

Held, affirming the decision of the Court of Appeal (19 Ont. App. 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, and that 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 being a conveyance to a person appointed by the party in possession, which was good under the fourth section of the statute.

Appeal dismissed with costs.

Riddell and Webb, for the appellants.

Roaf, for the respondents.

20 November, 1893.

BROOKFIELD v. BROWN et al.

Nova Scotia.]

Practice—Parties to action—Mortgagees out of possession—Holder of equity of redemption—Effect of transfer of interest.

The first mortgagee of property on which there were two other mortgages foreclosed two days before the sale under foreclosure. B., the second mortgagee, with an agent's assistance, entered the mortgaged premises and removed the personal property therefrom and certain fixtures attached to the freehold. The sale took place and realized enough to pay off the first two mortgages. On the same day the purchaser at the sale received a deed from the sheriff, an assignment of the third mortgage and a conveyance of the equity of redemption. Some little time after an action was brought against B. and his agent for trespass and injury to the mortgaged property, in which action the first and third mortgagees, the original owner of the equity of redemption and the purchaser at the sale were joined as plaintiffs.