

CLUTE, J.

MAY 30TH, 1917.

RYCROFT v. TRUSTS AND GUARANTEE CO.

Contract—Agreement to Devise Farm to Nephew—Services Rendered by Expectant Devisee—Action to Enforce Agreement against Administrators of Estate of Uncle—Evidence—Corroboration—Intention of Testator—Failure to Prove Contract—Statute of Frauds—Wages or Remuneration for Services—Uncle in Loco Parentis—Limitations Act—Wages for only Six Years before Decease.

Action by Murray E. Rycroft against the administrators of the estate of his uncle, William A. Spoar, who died in March, 1917, intestate and unmarried, for specific performance of an agreement alleged to have been made by the deceased with the plaintiff to devise to the plaintiff a farm, in consideration of the plaintiff devoting himself upon the farm to the support of his uncle, or, in the alternative, to recover \$3,850 as remuneration for the plaintiff's services rendered to his uncle for eleven years before his death. There was no writing evidencing the alleged agreement.

The action was tried without a jury at Brantford.

E. R. Read, for the plaintiff.

W. S. Brewster, K.C., for the defendants.

CLUTE, J., in a written judgment, set forth the facts, which were not in dispute, and said that it was clear from the evidence of the plaintiff and other witnesses that the plaintiff was induced to remain and work for the intestate upon the farm, devoting his whole time thereto, upon the understanding that he was to be compensated for his work by the intestate leaving him all his property. Accepting the plaintiff's evidence and that of other witnesses who stated what the intentions of the uncle were, the learned Judge was yet unable to say that such a contract was established as entitled the plaintiff to specific performance, even if the Statute of Frauds did not bar the way; but the evidence clearly established the plaintiff's right to wages and compensation for his services, and took the case out of the ordinary rule that children are not to look for wages to their parents or those in loco parentis: *Walker v. Boughner* (1889), 18 O.R. 448; *Herries v. Fletcher* (1914), 6 O.W.N. 587, 589; *Cross v. Cleary* (1898),