

1893

MACK *v.* MACK.

*Nov. 29, 30. *Trustee—Administrator of Estate—Release to, by next of kin—Rescission of release—Laches.*

1894

*Mar. 13. **APPEAL** from a decision of the Supreme Court of Nova Scotia, reversing the judgment at the trial for the defendants.

Edward Mack died in 1871, and his brother and partner, Henry Mack, obtained from his widow and his father, as next of kin, a release of their respective interests in all real and personal property of the deceased. In getting this release he represented that the estate would be sacrificed if sold at auction, and the most could be made of it by letting him have full control of the property. He then took out letters of administration to Edward Mack's estate, but took no further proceedings in the Probate Court and managed the property as his own until he died in 1888. During that time he wrote several letters to the widow of Edward Mack, in most of which he stated that he was dealing with the property for her benefit, and would see that she lost nothing by giving him control of it. After his death the widow brought an action against his executors, asking for an account of the partnership between her husband and Henry Mack, and of his dealings with the property since her husband's death and payment of her share; she also asked to have the release set aside. The defendants relied on the release as valid, and also pleaded that plaintiff by delay in pressing her claims was precluded from maintaining her action.

The Supreme Court held, Gwynne J. dissenting, that the release should be set aside; that it was given in ignorance of the state of the partnership business and Edward Mack's affairs, and the plaintiff was dominated by the stronger will of Henry Mack; that

*PRESENT:—Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

the latter had divested himself of his legal title by admitting in his letters a liability to the plaintiff, and must be treated as a trustee ; that as a trustee lapse of time would not bar plaintiff from proceeding against him for breach of trust ; and that the delay in pressing plaintiff's claim was due to Henry Mack himself, who postponed from time to time the giving of a statement of the business when demanded by the plaintiff.

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Appeal dismissed with costs.

Borden Q.C. for appellant.

Newcome and McInnes for respondent.
