

MACMAHON, J.—The plaintiff Mrs. Shaw was the owner of the land in question, situated on Sully street, in the city of Toronto, which she mortgaged (her husband joining) to defendant on 8th September, 1892, to secure the repayment of \$3,500. On the property were 5 small dwelling-houses, which when occupied rented for about \$8 per month each. These were occupied at the time the mortgage was given by tenants who had been let into possession by Mrs. Shaw.

In January, 1894, there was owing on the mortgage \$562.40 for interest and taxes. The houses were all occupied at that time, and defendant served notice on all the tenants shortly before 22nd January, 1894, to pay rent to him, and a tenant named Gardiner paid rent to him on 22nd January, . . . for the past month. . . . None of the tenants paid rent to Mrs. Shaw after 1st January, 1894.

This action . . . was begun on 4th July, 1904. . . .

Defendant had on 12th May, 1904, served Mrs. Shaw's husband with notice of sale, and . . . Mrs. Shaw on 18th May. The property was advertised and put up for sale under the notice, but the sale proved abortive, there being no bidders. Plaintiffs set this up as creating a right in them as mortgagors to redeem.

The statute having run for the ten years necessary to create a bar against plaintiffs, the serving of the notice of sale and the proceeding to sell were nullities. . . .

An advertisement for the sale of land is a "proceeding" within sec. 23 of R. S. O. ch. 197: *Smith v. Brown*, 20 O. R. 165; and a notice of sale under the power of sale in a mortgage is also a "proceeding" within that section: *Pryor v. City Offices Co.*, 10 Q. B. D. 504; *Neil v. Almond*, 29 O. R. 63; *In re Woodall*, 8 O. L. R. 288, 4 O. W. R. 131; and, as pointed out by Meredith, J., in *McDonald v. Grundy*, 8 O. L. R. at p. 115, 3 O. W. R. 731, the giving of the notice, the advertising of the property, and putting it up for sale, were "proceedings" which defendant, the mortgagee, was precluded from taking after the lapse of 10 years.

The paper title of the mortgagors having been extinguished by the running of the statute for 10 years, it requires a reconveyance to revest the land in them: *Armour on Titles*, 3rd ed., p. 299; *Doe Perry v. Henderson*, 3 U. C. R. 480; *McDonald v. McIntosh*, 8 U. C. R. 388; *Sanders v. Sanders*, 19 Ch. D. 373; *Dodge v. Smith*, 3 O. L. R. 305, 1 O. W. R. 803; *Chapman v. Coope*, 41 L. T. N. S. 22; *Gray v. Richford*, 3 S. C. R. 431, 454.

Action dismissed with costs.