

The plaintiff's was a money-claim—for a legacy—payable out of land, and under the Limitations Act, R.S.O. 1914 ch. 75, sec. 24, the action could be maintained "within 10 years after a present right to receive the same accrued to some person capable of giving a discharge." As it was not until the 14th July, 1919, that the plaintiff became administratrix, the claim had not been barred.

Section 47 of the Limitations Act is in Part II., and that Part does not apply to a constructive trust.

Section 37 of the Trustee Act, R.S.O. 1914 ch. 121, does not prevent a cestui que trust from following trust-assets into the hands of a constructive trustee.

It was argued that, as the surviving husband of Matilda was entitled to one-third of his wife's personal estate, and was under no disability, one-third of the plaintiff's claim was barred. But until the plaintiff's appointment as administratrix no one was entitled to bring an action in respect of the legacy or any part of it. The statute did not begin to run against any of those entitled to share in Matilda's estate until the appointment of an administratrix.

The appeal should be allowed, the judgment dismissing the action set aside, and judgment should be entered declaring that the plaintiff, as administratrix of the estate of Matilda Sanderson, is entitled to two-tenths of the testator's estate, and that the defendant is accountable to her in respect thereof to the extent of the value of a two-tenths part of the estate come to his hands.

The defendant was guilty of no moral wrong, but was led into the unfortunate position of constructive trustee by the innocent mistake of the testator's executors that they had extinguished Matilda's claim. The defendant should not be ordered to pay the plaintiff's costs down to judgment, but he should pay the costs of the appeal.

RIDDELL, J., also read a judgment; he agreed that the appeal should be allowed.

SUTHERLAND and MASTEN, JJ., agreed with MULOCK, C.J. Ex.

Appeal allowed.

SECOND DIVISIONAL COURT.

MAY 5TH, 1920.

***CITY OF SARNIA v. McMURPHY.**

Assessment and Taxes—Local Improvement Rates—Special Assessment of Property-owners for Part of Cost of Tile-drain—Contract—Authority—By-laws of City—Lack of Petition—Fundamental Defect—Local Improvement Act, R.S.O. 1914 ch. 193, secs. 5, 9, 10, 38, 44—Estoppel—Debentures.