The action was tried without a jury at Toronto.

J. W. Bain, K.C., and M. L. Gordon, for the plaintiff.

G. M. Clark, for the defendants the administrators.

J. T. Richardson, for the other defendants.

MIDDLETON, J., in a written judgment, said that the estate of the deceased was worth some $10,000 over and above all liabilities, and there was no reason why the double liability should not be realised upon for the benefit of the creditors of the bank.

The administrators were not personally liable upon the shares, but the assets of the estate in their hands were liable: Bank Act, 3 & 4 Geo. V. ch. 9, sec. 53 (D.)

When the administrators parted with the assets without providing for this liability, they were guilty of a devastavit, and so rendered themselves personally liable.

They had a simple course open to them, for they might have made proper transfers to those beneficially entitled, and then have retained the assets for 60 days, when, if the bank had not suspended, they would have been safe: sec. 130.

But the Limitations Act afforded a defence to the claim of devastavit. It constituted a new cause of action; and, as this action was not brought until 1917, more than 6 years had elapsed.

The cause of action, so far as it was based upon a claim for the double liability upon the shares, was not barred, for it was based upon contract, and the time did not begin to run until there was a call; and so the liability of the administrators as administrators was not barred, for that was the liability of the deceased and of his estate.

This distinction is recognised in Thorne v. Kerr (1855), 2 K. & J. 54; In re Baker (1881), 20 Ch.D. 230, 235; In re Gale (1883), 22 Ch.D. 820, 826; In re Marsden (1884), 26 Ch.D. 783, 789; In re Hyatt (1888), 38 Ch.D. 609, 616; Lacons v. Warmoll, [1907] 2 K.B. 350.

As against the persons beneficially entitled, the liquidator can recover upon either of the grounds alleged, and the Limitations Act affords no defence. As against them, the cause of action is upon the contract, and the liability upon the shares first accrued when the call was made in 1912. They were, at the time of the liquidation, the beneficial owners of the shares, and had accepted the transfer to them, although it was not recorded upon the books of the bank. Section 63 of the Bank Act requires registration to make a transfer valid; but the transferees are in Equity those who should pay. The reasoning in Hardoon v. Belilios, [1901] A.C. 118, applies.