

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

POWER v. FOSTER.

[May 4.

Foreclosure—Form of order and advertisement for sale—Specific performance—Administration proceedings—Title of tenant for life purchasing at as against party entitled to remainder.

A lot of land was devised by her husband to M. for the term of her natural life, and after her death to any child or children that she might have by the devisor. At the time of the devisor's death the property was subject to a mortgage, and there was one child by the marriage, who subsequently married. M. instituted an administration suit in the Chancery Court for the settlement of the estate as the result of which a sale was ordered. M. became the purchaser at the sale, and the Master's deed was made out to her. Subsequent to the purchase M. executed a paper by which she agreed to convey the property in question to her daughter K. for her life, subject to the life interest of M., then to go to the children of K. in fee simple.

Held, 1. Notwithstanding the fact that the Master's deed was absolute in its form, that M. took the property in question, subject to the life interest in herself, in trust for her daughter K.

2. As against the title of K. the instrument executed by M. purporting to give K. a life estate only had no effect.

3. K. had a good title to the land, and that as against defendant purchased at a sheriff's sale, on proceedings to foreclose a mortgage n. by M. and her husband, and who refused to complete the purchase, plaintiff, the holder of the mortgage, was entitled to a decree for specific performance.

The advertisement of sale was in the following form: "All the estate, right, title, interest and equity of redemption of K. and of all persons claiming or entitled from or under the said K. of, in, to or out of all that lot, piece or parcel of land, etc.," and the form of the order was that "the said land and premises be sold, etc."

Held, 1. This form was sufficient to cover all the estate, right, title, interest and equity of redemption of the defendant at the time of giving the mortgage.

2. The deed was given by virtue of the statute (Acts 1890, c. 14, secs. 5, 6) and by virtues of the provisions of the statute the land ordered to be sold by virtue of the sheriff's deed was vested in the grantee.

Seemle, that the form of words in use in this province was adopted in consequence of the practice of not settling conditions of sale and offering a specific title: *Diocesan Synod of Nova Scotia v. O'Brien*, Ritchie's