

several payments on account by W. W. Greenwood within six years of the commencement of the action, and plaintiff sought to establish that these payments were out of money to which defendant Mary J. Greenwood was entitled, and were made by her husband with her authority.

E. E. A. DuVernet and J. H. Ingersoll, St. Catharines, for plaintiff.

E. D. Armour, K.C., and A. W. Marquis, St. Catharines, for defendant Mary J. Greenwood.

TEETZEL, J.—In my opinion, the evidence falls short of establishing either that the payments or any of them were made out of the wife's money with her knowledge and consent, or that in making any of the payments the husband was acting as her agent. The fact (which I find) that the husband had general authority to collect certain assets belonging to the wife, and was allowed by her to apply the same either for his own benefit or hers as he saw fit, would not, I think, constitute him her agent so that by payments (out of the money so collected) on account of the note he could either continue or renew her liability upon a joint note which but for such payments would be barred by the Statute of Limitations. Payments made by one of two joint makers will not take the case out of the statute as against the other unless made expressly as his agent and by his authority: *Creighton v. Allen*, 26 U. C. R. 627. See also *Paxton v. Smith*, 18 O. R. 178. While the husband did make collections for the wife and did not account to her fully for the same, there is no evidence that any part of such collections was ever specifically applied by him upon the note. It is, however, clear that, if he did so apply the money, it was without her knowledge or express consent.

While this note was outstanding the husband caused to be conveyed to the wife several parcels of incumbered real estate, the equity of redemption in which would have been available in his hands to pay plaintiff, and, while I must dismiss the action as against defendant Mary J. Greenwood, I think, under the circumstances, it should be without costs.