

become purchaser of the lots in question for prior taxes, for which the earlier sale was held, in respect of the taxes up to 1897; but the time for redemption was current till 19th October, 1900, and no title was in fact vested by conveyance in the town till 9th April, 1901. So that it was competent for the tax officers to assess taxes validly on these lots for the years 1898-1900: sec. 192. These lots were not exempt under the statute when the assessments were made in the years 1898-1900; at the outside the lots did not belong to the town till after 15th October, 1900, before which that year's taxes had been imposed. There is no valid reason why the purchasers should not have the full benefit of sec. 218 of the Act, which, being read with sec. 222, declares that anyone who purchases at any sale under colour of any statute authorizing sales of land for taxes in arrear shall have a lien on the lands for the purchase money paid and interest, to be enforced against the lands. As against plaintiffs, that is the measure of relief to which all the tax purchasers are entitled.

Judgment for payment of that amount, with interest at ten per cent. and costs of suit, to be paid within a month; otherwise to be realized out of the sale of the lots respectively according to the amount chargeable on each as to each purchaser. No costs to be taxed as to those purchasers who are noted in default.

The proper construction of the agreement and dealings between plaintiffs and the town corporation does not require the latter to intervene for the purpose of paying these taxes and saving plaintiffs harmless therefrom.

Action dismissed with costs to the defendant town corporation.

BOYD, C.

NOVEMBER 19TH, 1902.

CHAMBERS.

RE PHELAN.

*Will—Devise—Restraint on Alienation—Validity—Case Stated—Reference to Divisional Court—Res Judicata.*

Case stated by the Master of Titles. The question arose upon the will of D. T. O'Sullivan, which, after devising certain lands to his nephews, provided that: "Neither of my said nephews is to be at liberty to sell his half of the said property to anyone except to persons of the name of O'Sullivan in my own family. This condition to attach to every purchase of the said property." Ellen Phelan, a married sister of one of the nephews (both O'Sullivans), applied to be registered as owner of the lands under the Land Titles Act.