

tations Act as a bar to the action; and it was conceded that, unless the plaintiff's right to redeem was saved by what is now sec. 40 of the Limitations Act, R.S.O. 1914 ch. 75, it was barred; but, if that section applied to an action for redemption, the plaintiff was entitled to redeem.

An arrangement having been made as to the Kingston property, the Court dealt only with the Storrington property.

The question as to the application of the disability sections to an action for redemption is not free from difficulty—and the difficulty is increased by the conflict of judicial opinion as to it.

Reference to 3 & 4 Wm. IV. ch. 27, secs. 2, 16, 17, 28 (Imp.); Sugden on Real Property, 2nd ed., p. 118; Fisher on Mortgages, 1st ed., p. 95, para. 142; 6th ed., p. 724, para. 1412; Kinsman v. Rouse (1881), 17 Ch.D. 104; Forster v. Patterson (1881), 17 Ch. D. 132; 37 & 38 Vict. ch. 57; Banning on Limitation of Actions, 2nd ed., pp. 187, 188; 3rd ed., p. 174; Coote on Mortgages, 8th ed., pp. 774, 775; Dart on Vendors and Purchasers, 7th ed., p. 438 (note (b)); Williams's Real Property, 21st ed., p. 563; Darby & Bosanquet on Limitations, 2nd ed., pp. 469, 470; Halsbury's Laws of England, vol. 19, p. 150, para. 302; 4 Wm. IV. ch. 1, secs. 16-45 (U.C.); C.S.U.C. 1859 ch. 88, secs. 25, 45; 38 Vict. ch. 16 (O.); Caldwell v. Hall (1860-2), 6 U.C.L.J. 141, 7 U.C.L.J. 42, 8 U.C.L.J. 93; R.S.O. 1877 ch. 108; Faulds v. Harper (1882-6), 2 O.R. 405, 9 A.R. 537, 11 S.C.R. 639; Farquharson v. Imperial Oil Co. (1899), 30 S.C.R. 188; R.S.O. 1887 ch. 120, sec. 5; R.S.O. 1887 ch. 111; R.S.O. 1897 ch. 133; 10 Edw. VII. ch. 34 (O.); R.S.O. 1914 ch. 75, secs. 6, 26, 40; Bell & Dunn on Mortgages, pp. 382, 383; Leith's Blackstone, 2nd ed., p. 444.

"Upon the whole," concluded the Chief Justice, "though necessarily not without some doubt, owing to the conflict of judicial and other opinion, my conclusion is, if the question is *res integra*, that the disability sections do not apply to actions to redeem. I am, however, of opinion that we ought, if indeed we are not bound, to follow the decision of the Court of Appeal in Faulds v. Harper. It was a decision on the very question we are now called upon to determine. The judgment of the Supreme Court of Canada, though it reversed the judgment of the Court of Appeal, proceeded on an entirely different ground from that upon which the case was decided in the Court below, and the expressions of opinion of Strong and Henry, JJ., as to the application of the disability clauses, were only obiter."

Appeal allowed and action dismissed as to the Storrington lands; each party to bear his own costs of the action and appeal as far as these lands are concerned.