

MULOCK, C.J.Ex.

FEBRUARY 15TH, 1917.

RE BROWN AND KELLAR.

Title to Land—Tenant in Tail—Enlargement of Estate—Mortgage—Registration—Bar of Entail—Act respecting Assurances of Estates Tail, R.S.O. 1887 ch. 103, sec. 9.

Motion by Margaret Lucia Brown, vendor, for an order, under the Vendors and Purchasers Act, declaring that objections to the vendor's title made by Stanley Kellar, the purchaser of lands under an agreement for sale and purchase, had been fully answered, and that the vendor had a good title in fee simple.

The motion was heard at Kitchener as in Weekly Court. M. A. Secord, K.C., and A. B. McBride, for the vendor. W. H. Gregory, for the purchaser.

MULOCK, C.J.Ex., in a written judgment, said that for the purposes of this motion it was to be assumed that Margaret Lucia Brown by indenture made the 8th September, 1863, between her father Thomas Halifax Lamphier, the grantor, and Jane Lamphier, his wife, to bar dower, and the said Margaret Lucia Brown, acquired an estate tail in the lands referred to; and the only question to determine here was, whether the estate tail had been barred.

It appeared that by indenture of mortgage bearing date the 17th April, 1888, Margaret Lucia Brown granted by way of mortgage the lands in question to David B. Eby in fee, as security for payment of the mortgage-moneys and interest therein mentioned, and covenanted that she had a good title in fee simple to the said lands—Fanny Brown and Annie Brown, described as daughters of the mortgagor, also joining in the mortgage for the purpose of thereby releasing any interest they might have in the lands in question.

According to the affidavit of Margaret Lucia Brown, this mortgage had been paid off, but it did not appear that it had been discharged or that there had been any reconveyance of the mortgaged lands to her.

By the Act respecting Assurances of Estates Tail, R.S.O. 1887 ch. 103, sec. 9, the execution of a mortgage in fee by a tenant in tail and its registration within six months bars the entail: *Lawlor v. Lawlor* (1881), 10 S.C.R. 194; *Culbertson v. McCullough* (1900), 27 A.R. 459.