fit of the Statute of Limitations there was not sufficient evidence of possession to give him a title thereunder.

Appeal dismissed with costs.

McCarthy, Q.C., and Leitch, Q.C., for the appellant.

Moss, Q.C., for the respondent.

April 4, 1892.

Ontario.]

HOUGHTON v. BELL.

Will—Construction—Devise to children and their issue—Estate to be "equally" divided—Per stirpes or per capita—Statute of Limitations—Possession—Trustee.

T.B. by his will made provision for the support of his wife and unmarried daughters, and then directed as follows: "When my "beloved wife shall have departed this life, and my daughters shall "have married or departed this life, I direct and require my trus- "tees and executors to convert the whole of my estate into "money to the best advantage by sale thereof, and to divide the "same equally among those of my said sons and daughters who "may then be living, and the children of those of my said sons "and daughters who may have departed this life previous thereto." The testator's wife and unmarried daughters having died, and some of his sons having previously died, leaving children, proceedings were taken to have the intention of the testator under the above clause ascertained.

Held, reversing the judgment of the Court of Appeal (18 Ont. App. R. 25) and restoring that of the trial judge, Ritchie, C. J., dissenting, that the distribution should be *per capita* and not *per stirpes*.

J.B., a son of the testator and one of the executors and trustees named in the will, was a minor when the testator died, and after coming of age he did not apply for probate though leave was reserved for him to do so. He did not disclaim, however, and he knew of the will. With the consent of the acting trustee he went into possession of a farm belonging to the estate some time after he had attained his majority, and had remained in possession for over twenty years when the period of distribution under the clause above set out arrived, and he then claimed to have acquired a title under the Statute of Limitations.

Held, affirming the decision of the Court of Appeal, that as he