

circumstances, a person claiming under the mortgage, as well as the mortgagor, was not perhaps unreasonable. In *Thornton v. France* the mortgage, it is worth noting, was after what I may call the adverse possession had commenced, and it was held that time was running against both mortgagor and mortgagee; in other words that the giving of the mortgage, under such circumstances, did not affect the operation of the statute.

[Reference to *Heath v. Pugh*, 6 Q.B.D. 345, in which the whole subject is very fully considered in the Court of Appeal by Lord Selborne, L.C., afterwards affirmed in the House of Lords, 7 A.C. 235; *Ludbrook v. Ludbrook*, [1901] 2 K.B. 96, and *Cameron v. Walker*, 19 O.R. 212.]

But all these cases differ widely from the present. When the plaintiff here obtained the discharge, he was a stranger to the estate, and had, therefore, no estate or interest to be enlarged by paying off the mortgage and obtaining a statutory discharge. He might, of course, as in *Ludbrook v. Ludbrook*, have taken an assignment of the mortgage, for he was under no obligation to the defendant to pay it, and in that way have fully protected himself to the extent of the payment. He may even yet, upon the principle applied in *Brown v. McLean*, be able in another action to establish a lien to the extent of the payment. With that, however, we have here nothing to do, for although leave was sought at the trial to set up such a claim, the application was, quite properly at that stage, disallowed.

Upon the whole, I am of the opinion that the appeal should be allowed with costs and the judgment at the trial restored.

MACLAREN, J.A.:—I agree.

MAGEE, J.A., also concurred in the result, giving reasons in writing.

MEREDITH, J.A., dissented from the opinion of the majority of the Court, giving reasons in writing.