OSLER, J.A.:—In the circumstances disclosed by the evidence, the plaintiff was . . . entitled to treat the principal money paid by her in discharge of the mortgage as a subsisting charge in her favour upon the mortgaged lands. Of her right to do so she was ignorant until she was advised of it before the action was brought. . . . Burrill v. Earl of Egremont, 7 Beav. 205. 226, 232; . . . Macklem v. Cummings, 7 Gr. 318. . . . The plaintiff's right is not affected by the taking or the registration of the discharge. It is no more than if she had taken a release of the mortgage or a conveyance of the original estate of the mortgagor: Burrill v. Lord Egremont; Gifford v. Fitz Hardinge, [1899] 2 Ch. 32. . . .

The plaintiff is, therefore, in my opinion, entitled to relief unless her claim is defeated by one or other of the various defences pleaded thereto.

As to the Statute of Limitations: "Where the tenant for life is himself the owner of a charge upon it, since it is his duty to keep down the interest, he is deemed to pay himself out of the rents and profits, and this is a sufficient payment to save the bar of the statute:" Lightwood on the Time-limit of Actions (1909), p. 361, citing Burrell v. Earl of Egremont, Topham v. Booth, 35 Ch. D. 607, 611, and other cases; and see Fisher on the Law of Mortgages, 5th ed., sec. 795; Darby & Bosanquet on Limitations, 2nd ed. (1893), p. 465. . . .

When the son became of age, the statute (R. S. O. 1897 ch. 133, sec. 23) was not running, the plaintiff being tenant for life under her husband's will, paying and receiving the interest on the charge out of the rents and profits of the land. When that life estate came to an end . . . her right to possession and receipt of the rents and profits ceased, and the statute began to run and continued to do so until the death of the son on the 8th December, 1900. But the plaintiff's new life estate then came into existence, and with it the right to the rents and profits and the corresponding obligation to keep down, out of them, the interest on the still existing charge, or so much thereof as might be due after charging the plaintiff with whatever sum she ought to be charged with in respect of her receipts during the eight years which elapsed between the termination of her first life estate and the commencement of the second. The result of payment of the interest in this way is . . . in accordance with the authorities above cited, that the statute is not a bar.

It was contended that the plaintiff was bound to elect between the retention of the charge and the acceptance of the life estate under her son's will. . . . In the absence of evidence from