

O. L. Lewis, K.C., and H. D. Smith, for plaintiff.

Matthew Wilson, K.C., for defendant.

HON. MR. JUSTICE LENNOX:—I stated my conclusion as to the deed at the trial.

As to the money in the Traders Bank, \$2,029.35, standing in the names of the deceased John L. Campbell and the defendant, it is impossible to distinguish it from the money on deposit in *Hill v. Hill* (1904), 8 O. L. R. 710, and the result must be the same. Here, as in that case, the plaintiff's own evidence and depositions, and a great deal of other evidence in the case, the purpose of the deceased in associating the defendant's name with his own in the bank account was, by this means, to make a gift to the defendant, in its nature testamentary. The money continued to be the money of the deceased, it was drawn upon by him only, and whatever was the form of the instrument, upon the understanding with the banker, and in the understanding of the parties, the defendant could not touch the money in the lifetime of the deceased. The evidence of the bank officials, the practice pursued, and above all the conditions attending the signing of the final cheque for \$500, shew this. When the \$500 was withdrawn on this cheque it was distinctly for the personal use of the deceased, the defendant took it as an agent or trustee, it was not used, and it must be accounted for. This \$500 and the \$1,529.35 carried to the credit of the defendant's account on the 2nd April, 1912, making a total of \$2,029.35, I find and declare to be money of and belonging to the deceased John L. Campbell, and undisposed of by will or otherwise at the time of his death. The defendant has appropriated this money to her own use. She is or has been the administratrix of the deceased and must account for the money to the estate with interest at five per centum per annum from the 25th of February, 1913, the date when the accounts were passed by the Surrogate Court. I am not sure that I should charge the defendant with interest from the time the money was carried to the credit of her account.

The action, so far as it relates to setting aside the deed from John L. Campbell to the defendant is concerned, will be dismissed.