

NOVEMBER 2ND, 1903.

DIVISIONAL COURT.

COOK v. DODDS.

Promissory Note—Statute of Limitations—Acknowledgment—Payments by Executor de son Tort—Joint Note—Death of One Maker—Remedy against Estate—Bills of Exchange Act—Trustee Act—Provision as to Joint Contractors.

Appeal by defendants from judgment of 2nd Division Court in County of Huron in favour of plaintiff.

The defendants were sued as executors of Peter Dodds, deceased, to recover the amount of a promissory note for \$200, dated 10th January, 1891, made by deceased and one Thomas Dodds, payable, with interest at 7 per cent., to the plaintiff one year after date.

At the trial plaintiff gave evidence of acts done by defendant Ellen Dodds sufficient to charge her as executrix de son tort of the deceased, and also proved that she had made payments of interest on the note within six years before action.

Unless the payments of interest made by her operated to save plaintiff's right of action, the right to recover on the note was admittedly varied by the Statute of Limitations.

W. E. Middleton, for appellants, relied on the Limitations Act, and also contended that, inasmuch as the promissory note was a joint one, and the other maker had survived Peter Dodds, there was no right of action against the estate of the latter.

W. Proudfoot, K.C., for plaintiff.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) was delivered by

MEREDITH, C.J.—It is, I think, not open to doubt that a payment or acknowledgment by an executor de son tort cannot be relied on to prevent the Statute of Limitations from operating as a bar, where the action in which it is set up is brought against the lawful personal representative of the deceased.

The principle upon which a part payment has been held to give a new starting point for the running of the statute is, that it is an acknowledgment from which the law raises the implication of a promise to pay the residue of it, and the rule is therefore quite inapplicable, as it seems to me, to