

occurring in the course of an interview concerning a matter to which he did attach importance, would neither fix itself in his memory nor be noted in the memorandum which he made as to the matters about which he was particularly inquiring. This consideration balanced, if it did not outweigh, the effect of the other matters mentioned; and the case was one for the application of the rule referred to. The words of the statute seem to cast upon the plaintiff the burden of proving that he began his action within 60 days after he received notice of the sale.

The learned Judge said that he had considered and reached a conclusion upon the question whether the Bulk Sales Act applied to such a sale as that attacked; but, as that point was one upon which opinions might differ, and a decision of it was unnecessary, he said nothing about it.

*Action dismissed with costs.*

LATCHFORD, J.

JUNE 29TH, 1920.

BATTLE v. QUILLINAN.

*Easement—Right of Way over Strip of Land—Unlimited Right Created by Grant—Obstruction of Way by Building—Mandatory Injunction Granted to Compel Removal of Obstruction—Discretion—Costs.*

Action for an injunction restraining the defendant from erecting any building upon the southerly 8 feet of lot 73, plan 603, Niagara Falls, and for a mandatory order for the removal of the building in course of erection thereon.

The action was tried without a jury at Welland.

T. D. Cowper, for the plaintiff.

T. N. Phelan, for the defendant.

LATCHFORD, J., in a written judgment, said that the plea set up by the defendant for reformation of the deed having failed, and the erection of a garage on part of the way over which the plaintiff had a right having been proved, the only question remaining for consideration was, whether the defendant should be compelled to remove the obstruction or pay damages.

The garage was undoubtedly a substantial interference with the right, in respect of which the plaintiff was entitled to maintain an action.

When a right of way is created by grant, it must depend on the proper construction of the grant whether the way is to be used for all purposes or for but limited purposes. If, as in this case, there is no limit to the grant, the way may be used for all purposes: