

Canada Law Journal.

VOL. XXXIII.

OCTOBER 1, 1897.

NO. 16.

We note at p. 622 a rather interesting and novel point, which was successfully raised in one of the Division Courts, as to the right of a mortgagee to recover money paid by him for taxes due upon the mortgaged lands. The prevailing opinion seems to have been that the mortgagee had such a right under the Act respecting short forms of mortgages, and heretofore the question does not seem to have been raised. We cannot think it could have been the intention of the draughtsman of this statutory form that the mortgagee's right should cease to exist immediately upon a default being made in payment of a gale of interest; but if this judgment be well founded, it will mean that conveyancers must introduce into their mortgage forms a proviso enabling the mortgagee to pay taxes, and add the amount so paid to the principal money, and give him the same rights of recovery.

The interesting question which was discussed in this journal in February and March last, see ante pp. 93, 181, 219, as to the effect of the Statute of Limitations on the rights of mortgagees, has received some elucidation by the recent decision of the English Court of Appeal in *Thornton v. France*, (1897) 2 Q.B. 143. On reference to that case it will be seen that it is there held that a person paying off a mortgage is not a person claiming under the mortgage for the purpose of the statute, and that the provision in the statute in favour of mortgagees only applies to subsisting mortgages, *i. e.*, mortgages actually current and undischarged. The Court also holds that where a mortgage is executed by a mortgagor out of possession it does not create a new starting point for the statute as against a person in adverse possession who is no party to the mortgage. This decision therefore seems very strongly to support the view maintained by Mr. Holmsted in the articles above referred to as to the effect of the statute.