

or to bring an action to recover any land or rent first accrued, and departs this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person.

6. MORTGAGOR OUT OF POSSESSION.

Sec 28 of the statute of 1833 contained a provision specially applicable to the case of a mortgagor being out of possession. This provision was superseded in England by sec. 7 of the statute of 1874 (reducing the limitation period from 20 to 12 years), and the corresponding provision in Ontario is R.S.O. 1914, ch. 75, sec. 20, as follows:—

20. Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action to redeem the mortgage, but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or to some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him, and in such case no such action shall be brought, but within ten years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

7. DISABILITIES CLAUSE NOT APPLICABLE TO SUIT FOR REDEMPTION.

It was held by Jessel, M.R., in *Kinsman v. Rouse* (1881), 17 Ch.D. 104, that the time within which a mortgagor might sue for redemption was not to be extended by reason of his being under any disability. The disabilities provision (R.S.O. 1914, ch. 75, sec. 40; *supra*) saves the right of any person "to bring an action to recover any land" if such person is under disability, but, as Jessel, M.R., pointed out, an action to redeem is not, properly speaking, "an action to recover land," and the section evidently refers to cases of ordinary ownership, where the rightful owner has been dispossessed. Sec. 20 contains no qualification of the rights of the mortgagee as against the mortgagor and there is no reason for extending the disabilities provision to the case of a mortgagor.

The same result was reached in *Förster v. Patterson* (1881), 17 Ch.D. 132, by Bacon, V.C., who laid emphasis on the order in which the sections are arranged. In the English statute the section relating to actions by a mortgagor follows the disabilities section, and Bacon, V.C., considered it clear that one is not at liberty to read into the special section relating to mortgagors, a qualification derived from an earlier and more general section. In the English statute (37 & 38 Vict., ch. 57, similar in arrangement to 3 & 4 Wm. IV., ch. 27) the matter is made more plain because the disabilities section