

in the matter in controversy are virtually left undetermined. We think that such a state of things is hard to justify, and it is disappointing to find that it is still possible to exist under our supposed improved methods of procedure.

If the disposition of the case be unsatisfactory in this view, it appears to us equally so in regard to the point actually decided—in that it appears to fail to give due effect to the legal right of the mortgagee which was admittedly unaffected by the Statute of Limitations. The operation of a certificate of discharge of a mortgage is, according to the Registry Act, to be that of a conveyance of the estate. If the mortgagee had conveyed the land to a stranger the latter would have had, beyond question, the legal title to the land, and the mortgage being in default, he would have had the legal right to possession. If a stranger should unwarily take a discharge of the mortgage which he pays off instead of a conveyance from the mortgagee he is not to be presumed to have cleared the estate of an incumbrance for the benefit of some one else, but as was decided in *Brown v. McLean*, 18 Ont. 533; *Abell v. Morrison*, 19 Ont. 669, he is equitably entitled to treat the mortgage as a subsisting incumbrance, and to be subrogated to the rights of the mortgagee.

When the mortgagor in *Noble v. Noble* was barred of his equity of redemption under the Statute of Limitations, he had at all events the same rights as any other stranger to the estate, and when he paid off the mortgage debt he was, though barred as mortgagor of his equity of redemption, nevertheless entitled to step into the shoes of the mortgagee, and for the Court to treat his payment of the mortgage as merely having the effect of the removal of an incumbrance, is not, we think, giving due effect to the Registry Act. If it be true that a stranger paying off a mortgage is not entitled to the rights of the mortgagee as held in *Noble v. Noble*, then it seems to us the rights of the mortgagee are impaired, and he cannot sell or assign his security so as to give his vendee or assignee his title, and though the Statute of Limitations purports to protect his title, it is, by the decision in *Noble v. Noble*, found really not to do so. The tak-