

SUTHERLAND, J., said that, shortly after the making of the note, the defendant left Ontario and went to one of the western Provinces. No demand for payment was made on him before his departure, and no demand was ever made until, on the 24th November, 1909, a firm of bankers, with whom the note had been deposited by Hamilton, wrote a letter to the defendant at his supposed address in the west. The defendant gave no evidence at the trial, and it was not shewn that he received the demand so sent. On the 28th July, 1913, Hamilton purported to assign the note to the plaintiff; but it was admitted at the trial that Hamilton was still the beneficial holder and owner of the note.

This action was begun on the 17th September, 1915; and the plaintiff stated the 24th November, 1909, as the date of maturity.

Among other defences, the defendant pleaded the Statute of Limitations.

The note, being a demand note, created a debt at once without demand; and the statute began to run from the date of the instrument or of its delivery (in this case the same): Byles on Bills, 17th ed. (1911), p. 321; Leake on Contracts, 6th ed. (1912), p. 614. The statute having once begun to run while the defendant was within the Province, it continued to run after the defendant's departure from the Province: Darby & Bosanquet on the Statute of Limitations, 2nd ed. (1899), p. 25; Banning's Limitation of Actions, 3rd ed. (1906), p. 7; Boulton v. Langmuir (1897), 24 A.R. 618. More than 6 years having elapsed from the date of the note, the right of action was barred by the statute.

*Action dismissed with costs.*

BRITTON, J.

DECEMBER 23RD, 1915.

# RE LE BRUN.

*Will—Construction—Undisposed of Personalty—Insufficiency to Pay Debts and Mortgage Charges—Deficiency Borne by Mortgaged Land—Wills Act, R.S.O. 1914 ch. 120, sec. 38—Interest Payable out of Revenue from Mortgaged Land—Period of Distribution—Expiration of Life-tenancy—Persons Entitled to Share—Ascertainment—Vested Estate—Survivorship—Remuneration of Executors—Division between Corpus and Income—Costs out of Corpus.*

Motion by the executors of the will of Honore Le Brun, deceased, for an order determining certain questions arising upon the terms of the will.