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## MORTGAGEES AND THE STATUTE OF LIMITATIONS.

The recent decision of the Court of Appeal in *Henderson v. Henderson*, 23 A.R. 577, is an interesting case, and gave rise to a very considerable difference of opinion among the judges before whom it came. The action was brought by executors to recover possession of land alleged to belong to their testator's estate. One of the defences set up, and that on which the case ultimately turned, was the Statute of Limitations. Street, J., who tried the case, and Meredith, J., in the Divisional Court, and Hagarty, C.J.O., and Osler, J.A., decided against this defence. Ferguson and Robertson, J.J., in the Divisional Court, were of opinion that it should succeed, and with this view (but for the existence of a mortgage) MacLennan, J.A., would also have agreed; Burton, J.A., agreed with MacLennan, J.A., as to the effect of the mortgage, but expressed no opinion as to whether, but for the mortgage, the statute would have been a bar. But for the existence of the mortgage, therefore, it would almost seem that the defence of the statute would have been successful, although this, owing to the silence of Burton, J.A., on this point, cannot be confidently affirmed. Although under the circumstances, the views of Burton and MacLennan, J.J.A., as to the effect of the mortgage, may possibly be considered *obiter*, yet as this point virtually proved the rock on which the defendant's case was wrecked, it is deserving of careful consideration, notwithstanding that both the Chief Justice of Ontario, and Osler, J.A., cautiously refrain from assenting to the views expressed by MacLennan, J.A., on that point.

The land in question was purchased by the testator in 1881, and he then gave a mortgage for the purchase money, which was subsequently paid off and discharged in 1886.