

MULOCK, C.J.Ex.D.

OCTOBER 23RD, 1911.

## NOBLE v. NOBLE.

*Limitation of Actions—Possession of Land for Statutory Period—Limitations Act, 10 Edw. VII. ch. 34, sec. 23—Mortgage—Registered Discharge—Effect of—Registry Act, 10 Edw. VII. ch. 60, sec. 62—Lien for Mortgage-debt Paid off—Parties—Pleading.*

Action by Thomas A. Noble to recover possession of certain lands in the city of Brantford.

W. S. Brewster, K.C., for the plaintiff.  
T. Woodyatt, for the defendant.

MULOCK, C.J.—On the 8th September, 1894, the plaintiff's son, Frank Noble, married the defendant; and the plaintiff, desiring to provide them with a home, on the 20th February, 1895, purchased the lands in question, which consisted of a house and grounds in Brantford, and on the same day executed a mortgage thereon to secure the sum of \$650 and interest. On the 1st April, 1895, Frank Noble, with the defendant, his wife, took possession, and with his father's consent remained in undisturbed possession until the month of April, 1907, when he became insane and was removed to an asylum, where he remained until he died intestate on the 24th April, 1908, leaving him surviving his widow, the defendant, and one child, Grace, aged four years. No administrator of his estate has been appointed.

When Frank Noble was removed to the asylum, his wife and child continued to occupy the premises as a home, and were in such possession on Frank Noble's death, and remained in possession until about the 30th May, 1908, when the property was rented by the defendant to one Frank Smith, who occupied it as tenant from the 17th June, 1908, until the 17th October, 1909, when he vacated, giving the key to the defendant, who retained it, and about a month thereafter resumed possession, and has so remained ever since.

There is a slight discrepancy between the evidence of the plaintiff and the defendant as to the circumstances under which the premises were rented to Frank Smith; but I think the plaintiff, in the transaction, acted as agent for the defendant.

The plaintiff from 1895 until 1910 each half-year paid interest accruing on the mortgage in question, and on the 28th