Held, that, under paragraph (h) of s. 2 of R.S.M. 1902, c. 152, the hay was "goods," as it was a "thing attached to or forming part of the land which was agreed to be secured . . . under the contract of sale," and that the defendants were liable in damages as claimed. The statute has extended the common law: Benjamin on Sales, p. 190.

Hudson and *Laurence,* for plaintiff. *Wilson* and *Jameson,* for defendants.

Cameron, J.] ALLOWAY *v.* MUNICIPALITY OF MORRIS. [July 4.

Sale of land—Warranty of title—Representation that land patented—Recovery of money paid under mistake of fact—Assessment Act—Caveat emptor—Limitation of actions.

The defendant municipality on 12th April, 1902, offered to sell by public auction the lands in question, for arrears of taxes, and the plaintiff offered $166.16 for them. This being the highest bid, the defendants sold and conveyed the lands to the plaintiff for that sum which he paid. The lands had been previously advertised for sale in the *Manitoba Gazette.* That advertisement, signed "H. R. Whitworth, Secretary-Treasurer, Rural Municipality of Morris," under the heading "patented or unpatented," had the lands listed as "pat'd." The plaintiff paid the defendants subsequent taxes for 1902 and 1903, amounting to $248.23. It was admitted that, at the time of the sale, the lands were unpatented, also that the defendants had, under s. 159 of the Assessment Act, R.S.M. 1902, c. 117, authorised the treasurer to sell the lands.

Held, that the defendants had expressly warranted that the lands were patented and were liable to the plaintiff for the damages suffered by him in consequence of having paid his money on the strength of that warranty and that such damages should be fixed at an amount equal to the sum of all the moneys he had paid them together with simple interest at five per cent. per annum. Blackwell, on Tax Titles, s. 1007; *Chapman* v. *Brooklyn,* 40 N.Y. 379; *Pearson* v. *Dublin* (1907) A.C. 351 followed; *Austin* v. *Simcoe,* 28 U.C.R. 73, distinguished.

It was argued at the trial that the treasurer was a statutory officer, independent of the municipality, and performing duties imposed on him by statute and that, therefore, the municipality was relieved from any liability for his actions, and *Seymour* v. *Maidstone,* 24 O.R. 370; *Forsyth* v. *Toronto,* 20 O.R. 478, and *McLellan* v. *Assiniboia,* 5 M.R. 265, were relied on.