

he was not entitled to insist that certain requisitions as to title should be complied with.

The lot was owned by Bridget Mulholland. She made a will on the 14th December, 1893, and a codicil on the 4th January, 1894, and died on the 2nd May, 1894.

By the will she devised this lot to the vendor, but subject to a charge of certain legacies. "Said six legacies . . . I hereby charge on my said lot on Barrie street, and I exempt all the rest of my estate real and personal from the same. On said lot I also charge the payment of my just debts, funeral and testamentary expenses, and I exempt the rest of my estate real and personal from all liability as to same. For the purpose of paying the sums charged on my said lot . . . and also my debts, funeral and testamentary expenses . . . I give my said executors full power to mortgage or sell said lot as they may think proper."

The vendor and two others were appointed executors.

By the codicil certain changes were made in the legacies.

No probate of the will was obtained.

One of the executors, Michael Brennan, died about 1896.

The surviving executors, of whom the vendor was one, as such executors, on the 24th May, 1899, conveyed this lot to the vendor, and he took possession and remained in possession thereof till the purchaser took possession.

The contract between the vendor and purchaser was made on the 24th December, 1908.

The purchaser required registration of releases of the legacies named in the will. The vendor answered that these legacies were barred by the Statute of Limitations.

The purchaser, about the 24th May, 1909, during negotiations about this and other requisitions, took possession and made changes in and improvements to the property.

H. W. Mickle, for the vendor.

G. M. Macdonnell, K.C., for the purchaser.

BRITTON, J.:—As to legacies being barred by the Statute of Limitations, an executor is not, as such, an express trustee: *Lightwood on Time Limit*, p. 172. . . .

Here the executors were not named as trustees, nor was the devisee-executor named as such. . . . There has been no assent to any legacy and no setting apart of any sum. "Where the money representing a legacy has not been actually raised, but is charged on land and secured by an express trust, the trust does not prevent the operation of the statute, and it is recoverable only within the same period as if there was no trust:" *Lightwood*, p. 173, and authorities