to a mortgagee in possession; that sec. 43, the disability section of ch. 133, does not include an action for redemption of a mortgage; and that sec. 40 of 10 Edw. VII. ch. 34, which would include an action to redeem, cannot be invoked.

If any Statute of Limitations was applicable, in the circumstances here disclosed, the learned Judge said, he thought it was R.S.O. 1897 ch. 133, although this appeared to conflict with the rule recognised in Dumble v. Larush (1878-9), 25 Gr. 522, 27 Gr. 187; see also Harris v. Prentiss (1880), 30 U.C.C.P. 484; Harris v. Mudie (1882), 7 A.R. 414. On the other hand, the rule contended for by counsel for the defendant Darling was recognised in Faulds v. Harper (1884-6), 9 A.R. 537, 11 S.C.R. 639. But, the learned Judge said, he had not been able to detect any difference in substance or effect between sec. 43 of the earlier and sec. 40 of the later Act. It is possible that neither of these sections applies to an action to redeem, but it is impossible to argue that one of them does and the other does not.

The crucial question is, whether an action to redeem the mortgage of a mortgagee in possession of the lands comprised in his mortgage—in possession within the meaning of sec. 19—is "an action to recover land" within the meaning of sec. 43.

It was held by our Court of Error and Appeal that a similar section included an action to redeem: Hall v. Caldwell (1861), 7 U.C.L.J. O.S. 42. The judgment of the Supreme Court of Canada in Faulds v. Harper, 11 S.C.R. 639, did not turn upon the construction of the statute, but upon a ground which clearly entitles the plaintiff to maintain this—that the mortgagee, through whom the defendants claimed, obtained possession of the mortgaged land and set up absolute ownership therein, by a fraudulent disregard of his duty to protect the heirs of the mortgagor, an abuse of the process of the Court, and could not be treated as a mortgagee in possession, but was a trustee for the plaintiff, against whom no time-limit could be set except such as might be dictated by the conscience of the Court by reason of the misconduct, acquiescence, or laches of the claimants, or the consideration to be shewn to subsequent bona fide purchasers for value without notice, as in Skae v. Chapman (1874), 21 Gr. 534.

As regards the Storrington property, the case is not distinguishable from Faulds v. Harper. It would be impossible to allow the foreclosure order and quit-claim deed or either to stand to the prejudice of the plaintiff.

The defendant Darling has not, nor has any person claiming