

wind up the estate. During that period he wrote a number of letters to the testator's widow, in most of which he stated that he was acting for her benefit in regard to the property, and would see that she lost nothing by his having it, and in 1881 he paid her \$1,000. Prior to this payment it would appear from his letters that the widow had repented handing over the estate, and kept urging him to give her a statement of his dealings with the property, and early in 1881 he wrote that it would take two years more to enable him to know how the business stood, but no such statement was given, and after his death the widow brought an action against his executors, asking for an account of the estate and M.'s dealings therewith and payment of her share, and to have the said release set aside. The defendants set up the release as an answer to the claim, and also pleaded that the plaintiff was precluded by laches from maintaining the action.

Held, affirming the decision of the Supreme Court of Nova Scotia, GWYNNE, J., dissenting, that the release should be set aside; that the widow in signing it was ignorant of the state of her husband's business and was dominated by the stronger will of M.; and that M. after the release had admitted his liability to her as trustee and promised to account to her for the property without regard to his legal title, and paid money to her on account of such liability.

Held, further, that the plaintiff was not precluded by delay in pressing her claim from taking these proceedings; that the delay was due to M. himself, who by his promises to render a statement of the affairs of the estate had induced her to refrain from taking proceedings; and that M. by his correspondence had elected to divest himself of his legal title and must be treated as a mere trustee for the widow, and there is no Statute of Limitations to bar a *cestui que trust* from proceedings against his trustee for breach of an express trust, nor is there in Nova Scotia any prescription in favour of an administrator or executor against a beneficiary bringing suit for his share of an estate except in the case of a legatee.

Appeal dismissed with costs.

Borden, Q.C., for the appellant.

Newcombe and McInnes for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL

DONOGH v. GILLESPIE.

[May 30.]

Principal and agent—Banks and banking—Bills of exchange and promissory notes—Payment—Set-off—Debtor and creditor.

Bankers are subject to the principles of law governing ordinary agents, and therefore bankers to whom as agents a bill of exchange is forwarded for collection can receive payment in money only, and cannot bind the principals by