by R.S.O. (1887), c. 111, s. 23 (R.S.O. 1897, c. 133, s. 23), which provides that no action "or other proceeding" shall be brought to recover out of any land any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of such land, but within ten years next after a present right to receive the same accrued to some person capable of giving a discharge for, or release of the same, unless in the meantime payment or acknowledgment be made or given by the party by whom the same is payable.

The learned Judge holds that the execution of a writ of fi. fa. is a "proceeding" within the meaning of that section, and that unless it takes place within ten years from the time the writ was first placed in the sheriff's hands the statute operates as a bar to the execution of the writ. This, as we have already remarked, is a very important—and we may add, without any intention of impugning its accuracy—a very surprising decision, because, as we have already observed, we think the general opinion of the profession has been the other way.

The wording of the section would rather tend to the conclusion that the liens referred to therein, and intended to be affected thereby, are liens created by the act of the parties, and not liens arising by operation of law as a result of legal process. The words "no action or other proceeding shall be brought" to recover money secured by any lien, are certainly not very happily chosen, if they were intended to apply to executions. The writ itself by its delivery to the sheriff is the lien, it is also itself "the proceeding" by which the lien is enforced, no other "proceeding," as far as the execution creditor is concerned, being necessary to enforce it, and with all due respect to the learned judge, there seems to be room for contending that the "proceeding" which the statute contemplates, is a "proceeding" by the party and not by the officer of the court in execution of its process.

In both *Smith* v. *Brown*, 20 O.R. 165, and *Casper* v. *Keachie*, 41 U.C.R. 599, referred to by the learned judge, the acts which were held to be "proceedings" were acts of the party, and therefore those cases are really no authority for the pre-