

to any covenant which does not immediately affect the land. Referring to *Sutton vs. Sutton* and *Fearnside vs. Flint*, the Court said:

But these cases decide only that the remedy on the covenant or bond is barred when the remedy against the land is barred, and in the present case the remedy against the land is not barred.

The eminent Judges of our Court of Appeal, who overruled Judge Morrison, fortified their decision by a reference to many cases to sustain their view. I find scarcely any of them referred to in *Sutton vs. Sutton*. The case of *Hunter vs. Nockolds*, 1 Macnaughton & Gordon 640, cited in *Allan vs. McTavish*, is referred to, but not many of the cases cited. In this state of the decisions, it is difficult to say what the law really is, or will be declared to be when the point is presented to the Privy Council.

In the mean time, in *McDonald vs. McDonald*, 11 Ontario Reports, Mr. Justice Proudfoot had the point before him in the Chancery Division of the High Court and there determined to follow the decision of the Court of Appeal, without expressing any opinion of his own. He there said:

The case of *Allan vs. McTavish* also answers the other ground of appeal that not more than ten years arrears should have been given. It is true that the Court of Appeal in England has taken a different view of the effect of the reduction of the limitation, and held that it applied to the covenant as well as the land, *Sutton vs. Sutton*, 22 Ch. D. 511. But *Allan vs. McTavish* is the decision of the highest appellate tribunal in the Province to which an appeal lies from me. The Court of Appeal in England is not the Court of ultimate appeal for the Province. And therefore whatever my own view might be, I feel constrained to decide according to the opinion of our Court of Appeal. The appeal is therefore dismissed, with costs.

I have thought it right to refer to the decision of *Allan vs. McTavish*, as in that case Judge Morrison decided a new point on a Statute which is open to different constructions, in which interpretation he has been sustained by eminent Judges in England, though the Judges of the Ontario Court of Appeal came to a different