

for a mandamus will not be allowed to be made the occasion or excuse for obtaining the opinion of the Court on a doubtful question of law, or as to the construction of an Act of Parliament.

When it appeared on the evidence that certain farm lands were not charged or assessed for any of the purposes mentioned in R.S.O., c. 224, s. 2, s.s. 2, a mandamus directed to the reeve and councillors of a village to pass a by-law declaring what part of the farm lands should be exempt or partly exempt from taxation for such expenditure was refused.

Per ROSE, J.—The order appealed against, directing the Council to pass a by-law declaring the lands in question exempt, goes beyond the proper exercise of the powers of the Court, as it takes away from the Council the powers and right to decide as a preliminary question whether there were any farm lands which were or were not benefited, and decides by way practically of appeal what is to be decided by the County Judge under sub-sec. 4 of sec. 8, c. 224, R.S.O., if any appeal is there given. Judgment of ARMOUR, C.J., reversed.

Aylesworth, Q.C., for the appeal. *Clute, Q.C.*, contra.

Street, J.]

CLARK v. BELLAMY.

[March 15.]

Executor and administrator—Setting apart a fund—Investment of—Non-existence of—Fraud of solicitor—Negligence of executor—Representation—Agency of solicitor—Representations and payments by—Statute of limitations.

Two executors, relying upon the word of a solicitor who had managed the testator's affairs in his lifetime, procured from him a list of mortgages alleged to have been taken by the testator in his lifetime representing a trust fund of \$5,000.00, set apart by the will for the widow, but without the actual production of the mortgages, and showed it to her, informing her that the solicitor would pay her the interest. As a matter of fact, the mortgages in the list never had any existence, but the solicitor regularly paid her the interest up to the time of his death.

Held—1. The executors neglected their duty in not setting aside the \$5,000.00 in money or securities, and that their duty in that respect could not be delegated.

2. That they had appointed the solicitor their agent for the purpose of paying the interest, and that statements and payments made by him were made in the course of the business for which they had employed him, that each payment was a renewal of the representation that the \$5,000.00 was still in their hands invested for her benefit, and they could not be allowed to set up the statute of limitations in answer to the plaintiff's claim, or that the statements they made were not true, and that they were liable to make the fund good.

Clute, Q.C., and *Duncan*, for plaintiff. *S. H. Blake, Q.C.*, and *St. John*, for defendant Riseborough, an executor. *W. E. Middleton* and *R. T. Harding*, for the defendant Bellamy, an executor.