

be paid for the same was received, however, the above-mentioned deed executed by the widow and children of the testator, which had been mislaid for several years, the grantee under it having died, was discovered, and the children of the grantee claimed the whole of the said money, and an action was brought by the other heirs for their respective shares of the same. On the trial judgment was given in favour of the plaintiffs, the trial judge holding that an agreement was proved between the parties that the money should be equally divided. This decision was affirmed by the Divisional Court, but reversed by the Court of Appeal.

Held, affirming the decision of the Court of Appeal, that the purchaser at the tax sale paid the money at the tax sale in order to obtain a perfect title; and as the defendants were the only persons who could give such title, the legal estate being in them, the plaintiffs could not claim any part of the money, no agreement with the defendants to apportion it being proved, and any agreement made by the plaintiffs with the purchasers not being binding on the defendants.

Appeal dismissed with costs.

Marsh, Q.C., for the appellants.

Donovan for the respondent.

BOOTH v. RATTE.

Practice—Master's office—Reference to assess damages—Severance of damages—Reasons for report—Judgment of court—Equal division—Withholding judgment.

R. brought an action against several mill owners on the Ottawa River for damage to his business, as an owner and letter of boats, caused by sawdust and mill refuse being thrown into the river and accumulating so as to obstruct navigation; and he claimed that he was not only prevented from sailing his boats on the river, but his customers who hired boats left him on account of the sawdust and refuse accumulating in front of his boat house. On the trial judgment was given for the defendants, but was reversed by the Court of Appeal and by the Privy Council, and a reference to a Master was ordered to assess the damages. Before the Master defendants claimed that other mill owners not proceeded against in the action had contributed to the alleged nuisance, and that the report should show the amount of damage caused by each defendant, also the amount of damage to R. under each head of injury claimed. The defendant's offered evidence to show that the loss of custom to R. in letting boats arose from the change in public taste, customers preferring the canal to the river; and plaintiff gave evidence in rebuttal, some of which defendants alleged to be irrelevant. The Master having reported generally awarding R. \$1000 damages against each of the defendants, an appeal was taken against the report, resulting in its being affirmed by the Chancellor; and in the Court of Appeal two of the four judges were in favour of confirming the report, and the other two gave no judgment. On appeal by defendants to the Supreme Court, in addition to the objections to the report, it was argued that the Court of Appeal gave no judgment.