100), "upon examination of the English Act and ours, it appears that there is no substantial difference in the language, and that the same rules of construction should be applied."

I wish, however, to make a humble remonstrance against such an indiscriminate adoption of English decisions as you would seem to advocate, and more especially against the English decision in *Sutton* v. *Sutton*, 22 Chy. Div. 511 (the text of your article), being taken to be "the very opposite" of the decisions you mention of our Court of Appeal. Is it not possible that the Court of Appeal in *Sutton* v. *Sutton*, and the other recent English cases has rightly construed the Statute upon which it was required to adjudicate, and that *Allan* v. *McTavish*, 2 Ont. App., and *Boice* v. *O'Loane*, 3 Ont. App., are also correctly decided in view of the condition of our legislation on the same subject

The two latter cases, as I understand them, proceeded on the ground that Con. Stat. U. C. c. 78, named the period (20 years) of limitation for a personal action, and Con. Stat. U. C. c. 88, the period of limitation (also 20 years) for enforcing a charge against land, and that the Act of 1874 (reducing certain periods of limitation to ten years) was only enacted in amendment of Con. Stat. U. C. c. 88, leaving c. 78 unaffected, so that practically there was existing in this Province a state of things similar to that which existed in England when *Hunter* v. *Nockolds*, 1 Mac. & G. 640, was decided, the two corresponding Imperial Statutes having been passed in the same Session.

In *Sutton* v. *Sutton*, the court had to deal with an Act of 1833 and an Act of 1874, and held that the latter Act effected a repeal of inconsistent provisions in the former.

*Allan* v. *McTavish* and *Boice* v. *O'Loane* were decided upon the legislation prior to the Revision of 1877, and, assuming for the sake of argument, (though only for the sake of argument), that the court was not correct in holding that the Act of 1874 was merely an amendment of Con. Stat. c. 88, and had no effect upon Con. Stat. c. 78, did not the Revised Statutes, which came into force on the 1st January, 1878, adopt the construction afterwards put by the Court of Appeal upon the two chapters of the Con. Stat.? We there find in chap. 61, sec. 1, the period of 20 years as the limitation of the personal action, and in chap. 108, sec. 23, a clause identical with the English clause in question in *Sutton* v. *Sutton*, and with our Provincial enactment of 1874 (except that ten years instead of twelve is the reduced period of limitation). Further, in regard to judgments, on turning to chap. 50, sec. 330, we find a section which contemplates proceedings to enforce a judgment, upon which writs of execution have never been issued, after it is more than 15 years old.

In view of the above three provisions occurring in the Statutes passed in the same Session, is it not reasonable to conclude that our Court of Appeal, if the matter again arose, might properly hold that the circumstances existing here are practically those which existed in England when *Hunter* v. *Nockolds* was decided, but which had ceased to exist before *Sutton* v. *Sutton* was decided, and that therefore, the decisions in this country should still follow *Hunter* v. *Nockolds*?

Further, is it not also reasonably arguable that if the tribunal which decided *Sutton* v. *Sutton* had been then construing our Acts, its decision would have been in accordance with *Allan* v. *McTavish* and *Boice* v. *O'Loane*?

In *Sutton* v. *Sutton*, at page 518, Cotton, L J., says:—

"One difficulty I have felt has been in consequence of the case of *Hunter* v. *Nockolds*, 1 Mac. & G. 640, decided by Lord Cottenham, in which he expressed an opinion that although in actions brought to recover money issuing out of the lands, only six years' interest could be allowed, yet he based his decision upon this ground that one must take the two Statutes, 3 & 4 Will. IV., c. 27, and 3 & 4 Will. IV., c. 42 together. That might be right under the circumstances. He was driven to that by this consideration, that the one Act was only passed three weeks before the other, and therefore he said you must read the two together, and take the latter one only as an explanation of the other Act. I think we are not in any such difficulty here, because the section we have to construe is contained in an Act passed in the year 1874, and therefore there is no necessity for construing this so as to leave the same bar to an action on the covenant, as that which is provided by section 42 of the earlier Act. There is no necessity to follow in this case the way in which Lord Cottenham dealt with the two Acts passed almost simultaneously."

Yours truly,

THOMAS LANGTON.

*Toronto, Jan. 28th, 1887.*

[The point aimed at was not so much whether the case of *Sutton* v. *Sutton* did override *Boice* v. *O'Loane* and *Allan* v. *McTavish*; as whether assuming it did so (and as the learned judges quoted from appear to have assumed), the decision of the Court of Appeal in England should be held to override a decision of our Court of Appeal, where such decisions were, on the same point, to the opposite effect.—Ed. LAW JOURNAL.]