

FIRST DIVISIONAL COURT.

JULY 4TH, 1917.

*LEES v. MORGAN.

Trustee—Account—Release—Innocent Mistake—Limitations Act, R.S.O. 1914 ch. 75, sec. 47—Interest of Beneficiary—Interest in Possession—Time when Statute Began to Run in Favour of Trustee.

Appeal by the defendant and cross-appeal by the plaintiff from the judgment of LENNOX, J., 11 O.W.N. 222.

The appeal and cross-appeal were heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

J. D. Bissett, for the defendant.

H. D. Petrie, for the plaintiff.

FERGUSON, J. A., reading the judgment of the Court, said that the trial Judge had directed that the plaintiff should recover from the defendant \$936.61, and that the defendant, as trustee of the estate of Andrew Thompson, deceased, should convey certain lands, on a sale thereof by the plaintiff—the proceeds to be paid into Court subject to further order. Andrew Thompson died in 1882, and by his will devised and bequeathed one half of his estate to the defendant in trust, to pay the income thereof to Mary Lees during her life, and to divide the corpus among the children of Mary Lees who should attain the age of 26 years. The plaintiff is the only child of Mary Lees.

In 1899, the defendant proposed to pass his accounts, whereupon the plaintiff and his mother agreed with the defendant to take from him an affidavit verifying the proposed accounts and to take over their share of the estate and give him a release. On the 5th October, 1899, the plaintiff and his mother executed a release under seal discharging the defendant from all accounting and from all demands. Mary Lees died in February, 1913; and on the 4th January, 1915, the plaintiff commenced this action, alleging that the defendant had not converted all the residuary estate of Andrew Thompson, but was still in possession of certain lands; that the defendant had failed to account to the plaintiff for his share of the estate; and that he had executed the release improvidently. The claim was for consequential relief.

The trial Judge did not set aside the release, but allowed it to stand as a receipt or accounting for the amount named therein,

* This case and all others so marked to be reported in the Ontario Law Reports.