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DIARY FOR JANUARY.

1. Sat.....*New Year's Day*. Holiday in H. C. J.
2. Sun.....*2nd Sunday after Christmas*.
3. Mon.....Co. Ct. term begins. Lord Eldon died 1838, at. 87.
6. Thur.....*Epiphany*. Christmas vacation H. C. J. ends.
8. Sat.....Co. Ct. term ends. Christmas vacation in Exchequer Court ends.
9. Sun.....*1st Sunday after Epiphany*.
10. Mon.....Christmas vacation in Sup. Ct. Canada ends.
11. Tu.....Sittings of Court of Appeal begin.
12. We.....Sir Chas. Bagot, Gov.-Gen., 1844.

TORONTO, JANUARY 1, 1887.

MORTGAGEES AND THE STATUTE OF LIMITATIONS.

FOLLOWING close upon the case of *Newbould v. Smith*, 55 L. T. N. S. 194, to which we recently referred (see *ante* p. 373), comes the deliverance of the Judicial Committee of the Privy Council in *Lewin v. Wilson*, 55 L. T. N. S. 410, on appeal from the Supreme Court of Canada (since reported in 11 App. Cas.). In this case *Newbould v. Smith* is not referred to, and the decision arrived at appears very materially to modify the effect of that case.

The facts in *Lewin v. Wilson* were very simple—a principal and surety joined in a bond to secure a debt, and as collateral security for the bond, the surety gave a mortgage. In this mortgage the proviso for redemption stipulated that the mortgage should be void on payment of the mortgage debt, either by the mortgagor or by the principal debtor, the latter, however, was no party to the mortgage, and was not bound by any covenant therein. The principal paid interest on the debt down to 1879, but no payment had been made

by the surety himself. The action was brought to foreclose the surety's mortgage, and the question was whether payment by the principal prevented the statute from running as against the surety in respect of the land covered by his mortgage. The majority of the judges of the Supreme Court thought that the result of the authorities was to establish that a payment in order to prevent the statute from running must be made by the mortgagor, or by some person in privity of estate with him, or the agent of one of them; in short, that the only person competent to make a payment sufficient to stop the statute is one who is competent to give an acknowledgment of title. Strong, J., however, dissented from this view, and the Privy Council have determined that the conclusion at which he arrived was the correct one.

In *Bolding v. Lane*, 1 D. G. & S. 122, Lord Westbury determined that an acknowledgment of the mortgage debt given by the mortgagor would not bind a *puisne* incumbrancer. But in *Lewin v. Wilson*, Lord Hobhouse, who delivered the judgment of the Privy Council, says "that payments made by a person who, under the terms of the contract, is entitled to make a tender, and from whom the mortgagee is bound to accept a tender of money, for the defeasance or redemption of the mortgage, are payments, which, by section 30 (see R. S. O. c. 108, s. 22) give a new starting-point for the lapse of time."

Assuming this to be an authoritative statement of the law it would seem to follow that a payment by a mortgagor, even after he has assigned or incumbered the equity of redemption, would prevent the