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MORTGAGE ACTIONS AND THE STATUTES OF LIMITATIONS.

The Supreme Court of Canada has in the case of *Smith v. Darling*, 55 S.C.R. 82, affirmed the decision of the Appellate Division of the Supreme Court of Ontario, 36 O.L.R. 587, and it may now be taken to be settled that the disability clauses of the Statute of Limitations (R.S.O. c. 75) do not apply to actions of foreclosure or redemption.

That an action for redemption against a mortgagee in possession in Ontario is "an action to recover land," no one who is familiar with the present procedure of the Supreme Court of Ontario can have any reasonable doubt, because in the action the defendant may be ordered on payment of what, if anything, may be found due to him, to deliver up possession of the mortgaged lands to the plaintiff. Under the former procedure in equity an action of ejectment might have been necessary in order to enable the plaintiff to get possession, as was the case in actions of foreclosure at one time in England, see *Heath v. Pugh*, L.R. 6 C.P.D. 345, but even in that case it was held that an action of foreclosure was "an action to recover land" and stayed the running of the statute. But it is many years since both in actions of foreclosure, and redemption, in Ontario, the Court has been authorized to give complete relief in the action, including the right to order delivery of possession of the lands in question.

Both redemption and foreclosure actions being "actions to recover land," why should they be subject to any other period of limitation than any other actions to recover lands? Bacon, V.C., in *Forster v. Patterson*, L.R. 17 Ch. D. 132, suggested that it might be out of legislative sympathy for mortgagees that the disability clauses were not applied to redemption actions; but even if the suggestion were well founded in fact, it is ill founded in reason;