

begins: "If at the time at which the right of any person to make an entry or distress, or to bring an action or suit to recover any land or rent, shall have first accrued as aforesaid"—thus referring back to the earlier sections. The Upper Canadian statute, 4 W. IV., ch. 1, is similar in arrangement and wording to the English statute.

In C.S.U.C. 1859, ch. 88, sec. 45, the similar expression "as hereinbefore mentioned" is used, and in R.S.O. (1877), ch. 108, sec. 43 "as aforesaid," but inasmuch as the section relating to actions by mortgagors precedes the disabilities section, the application of the latter section to the former is not excluded by the expressions quoted. In R.S.O. (1887), ch. 111, sec. 43, and R.S.O. (1897), ch. 33, sec. 43, the reference is made quite specific by the expression "as in sections 4, 5 and 6 mentioned," so that the application of the disabilities section to the redemption section is excluded, unless a suit for redemption should be held to be an "action to recover land," contrary to the opinion of Jessel, M.R., in *Kinsman v. Rouse*, *supra*. In 10 Edw. VII., ch. 34, sec. 40, and R.S.O. (1914), ch. 75, sec. 40, the more general expression "as herein mentioned" is substituted for the specific reference to the earlier sections, but it was held in the principal case of *Smith v. Darling* that no change in meaning was intended.

In *Faulds v. Harper*, a Divisional Court (1883, 2 O.R. 405) held that the disabilities section (R.S.O. 1877, ch. 108, sec. 43) applied to a suit for redemption, the case of *Hall v. Caldwell*, (1861), 7 U.C.L.J., O.S. 42, 8 U.C.L.J., O.S. 93, in the Court of Error and Appeal being followed in preference to *Kinsman v. Rouse*, *supra*, and *Forster v. Patterson*, *supra*. This decision was, however, reversed by the Court of Appeal (1884, 9 A.R. (Ont.) 537). See especially the remarks of Patterson, J.A., at pp. 554 ff. with regard to the case of *Hall v. Caldwell*, and with regard to the effect of the changes of wording made in the successive revisions of the statutes. On appeal to the Supreme Court of Canada the judgment of the Court of Appeal was in turn reversed (1886, 11 Can. S.C.R. 639), the decision being based chiefly on the ground that the action was virtually to impeach a purchase by a trustee for sale and that therefore the Statute of Limitations had no application. Strong, J., at p. 655, says:—

"I think it well, however, to add that if I had to choose between the decisions in *Caldwell v. Hall*, and those in *Kinsman v. Rouse* and *Forster v. Patterson*, I should certainly have agreed with the learned Judges of the Divisional Court; for the reason that since the two cases in 17 Chancery Division were decided, the House of Lords has held in *Pugh v. Heath*, 7 App. Cas. 235, that a foreclosure suit is an action for the recovery of land. This being so it follows *à fortiori* that a redemption suit is also an action or suit for the recovery of land. And it is impossible, without doing violence to the words of the statute, to hold that the saving of disabilities does not apply to any action or suit, as well in equity as at law, for the recovery of land."

Whether an action for redemption is, or is not, an action to recover land, the dictum of Strong, J., that the disabilities clauses of the statute apply to a suit for redemption has been overruled, and the decision of the Court of Appeal in *Faulds v. Harper* has been followed in the principal case of *Smith v. Darling*.