

payments heretofore made by the company for labour employed on said contract, and for material and supplies which went into the work." The contract, under certain circumstances, gave the right to the company to employ men and additional workmen, etc., as they might think proper, but did not give the right to guarantee contractors' debts, or pay for provisions and food, etc., due by the contractors, and which was done without the assent of O'G.

*Held*, that the payments for supplies and provisions made by the company for which the bank signed a release without O'G.'s assent were not authorized by the contract, and were such a variation of the rights of O'G. as surety as to discharge him.

TASCHEREAU and GWYNNE, J.J., dissenting.

Appeal allowed with costs.

*D. McCarthy, Q.C.*, and *A. Ferguson, Q.C.*, for the appellant.

*Meredith, Q.C.*, and *Chrysler, Q.C.*, for the respondents.

Ontario.]

[Nov. 20, 1893.]

WEBB v. MARSH.

*Title to land—Crown grant—Conveyance by grantee out of possession—Disseizin—Statute of Maintenance, 32 Hen. VIII., c. 9—Conveyance to wife of person in possession—Assent by husband—Statute of Limitations.*

In 1828 land in Upper Canada was granted by the Crown to King's College. In 1841 King's College conveyed to G. In 1849 G. conveyed to the wife of M., who had been in possession of the land for some years before the deed to G. in 1841. In an action by the successors in title of M.'s wife to recover possession, the defendants, claiming through M., alleged that the deed from King's College to G. in 1841 was void under the Statute of Maintenance, being made by a person not in possession of the land, and that G. had, therefore, nothing to convey to M.'s wife in 1849. They also pleaded the Statute of Limitations, claiming that M., in 1849, had been in possession more than twenty years.

*Held*, affirming the decision of the Court of Appeal (19 A.R. 564), and of the Divisional Court (21 O.R. 281), that defendants had failed to prove continuous possession by M. for twenty years prior to the conveyance to his wife in 1849; that if he had entered before the grant from the Crown the Statute of Maintenance would not have avoided the conveyance by the grantee; that for that statute to operate disseizin of the grantor must be established, and the Crown could not be disseized, so the original entry not having been tortious it would not become so against the grantee from the Crown without a new entry; that though M. entered while the title was in King's College, and was in possession when the college conveyed to G., such conveyance was not absolutely void, but, at the most, was only void as against M.; and that M., having executed the conveyance to his wife, must be taken to have assented thereto, and such assent and M.'s subsequent acts created an estoppel against him, and took the case out of the Statute of Maintenance.

Appeal dismissed with costs.

*Riddell and Webb* for the appellants.

*Roaf* for the respondents.