

the fact of dishonour under circumstances which did not make it his duty to communicate the fact to the A. Co.

STATUTE OF LIMITATIONS—ACTION TO RECOVER LAND—MARRIED WOMAN—CLAIM BY HUSBAND IN RIGHT OF WIFE—PERSON UNDER DISABILITY—REAL PROPERTY LIMITATION ACT (37 & 38 VICT., c. 57), s. 5—(R.S.O. c. 133, s. 43).

Hounsell v. Dunning (1902) 1 Ch. 512, was an action for the recovery of land. The facts were somewhat peculiar:—One Henry Ball died intestate entitled to the copyhold land in question, which by the custom of the manor devolved on his widow, who survived him. He also left a son and two daughters. The widow died on January 7, 1870, leaving by her will to her daughters "the share of her late husband's estate" that she took or was entitled to on his decease; she also gave them pecuniary legacies which she declared she gave them in lieu of the copyhold estate which descended to her son on the death of her husband—and she appointed the husband of one of the daughters her executor. It was assumed on her death that the son was entitled to the copyhold estate and the executor received the rents on his behalf and accounted to him for them on his coming of age in 1878 when the title deeds were handed to him and he thereafter continued in possession until his death in 1890, having devised all his real estate to the defendants. On 25th September, 1900, it having been discovered that on Henry Ball's death the lands in question had in fact devolved on his widow and not on his son, it was claimed that they passed under her will to the daughters, and the present action was brought by the executor and his wife claiming to be entitled under the will to a moiety of the land. The defendants set up the statute of limitations, and Joyce, J., held that even if the land did in fact pass under the will, which he considered was not the case, the plaintiffs were nevertheless barred on the ground that the action was not brought within thirty years from January 7, 1870, when the plaintiffs' right first accrued, as required by 37 & 38 Vict., c. 57, s. 5, (see R.S.O. c. 133, s. 43). In Ontario, we may remark, coverture is not one of the disabilities to which s. 43 applies, and in a case like this a married woman would only be entitled to ten years within which to bring her action, as regards both property to which the Married Woman's Property Act applies, and property to which she is entitled and to which that Act does not apply. It would also seem she may be barred during coverture: see *Hicks v. Williams*, 15 Ont. 228.