

given setting aside the tax sale on the following grounds: (1) No resolution of the council of the municipality was passed as required by the statute directing the treasurer to prepare a list of lands liable to be sold for taxes prior to the preparation of same, or until after the reeve had signed the warrant to the treasurer to proceed with the sale. (2) Only one of the two lists of lands for sale was authenticated by the signature of the reeve and the seal of the municipality, whereas the statute, R.S.M., c. 101, s. 148, requires that both lists should be so authenticated. (3) There was no resolution of the council directing the treasurer in what newspaper the advertisement of the sale should be published as the statute requires, where there is no newspaper published in the municipality as in this case. (4) At the sale the land was bought for the municipality, but no resolution was passed by the council prior to the sale authorizing the reeve or any other member of the council to attend and bid.

Held, also, following *O'Brien v. Cogswell*, 17 S.C.R. 420; and *Nanton v. Villeneuve*, 10 M.R. 213, that the effect of ss. 190, 191 of the Assessment Act, R.S.M., c. 101, as amended by 55 Vict., c. 26, ss. 6, 7, is to remedy only irregularities and not absolute nullities, and not to validate sales made on the basis of absolutely void proceedings as in this case. Verdict for defendant in the issue.

Howell, Q.C., for plaintiff. *Munson*, Q.C., for defendant.

Bain, J.]

McFADDEN v. KERR.

[March 29.

*Garnishment—Queen's Bench Act, 1895, Rules 425, 742, s. 39, s.-s. 11—
What may be attached—Equitable execution.*

Plaintiff, a judgment creditor of defendant, had issued and served a garnishing order upon the garnishee, but at the time of such service the only foundation for the claim that there was any debt, obligation, or liability from the garnishee to the judgment debtor was that the latter had previously sold a farm to the former for \$1,800 which had been paid in full, and that the garnishee had agreed that if he could at any time sell the farm for more than \$1,800, he would do so, and hand over any surplus to the judgment debtor. The latter applied under Rule 425 of the Queen's Bench Act, 1895, to set aside the garnishing order.

Held, that there was neither any debt owing or accruing from the garnishee to the judgment debtor, nor any claim or demand arising out of trust or contract, which could have been made available by equitable execution, nor would it be proper to appoint a receiver under s. 39, s.-s. 11, of the Act, for the claims and demands referred to in Rule 742 of the Act, as re-enacted by 60 Vict., c. 4, are those that could be made available by equitable execution at the suit of the judgment debtor himself, and not at the suit of the judgment creditor; and the former had no cause of complaint or right of action against the garnishee at the time the order was