

which contains similar provisions to those in the Ontario Devolution of Estates Act (R.S.O. c. 127, s. 4), a testator died having devised his real estate to three trustees upon certain trusts, and he also appointed the trustees his executors. Only two of them proved the will, power being reserved to the other to come in and prove. This third executor had neither proved the will nor disclaimed the trusts thereof. The two executors who proved the will entered into a contract to sell certain real estate belonging to the testator's estate, and the purchasers required that the third executor, who had not proved, should also join in the conveyance, or that a disclaimer by him of the trusts of the will should be abstracted and produced. The other executors contended that they alone could make title, and this was the point submitted to Kekewich, J., who was of opinion that the purchasers' requisition was well founded, and although there was a power in the will expressly enabling the proving executors to sell, he nevertheless considered that the legal estate was vested in the three, and as an executor derives his title from the will, and not from the probate, the omission of the third executor to prove the will did not prevent the title vesting in him. The term "personal representatives" in the Act, in the learned judge's opinion, applies to those filling that character irrespectively of the question whether they obtain probate or not.

LEASE—COVENANT BY LESSOR NOT TO LET ADJOINING LAND FOR A SPECIFIED TRADE—LESSEE, RIGHT OF, TO ENFORCE COVENANT MADE BY THIRD PERSON WITH HIS LESSOR.

Ashby v. Wilson (1900) 1 Ch. 66 is a somewhat peculiar case. Ashby was a tenant of Wilson who also owned adjoining premises which he had covenanted with Ashby he would not let for the purposes of the same kind of trade as that carried on by Ashby. Subsequently Wilson let the adjoining premises to one Bebb, who covenanted with Wilson that he would not use the premises for carrying on a trade like that of the plaintiff's, but in breach of this covenant he actually did carry on a trade like that of the plaintiff Wilson's. The action was brought against both Wilson and Bebb, to restrain Wilson from letting the premises, and Bebb from using the premises, for the business carried on by the latter. Kekewich, J., however, held that the plaintiff was not entitled to succeed as against either defendant,—not against Wilson because he had not