

The plaintiffs claim as owners of lot 3 on James street. That lot was acquired by Mark Hill in 1871, and was mortgaged by him to Edward Martin on the 14th February, 1887. Hill, on the 10th December, 1888, assigned all his property to F. H. Lamb in trust to sell and convert and pay expenses and pay his creditors, and any surplus to Hill. It does not appear that Lamb did anything under this assignment unless to register it.

On the 26th December, 1890, by a deed, which recites that on the 9th May, 1889, Hill had assigned his property to David Blackley for the benefit of his executors and had afterwards compromised with his creditors, Hill and Blackley conveyed lot 3 on James street to one Farewell, with a right of way over the southerly strip of 11 feet 4 inches of lot 3 on Hughson street, which adjoins lot 3 on James street, but reserving a right of way in common over the easterly twelve feet of lot 3 on James street.

On the 23rd May, 1899, Martin obtained judgment for possession and foreclosure in an action against Farewell, the action being referred to the Master at Hamilton. On the 6th June, 1899, the Master reported that he had added F. H. Lamb and others as defendants, and, they not having appeared, he had declared them foreclosed, and he appointed the 16th December, 1899, for payment of the mortgage-debt by Farewell. On the same 16th June, 1899, he, as Deputy Registrar, certified that all the defendants stood foreclosed by his order, as Master, of that date. The order is not produced.

Objection is taken to the regularity of these proceedings for foreclosure; but, inasmuch as Martin had the legal estate, he was entitled to possession, and the plaintiffs, as claiming under him, are also entitled thereto. He entered into possession at once, and had a fence put across the north end of the eleven-foot strip now in question, at the back of the lot; and any objection to the proceedings for foreclosure or to the absence of foreclosure of any parties interested are now removed by length of possession.

The defendants claim the eleven foot strip referred to as being part of lot 3 on Hughson street in Hughson's survey. If this were so, lot 3 on James street would have been laid out eleven feet shorter than all the other five lots fronting on James street in the same block, and lot 3 on Hughson street correspondingly shorter than all the others fronting on Hughson street. Apart from this being wholly unlikely, it is contrary to the old Mackenzie map of the town of Hamilton, published in 1836, as "reduced and compiled from various surveys by Alexander Mackenzie, surveyor," and the other map "reduced and com-