

became in default Jan. 1, 1892. The land was vacant, and by the terms of the mortgage the mortgagor's right to possession ceased upon default, but the mortgagees had not taken actual possession.

Held, following *Rutherford v. Mitchell*, 15 M.R. 390, that the mortgagees should be deemed to have "obtained possession" of the land within the meaning of section R.S.M. 1902, c. 100, s. 20, at the time of the default, and that the right to redeem was barred in ten years from that time.

Held, also, that the posting up on the lands, in September, 1903, of a notice of exercising the power of sale contained in the mortgage, even if it could be treated as "an acknowledgment in writing of the title of the mortgagor or of his right to redemption" within the meaning of the same section, would not have the effect of reviving the plaintiff's title or right to redeem which had already been barred. *Show v. Colter*, 11 O.R. 630.

A. J. Andrews and Burbidge, for plaintiff. Aikins, K.C., Haggart, K.C., Caldwell, K.C., Kilgour, and Sullivan, for respective defendants.

Mathers, J.]

CHATWIN V. ROSEDALE.

[Sept. 14.]

Municipality—Construction of drain causing damage to plaintiff's land.

In 1893 the council of the defendant municipality caused the construction of a ditch and breakwater which diverted large quantities of water from a creek called Snake Creek into a smaller creek called Eden Creek, running through plaintiff's land. The capacity of Eden Creek was in some years not sufficient to carry the additional load thus put upon it, and in 1902 and in 1904, it overflowed and flooded plaintiff's land. This would not have happened but for the ditch and breakwater referred to.

Held, that the municipality was liable for the damages thus suffered by the plaintiff which were fixed by the judge at \$400.

Wilson, and Davis, for plaintiff. Haggart, K.C., and Howden, for defendant.