BOYD, C.] [Dec. 3.

CHARD *v.* RAE.

Executors and Administrators—Action upon a judgment—Grant of administration after action begun—Plaintiff not primarily entitled to administer—Right of widow to administer—Renunciation after action—Statute of Limitations, R.S.O., c. 60, s. 1—Parties—Joint judgment.

The rule in equity is that when a person is entitled to obtain letters of administration he may begin an action as administrator before he has fully clothed himself with that character; but the same doctrine does not obtain where the person immediately entitled to obtain administration is not the one who begins the action.

Trice v. *Robinson*, 16 O.R., 433, distinguished.

Where the point is specially raised on the pleadings as to the time when the letters of administration were obtained, it devolves upon the Court to ascertain whether an action was begun in time by a properly constituted plaintiff.

The father of the plaintiff obtained judgment against L. & R. in an action upon a promissory note on the 26th October, 1868, and the plaintiff began this action against L. & R. upon the judgment on the 22nd October, 1888. At that time the plaintiff's father was dead, and no personal representative of his estate had been appointed. On the 4th November, 1888, letters of administration to his father's estate were granted to the plaintiff, the widow renouncing probate on the same day. Subsequently to that the statement of claim was delivered and the action continued against R. alone. R., by his statement of defence, put the plaintiff to the proof of his position and title to sue on the judgment, and set up amongst other defences, the statute R.S.O., c. 60, s. 1.

Held, that the widow was the person primarily entitled to administer, and as she had not renounced when the action was begun, the plaintiff had at that time no status; and as against the Statute of Limitations that no action was rightly begun within the period of twenty years fixed by the statute as that within which an action upon a bond or other specialty shall be commenced; and therefore the action failed.

Semble, also, that an objection raised at the trial that L. was not before the Court was a valid one; for an action on a joint judgment is not different in principle from an action of contract against joint contractors.

Dickson, Q.C., for plaintiff.

Clute for defendant.

Div'l Ct.] [Dec. 3.

BLACKLEY *v.* DOOLEY.

Sale of goods—Payment by instalments—Property remaining in vendor—Transfer by vendor of his interest—Removal of goods by third party — Conversion — Trover — Detinue — Parties.

B. delivered to Mrs. M. a piano, for which she agreed to pay $275, $50 down and the balance by instalments; it was also agreed between them that the piano should remain the property of B. until the payments were completed, and that upon any default in the payments B. should have the right to remove the piano. Default was made in these payments; the plaintiff purchased the notes representing them, and took from B. a transfer under seal of his property in the piano. Before the plaintiff acquired his interest, D., the agent for B., who had made the agreement with Mrs. M. and who was aware of B.'s rights, paid Mrs. M. $50 and was allowed by her to remove and did secretly remove the piano. D. had left B.'s employment at this time, and was acting adversely to him.

This action was brought against D., Mrs. M. and her husband, to recover the piano or its value, with damages for its detention. It was not proved that any demand had been made upon D. for the return of the piano. It was objected by the defendant that neither detinue nor trover would lie.

Held, that the plaintiff was entitled to recover damages against D. for the conversion of the piano; for it was not necessary to impute the conversion to any particular period of time, and the defendant's denial after action of the plaintiff's right to the piano, could be treated under the circumstances as evidence of a conversion before action by the defendant of the plaintiff's interest in it; and as against technical objections raised by a wrong-doer, the benefit of all possible presumptions should be allowed.

Held, also that it was not necessary that B. should be added as a party in order to entitle the plaintiff to succeed.

Finlay for the plaintiff.

F. Fitzgerald for the defendant.