

LENNOX, J.

MARCH 27TH, 1920.

TORONTO GENERAL TRUSTS CORPORATION v.
RAHELLY.

Limitation of Actions—Exclusion of Owner (Son) of Undivided Half Interest in Land—Possession of Co-owner (Father)—Extinction of Interest of Son in Lifetime of Father—Death of Father Intestate—Share of Son Claiming under Father—Possession Taken by Mother and Daughters—Exclusion of Son—Right Acquired by Possession—Interest of Mother—Limitations Act, R.S.O. 1914 ch. 75—Mortgage—Claim of Mortgagees under Foreclosure—Redemption—Consent Judgment—Costs.

Action by the Toronto General Trusts Corporation, as personal representatives of John Foy and James J. Foy, deceased, and by Jane Rahelly and her son and daughter, as heirs at law of Thomas Rahelly, deceased, to recover possession of lot 70 and the northerly half of lot 69 on the west side of O'Hara avenue, in the city of Toronto.

The action was tried without a jury at a Toronto sittings.

A. E. Knox, for the plaintiffs.

Gideon Grant, for the defendants.

LENNOX, J., in a written judgment, said that the Foyes were mortgagees, and had obtained a final order of foreclosure; but it was arranged at the trial that the parties entitled should be allowed to redeem the Foy mortgage, and consent minutes of a judgment disposing of the claim based on the mortgage and final order were filed.

Thomas Rahelly died intestate on the 31st December, 1912; and the question raised upon the other branch of the case was, what rights, if any, his widow and children had in the property. The property consisted of a dwelling-house and garden, and from the time it was acquired by Gerald Rahelly and his son Thomas, the above-mentioned, in 1884, had been occupied and used as the home of members of the Rahelly family. Since the 12th December, 1915, it had been in the exclusive occupation and possession of the defendants, who were the three daughters of Gerald and sisters of Thomas. Gerald died intestate on the 30th May, 1907. After Gerald's death, his widow continued to live with her daughters, the defendants, in the house upon the property, until her death on the 12th December, 1915.

The learned Judge finds that Thomas Rahelly was the owner of an undivided one-half interest in the property in August, 1894,