

which may remain after payment of the said claims of the said creditors . . . for principal, interest, and costs shall be paid . . . to my said son . . .”

The question raised was, whether or not the trustees should pay the claims of creditors which were filed on the assignment being made, but which, as was suggested, may now be barred by the Limitations Act.

The learned Judge was of opinion that the trustees ought to pay all the creditors, whether judgment creditors or otherwise, who had filed claims with the assignees and who would be entitled to rank as creditors against the insolvent estate of J. G. M. It was not open to the trustees to contend that, by reason of lapse of time, the claims filed which had not been converted into judgments had been barred.

It seemed doubtful whether the Limitations Act could be successfully pleaded by the assignee against a simple contract creditor whose claim was filed in time and who claimed to be entitled to share in the distribution of assets coming into the hands of the assignees a long time after the making of the assignment—the assignees would hold as trustees for those creditors whose claims had been duly proved, and the statute would probably cease to run at the date of the filing of the claim.

Those creditors whose claims came into existence after the making of the assignment, and who would consequently have no right to rank against his estate, were excluded from the benefit of the testator's bounty. Their remedy, if any, must be by attachment of any surplus coming to the hands of J. G. M. after payment of the claims of the other creditors.

Order declaring accordingly; costs of all parties to be paid out of the 3 shares disposed of as above.

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ORDE, J.

MARCH 26TH, 1920.

SMITH v. CARVETH.

*Fraud and Misrepresentation—Agreement for Sale of Land—False Representation by Purchaser—Inducement to Vendor to Enter into Contract—Dismissal of Purchaser's Action for Specific Performance—Counterclaim of Vendor for Rescission.*

The plaintiff, as the assignee of the purchaser (her husband), claimed specific performance of a contract by the defendant to sell land to the husband.