

The Ontario Weekly Notes

VOL. XIX. TORONTO, SEPTEMBER 24, 1920. No. 2

HIGH COURT DIVISION.

MIDDLETON, J.

SEPTEMBER 13TH, 1920.

DUNBAR v. TEMPLE.

*Settlement—Trust-deed—Power of Appointment—Exercise of—
Fraud upon Power—Status of Possible Appointee to Attack
Appointment—Acquiescence—Laches—Following Trust-fund—
Trustees—Limitations Act.*

In this action, the plaintiff, a daughter of the late Mary Jones Temple and of the defendant Charles V. M. Temple, attacked certain appointments made by the latter in favour of her sister and brother, the defendants Gertrude L. Temple and Cuthbert K. W. Temple, under the marriage settlement of the parents, and sought to have the funds now held under these appointments declared to be a part of the original trust-fund and to be still subject to the terms of the marriage settlement.

The action was tried without a jury at a Toronto sittings.

H. J. Smith, for the plaintiff.

J. A. Worrell, K.C., for the defendant Wurtele.

A. J. Anderson, for the defendant C. K. W. Temple.

H. J. Scott, K.C., and W. Lawr, for the other defendants.

MIDDLETON, J., in a written judgment, said that at the date of the marriage settlement, the 29th April, 1864, the wife had about £21,000 (face value) which was placed in settlement. The husband contributed nothing. Under the settlement, the income was to be divided between the husband and wife so long as they both lived, and on the death of either the whole income was to be paid to the survivor for life, and on the death of the survivor the principal is to be paid to "all and every or such one or more of the children . . . exclusively of any other or others of such children . . . in such shares and proportions and with