

Pending these proceedings, Mrs. Hirbert brought an action against Alexander Black, the president of the plaintiff company, for the redemption of a mortgage on the same property held in trust for the company. The Full Court had held, that she was entitled to redeem, but Black appealed to the Supreme Court of Canada. That appeal was pending at the time this application was made for a stay of proceedings in the mechanics' lien suit, until the result of the appeal should be known.

Mrs. Hirbert was in this position that, if she paid the amount required to discharge the liens and the Supreme Court afterwards denied her right to redeem the mortgage, she would have nothing for the \$750 paid out. She was not personally liable for this debt, but her land was charged with it.

Held, on appeal from Perdue, J., who dismissed the application, that Mrs. Hirbert was entitled to the stay of proceedings applied for on the terms fixed as stated below.

The Black Company was in effect a party to both actions and, if the stay was not granted, might get the redemption money in this action, and afterwards the land in the other in case the appeal to the Supreme Court should be successful.

Another reason for granting the stay was that, if the sale proceedings go on, a purchaser could only get a title contingent on the result of the appeal to the Supreme Court, and a sale under such circumstances would either be abortive or be made at much less than the value of the property. The enforcement of a sale in the lien action before the result of the appeal would be a vexatious proceeding, and the Court has inherent power to stay any vexatious proceedings to prevent abuse of its process: *Haggard v. Pelicier* (1892) A.C. at p. 67, and *Metropolitan v. Pooley*, 10 A.C. 214.

As the other lien holders were not parties to the application, the stay of proceedings was only granted on the terms that counsel for Mrs. Hirbert should undertake to pay the amount fixed for their claims into Court within a month, that they should have a right to take the money out as soon as paid in, and that Mrs. Hirbert should get credit for that amount if she afterwards decided to redeem in the lien action, in which case she should be entitled to deduct her costs of this appeal from the \$598, coming to the plaintiff company. Costs of the application to Perdue, J., not allowed.

Coyne, for plaintiff. *Elliott*, for Mrs. Hirbert.