

Falconbridge, C. J. K. B., Street, J., Britton, J.]

[May 22.

LLYD V. WALKER.

Assessment—Distress for taxes—"Owner"—Agent for mortgagees in possession—R.S.O. 1897, c. 224, s. 135, sub-s. 3.

Mortgagees in possession entered into an agreement with the plaintiff reciting that they were about to take proceedings to foreclose their mortgage and that the plaintiff had agreed to become the purchaser of the mortgage at a sum equal to the principal, interest and costs, the purchase to be carried out so soon as the vendors should have obtained a final order of foreclosure upon which event and upon payment by the plaintiff of \$2000 they would convey the premises to them taking back a mortgage to secure payment of the balance of the purchase money; and in the meantime the plaintiff was to be allowed as their agent to manage the property, receive the rents and make sales subject to their approval and to render accounts to them.

Held, that the plaintiff was not the owner of the premises within s. 135, sub-s. 3 of the Assessment Act and the collector was not authorized to levy the taxes assessed against the property upon the plaintiff's goods.

Semble, per BRITTON, J., that a mortgagee in possession would be an owner whose goods would be liable to seizure and so would one who had an absolute agreement to purchase with the mortgagee, but in this case the plaintiff held only a conditional agreement for the sale of the property and was in the position only as agent for the mortgagee.

J. J. Warren, for plaintiff. *S. B. Woods*, for defendant.

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[May 23.

BATZOLD V. UPPER.

Evidence—Corroboration—"Some other material evidence"—Cestui que trust not party—R.S.O. 1897, c. 73, s. 10.

The material corroborative evidence required by R.S.O. 1897, c. 73, s. 10, in a proceeding by or against the executors of a deceased person may be given by one who is interested as cestui que trust in the matter of the claim in question in the action. The interest of such a witness in the result may well be considered by the jury in considering the weight to be attached to it but the evidence could not be withdrawn from their consideration.

Denison, for plaintiff. *Wilson*, for defendant.

Street, J., Britton, J.]

DUNN V. PRESCOTT.

[June 2.

Bailment—Grain elevator—Negligence—Storage—Duty of periodical examination—Fermentation of corn.

The defendants were keepers of an elevator and on April 24, 1897, received from the plaintiff a quantity of corn for storage and stored it in