

Full Court.]

BANK OF MONTREAL v. LINGHAM.

[Jan. 25.]

Statute of limitations—Simple contract debt—Conversion into specialty debt—Payment or acknowledgment of debt—Evidence of.

Two promissory notes payable to a bank not having been paid, a trust deed was entered into, to which the defendant, the maker of the notes, the defendant's father, an agent of the bank as trustee, and the bank itself, were parties. The deed, after reciting the defendant's indebtedness to the bank and also to his father, and that the father held certain lands as security therefor, the father thereby conveyed the same to the trustee as security, in the first place for his indebtedness, and then for that of the bank, power being given to the trustees to sell the lands on one month's default in payment and notice in writing of the trustee's intention to sell. The deed contained an acknowledgment by the defendant of his indebtedness, but there was no covenant by him to pay the same. In 1893, on the plaintiffs pressing for payment, deeds of release were executed by the defendant and the other heirs and next of kin of the father, who was then dead, on the understanding that the father's debt had been paid, whereby after referring to the recitals in the deed of 1884, and reciting that the leases were given to save the expense of a sale, they released to the plaintiffs all their interest in the said lands, and subsequently \$5,500 was realized by the plaintiffs from a sale of a portion of the lands or the timber thereon.

Held, that the effect of the deed of 1884 was not to convert the debt into a specialty debt, nor did the reference to the recitals in a deed of 1884 or the deed of 1893 so incorporate them in the latter as to amount to an acknowledgment of the debt; nor did such deed operate as a transfer or assignment of the interest, if any, which the defendant had in his father's estate, as one of his personal representatives; nor did the receipt by the bank of the \$5,500 constitute a payment by the defendant on account of the debt, so that no bar was created by the running of the statute of limitations, and that it could, therefore, be validly set up by the defendant as a defence to an action brought by the plaintiffs in 1902.

MACLENNAN, J.A., dissented.

Walter Cassels, K.C., and A. W. Anglin, for appellants. Ritchie, K.C., and Northrop, K.C., for respondents.

HIGH COURT OF JUSTICE.

Meredith, C.J.C.P.] RE GRUNDY STOVE COMPANY.

[Feb. 3.]

Winding-up—Material supporting petition—Necessity for proof of insolvency.

To enable a company to be wound up under the Winding-up Act, R.S.C. c. 129, it is not sufficient for the company to appear by counsel