

## 5. DISABILITIES CLAUSE IN CASE OF ACTION TO RECOVER LAND.

In the statute of 1833 the general 20-year period of limitation of entry or action was subject to an extension (in favour of a person who was under disability or some one claiming under him) for a further period of 12 years after such person ceased to be under disability or died, whichever of those two events first happened (sec. 16), provided that the entry must be made or the action brought within 40 years of the time when the right first accrued (sec. 17), and that additional time should not be allowed for the disabilities of successive claimants (sec. 18). These provisions were superseded by secs. 3, 5 and 9 of the statute of 1874 (which reduced the additional period allowed for disability from 10 to 6 years, and reduced the ultimate limitation of 40 years to 30 years), and the corresponding provisions in Ontario are R.S.O. 1914, ch. 75, secs. 40, 41 and 42, as follows:—

40. If at the time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is under any of the disabilities herein-after mentioned (that is to say) infancy, idiocy, lunacy or unsoundness of mind, then such person, or the person claiming through him, notwithstanding that the period of ten years or five years (as the case may be) hereinbefore limited has expired, may make an entry or a distress, or bring an action, to recover such land or rent at any time within five years next after the time at which the person to whom such right first accrued ceased to be under any such disability, or died, whichever of those two events first happened.

The corresponding section of the English Act of 1874 (sec. 3) specifies "coverture" as one of the disabilities provided for. The Ontario statute was changed in this respect by 38 Vict., ch. 16, *Hicks v. Williams* (1888), 15 O.R. 228.

A disability arising after the right has accrued will not prevent the time from running. *Murray v. Watkins* (1890), 62 L.T. 796.

41. No entry, distress or action, shall be made or brought by any person, who, at the time at which his right to make any entry or distress, or to bring an action to recover any land or rent first accrued was under any of the disabilities hereinbefore mentioned or by any person claiming through him, but within twenty years next after the time at which such right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such twenty years, or although the term of five years from the time at which he ceased to be under any such disability, or died, may not have expired.

If a person is under one disability when his right first accrues and then falls under another disability before the removal of the first, his right may be enforced after the removal of the second, provided it be within the ultimate limitation of 20 years. *Burrows v. Ellison* (1871), L.R., 6 Ex. 128.

42. Where any person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress,