

mortgage" within the meaning of the statute. Following that case, I think the plaintiff must fail, unless saved by the Registry Act, 10 Edw. VII. ch. 60, sec. 62.

This section declares that "the certificate when registered shall be a discharge of the mortgage, and shall be as valid and effectual in law as a release of the mortgage, and as a conveyance to the mortgagor, his heirs, executors, administrators, or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgagor."

The object of this section is to enable a registered certificate to operate as a release of the mortgage and as a conveyance of the legal estate to the mortgagor or other parties entitled thereto, but not so as to defeat the rights acquired against the mortgagor after the making of the mortgage. Further, the "original estate" mentioned in the section means the estate granted to the mortgagee; and, in the present case, does not include the right to possession of the mortgaged lands. That right was reserved to the mortgagor, and at no time during the currency of the mortgage was the mortgagee in possession.

In the meantime Frank Noble had, as against the mortgagor, acquired title by possession, but the mortgagor's estate in the lands did not thereby pass to Frank Noble, but remained in the mortgagor, the statute, while barring the owner from recovering possession, not transferring to the party in possession any title or estate in the land: *Tichborne v. Weir*, 8 Times L.R. 713. Thus, the registered certificate, operating as a reconveyance to the mortgagor of the "original estate" held by the mortgagee, does not include the right of possession; and, consequently, does not affect or disturb any right of possession acquired by Frank Noble.

Mr. Brewster contended that, in the event of the plaintiff failing to recover possession, he was entitled to a lien on the land to the extent of the mortgage-debt paid off by him. This contention raises an entirely new issue, not open to the plaintiff on the present pleadings and as the action is at present constituted. In the trial of such an issue a representative of the estate of Frank Noble would be a necessary party. For such purposes his widow, the defendant, does not represent the estate. She may ultimately have a beneficial interest in the property, but at present as the party in possession she is simply defending her possession against the claim of the plaintiff, who has no right to dispossess her.

For these reasons, I am unable to deal with the question thus raised by Mr. Brewster.

The action fails and should be dismissed, but without costs.