

meat as "goods and chattels" in the "possession, order, or disposition" of R. as reputed owner with the consent of H., the true owner, within the Bankrupt Act 12 & 13 Vict. c. 106, § 125.

Held, that the debt passed to the assignee.

(Per WILLIS, J., *dissentiente*). The meat never having been in R.'s possession, the debt arising thence was not within his possession, order, or disposition.—*Cooke v. Heming*, Law Rep. 3 C. P. 334.

HIGHWAY — DEDICATION.—The defendant company, by the Railways Clauses Act, 1845, § 16, were empowered to divert ways, subject to the Lands Clauses Act. Section 84 of the latter prohibits entry upon lands to be permanently used for the purposes of the act, until the same had been paid for. *Held*, that the former section did not authorize the company to divert a public footpath on to land of which the company had not obtained the ownership. (Per Lord CAIRNS, L.J.) A highway is not an easement; but the dedication to the public of the occupation of the surface of the land for the purpose of passing and repassing; the public generally assuming the obligation of repairing it. This is a permanent user of the land, within sec. 84.—*Rangleley v. Midland Railway Co.*, Law Rep. 3 Ch. 306.

ONTARIO REPORTS.

COMMON PLEAS.

BELL V. McLEAN.

Sale for taxes—Non-resident land—Taxes not due for five years—Deed by Sheriff's successor—C. S. U. C. ch. 55, sec. 97—27 & 28 Vic. ch. 23, sec. 43.

The collector's roll was delivered to him on 26th August, 1852, and the Treasurer's warrant under which the Sheriff sold the land, which was non-resident land, for unpaid taxes, was issued on 11th August, 1857:

Held, that, as under sec. 42 of the Assessment Act of 1853 (C. S. U. C. ch. 55, sec. 97), the taxes could not be considered due until one month after the Collector had received his roll, the taxes for that year were not due at the time the roll was delivered to him, and that therefore no portion being due for five years on 11th August, 1857, the sale was void.

Seemle, per A. Wilson, J., that the taxes of the preceding year, for the purposes of sale for arrears, are not to be considered as in arrear till after the expiration of the year in they are imposed.

Seemle, that a deed made by the successor of the Sheriff who made the sale for taxes, is good under 27 & 28 Vic. ch. 23, sec. 43.

[C. P. H. T. 31 Vic., 1868.]

Ejectment.

The titles of both parties were admitted.

The defendant claimed under a tax title, and it was admitted he was entitled to recover if the tax title was good in law.

The plaintiff took the following exceptions to it:

1. Taxes were not in arrear for five years when the warrant issued to sell the land.

2. The warrant described the land to be sold as *patented* without specifying for what kind of estate.

3. The notices of sale described the land in same manner.

4. Publication not made a sufficient time. The first advertisement was in the *Gazette* on the 22nd of August, 1857, and the last on the 14th of November, 1857. Statute of 1853, sec. 57 (C. S. U. C. ch. 55, sec. 128) required three months' publication. The first advertisement in the local paper [a weekly] was on the 26th of August, 1857, and the last on the 25th November, 1857.

5. The notices advertised a sale for the 1st December, and no adjournment appeared to have taken place, and the sale was made, not on the 1st, but the 3rd of December.

6. The Sheriff's deed did not describe the land by boundaries, but simply as the west-half of the lot.

7. The whole west-half should have been assessed together, as three acres of it had been sold separately from it.

8. The land was sold by Sheriff Moodie, and the deed should have been made by him, whereas it was made by his successor, Sheriff Taylor, who had no authority to make it.

9. The sale was in 1857, yet no deed was given till 1865, and no registration of such sale was made, while the plaintiff claimed by a connected, registered title traceable from the Crown, one of which registrations was since 1857, that is, on the 27th of February, 1865, while the Sheriff's deed was not made till the 14th, and registered on the 15th, of March, 1865; and the plaintiff had no notice of such Sheriff's deed.

The verdict was entered in the plaintiff's favour with leave to the defendant to move to enter the verdict for him, in case the Court should be of opinion that the objections so taken were not entitled to prevail.

In Easter Term last, *Wallbridge*, Q. C., obtained a rule to set aside the verdict, and enter a nonsuit for the defendant, because the objections taken at the trial were not valid objections to the defendant's title.

Bell, Q. C. (of Belleville), shewed cause:—

As to the first objection, the evidence of the County Treasurer was, that the Collector's roll for Township of Elzevir, in which the land lies, was not completed and sent to him before the 26th of August, 1852, while the warrant to sell was made and delivered to the Sheriff on the 11th of August, 1857, several days less than five years from the time the Collector's roll was complete.

By the 13 & 14 Vic. ch. 67, sec. 10, the assessments for a year are not to be held as due, for the purposes of a sale of land, until the 31st December of that year, and perhaps not until the Collector's roll is returned, if after that day. Here the roll never was returned. Under sec. 33 the Collector must first demand payment before he can enforce payment. By sec. 45 the Treasurer was required to make a list of lands on which taxes remained due at the time the Collector made his return. By sec. 41 the Collector's roll was returnable on the 14th of December. The taxes, so as to charge lands by way of sale, were not due till that time.

By the Act of 1853, sec. 55, the sale could only be made "whenever a portion of the tax on any land has been due for five years." The Treasurer is then to issue his warrant for that purpose.

The warrant issued before any portion of the taxes had been due for five years: the sale was