

2. The word "provided" in the Act was intended to create a condition precedent to the exercise of the borrowing power.

3. The purchaser of the debentures was bound to examine the statute under the authority of which they were issued, and had he done so would have been made aware of the fact that the terms of the statute had not been satisfied, there being nothing on the face of the debentures, or in any of the proceedings of the council so far as disclosed, to convey any intimation that the condition subject to which the power was to be exercised had been performed.

4. The word "provided" as used in the Act was an apt word to create a condition, being synonymous with "if," "when," and "as soon as."

*A. McKay and Allison, for appellant. MacCay, K.C., for respondent.*

Full Court.]

ARCHIBALD T. LAWLOR.

[Jan. 14.

*Statute of Limitations—Twenty years' possession held insufficient as against mortgagee—Foreclosure—Effect of as against third party in possession.*

In an action claiming possession of land plaintiff's title was derived under a sheriff's deed made under direction of the Court in foreclosure proceedings, and dated July 23rd, 1896. Defendant relied upon the Statute of Limitations, and gave evidence of more than twenty years' possession of the land in dispute without payment of rent or acknowledgment of title. It appeared that defendant went into possession at a date subsequent to the date of the mortgage under which plaintiff claimed.

*Held*, dismissing defendant's appeal with costs, and affirming the judgment of the trial judge, that defendant could not acquire title by possession against the mortgagee so long as the mortgage was kept alive.

It is enacted by the Statute of Limitation, R.S.N.S. (1900), c. 167, s. 23, that "any person entitled to or claiming under a mortgage of land may make an entry or bring an action to recover such land at any time within twenty years next after the last payment of the principal money, or interest secured by such mortgage, although more than twenty years have elapsed since the time at which the right to make such entry or bring such action first accrued."

*Held*, that the granting of a decree of foreclosure was an adjudication that, at that date, the mortgage was in force, and that, therefore, plaintiff's title came under the provisions of the section quoted.

*Held*, also, that a third party could not by a possession of twenty years acquire title, notwithstanding the provisions of the statute, and that plaintiff's title could not be defeated by defendant's possession, even though it were shewn to be of a more definite kind than was disclosed by the evidence. Weatherbe, J., dissented.

*D. McNeil, for appellant. H. McInnes, for respondent.*