

principal and interest, the last of which became due on the 25th February, 1880. He died on the 15th March, 1877, and by his will (proved the 12th January, 1878) devised the mortgaged land to his son John in fee, subject to a life estate therein to the plaintiff, defeasible on the son attaining the age of twenty-one. The will directed that the plaintiff should have the whole and sole control of the testator's farm, which consisted of the mortgaged land and of an adjoining lot, which he devised to his other sons, also to a life estate in favour of the plaintiff, during the continuance of her life interest, and she was the residuary devisee of all the testator's real and personal property. The will contained no direction as to payment of debts, nor any reference to the mortgage.

After her husband's death, the plaintiff, who lived on the mortgaged land with her family, or rented it when she was not living there, paid off the mortgage by a number of payments, commencing on the 31st March, 1877, and ending on the 12th January, 1888. These payments were made out of her own moneys; and on the 31st January, 1888, she obtained from the executors of the mortgage a discharge of mortgage, in the usual form, which she retained in her own possession.

The son John became of age on the 18th December, 1892. He died on the 8th December, 1900, having by his will devised the land to the plaintiff "to be used by her as she might deem fit during her lifetime," with remainder to his four sisters in fee. He knew that the plaintiff had paid off the mortgage.

From the time the son John became of age until his death the plaintiff remained in possession, receiving the rents and profits as before, and John and the unmarried daughters lived with her.

On the 5th December, 1903, the plaintiff, upon a solicitor's advice, caused the discharge of mortgage to be registered.

In October, 1908, she endeavoured, without success, to obtain from her surviving daughters and grandchildren a release of their interests in remainder, and, after proposals for a sale of the land and investment of the proceeds for the benefit of all parties had failed, this action was brought on the 30th September, 1909, up to which time there was no claim for repayment of the moneys paid by her; nor was there evidence either way of any expressed intention of the plaintiff in paying off the mortgage—whether she was paying it off for her own benefit or for the benefit of those entitled in remainder. She paid it off because it was overdue, and the executors of the mortgage were threatening to sell.

A. E. H. Creswicke, K.C., for the plaintiff.

W. H. Irving and W. E. S. Knowles, for the defendants.