

consolidation would have to be allowed against him; but if he is in a position to maintain a legal, as distinguished from an equitable, action for the money, the right of consolidation cannot be allowed.

This seems a little like an attempt to get rid of a distasteful doctrine by a technicality; and seems, moreover, to offend against The Judicature Act, s. 53, s-s. 12, which provides that when there is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter the rules of equity shall prevail. The rule of equity was that in courts of equity the right of consolidation should be allowed, and the rule of the common law was that it should not be allowed; and yet, in spite of the statute, effect is given to the common law rule.

But it may be said, in answer to this, that the rule of equity was only applicable where relief was sought in equity, and would not have been allowed to be set up in derogation of any common law right of action; but we imagine it would be somewhat hard to find in the books any instance of a common law action for money had and received being successfully brought before The Judicature Act to recover insurance moneys in the circumstances above referred to.

LEGISLATION AND LIMITATIONS.

The perennial and apparently inexhaustible flow of the statutory fountain has often been remarked upon, and the turbid character of the stream is equally noticeable. To take a recent instance as an illustration, we may refer to the Act of the Ontario Legislature, at its last session, entitled "An Act to amend the Act respecting the limitation of certain actions," being 56 Vict., c. 17. This Act is passed with the laudable intention of doing away with the incongruity heretofore prevailing in reference to mortgages, to which the attention of the profession was drawn by the decisions of the Court of Appeal in *Allan v. McTavish*, 2 A.R. 278; *Boice v. O'Loane*, 3 A.R. 67; and *McMahon v. Spencer*, 13 A.R. 430, where it was held that, although an action to recover the mortgaged land must be brought within ten years, as provided by R.S.O., c. 111, yet an action on the covenant for pay-