

Province of Manitoba.

QUEEN'S BENCH.

KILLAM, J.]

[April 7.

IN RE BAIN AND CHAMBERS.

*Limitation of actions—The Real Property Limitation Act, R.S.M., c. 89, s. 4
—Mortgagor and mortgages—Foreclosure—Tax sale—Assessment Act,
s. 194—35 Vict., c. 26, s. 8 (M. 1892.)*

This was an application to settle the right to the surplus proceeds of land sold for municipal taxes in 1888, and paid to the treasurer in November, 1890.

The money was claimed by the representative of a mortgagee, but the assignee of the equity of redemption claimed that the rights of the mortgagee and his representatives were barred by The Real Property Limitation Act, R.S.M., c. 89, s. 4. The last instalment of the money secured by the mortgage fell due on 23rd December, 1885, and the application for the money had not been made until after 23rd December, 1895.

It was shown, however, that judgment against the mortgagor had been obtained upon the covenant contained in the mortgage, and that the personal representative of the mortgagee in a suit against the mortgagor had in 1887 obtained a final order of foreclosure, but afterwards he had renewed and replaced in the sheriff's hands a writ of fieri facias issued upon the judgment referred to, thus opening the foreclosure.

Held, that the representative of the mortgagee had not lost his right to recover the land as against the holder of the equity of redemption, or to continue successfully the suit for such recovery which was pending when the money in question was paid to the municipal treasurer, and that consequently he was still entitled to such money, being the proceeds of the land in question.

Quære, whether s. 194 of the Assessment Act, as amended by 35 Vict., c. 26, s. 8, giving the right to apply for the money to the person who, at the expiration of the time for redemption from the tax sale, held an incumbrance on the land, does not furnish a new point of departure and operate to bring to an end the running of the period fixed by the Statute of Limitation.

Perdus, for petitioner.

Phippen, for respondent.