

of about \$2,000, and as these incumbrances amounted to a good deal more than the value of the land, he paid nothing on the mortgage; and the mortgagee soon afterwards sold and conveyed the property to a third party, under the power of sale contained in the mortgage. Plaintiff claimed that the real bargain was that he was to deliver six horses valued at \$700 to the defendant in addition to assuming the mortgage, and that he had actually delivered the horses. He brought this action after the lapse of more than ten years on the defendant's covenant in the agreement of sale, that in consideration of the aforesaid covenants of the plaintiff, and on payment of the said sum of money (viz., the \$1,000 mortgage) with interest as aforesaid, in manner aforesaid, the defendant would convey and assure the land to the plaintiff by a good and sufficient deed in fee simple, and his claim was for damages for the alleged breach of that covenant.

His counsel contended that he was not seeking "to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land," within the meaning of section 24 of the "The Real Property Limitation Act," R.S.M. 1902, c. 100, and so was not barred by the lapse of ten years, but might bring such an action within twenty years, relying on *In re Powers*, 30 Ch. D. 297.

Held, that, if the plaintiff had paid the \$1,000 referred to in defendant's covenant and had brought his action to recover that amount on the covenant, section 24 of the statute would certainly bar it, and that he could not be in a better position now because he had not paid the money and that his claim was barred by the statute. *Sutton v. Sutton*, 22 Ch. D. 511, and *Fearnside v. Flint*, 22 Ch. D. 579, followed. *Allan v. McTavish*, 2 A.R. 278, and other Ontario cases in which a different construction is given to a similar statute not followed, as this Court is bound by the decisions of the English Courts: *McLenaghan v. Hetherington*, 8 M. R. 357.

Wilson and F. D. Davis, for plaintiff. *Haggart, K.C.*, for defendant.

Perdue, J.]

MACARTHUR v. HASTINGS.

[April 19.

Breach of trust—Constructive notice—Knowledge of solicitor acting for both parties—Purchase for value without notice—Notice by tenancy—Redemption—Negligence.

The plaintiff, Duncan MacArthur, being indebted to a number of persons, including his infant son, the plaintiff, John R. MacArthur, by an instrument absolute in form, assigned to the defen-