

Sup. Ct.]

NOTES OF CANADIAN CASES.

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LAW SOCIETY.

SUPREME COURT OF CANADA.

ADAMSON (Defendant), Appellant v.
ADAMSON (Plaintiff), Respondent.

*Statute of limitations—Conveyances to trustees—
In trust for tenant for life—Remainder to joint-
tenants or tenants in common—possession by tenant
of tenant for life.*

Appeal from the Court of Appeal for Ontario.

By a deed to trustees in 1837, two lots of land were conveyed in trust for E. A. for her life, with remainder as follows:—Lot No. 2 to G. A. and lot No. 1 to A. A., to the use of them, their heirs and assigns as joint-tenants, and not as tenants in common. E. A., the tenant for life, entered into possession of lot No. 2, and in 1863 put her son, the husband of the defendant, into possession without exacting any rent. The son died a few months after, and the defendant, his widow, continued in possession of the lot, and was in possession in 1875, when the tenant for life died.

In 1878, A. A., the plaintiff, obtained a deed of the legal estate in the two lots from the executors of the surviving trustee (G. A. having died a number of years before), and brought an action against the defendant for the recovery of the said lot No. 2.

Held, that as there was no time prior to the death of the tenant for life, when either the trustee or the remainder-man could have interfered with the possession of the said lot, the statute of limitations did not begin to run against the remainder-man until the death of the tenant for life in 1875, and he was therefore entitled to recover.

Held, also, that for the purposes of the said action it was immaterial whether the plaintiff was entitled to the whole lot by survivorship on the termination of the joint-tenancy by the

death of his brother, or only to his portion of the lot as one of his brother's heirs.

Appeal dismissed with costs.

C. Robinson, Q.C., for appellants.

Mowat, Attorney General, and MacLennan, Q.C., for respondents.

FAULDS ET AL. (Plaintiffs), Appellants v.
HARPER (Defendant), Respondent.

*Mortgagor and mortgagee—Foreclosure and sale—
Purchase by mortgagee—Right to redeem after
—Statute of limitations—Trustee for sale.*

Appeal from the Court of Appeal for Ontario.

In a foreclosure suit against the heirs of a deceased mortgagor who were all infants, a decree was made ordering a sale: the lands were sold pursuant to the decree and purchased by J. H., acting for and in collusion with the mortgagee; J. H., immediately after receiving his deed, conveyed to the mortgagee, who thereupon took possession of the lands, and thenceforth dealt with them as the absolute owner thereof; by subsequent devises and conveyances the lands became vested in the defendant M. H., who sold them to the defendant L., a *bona fide* purchaser without notice, taking a mortgage for the purchase money. In a suit to redeem the said lands, brought by the heirs of the mortgagor, some eighteen years after the sale, and more than five years after some of the heirs had become of age.

Held, reversing the judgment of the Court of Appeal, that the suit being one impeaching a purchase by a trustee for sale, the statute of limitations had no application, and that, as the defendants and those under whom they claimed had never been in possession in the character of mortgagees, the plaintiffs were not barred by the provisions of R. S. O. cap. 108, sec. 19, and that the plaintiffs were consequently entitled to a lien upon the mortgage for purchase money given by L.

Held, also, that as it appeared that the plaintiffs were not aware of the fraudulent character of the sale until just before commencing their suit, they could not be said to acquiesce in the possession of the defendants.

Appeal allowed with costs.

McCarthy, Q.C., for appellant.

Street, Q.C., for respondent.