

The motion was heard in the Weekly Court at Toronto.

J. A. Worrell, K.C., for the applicant.

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

D. W. Saunders, K.C., for the Union Bank of Canada, assignee of the applicant.

R. R. Hall, for William Fortye Hamilton, another assignee of the applicant.

LATCHFORD, J., said that the Union Bank of Canada, as security for advances made to the applicant, obtained from her on the 22nd March, 1915, an assignment of so much of the income payable to her under her father's will as would satisfy its claim. None of the income was paid to the bank; but the bank had in an Alberta Court recovered judgment against her upon the assignment. The applicant admitted that the position of the bank ought not to be prejudiced by the order for which he applied.

The assignment to the bank was subsequent to the report and deed of settlement. The assignment by the applicant to her brother, William Fortye Hamilton—also of income—was made in March, 1913, after the order of the Chancellor had been affirmed upon appeal, but before the execution of the deed.

The applicant was not content that the security which she gave to her brother should be protected in the same way as the security which she gave to the bank.

What the applicant now sought was, no doubt, intended to be carried into effect by the judgment of the Chancellor. His reasons clearly implied that the deed should prevent her from anticipating the income; and the intention of the Divisional Court was the same; but the judgment, as settled and issued, did not contain a clause restraining anticipation of the income.

In other circumstances, the applicant might be entitled to have the judgment supplemented so as to conform to the expressed intention of the Court; but to grant the present application would enable the applicant to derogate from her assignment to her brother—and, but for her consent, from her assignment to the bank. Seeking equity, she must do equity. Until such time as the debt to the brother is paid, or the assignment to him is set aside, and the debt due to the bank is discharged, the application cannot be granted. When that time arrives, the application may be renewed.

Costs of all parties to be paid by the applicant.