

The sale took place on 19th December, 1908, and what was advertised to be sold and was offered for sale was "all the right, title, and interest of J. Tremblay and B. Ballard under and by virtue of an oil and gas lease" in the west half of lot No. 12 north of the middle road in the township of Tilbury East.

The respondents became the purchasers at the sale for the price of \$3,080, and signed an agreement to purchase the property mentioned in the advertisement or particulars, a copy of which is annexed to the agreement, at that price and upon the terms set forth in the conditions of sale.

The lands were, at the time of the sale, subject to a tax imposed by the Supplementary Revenue Act, 1907, amounting to \$144.46, but this was not known to the vendors or to the respondents.

By the report of the local Master at Chatham of 1st February, 1909, he deducted from the purchase money the amount of this tax, and treated the sum realised from the sale as \$3,080, less the amount of the tax.

The plaintiffs appealed from this report as to various matters, including the deduction of the tax from the purchase money, and the appeal was heard by Anglin, J., who was of opinion that the proper course would have been to sell subject to the tax, and that it might be that "in strict law the purchaser would only acquire the estate or interest of the owner, and would therefore take subject to the payment of the tax," but, being satisfied that "the Court would not allow a purchaser from it to be put in any unfair position," and of opinion that the only effect which could be given to the appellants' objection would be to set aside the sale and to direct that the property be again offered for sale, and that "this would involve a great deal of expense and inconvenience, probably a loss to the lien-holders greater than the amount of the tax," my learned brother thought that the proper course was to affirm what the Master had done, and he therefore dismissed the appeal.

We are, with great respect, of opinion that, however reasonable the course taken by the Master and approved by my learned brother may appear to have been in the circumstances, it was not proper or in accordance with the practice of the Court against the will of the appellants to vary the terms of the sale, as has practically been done, by allowing