

VALUING LANDS TAKEN FOR RAILWAY.

See "Railway Company," 2.

VARYING CONSIDERATION STATED IN DEED.

See "Parol Evidence of Consideration."

VENDOR AND PURCHASER.

In 1835, *D.*, the owner of land, sold and conveyed the same to *S.* for £310, and a mortgage was executed by the purchaser for the whole of the consideration money. In 1838 *S.* sold and conveyed his equity of redemption to *K.* In 1842 the original vendor filed a bill of foreclosure against *S.*, on which a final decree of foreclosure was obtained in August, 1846; but to this suit *K.*, through some oversight, was not made a party. Sixteen months afterwards *D.* effected a sale of the same property to another purchaser, who, in October, 1854, mortgaged to the defendant *W.*, and he, in September, 1860, obtained a final order of foreclosure, by reason of default in payment, and subsequently conveyed to his co-defendant. During the time *W.* held the land he paid a sum for taxes exceeding the original purchase money; *K.* never having paid anything on account thereof, or of the money or interest secured by the mortgage from *S.* to *D.* (of 1825.) In 1876 *K.* died, and the plaintiff, his heir-at-law and devisee, in June of that year, for the first time discovered the conveyance of 1838 from *S.* to *K.*, and thereupon filed a bill seeking to redeem.

Held, under the circumstances stated, that whether the original transaction between *D.* and *S.* could only be looked at as one between mortgagor and mortgagee, or merely as one between vendor and vendee, the plaintiff was not entitled to relief, and the bill filed by him was, therefore, dismissed with costs; and *Seem*, that *S.* having been an innocent purchaser at a time when registration was not notice, would have afforded a good ground of defence, if it had been taken by the answer.

Kay v. Wilson, 212.

2. Where the purchaser paid a deposit on effecting a purchase, which he afterwards rescinded in consequence of a good title not having been made out, and recovered judgment at law for the amount of the deposit, which he was unable to realize under execution:

Held, notwithstanding the provisions of the Administration of Justice Act, that the purchaser had a right to institute proceedings in this Court to enforce his lien, his object being to obtain a *lis pendens* which he could not obtain at law, in order to prevent the vendor disposing of his lands as he had of his goods.

Burns v. Griffin, 451.

[Affirmed on Appeal, 16th March, 1877.]