hill*, *supra*; and cited his own decision in *Schwent v. Roetter* (1910), 21 O.L.R. 112. His conclusion was expressed as follows:—

The appeal should be allowed generally and the action dismissed.

The sum of \$500 was withdrawn by the deceased a short time before his death, and was delivered to the defendant. Some evidence was given at the trial, but the matter was not fully investigated; there was nothing in the pleadings about it; and, while we dismiss the action, we reserve to the plaintiff the right to bring any action she may be advised in respect of the \$500.

As to costs, I can see no good reason for taking this case out