

Then the debt being barred by the statute on the 8th June, 1880, did the release by defendant to plaintiffs in July, 1893, revive the debt? If the \$10,000 note was paid by defendant, then Job Lingham at the time of his death had no interest in the Minnesota lands. That would be the proper finding. . . . If Job Lingham had no interest in the lands, plaintiffs could sell free from his claim.

But even assuming the defendant had not paid the \$10,000 note, the release to plaintiffs in 1893 of his interest in the lands—which would necessarily include his interest as one of the heirs of Job Lingham in the \$10,000—and the subsequent sale in August, 1896, of timber valued at \$5,500 from the lands, his share of which the plaintiffs credited on their claim against him, was merely permitting the plaintiffs to realize an additional sum from the same security, which they held for defendant's debt.

The only object plaintiffs had in procuring the release from defendant, and his only intention in granting a release was "in order to avoid the expense of a sale." There was nothing in defendant's act in executing the release from which an intention could be implied to pay the debt and so waive the statutory bar.

Action dismissed with costs.

APRIL 14TH, 1903.

DIVISIONAL COURT.

HOLNESS v. RUSSELL.

Deed—Conveyance of Land—Cutting down to Mortgage—Improvidence—Fraud.

Appeal by plaintiff from judgment of BRITTON, J., 1 O. W. R. 655, dismissing action to set aside a conveyance of land and a bill of sale for improvidence, or for leave to redeem.

E. Coatsworth, for plaintiff.

G. F. Shepley, K.C., for defendant.

THE COURT (BOYD, C., FERGUSON, J.) dismissed the appeal with costs, not being able to find any ground upon which to interfere with the findings of the trial Judge.