

those claiming under him was barred by the Statute of Limitations, but the mortgage being duly kept alive by payments on account, was paid off by the mortgagor in 1908, and a certificate of discharge was then given, and registered in 1911. Though the defendant had acquired a title against the owner of the equity of redemption, he had not acquired a title as against the mortgagee. This is conceded by all the members of the court.

The true legal position of the matter would therefore appear to be this, the defendant had acquired or extinguished the mortgagor's right of redemption by virtue of his possession as against the mortgagor, which would possibly entitle him to redeem and thus acquire an absolute estate. But the mortgagor who had thus lost his right of redemption nevertheless paid off the mortgage, he was therefore in the position of a stranger paying off an incumbrance in such circumstances as would entitle him notwithstanding he accepted a discharge of the mortgage, nevertheless to claim that it was a subsisting incumbrance: *Brown v. McLean*, supra. The mortgagor had then in effect ceased to be mortgagor, and had, in fact, become the mortgagee with all the rights incident to that position, and the mortgage being in default he was entitled to recover possession, but that right to possession would be as mortgagee and should not be held to oust the right of the defendant to redeem by virtue of his possessory title as against the mortgagor qua mortgagor. It is only by working the matter out in this way that we think that due effect can be given to all the provisions of the Statute of Limitations in favour of mortgagees and adverse occupants.