

MOTIONS FOR NEW TRIALS.

statute from running against the mortgagee, wherever the mortgagor is bound by a covenant to pay the mortgage debt, or the proviso for redemption stipulates that the mortgage is to be void on payment by him. There is no doubt that so long as the original mortgagor, in such cases chooses to pay, the mortgagee is bound to accept payment, and it would certainly be in the highest degree unreasonable if payments made under such circumstances were not sufficient to keep the statute from running.

The rule deducible from *Newbould v. Smith* and *Lewin v. Wilson*, appears to be this: a payment to prevent the Statute of Limitations from running as against a mortgagee must be made by some person who, at the time of the payment is interested in the equity of redemption; or by some person from whom the mortgagee is bound to receive payment, whether such person be or be not interested in the equity of redemption at the time the payment is made; or the agent of some such person.

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EVERY sitting of the Divisional Court of the Chancery Division reveals the fact that there is a widespread ignorance in the profession as to the proper practice to be pursued in that Division in regard to motions to set aside verdicts and for new trials.

The sittings which have just taken place have been no exception. No less than eight applications were made to get cases set down which had not been set down owing to the slip of the solicitor engaged, and the difficulty is not lessened by the fact that the court has laid down a rigid rule, which it appears to be extremely loath to relax, that slips of solicitors are not a sufficient reason for granting any

indulgence. The result was, that of the eight applications only one was successful, and that one, owing to the fact that it was unopposed, and that judgment had not been given in it a sufficient time before the sittings to permit the case to be set down within the time prescribed by Rule 522.

It may be that no injustice has been done in the seven cases. It may be that every one of them would have been affirmed, even if they had been set down and duly argued. At the same time the fact remains that the suitor, though entitled to have the opinion of the Divisional Court on the merits of his case, has been deprived of that privilege through no fault of his own, but owing to a mistake of his lawyer. Clients, we fear, will not view this mode of disposing of their cases with any satisfaction; and we think it is always to be regretted in the public interest when any suit goes off on any such ground. Courts of Justice must feel that their highest duty is to dispose of business, so that suitors may be reasonably satisfied that their causes have been fully heard and carefully considered, and no court can expect to satisfy the public when the suitors are driven from the judgment seat merely on the ground that some technical rule of practice has not been complied with.

We do not wish to exculpate solicitors who are at fault; at the same time we do not think the ignorance which appears to prevail upon this branch of practice is altogether the fault of the profession. The policy of the Judicature Act has had the effect of lulling them into a false security. They have rashly assumed that what that Act professedly aimed at effecting, namely, a perfect assimilation of the practice in all the Divisions of the High Court, has been, in fact, accomplished. Such experience as they have recently gained in the Chancery Division, has