

LEGACY CHARGED ON REVERSIONARY INTEREST IN LAND—"PRESENT RIGHT TO RECEIVE"—STATUTE OF LIMITATIONS—(37 & 38 VICT., c. 57), ss. 1, 2, 8—(R.S.O., c. 111, ss. 4, 23).

*In re Owen*, (1894) 3 Ch. 220; 8 R. Oct. 131, an interesting question arising upon the Statute of Limitations (37 & 38 Vict., c. 57), (see R.S.O., c. 111), is discussed by Stirling, J. The point in controversy was whether a legacy charged on a reversionary interest in land could be recovered after the lapse of twelve (in Ontario, ten) years next after a present right to receive the same had accrued, notwithstanding that the reversionary interest had not within that time fallen into possession. According to the view of Stirling, J., the question turned, to some extent, on the nature of the relief to which such a legatee was entitled in equity to enforce his charge. If he were entitled to a foreclosure, then that would be in the nature of a suit to recover land, and would not be barred until twelve (in Ontario, ten) years after the reversionary interest had fallen into possession; but if, as he held to be the case, the legatee's only remedy was a sale, then the case came within s. 8 (R.S.O., c. 111, s. 23), and the action must be brought within the period prescribed by that section, viz., within twelve (in Ontario, ten) years after a present right to receive the legacy accrued. Incidentally, the learned judge discusses the principles on which foreclosure is granted, from which it appears that that remedy is merely the removal of a bar to the enforcement of a legal title. The most usual instance is in the case of a legal mortgage which provides that unless the money secured be duly paid, the estate of the mortgagee shall become absolute. Here equity, notwithstanding the condition, gives the mortgagor a right of redemption, but if the money be not then paid the court refuses further to interfere and leaves the parties to their legal rights. But where there is simply a charge created and not a mortgage, nor an agreement for a mortgage, then the right of the parties having such a charge is a sale, and not a foreclosure. An equitable mortgagee by deposit of title deeds, though not having a legal title, is held entitled to a foreclosure, because the court treats the transaction as evidence of an agreement to create a legal mortgage. In the present case the right to receive the legacy having arisen in 1880, on the death of the testator's widow, it was held that the right to recover it was barred in 1892, no suit having been in the meantime brought to recover it, and this notwithstanding that the reversionary interest did not fall into possession until 1893.