Held, affirming the decision of the Court of Appeal (17 A.R. 192) and of the Divisional Court, STRONG, J., dissenting, that the land having been sold in the first instance for a debt of D.M., he became, when he purchased it at such sale, a constructive trustee for the devisee, and this trust continued when he purchased it the second time.

Held, further, that if D.M. was in a position to claim the benefit 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.

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 trustees 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 A.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 held by an express trust under the terms of the will the rights of the other devisees could not be barred by the statute.

Appeal allowed with costs and cross-appeal dismissed with costs.

S. H. Blake, Q.C., for the appellants.

McCarthy, Q.C., and *H. S. Osler* for the respondents.

GRAND TRUNK R. W. CO. *v.* SIBBALD.

GRAND TRUNK R. W. C[O] *v.* TREMAYNE.

Railway Co.—Negligence—Construction of road —Interference with highway—Neglect to ring bell.

The Midland Railway Company, in building a portion of its road, left, at a crossing, the roadbed some feet below the level of the highway, and operated it without erecting a fence or otherwise guarding against accident at such crossing. The road was afterwards operated by the Grand Trunk Railway Company, and S. was driving along the road one day, and, as he approached the crossing, an engine and tender came towards him on the track; the horses became frightened and broke away from the coachman, who had jumped out to hold them, wheeled around, and the wagon rolled over the edge of the highway on to the track in front of the train. S. lost his arm, and a lady who had been in the carriage with him was killed. In actions by S. and the administrators of the deceased lady, the jury found that the bell had not been rung as required by the statute, and that the defendant company was guilty of negligence thereby, and also in not fencing or otherwise protecting the dangerous part of the highway.

Held, affirming the decision of the Court of Appeal (18 A.R. 184) and of the Divisional Court (19 O.R. 164), that the Midland Railway Company had no authority to construct the road as they did unless upon the express condition that the highway should be restored so as