

firm, who are really its members by disclosing the manner in which they had dealt with each other.

J. A. Macdonald, K.C., for appellants (defendants). MacNeill, K.C., for respondents (plaintiffs).

Full Court.]

MACCRIMMON v. SMITH.

[Jan. 21.

Crown lands patent (Dominion)—Reservation of timber—Mortgage by patentee—Subsequent Order in Council rescinding reservation—Rights of mortgagee in timber—Accretion—Estoppel.

The plaintiff MacCrimmon was the owner and the plaintiffs Pelly the mortgagees of a lot in the district of New Westminster under mortgage dated 5th August, 1893, securing the payment of \$1,500. The plaintiff MacCrimmon entered into an agreement with the defendants Johnson and Cook, by which the timber on the land was sold to the latter, who in turn sold to defendant Smith. The plaintiffs' mortgagees claimed to be the owners of the land, and that defendants in cutting and removing the timber under the authority of the agreement with the plaintiff mortgagor, were trespassers; and this action was brought for an injunction and damages in respect of the trespasses. The rights of the parties turned upon the question as to whether the property in the timber had passed to the mortgagees. The mortgagor acquired title under a grant from the Dominion of Canada, issued under the authority of R.S.C. ch. 56, relating to lands in the railway belt in British Columbia. Pursuant to secs. 14 and 15 of the Dominion Land Regulations, ch. 100, of the Consolidated Orders in Council, the grant contained a reservation of all merchantable timber. Subsequently, on 3rd July, 1899, an Order in Council was passed by which the reservation established by these sections was rescinded, and it was provided that all persons who had received, etc., prior to the date of the Order in Council, should be entitled to the timber on their homestead free of duties.

At the trial, DUFF, J., came to the conclusion that by the combined effect of secs. 14 and 15 of the Dominion Land Regulations, and the provisions of the Crown grant under which the lands were held, the property in the merchantable timber on the land comprised in the mortgage deed was reserved to the Crown, subject to