

The defendant should now amend so as to conform to this judgment. Plaintiff to have the usual time to reply.

The costs of the motion will be in the cause.

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APRIL 23RD, 1909.

DIVISIONAL COURT.

WESNER v. TREMBLAY.

*Mechanics' Liens—Sale of Land Affected to Realise Liens—Judicial Sale—Interest under Oil and Gas Lease—Contract of Purchasers — Land Subject to Tax Imposed by Supplementary Revenue Act, 1907—Ignorance of Vendors and Purchasers of Existence of Tax—Purchasers not Entitled to have Amount of Tax Deducted from Purchase Money—Rescission of Sale—Direction for Re-sale—Costs—Appeals.*

Appeal by plaintiffs from order of ANGLIN, J., ante 544, dismissing plaintiffs' appeal from a report of the local Master at Chatham, dated 1st February, 1909.

J. M. Ferguson, for plaintiffs.

W. E. Middleton, K.C., for the claimants MacEwen Brothers.

The judgment of the Court (MEREDITH, C.J., MAGEE, J., LATCHFORD, J.), was delivered by

MEREDITH, C.J.:—The action is a mechanic's lien action, and by the judgment pronounced at the trial, which is dated 20th June, 1908, it was ordered and adjudged that, in default of payment by the defendants into Court of the amounts which upon the reference directed by the judgment should be found due to the lien-holders, the lands upon which the lien existed should be sold with the approbation of the local Master at Chatham, and the purchase money paid into Court.

Default was made in payment of the amounts found due to the lien-holders, and a sale thereupon took place under the authority of the judgment.