

KELLY, J.

JULY 30TH, 1920.

KEEFER v. MACDONELL.

Trusts and Trustees—Sale of Land—Satisfaction of Mortgage out of Purchase-money—Balance of Proceeds of Sale—Application by Trustee—Credit for Sums Expended—Small Balance Remaining Due—Limitations Act, R.S.O. 1914 ch. 75, secs. 46, 47—Interest—Action by Administrator of Estate of Cestui que Trust for Account—Costs.

Action by Francis H. Keefer, as administrator of the estate of Jemima Keefer, wife of Thomas A. Keefer, against Angus J. Macdonell, in his personal capacity and as executor of the will of Eleanor Macdonell, for a declaration that the defendant is and has always been since the 8th August, 1892, when an agreement was made between the defendant and Jemima Keefer, a trustee, under that agreement, for Jemima Keefer, and for an accounting of all moneys which should have been credited upon a mortgage for \$2,500, dated the 9th August, 1892 (referred to in the agreement), from Jemima Keefer to Eleanor Macdonell, and that, upon payment of the amount, if any, which may be ascertained as still due upon that mortgage, the defendant be ordered to transfer to the plaintiff, as such administrator, the land and other property conveyed by Jemima Keefer as security for the \$2,500, together with any judgment or other securities he may hold in lieu or in respect thereof.

The action was commenced on the 31st January, 1919.

The trial was at a Toronto sittings, without a jury.

A. J. McComber, for the plaintiff.

W. F. Nickle, K.C., and J. M. Farrell, for the defendant.

KELLY, J., in a written judgment, referred to the judgment of Latchford, J., in Macdonell v. Keefer (1918), 14 O.W.N. 25, and said that the findings therein made were in accord with the evidence in the present case, and were, so far as relevant, adopted.

After stating the facts, the learned Judge (Kelly, J.) found that the sale by the defendant to the plaintiff in 1894 of the lands covered by the mortgage of the 9th August, 1892, was an out-and-out sale by the defendant in pursuance of the powers he possessed under his trust (and not a sale by the mortgagee under the power in the mortgage), and that thereout the mortgage was paid off and discharged, and the personal liability of Jemima Keefer's estate for the mortgage-moneys came to an end—the result, so far as the estate was concerned, being just as if the defendant had been paid \$3,500 in cash and thereout paid off and discharged