

the mortgage. The adequacy of the consideration was not, upon the evidence, open to question.

The sale itself being regular, the defendant's disposition of the proceeds must be inquired into. In his statement of defence, he pleaded his willingness to render an account to the estate of Jemima Keefer of his trusteeship under the trust-agreement, and claimed credit for several items set out. He was entitled to credit three sums, aggregating \$737.10, against the \$1,000 balance of purchase-money which he received on the sale to the plaintiff, and was accountable to Jemima Keefer's estate for the balance—\$262.90. This being part of the proceeds of the trust property, retained by the trustee, and not handed over or accounted for to the person or estate entitled to receive it, and not held separately or separately invested, he has remained accountable therefor and is not entitled to the benefit of the Limitations Act as a bar to an action to recover it: see the Act in force in 1894, 54 Vict. ch. 19, sec. 13, and secs. 46 and 47 of the present Act, R.S.O. 1914 ch. 75.

In *Stephens v. Beatty* (1895), 27 O.R. 75, it was held that where a small balance remained in the hands of a trustee that did not prevent the Statute of Limitations running in his favour. Here the amount was not so small as to entitle the defendant to the benefit of the statute. He was liable also for interest—the case falling within the principles laid down in *Halsbury's Laws of England*, vol. 28, p. 191, para. 386; but simple interest only: *ib.*, p. 192, para. 388.

The distinction between the position and rights of the estate and those of Francis Henry Keefer personally should not be lost sight of. The argument that the latter in 1894 knew of and approved of the defendant's disposal of the \$1,000, as now set up in the defence, was not an answer, even if that were the accepted fact, to the claim by Keefer as representative of Jemima Keefer's estate. He had no authority to alienate, waive, or compromise any of the estate's rights; he was not then the legal representative; he was not even an heir-at-law of hers. If the defendant relied on Keefer to indemnify him, the indemnity could only have been that of Keefer personally. He was not a party to this action in his personal capacity.

There should be a judgment in favour of the plaintiff, as administrator of Jemima Keefer's estate, against the defendant personally for \$262.90, and simple interest at 5 per cent. from the 17th August, 1893.

A considerable portion of the time of the trial was devoted to important issues raised by the plaintiff on which he had not succeeded. He should be allowed only two-thirds of the costs of the action.