

of the B.N.A. Act, which vested such property in the Dominion Government. Plaintiff replied that having obtained title through her husband, defendants were estopped from denying that his title was valid. Defendants also relied on an Act of the Legislature of Nova Scotia passed in 1884, which enacted that the purchase and conveyance to the defendant company from their immediate grantors were absolutely ratified and confirmed, reserving to any person or persons the right to compensation only for any interest in or lien on the same.

Held, affirming the decision of the Supreme Court of Nova Scotia, STRONG and GWYNNE, JJ., dissenting, that the defendant company was estopped from saying that no title passed to plaintiff's husband by the grant from the Government of Nova Scotia, or from questioning his title thereunder.

Held, further, that the Act of 1884 did not affect plaintiff's claim. The statute was not pleaded; but if it was not necessary to plead it, it could not operate to vest in defendants' property belonging to the Dominion Government, which the property in question did.

Held, per PATTERSON, J., that though a paramount title might have been set up against both parties, it could not be asserted by the defendants.

Held, also, by the majority of the court, that the grant to plaintiff's husband was in fee simple, and he had such seizin that dower would attach.

Appeal dismissed with costs.

W. B. Ritchie for appellants.

Drysdale for respondents.

CUNNINGHAM v. COLLINS.

Mortgage—Foreclosure suit—Parties—Lessee of Mortgagor—Protection of rights—Practice.

In an action for foreclosure and realization of mortgage, the original defendants were the administrator, heirs-at-law, and certain devisees of the mortgagor; subsequent incumbrancers, namely, judgment creditors of some of the heirs, and the lessee of a part of the mortgaged property by lease from some of the heirs, not being joined. None of the defendants appeared, and an order was made foreclosing the equity of redemption and directing the lands to be sold unless the amount due on the mortgage was

paid before the day fixed for the sale. The sale was to be advertised in a newspaper and by handbills, copies of said handbills to be mailed to each of the subsequent incumbrancers. By a subsequent order the property was to be sold in two separate lots; the Queen Hotel property, which was that under lease, to be sold first. By a further subsequent order, made on the day fixed for the sale on application of Mrs. S., the lessee of the Queen Hotel, it was ordered that upon payment into court by S. & K. of \$37,019 further proceedings by plaintiff should be stayed until further order, and plaintiffs should assign to S. & K. the mortgages and lands free from incumbrance, and also the suit and all the benefit of the proceedings therein, plaintiffs to be paid their claim out of money so paid into court. This order was complied with.

On Dec. 26th, 1889, defendants moved to rescind the last-mentioned order. The motion was refused, and the order amended by a direction that Mary I. Sheraton, the lessee of the Queen Hotel, should be made a defendant to the action, and that S. & K. should be joined as plaintiffs and the stay of proceedings removed. The lessee, Mrs. Sheraton, then filed a statement of defence, setting out a lease of the hotel property from three of the mortgagor's heirs to her for five years, subject to renewal for a further term of five years, and that she had entered into possession and made large repairs and improvements.

On Jan. 4th, 1890, another order was made amending the order of sale by directing that the Queen Hotel property be sold subject to the rights of Mrs. Sheraton under the lease and subject to said lease.

From these orders of 26th Dec., 1889, and 4th Jan., 1890, defendants appealed to the Supreme Court of Nova Scotia sitting *in banc*, which court affirmed the former order, but set aside the latter. Both parties appealed to the Supreme Court of Canada.

Held, affirming the decision of the court below, that the order of 26th Dec., 1889, was a proper order. It stayed the proceedings at the instance of a person having a substantial interest in the equity of redemption of part of the mortgage lands, and if the proposed sale had been under a writ of *fi. fa.* an injunction might have been granted to restrain it; and it only stayed them on payment into court of the redemption money. As to the direction in the