

to repair the road not being "future rights" within the meaning of sec. 29 (b), the case was not appealable. *County of Verchères v. Village of Varennes* (19 Can. S. C. R. 365) followed, and *Reburn v. Ste. Anne* (15 Can. S. C. R. 92) overruled. Gwynne, J., dissenting.

Appeal quashed with costs.

*Bastien & Fortin*, for appellants.

*Ouimet & Emard*, for respondents.

Nova Scotia.]

June 28, 1892.

SYDNEY & LOUISBURG RAILWAY CO. v. SWORD.

*Dower—Defective title—Grant by Provincial Government of Dominion Lands—Estoppel—Local Act.*

S. brought an action to recover dower out of lands conveyed to defendant company through another company from her husband. Defendants pleaded that the lands were part of the navigable waters of Sydney harbor, and were granted to plaintiff's husband by the Government of Nova Scotia contrary to the provisions of the B. N. A. Act, which vested such property in the Dominion Government. Plaintiff replied that defendants having obtained title through her husband, 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 case.

*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.