the lessee no cause of action against the lessor for withholding his consent, and, therefore, the lessor could not be ordered to pay the costs of the action.

EXECUTOR — DEVASTAVIT — CLAIM ON GUARANTY — STATUTE OF LIMITATIONS—TRUSTEE ACT 1888 (51-52 VICT. C. 59), S. 8, SUB-S. 1.—(R.S.O. C. 129, S. 32(1).)

Lacons v. *Warmoll* (1907) 2 K.B. 350 was an action against one of two executors upon a guaranty given by their testator. The action was commenced in 1905 in respect of claims accruing due in 1903 and 1904. The plaintiff alleged that the defendant had been guilty of a devastavit in wrongfully handing over assets to a beneficiary under the will in 1898, without making provision for the liability under the guaranty now sued on. The County Court judge who tried the action held that the defendant was liable for the devastavit and gave a judgment against him de bonis testatoris et si non de bonis propriis for the amount of the plaintiff's claim, which judgment was affirmed by the Divisional Court (Kennedy and Lawrence, J.J.); but the Court of Appeal (Lord Alverstone, C.J., and Moulton and Buckley, L.JJ.) reversed the decision. The case was carried on without pleadings. The plaintiff's original plaint was to recover the amount payable under the guaranty, but he gave notice that he would claim that defendant had committed a devastavit; and the defendant gave notice that he would plead the Statute of Limitations as a bar to the alleged claim for devastavit. In the Courts below it was considered that as the claim on the guaranty did not become payable until 1903, the Statute of Limitations afforded the defendant no defence, because prior to that date the plaintiff could not have brought any action in respect of the devastavit. But the Court of Appeal hold that where an executor is sued in respect of a devastavit he is sued in respect of an alleged personal wrong and that, altogether apart from the Trustee Act, 1888, (see R.S.O. c. 129, s. 32), he is entitled to set up the Statute of Limitations as a bar, and that the statute begins to run, not from the date of the accrual of the plaintiff's right to sue the testator's representatives, but from the date the devastavit on which the plaintiff relies was actually committed. The judgment in so far as it was de bonis propriis was therefore held to be erroneous.

The judgment of Buckley, L.J., deserves careful attention