and was pending, could properly issue his appointment and tax the plaintiff's costs.

Held, also, that the taxation was properly had during the long vacation. The defendants objected that they had not a reasonable notice of the taxation by the local Registrar, but did not ask for an enlargement of it, relying instead on objections they took to its proceeding at all, in letters to the plaintiff's solicitors and to the local Registrar, and the taxation proceeded in their absence.

Held, that having taken the risk they must also take the result. A certain sum of money had been paid into Court as security for the defendant's appeal to the Court of Appeal, which was afterwards abandoned; and by an order made on the consent of both parties it was provided that the plaintiff's costs should be paid out of this money after taxation.

Held, ARMOUR, C. J., dissenting, that this money was a fund in Court within the meaning of Rule 1207, and there should be a revision by one of the taxing officers at Toronto of the taxation of costs by the local Registrar.

Per ARMOUR, C. J., the object of Rule 1207 was for the protection of a fund in Court, where the parties to the taxation of costs payable thereout were none of them sufficiently interested in the fund in Court to protect it.

T. Langton, for plaintiff.

C. Millar, for defendant.

Q.B. Div'l Ct.] [Feb. 15.

BARTLETT v. THOMPSON.

Landlord and tenant—Overholding Tenants' Act—Dispute as to date when tenancy commenced—"Color of right."

The proceedings were removed from before the Judge of the County Court of Oxford under the Overholding Tenants' Act, R.S.O. c. 144, and a motion was made by the tenant to set aside the proceedings and the writ of possession granted by the County Judge to put the landlord in possession. The dispute between the parties was as to whether the tenancy began on the 1st or 15th of October. If it began on the 1st, sufficient notice to determine the tenancy had not been given by the landlord.

Held, that there being a dispute between the parties as to the tenancy, there was that "color of right" which the Act contemplated, and the County Judge should have dismissed the case.

Price v. *Guinane*, 16 O.R. 264, approved and followed.

Wallace Nesbitt, for the motion.

C. J. Holman, contra.

Chancery Division.

Div'l Ct.] [Dec. 14, 1888.

DALZIEL v. MALLORY.

Tax sale—Duties of clerk and assessor—Omission to comply with R.S.O. (1887), *c.* 193, *s.* 140—*Curative effect of R.S.O. c.* 193. *ss.* 188, 189.

A lot of land was sold for taxes in 1882, the deed being made in 1883, and an action of ejectment was brought by the purchaser against the owner in 1888. On the trial it was proved that the list of lands required by sec. 140 of R.S.O. (1887), c. 193, was sent by the treasurer to the clerk of the village in which the land was situate, but that it was then lost; and, although the land was occupied, it was not returned "as occupied," nor was the owner notified that it was liable to be sold for taxes, as provided for by sec. 141.

Held [affirming MACMAHON, J.; BOYD, C., dissenting], that the sale was irregular and could not be sustained, and that the defect was not cured by secs. 188 and 189.

Haisley v. *Somers*, 13 O.R. 600; and *Fenton* v. *McWain*, 41 N.C.R. 239, referred to.

Per BOYD, C., dissenting. The omission to raise within the proper time the objection that sec. 141 was not complied with, is cured by sec. 189, and the deed is valid and binding. That section is in the nature of a statute of limitations as to such objections. The decision of the majority of the Court is reached by giving a construction to sec. 163, which in effect adds to the language of the statute, and in so far invades the distinction which ought to obtain between making and administering law.

Haisley v. *Somers, supra*, distinguished.

Aylesworth, for the plaintiff.

J. K. Kerr, Q.C., for the defendant.