

Bench Act merely states, I think, the manner in which the examination shall be conducted, but does not enlarge or affect the meaning of the words, "touching the matters in question in this action."

Motion dismissed with costs to be costs in the cause to the plaintiff in any event.

North-West Territories.

SUPREME COURT.

McGuire, C.J.]

[Dec. 29, 1902.

COLONIAL INVESTMENT AND LOAN CO. v. KING AND LEWIS.

Mortgage—Action—Land titles—Foreclosure—Consolidation—Right to sue on covenant.

Action on covenant in a mortgage given by defendant King to plaintiffs June 4, 1895, for \$2,600. A prior mortgage for \$400 had been given by defendant to same mortgagees on a different parcel of land, of which the plaintiffs are assignees. In March, 1894, defendant Lewis, under an agreement for sale, bought the land covered by the \$400 mortgage and paid the full consideration mentioned in a agreement of sale. Under the \$400 mortgage there was a clause whereby King agreed with the mortgagees giving a lien upon all shares of the capital stock of the mortgagees then held or thereafter to be subscribed for by him, and whereby he agreed to assign the shares he then held to the mortgagees forthwith. A similar clause was also in the \$2,600 mortgage. The plaintiffs, after both mortgages were in default, took proceedings to enforce the security under the \$2,600 mortgage as against the lands therein mentioned. The plaintiffs claimed the right to consolidate the mortgages and refused to allow the \$400 mortgage to be paid off without the \$2,600 one being satisfied. They also claimed that the \$2,600 mortgage gave them a lien as against King on the 4 shares of stock mentioned in the \$400 mortgage.

Held, as regards the defendant Lewis he was not a holder or subscriber for any stock of the mortgagees and is not concerned in how far the stock held by King, mentioned in the \$400 mortgage, may be subject to a lien for the payment of the \$2,600 mortgage. He bought the land prior to the \$2,600 mortgage with a knowledge of only one mortgage thereon, namely, for \$400. Lewis cannot be affected by the terms of the \$2,600 mortgage as he is not a party to it in any way, and the mortgage was not in existence until long after his purchase and was not made in pursuance of any covenant on the \$400 mortgage and there is nothing in the \$400 mortgage which makes the land or stock mentioned therein security for the payment