

STATUTE OF LIMITATIONS—ACKNOWLEDGMENT BY ONE OF TWO EXECUTORS AND TRUSTEES—REAL PROPERTY LIMITATION ACT, 1833 (3 & 4 W. 4, c. 27), s. 42—(R.S.O., c. 133, s. 17).

Astbury v. Astbury (1898) 2 Ch. 111, is a case as to the sufficiency of an acknowledgment under the Statute of Limitations (see R.S.O., c. 133, s. 17). The acknowledgment in question was given by one executor and trustee without the consent and concurrence of his co-executor or trustee, that more than six years arrears of interest was due on the plaintiff's mortgage, and it was held by Stirling, J., not to be a sufficient acknowledgment to bind the real estate under the Act, although it might be sufficient to bind the personal estate, a point which he did not decide. This decision turns on the ground that, qua executor, he had no power to bind the land, and as trustee of the land he could not bind it without the concurrence of his co-trustee. But in Ontario where an executor, qua executor, has a similar power over the land to that which he has over the goods of his testator, it is possible that the consent of an executor under such circumstances might be sufficient.

SPECIFIC PERFORMANCE — CONTRACT — VENDOR AND PURCHASER — "SUBJECT TO APPROVAL OF CONDITIONS AND FORM OF AGREEMENT"—MISTAKE RESCISSION—INTEREST—WILFUL DEFAULT.

North v. Percival (1898) 2 Ch. 128. This was an action for specific performance of a contract for the sale of land. By "heads of agreement" between the plaintiff and defendant it was agreed that the plaintiff should purchase "36 acres of land," the boundaries of which were accurately defined on three sides, but not on the fourth, for £3,600, "subject to the approval of conditions and form of agreement by purchaser's solicitor." The defendant subsequently discovered that the land he intended to sell measured 42 acres, and he refused to carry out the sale, unless the plaintiff took the 42 acres at £4,200. The plaintiff on the other hand insisted that the contract should be carried out for the 36 acres, and brought the action for specific performance. The contract contained a stipulation that if the purchase was not completed by a day named, the purchase money should bear interest from that