

that remains of the income when the annuities are ultimately satisfied.

The fact that the annuities are payable annually does not make the surplus income of any particular year irrevocably capital. It still remains income, and may be resorted to, if necessary, to meet the subsequently accruing annuity instalments.

Nothing was said upon the argument concerning the priority of the annuities, but it is plain that the annuity to the wife, being in satisfaction of her dower, is entitled to priority.

The questions asked resemble those raised in *Re Irwin* (1912), 21 O.W.R. 562, 3 O.W.N. 936.

Costs of all parties may come out of the estate.

MIDDLETON, J., IN CHAMBERS.

APRIL 9TH, 1915.

*RE M., AN INFANT.

Infant—Custody—Husband and Wife—Separation Agreement—Provision Giving Wife Custody of Child with Right of Access by Husband—Meaning of “Access.”

Motion by the father of an infant for an order for its custody, or, in the alternative, for an order construing a separation agreement so far as it related to the custody of the child, a girl, born on the 11th July, 1912.

Upon the separation of the applicant from his wife, the child's mother, “charge and control” of the child were given to the wife, the applicant paying for its support and education—the agreement not being an admission on his part that the wife should always have the control and charge of the child. It was stipulated by the agreement that the applicant “shall have access to the said child at any reasonable time, upon sending notice to (the wife) that he desires such access.”

It was arranged that the applicant should have access to the child at the apartments of the wife's mother once a week. The applicant complained that during his visits the mother, as well as the child's nurse, remained in the room with the child.

The motion was heard in Chambers.

E. G. Long, for the applicant.

G. H. Kilmer, K.C., for the wife, the respondent.