

Cameron and James for defendant moved for a nonsuit on the grounds (1) that the original will should have been produced ; (2) that the plaintiffs had not been identified as the executors and trustees under the will ; and (3) that Alexander Smith, the testator, had not been identified as the patentee.

Held, (1) While under the old law the first objection would stand, yet now, where under our statutes land is assimilated to personal property and goes to the executors, and in view of the provisions of s. 118 of the Real Property Act, whereby before the district registrar the probate or an office copy is considered sufficient evidence in the granting of a certificate of title, it would appear by analogy that the probate would be sufficient evidence to satisfy the court.

(2) In any event, the same conclusion might be arrived at by applying the rule laid down in *Taylor on Evidence*, s. 395, 16th ed., in regard to an executor proving title by the production of probate or an exemplification thereof granted by a registrar or district registrar of the court of probate : *Cox v. Allingham*, Jac. 514 ; *Bissett v. Maw*, 7 A. & E. 253.

(3) As to the identification of the plaintiffs as the executors and trustees named in the will, in the absence of proof to the contrary the identity of names may be considered as a reasonable and sufficient presumption that they are the same persons : *Armour on Titles*, 105, quoting *Nicholson v. Burkholder*, 21 U.C.R. 108.

(4) The same may be said as to the identification of the deceased as the patentee.

(5) By producing the exemplification of patent the plaintiffs made a *prima facie* case.

Nonsuit refused.

The only evidence brought forward by the defendant was the order in council, proved by a copy of the *Manitoba Gazette*, establishing the Adelaide School District, and a tax sale deed to him from the trustees of the school district, dated March 23, 1881.

Held, the holder of a tax deed must, in order to establish his title, show that there were some taxes due and in arrears at the time of sale : *Stevenson v. Truynor*, 12 O.R. 804 ; *Ryan v. Whelan*, 1 W.L.T. 30, 104 ; 3 W.L.T. 167 ; *Archibald v. Youville*, 1 W.L.T. 140 ; and *Alloway v. Campbell*, 2 W.L.T. 26, 48.

Verdict for plaintiff.

TAYLOR, C.J.]

[Dec. 6, 1893.]

CANADA PERMANENT LOAN AND SAVINGS COMPANY v. DONALDSON.

Mortgagor and mortgagee—Extending time for redemption—Grounds for so doing considered—Terms—Costs.

In equity.

Bill to foreclose mortgage. November 16 last was the day appointed for payment. On that day defendants served notice of motion to have time extended for three months.

The loan was originally \$40,000, interest at seven and a half per cent. Default having been made in payment of instalments, plaintiffs went into pos-