

The executrix, wishing to raise some money on the security of the land, applied to the agent of the defendant company in Winnipeg for a loan on mortgage of the property, and with his knowledge it was conveyed to Miss MacDonald by deed dated the 14th March, 1881. A mortgage was then taken by the company for \$2,000 the 16th March, 1881, signed by Miss MacDonald, but the evidence showed that the agent of the company was well aware that there was no real sale to Miss MacDonald, and that no consideration had passed for the deed, and that the executrix and the plaintiffs remained in possession of the property, although it did not appear that the scheme adopted had been suggested by the agent. The evidence also, in the opinion of His Lordship, showed that the solicitor of the company must have known the above facts in connection with the loan, or would have ascertained them if he had made the proper inquiries.

The property was reconveyed by Miss MacDonald to the executrix by deed dated 17th March, 1881, for an expressed consideration of \$1,000, and on the 18th November, 1881, a further loan was made on the mortgage of the executrix herself for \$2,000, and on the 8th November, 1884, a third mortgage was executed to secure a further sum of \$1,200. It was shown that the agent of the company was authorized to make loans and put them through subject to the approval of a local board as to value, and to the report of the solicitor on the title. The application for the first loan showed that the value of the property was at least \$7,000 at a forced sale, whilst the consideration stated in the deed to Miss MacDonald was \$5,000. The deed and mortgage bore evidence of having been executed about the same time and were registered at the same time, and the solicitor made no inquiry as to the possession.

Held, that the solicitor ought to have known that a breach of trust had been committed, that the agent's knowledge of the fraud committed must be imputed to his principals, and that the circumstances brought the case within the principle laid down in *Evans on Principal and Agent*, page 516, as follows: "A principal is liable to third parties for whatever the agent does or says, and whatever fraud or wrong he commits, provided the agent acts within the scope of his apparent authority, and provided a liability would attach to the principal if he were in the place of the agent."

Held, also, following *Statutor v. Carron Co.*, 18 Beav. 146, and *Yeatman v. Yeatman*, 7 Ch. D. 210, that the plaintiffs had a right to bring the action in their own names as the executrix could not sue; and that the Statute of Limitations afforded no defence in any way, as the company never had, but the plaintiffs had always been in possession.

Some evidence was given to show that one of the plaintiffs, being seventeen years of age at the time, had been aware of the making of the loans, and had been present at some of the meetings and interviews between the parties, but the Chief Justice considered that there was nothing to show that she should be estopped in any way by conduct or acquiescence from setting up the present claim. He also held that there was nothing to show that the money borrowed had been used in the maintenance and education of the plaintiffs in any way. The company claimed a lien on the land for money for insurance premiums and taxes, and to redeem the land from a tax sale.