Boyd, C.] KING *v.* ROGERS. [April 17.

Limitation of actions—Acknowledgment in writing—Revival of liability—Agent of executor—Letter to third person—Admissability.

The executor of the will of one of the joint makers of a promissory note proved the will after the debt on the note as against the testator or his estate had become barred by the Statute of Limitations. The will directed that all the testator's just debts should be paid by his executors as soon as possible after his death. The executor, who lived out of Ontario, executed a power of attorney to the other joint maker of the note, who was primarily liable on it, and against whom it had been kept alive by payments, to enable him in Ontario "to do all things which might be legally requisite for the due proving and carrying out of the provisions" of the will—the executor having at this time no knowledge of the note.

Held, that a letter written by the surviving maker shortly after the execution of the power of attorney, even if in its terms sufficient, was not such an acknowledgment, within R.S.O. c. 146, s. 1, as would revive the liability after the expiry of six years; for there was no trust created by the will for the payment of debts, nor was there any legal obligation on the part of the executor to pay statute-barred debts, and the surviving maker was not an agent "duly authorized" to exercise the discretion which an executor has to pay such debts.

Three years' later the executor wrote to the holder of the note to the effect that the holder ought to look to the surviving maker for payment, as he was now doing well.

Held, that this, though some recognition of the debt, was not sufficient; there must be such a recognition as amounts to a promise or undertaking to pay.

Just before this action was brought to recover the amount of the note, the executor wrote to the plaintiff's solicitors, asking them not to take any further step till he could hear from the surviving maker; and to the latter he wrote: "The debt is owing, and they are anxious to get their estate settled up."

Held, insufficient as an acknowledgement, and that the letter to a third person—not the creditor—was not admissible. *Goodman* v. *Beves*, 17 A.R. 528, followed.

D. E. Thomson, Q.C., and *W. N. Tilley*, for the plaintiffs. *F. E. Hodgins*, for the defendant Elford.

Boyd, C.] LOGAN *v.* HERRING. [May 5.

Costs—Will—Action to set aside—Failure of—Dismissal without costs—Costs out of estate—Administration.

In an action to set aside a will for undue influence by two of the defendants, one of whom was the executor, the attack failed, and the action