

CORRESPONDENCE.

"No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within ten (twelve) years next after a present right to receive the same has (shall have) accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, has (shall have) been paid, or some acknowledgment of the right thereto has (shall have) been given in writing, signed by the person by whom the same is (shall be) payable, or his agent, to the person entitled thereto or his agent; and in such case no action or suit or proceeding shall be brought, but within ten years after such payment or acknowledgment or the last of such payments or acknowledgments if more than one was made or given."

And if we insert in this section the words that I have enclosed in brackets, substituting twelve for ten years, and eliminating the obvious words from our Act, we have the corresponding section in the Imperial Act, the two sections being practically identical, with the exception that the period of limitation in England is twelve years. The only difficulty that arises in the construction of this statute is in reference to the word "judgment," and as Chief Justice Moss points out in *Boyce v. O'Loane*, it is a probable conjecture that the word was introduced *per incuriam* by the draftsman of the Act not appreciating the different effect that a judgment may have in relation to the lands of a debtor in England and in this province. In England a judgment becomes a lien upon the lands of a debtor by a procedure called docketing, which binds the lands of a judgment debtor throughout England, no matter where situate, and by means of a writ of *elegit* the judgment creditor may have delivered to him the lands of the judgment debtor to enable him to obtain satisfaction of his judgment. It will be observed, therefore, that the moment a judgment in England is docketed, it becomes from that moment a charge upon the debtor's lands, and by virtue of section 58, cap. 57, 37 and 38 Vict. (Imperial Act) such judgment becomes effete at the expiration of twelve years. There is nothing rendering it obligatory upon the judgment creditor to docket the judgment, and this peculiar attribute only attaches to the judgment from the moment of docketing. I should surmise that proceedings can, in England, be taken to realize a judgment from the debtor's lands the moment it is docketed, and therefore that moment the judgment creditor has a

present right to receive such judgment within the meaning of the section I refer to.

Some effect, however, must be given to the word "judgment" in the section in question in the Act in force in this province. I may here point out that Moss, C.J., thinks it clear that the word "judgment" in our Act (and thus far agreeing with English decisions) refers to judgments having the quality of binding lands. A judgment in this province becoming a charge upon lands by the aid of a *fi. fa.* placed in the hands of the sheriff in the county in which the lands of the debtor lie or are supposed to lie, and from the moment that the writ of *fi. fa.* lands is received by such sheriff, the debtor's lands are in such county bound by the judgment, but it is not necessary for the judgment creditors to issue and place in a sheriff's hands such writ of *fi. fa.* lands, and where the debtor has no lands of course he will not do so. May not the proper interpretation of this section of the Act be that in regard to judgments which by the judgment creditor have been so made a charge upon the debtor's lands the statute affects such judgments, and at the end of ten years from the time the creditor has a present right to receive the fruit of his judgment it will be deemed to be satisfied, and that period of course will be twelve months from the period the writ reaches the hands of the sheriff, at which latter period a sale of the debtor's lands may be had? If my view of the statute be correct, then every difficulty is seemingly removed as regards the interpretation of this section. If the judgment creditor does not see fit to cause his judgment to become a charge upon the debtor's lands, he will still have twenty years in which to bring an action upon his judgment, and so full effect can be given to section 1, sub-section (b) cap. 61 R. S. O., enacting that an action may be brought upon a debt, bond or other speciality within twenty years after the cause of such action arose. And this explanation removes the difficulty suggested by Mr. Langton in reference to proceeding to enforce a judgment upon which writs of execution have been issued after the judgment is more than fifteen years old (see section 330, cap. 50 R. S. O.).

If we now take up the English decisions bearing upon this point, we will find them all consistent. The first case in which a similar question was discussed was the case of *Hunter v. Nockolds*, 1 Mac. G. 640, in which Lord Chancellor Cottingham decided that when the Legislature enacted that only six years' arrears of rent could be collected this period was not extended, although the creditor held the personal covenant of the debtor, and notwithstanding the fact that under ordinary circum-

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