

deceased nephew's share to his widow for the maintenance of his children. In 1910 it was declared by the court that the period of distribution was at the death of the testatrix's nephews and niece, that there was an implied trust for the accumulation of the income of the third share from the death of the deceased nephew until the period of distribution, which trust, however, under the Thellusson Act came to an end twenty-one years after the death of the testatrix, viz., in 1908, and an inquiry was then directed as to the person entitled to that part of the testatrix's estate as to which she died intestate and Sarah Whitaker was found to be the sole next of kin, whose personal representative was the plaintiff in the present action, and who claimed an account of the accumulations of the income of the deceased nephew's share from the time of his death until 1908, and an order that the trustees make good all moneys improperly paid to the widow of the deceased nephew. The trustees set up the defence of the Statute of Limitations, Trustee Act, 1888 (51-52 Vict. c. 59), s. 8 (see 10 Edw. VII. c. 34, s. 47, Ont.), and they also claimed the benefit of the Judicial Trustees Act, 1896 (59-60 Vict. c. 35) s. 3 (see the Trustee Act, 1 Geo. V. c. 26, s. 36, Ont.). Warrington, J., who tried the action, came to the conclusion that the case fell within s. 8, sub-s. 1, of the Trustee Act, 1888 (see 10 Edw. VII. c. 34, s. 47, Ont.) as being one where no existing Statute of Limitations applied, but that by virtue of the proviso at the end of par. (b) time did not begin to run against the plaintiff until 1908, when her interest fell into possession, with which the Court of Appeal (Cozens-Hardy, M.R., and Hamilton and Eady, L.J.J.) agreed; but their Lordships were of the opinion that the Judicial Trustees Act, 1896, s. 3 (see the Trustee Act, 1 Geo. V. c. 26, s. 36, Ont.), is not confined to cases where the breach of trust arises from some executive or administrative blunder, but may extend to cases where money is paid to a person not entitled according to the true construction of an instrument; and that in the present case the trustees could not be said to have acted "unreasonably" merely because they had, under legal advice, taken a wrong view as to the construction of the will, and as there was no question as to their having acted "honestly" they ought to be relieved from liability for the breach of trust, and in this respect they reversed the decision of Warrington, J.