

himself in the possession of the trustee and that the Statute of Limitations had no application to the case. In such circumstances it would seem to us that the expressions of opinion of the majority of the Ontario Court of Appeal as to whether or not the disability clauses of the Limitation Act applied to actions to redeem were clearly unnecessary for the decision of the real point at issue in the case, as ultimately adjudged by the Supreme Court of Canada, and therefore because mere *dicta* and in no sense binding as an authority which the Court was under any obligation to follow. One test, we think, to determine the true character of the nature of the decision is its appealability. Was it necessary for the Supreme Court of Canada for the ultimate decision of the case to decide whether the views expressed by the majority of the Court were right or wrong? As the result proved, clearly it was not. The case before the Court was "Is the defendant a trustee for the plaintiff?" and the majority of the Court of Appeal in effect say we think he is a mortgagee in possession and because we think he is in that position we think the Statute of Limitations has barred the claim of the plaintiffs: and in so doing they virtually decide on a false assumption of fact a question of law which did not properly arise in the case at all. How such a judgment can be anything now than a mere dictum we fail to see. On the other hand, there can be no doubt that the judgment of the Court of Error in appeal in *Hall v. Caldwell*, 8 U.C.L.J. 93, really was a decision on the very point.

In these circumstances it is to be regretted that it was not considered admissible to apply a little ordinary commonsense to the solution of the question. If that had been done it might very properly be asked "Is there any conceivable reason for supposing that the Legislature intended to apply one rule to infants claiming to recover land by a legal right, and some other rule to those claiming to recover land by virtue of an equitable right?" and the answer must inevitably be "No."

That being the case the Court might very reasonably be astute to find that the statute had in fact made no difference, rather than to find that it had. Moreover, in the construction of Statutes of Limitations which often in effect legalise the stealing