

**STATUTE OF LIMITATIONS**—MONEY CHARGED ON LAND—DERIVATIVE MORTGAGE—PAYMENT OF INTEREST BY CO-DEBTOR—REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT., c. 57), s. 8—(R.S.O., c. 133, s. 23)—21 JAC. 1, c. 16, s. 3—THE MERCANTILE LAW AMENDMENT ACT, 1856 (19 & 20 VICT., c. 97), s. 14.

*Barnes v. Glenton* (1898) 2 Q.B. 223, is a decision of Lord Russell, C.J., on a point arising on a defence of the Statute of Limitations, and upon which it would seem that in Ontario the Courts might possibly come to a different conclusion. The facts were tolerably simple. The plaintiffs lent the defendants, who were trustees, money on the security of a mortgage, to which they were beneficially entitled, and which they procured to be assigned by their trustees to the plaintiff. This assignment contained no covenant by the defendants for the repayment of the money advanced; nor were they parties to it; but by a contemporaneous deed, to which they were parties, it was agreed that the money advanced should be a first charge on the mortgage money assigned, and that the plaintiffs would not realize the mortgage without first giving the defendants an opportunity to redeem. This deed also contained no express covenant for repayment of the advance. In 1882 Lewis, one of the defendants, retired from the trust, but the other trustees continued to make payments in respect of the amount advanced, until 1897, when the action was commenced to recover from the defendants the balance remaining due. The action, so far as appears from the report, was not to realize the money out of the mortgaged land, but simply to enforce the claim against the defendants personally. The defendant Lewis contended that there being no covenant for repayment of the moneys advanced, the plaintiff's action was barred as against him in 1888, under the joint effect of 21 Jac. 1, c. 16, and the Mercantile Law Amendment Act, 1856 (19 & 20 Vict., c. 97), s. 14, whereby payments by one joint debtor are insufficient to keep the debt alive as against another joint debtor. Lord Russell, C.J., was of opinion that this defence could not prevail, but that the plaintiff's claim was for money charged on land, and was therefore within the Real Property Limitation Act, 1874, s. 8 (see R.S.O., c. 133, s. 23), and being