

the place. The father, after the son's death, leased the place without objection, or rather with the assent of the wife, and let her have the rent. This was done after the expiration of the statutory ten years, and this, though done after the ten years' limit, was inconsistent with her husband being the owner, and reflects light on the real nature of the son's occupation, for the reasons fully given by Blake, C., and Esten, V.-C., in *Foster v. Emerson*, 5 Gr. at pp. 148 and 154.

Upon another ground, also, I think the judgment in appeal cannot stand. The father purchased the lot on the 20th February, 1895, and gave a mortgage in fee for part of the purchase-money on the same day. The son went into possession in April, 1895, taking subject to the mortgage. Payments were made during the series of years by the father to the mortgagee, till the mortgagor was paid off and the discharge registered in February, 1908. Had the son acquired a title under the statute as against the father, yet, according to *Henderson v. Henderson*, 23 A.R. 577, the execution and registration of the discharge gave a new starting-point for the statute. And the same point was decided by the Court of Appeal in *Ludbrook v. Ludbrook*, [1901] 2 K.B. 96, where Romer, L.J., says: "If the mortgage be an existing one, and was executed before the commencement of the possession of the person claiming to have acquired a title by such possession under the Statute of Limitations, then the statute undoubtedly applies in favour of the mortgagee, though the person in possession may have acquired a good title as against the mortgagor and those claiming under the mortgagor." The mortgage in this case being paid off by the mortgagor, the effect is, not to discharge the mortgage as against the assumed statutory owner, but to reconvey to the mortgagor his original title in fee, with the right to possession as from the date of the repayment: *Lawlor v. Lawlor*, 10 S.C.R. 194.

The judgment should be reversed; but I assume that no costs are asked, as the plaintiff stated during the argument that he was willing to allow the widow to get the balance of the price of the land, which the plaintiff has sold, after deducting the amount paid on the mortgage.

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LUM YET v. HUGILL—MASTER IN CHAMBERS—JAN. 10.

*Particulars—Statement of Claim—Negligence—Motor Vehicles Act.*]—This action was brought to recover damages for the death of the plaintiff's son, who was admittedly killed by the de-