

She further said that she wrote and told them about this money, and asked them to settle, and two of them did settle, and the plaintiff would not. She further stated that she never got any interest on this money, which she lent them, and that it was absolute robbery on their side to try to compel her to pay it; that the two brothers allowed her to retain their share for the money they owed her. She further stated that while the \$1,200 still remains in Trenholm's hands, she does not know what has been done with it, except that he holds it for her, but she does not know exactly how.

The appeal to Divisional Court was heard by HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE KELLY.

Grayson Smith, for the plaintiff, appellant.

A. B. Armstrong, for the defendant, respondent.

HON. MR. JUSTICE CLUTE:—On reading the examination it leads one to think that the defendant stated the exact facts of the case. It further appears that the money had never come to her hands or under her control. That there is a debt due from the plaintiff to the defendant. That a right of action therefor is barred by the statute. She could not successfully plead this debt due her as a set off against the plaintiff's claim. This could be met by the statute: Pollock on Torts, 5th ed., 685.

Mr. Smith relied upon the case of *McKinnon v. Crowe*, 17 P. R. 291. I think that case quite distinguishable from the present. There the judgment debtor hearing the judgment had gone or was about to go against her, turned all the property she had into money and sent it to a friend in a foreign country where it remained, and upon her examination she refused or professed to be unable to give any information as to where it was. After she had ample opportunity to become aware of its position, and had done nothing towards satisfying the plaintiff's claim, an order was made for her committal to gaol for three months. Here the case is quite different. This money never came to the hands of the defendant, although a judgment for the same has been recovered against her. It still remains in the hands of the person who had the division of the estate, with the view of inducing the plaintiff to sign a discharge and so authorise the person holding the money to pay over the same to the