

closed of and from all equity of redemption in and to the said lands and premises, and these presents shall be considered an absolute release to the party of the second part, his heirs and assigns forever, of all the right, title, interest, and equity of redemption of the party of the first part, his heirs, executors, administrators, and assigns, in, to, or out of the said lands and premises."

I am of opinion that defendant was in possession under the terms of the agreement as trustee for the purpose of carrying it out; that plaintiff's right to bring action to redeem was under the terms of this agreement, and that such action could not be brought before 1st July; that the action in effect would be for the recovery of the land upon payment of the amount due, to be ascertained pursuant to the terms of the agreement; that plaintiff was, in a sense, in receipt of the rents—that is, that defendant accounted to him for them in anticipation of their payment, and having done so he was entitled to retain possession under the agreement for the term he had thus paid for; and that no action would lie against defendant until 1st July, 1905.

It is contrary to the practice of the Court to decree the redemption of a mortgage before the day appointed for that purpose has arrived: *Brown v. Cole*, 14 Sim. 427: "because during that time the mortgage must remain as a security for the loan advanced, and it is not competent for the mortgagee or the mortgagor to disturb that relation." *Bovill v. Endle*, [1896] 1 Ch. 651.

Whether a redemption suit is also an action for the recovery of land was much discussed in *Faulds v. Harper*, 11 S. C. R. 655. The Divisional Court (2 O. R. 405) followed *Hall v. Caldwell*, 8 U. C. L. J. 93, in preference to *Foster v. Patterson*, 17 Ch. D. 132, and *Kinsman v. Rouse*, ib. 104. The Court of Appeal treated *Hall v. Caldwell* as having been overruled. In the Supreme Court *Strong, J.*, agreed with the Judges of the Divisional Court, "for the reason that since the two cases in 17 Ch. D. were decided the House of Lords has held in *Pugh v. Heath*, 7 App. Cas. 235, that a foreclosure suit is an action for the recovery of land. This being so, it follows, a fortiori, that a redemption suit is also an action or suit for the recovery of land."

Section 4 of the Real Property Limitation Act provides that no land or rent may be recovered but within 10 years after the right of action accrued. Section 5 provides that