

The result of giving effect to the contention of the appellants would be an injustice to the plaintiff, who no doubt refrained from bringing her action within the six years because of the payments which were made to her by one who assumed to be and whom she was entitled to treat as the executrix of the estate of the deceased, and I see no reason why the payments made by the defendant Ellen Dodds should not as against her, and for the purpose of enabling the plaintiff to reach the goods of the deceased which have come to her hands, be treated as having been made by the legal personal representative of the deceased,—the character which the defendant Ellen Dodds assumed, and, as the plaintiff had the right to think, rightly assumed.

The objection based upon the promissory note being a joint one is not, in my opinion, entitled to prevail. The Bills of Exchange Act does not deal with the consequences which are, to flow from the character which, according to its provisions, is attached to the promise which a bill or promissory note contains,—whether that of a joint or joint and several liability. These consequences, in my opinion, fall to be determined according to the law of the Province in which the liability is sought to be enforced, and, inasmuch as in this Province the common law rule as to joint contracts has been superseded by statutory enactment, R. S. O. ch. 126, sec. 15, the provisions of the latter are to govern in determining the right of the respondent to sue in this Province. . . .

Upon the whole, I am of opinion that the judgment should be varied by adding after the words “goods and chattels of the deceased” the words “in her hands to be administered,” and by substituting for the word “defendant” before the word “proper,” the words “defendant Ellen Dodds,” dismissing the action as against the defendant Thomas Dodds; and with that variation should be affirmed and the appeal dismissed without costs.

CARTWRIGHT, MASTER.

NOVEMBER 3RD, 1903.

CHAMBERS.

GURNEY FOUNDRY CO. v. EMMETT.

Evidence—Cross-examination of Officer of Company—Parties—Refusal to Attend—Remedy—Motion—Forum.

Motion by defendants to dismiss action for default of an officer of plaintiffs to make production and attend to conclude