

rebuttal. The plaintiff must show the measurements of the ground in dispute in order to prove overlapping of claims. An affidavit by a re-locator that the ground is unoccupied may be regarded as a statutory abandonment of his former claim. Action dismissed.

*Davis*, Q.C., for plaintiff. *Wilson*, Q.C., and *John Elliot*, for defendant Haney.

Full Court.]

KIRK v. KIRKLAND.

[June 27.

*Land Registry Act—Tax Sale—Certificate of title based on—Whether ousts a prior certificate in hands of former owner or not.*

Appeal by defendant Mary M. Johnson, from judgment of IRVING J., in favour of the plaintiff. The plaintiff, who was the owner of certain lots in Vancouver, entered into an agreement for the sale of one of them and then discovered that a conveyance (dated 20th July, 1898) of the lot from the defendant Kirkland, the assessor of taxes, to the defendant Johnson, had been registered. Plaintiff sued to have the deed set aside, and for a declaration that she was the owner of the property. The defendant Johnson pleaded that the said lots were on 15th July, 1896, duly offered for sale by public auction by the defendant Kirkland for arrears in taxes thereon, and were purchased by one S. K. Twigge, whose certificate of purchase and interest thereunder were subsequently transferred to her, the defendant Johnson.

*Held* (Martin, J., dissenting), that a certificate of title based on a tax deed does not, ipso facto, oust a prior certificate of title outstanding in the hands of the former owner, and the holder of such later certificate must affirmatively shew the regularity of all the tax sale proceedings in order to make good his title.

*Martin*, Q.C., A. G., for appellant. *Wilson*, Q.C., for respondent.