

STATUTE OF  
LIMITATIONSDECEASED  
OWNERRECOVERY OF  
LAND

A member of the Society raised with the Conveyancing Committee the difficulty which arises in relation to the operation of the Statute of Limitations in respect of land forming part of the estate of a deceased following the Judgement of Mr. Justice McMahon in the case of *John Drohan -v- Mary Drohan* given on 31st July 1980. In his judgement Mr. Justice McMahon held that a personal representative of a deceased was entitled to recover property for the benefit of the estate of the deceased at any time within a period of twelve years from the date on which the right of action accrues i.e. when adverse possession was taken of the property.

The difficulty arises if the personal representative recovers the property after the expiration of 6 years from the date of death of the deceased. Section 45(1) of the Statute of Limitations 1957, as amended by Section 126 of the Succession Act 1965, provides that no action in respect of any claim to the estate of the deceased person shall be brought after the expiration of 6 years from the date of the right to receive the share or interest accrued. The date on which the right to receive the share or interest accrued is the date of death. Accordingly under the provisions of Section 45 it would appear that the rights of the beneficiaries to share in the estate are statute barred after the expiration of 6 years from the date of death. On the face of the legislation it would appear that if the personal representative recovers the property of the deceased from some third party, say a Solicitor, after the expiration of 6 years from the date of death he would be personally entitled to the recovered property but this hardly seems in accordance with the general principles of law in relation to a personal representative namely that a personal representative's duty is to administer the estate for the benefit of the beneficiaries.

The Conveyancing Committee has sought the advice of Senior Counsel who has advised that the questions raised are extremely difficult and can really only be determined by the Courts. The Committee would be interested in hearing from any Solicitors who may be involved in cases in which property has been recovered by a personal representative after the 6 year period and where claims are being pressed by beneficiaries.