Barling v. *Bishopp*, 29 Beav., 417, followed. *Ex parte Mercer*, 17 Q.B.D., 290, distinguished.

After the evidence had been taken the learned Judge reserved his decision and permitted written arguments to be put in, in which there was an objection that an exemplification of the judgment in the seduction action was not evidence herein. The daughter was present in Court and could have proved the cause of action. The learned judge was therefore of opinion that the objection was too late, but to prevent the question hereafter arising, leave was given to put in the evidence, the giving of judgment in the meantime suspended.

Glenn for the plaintiff.

Colin Macdougall for the defendant.

STREET, J.] [May 3, 1889.

CAMERON *v.* ROWELL.

Will—Estate—Meaning of real or personal estate—Limitation of action—Express trustee.

The word "estate" used in a will, even when associated with words relating to personal property, is sufficient to pass real estate, unless there is a clear intention from other parts of the will, or from the way the word is used in the particular part of the will, or in some other way it is shewn that it is restricted to personal estate.

J. E. D., under the will of his mother, became entitled, on attaining his majority, in 1873, to a legacy of one-half the unexpended estate comprised in the will. In 1877 he assigned all his interest therein, both real and personal, to J. C., and the latter's interest became vested in G. C.

Held, that under the terms of the will the word estate, being entirely applicable to personal estate, and inapplicable to real estate, it only applied to the former; and, therefore, G. C.'s claim, under J. E. D., was limited to the personal estate, and as to this he had no claim either, for as J. E. D.'s legacy was payable in 1873, and it appeared that no payment was then made, nor any acknowledgment since of any right thereto, nor had the fund been set apart for J. E. D. so as to constitute the executor an express trustee for him; the claim was barred by the statute.

Aytoun Finlay for plaintiff,

Beard, Q.C., for defendant.

STREET, J.] Nov. 9, 1889.

BROWN *v.* MCLEAN.

Mortgagee—Paying off prior mortgages and taking mortgage for advance—Neglect of solicitor in searching for execution—Effect of.

The plaintiff advanced the amount necessary to pay off two existing mortgages on certain land, taking a mortgage for his advance, the prior mortgages, at plaintiff's request, being discharged in the statutory form. The defendant, at the time, had a *fi. fa.* lands in the sheriff's hands, of which the plaintiff was ignorant, his solicitor having neglected to search in the sheriff's office.

Held, that the plaintiff was entitled to a declaration that to the extent of the advance to pay off the prior mortgages he was entitled to priority over the defendant's execution, for that the plaintiff advanced his money and had the prior mortgages discharged under the mistaken belief that he was obtaining a first charge, and that he was not disentitled to relief because, by using ordinary care, he might have discovered the mistake, the defendant not being prejudiced thereby.

W. Cassels, Q.C., and *Milligan* for the plaintiff.

Garrow, Q.C., for the defendant.

MACMAHON, J.] [Dec. 14, 1889.

STONEHOUSE *v.* LOVELACE.

Limitation, statute of—Possession, sufficiency of.

Under a verbal agreement made in 1871, between plaintiff and his father, the owner of a farm, the plaintiff was to enter into possession, work, and treat same as his own, the father promising to devise it to him by his will. The plaintiff, in pursuance of the agreement, entered into and continued in possession up to 1884, expending, as he said, a large sum of money in improvements and paying the taxes. The evidence however, shewed that the father never intended relinquishing his title to the land during his lifetime, his actions being such as to indicate that he deemed himself still the owner, namely, by mortgaging it, leasing it, etc., his intention being that the plaintiff should only own it when he received it as a devisee under his will; and the father having by his will devised the land to the plaintiff, the plaintiff accepted thereunder.