

# The Ontario Weekly Notes

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No. 24.

## HIGH COURT OF JUSTICE.

OSLER, J.A.

FEBRUARY 24TH, 1910.

\* CURRIE v. CURRIE.

*Charge on Land—Mortgage Paid by Tenant for Life—Absence of Evidence to Shew Intention to Exonerate Fee—Effect of Taking and Registering Discharge of Mortgage—Preservation of Lien or Charge — Statute of Limitations — Duty to Keep down Interest—Payment to Save Bar—Second Life Estate—Intervening Period—Receipt of Rents and Profits—Election —Permissive Waste—Voluntary Waste.*

Action for a declaration that the plaintiff, the widow of John Currie senior, deceased, was entitled to a lien or charge on certain land for moneys paid by the plaintiff in satisfaction of a mortgage made by the deceased, and for sale of the land in default of payment, and for other relief.

The defendants were respectively the surviving children and grandchildren of the deceased, who were entitled to the land in remainder under the will of a deceased son, after the determination of the plaintiff's life estate therein under the same will.

The claim was resisted on the grounds that the mortgage was paid in exoneration of the fee; that the plaintiff had been guilty of voluntary and permissive waste in respect of the land to an amount more than sufficient to answer any charge or lien she might be entitled to; and that her claim was barred by the Statute of Limitations.

The defendants also counterclaimed for damages for waste in permitting the buildings and fences on the land to become ruinous and out of repair and the land to become depreciated in value for want of proper cultivation and for waste in cutting and selling timber and firewood off the land.

It appeared that the deceased mortgaged the land in fee to McD. in 1876 to secure \$760, payable in three instalments of

\*This case will be reported in the Ontario Law Reports.