

ing of a certificate of discharge in lieu of a conveyance is confessedly a matter of no importance as regards the substantial rights of the parties: *Brown v. McLean*; *Abell v. Morrison*, *supra*, and yet in the case of *Noble v. Noble* it is made the ground for depriving a party of his rights.

The decision of the Court of Appeal appears to us to run counter to prior decisions and the true meaning of both the Statute of Limitations and the Registry Act.

As we understand the cases, there is a wide difference between the rights of a mortgagee who acquires his mortgage before any adverse possession has begun against his mortgagor; and one who acquires his mortgage after an adverse possession has begun against his mortgagor. In the former case the rights of a mortgagee are saved by the Statute of Limitations for ten years after the last payment received under his mortgage from a person entitled and liable to pay. But where an adverse possession as against the mortgagor had begun at the time a mortgage is made, then, the Statute of Limitations having begun to run, it is not stopped by the giving of a mortgage, nor is a new starting point thereby created, but the mortgagee is in no better position than any other alienee of the mortgagor would be. That we take to be the result of *Thornton v. France* (1897), 2 Q.B. 143, and *McVity v. Trenouth*, 9 O.L.R. 105, 36 S.C.R. 455, although it is true this last case was ultimately reversed (1908) A.C. 60, as in the opinion of the Judicial Committee of the Privy Council, the Statute of Limitations did not begin to run, owing to the peculiar circumstances of that case, until the giving of the mortgage.

In *Noble v. Noble* the plaintiff purchased the land in question in February, 1895, and on the same day gave the mortgage for part of the purchase money. The defendant's predecessor in title (a son of the mortgagor) was let into possession as tenant at will in April, 1895, and in April, 1896, the statute began to run as against the mortgagor, but not as against the mortgagee. In 1906 the mortgagor's title as against his son and