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BOYD, C.

FEBRUARY 1ST, 1909.

TRIAL.

ESSERY v. BELL.

Easement—Right of Way—Extinguishment by Tax Sale—Liability of Easement to Assessment and Taxes—Validity of Assessment not Established—Onus—Statutes—“Privilege”—Judgment Declaring Right to Enjoyment of Easement.

Action for a declaration of the plaintiff's right to an easement in respect of a strip of land owned by the defendant, who alleged that the easement had been extinguished by a tax sale.

R. S. Robertson, Stratford, for plaintiff.

W. A. Henderson, for defendant.

BOYD, C.:—By statute going back as far as 32 Vict. ch. 36, sec. 107, taxes accrued on any land are made a special lien having preference over any claim, lien, privilege, or incumbrance of any party except the Crown. This provision was in force during the presumed assessment and the actual sale of the strip of land 10 feet wide which is the present cause of contention.

The only decision touching on the section that has been brought to my notice is Tomlinson v. Hill, 5 Gr. 231, in which a valid tax sale and deed was held to extinguish the inchoate right of dower of the widow of the owner. A parliamentary title was given which was paramount to her claim.