

and binding upon the former owners of the said lands and upon all persons claiming by, through or under them."

*Held per Fitzpatrick, C.J., and Idington and Anglin, JJ.* (reversing the judgment appealed from, 9 West. W.R. 440), Davies and Brodeur, JJ., *contra*, that, in the absence of evidence to the contrary, it must be presumed that the delivery of the conveyance to the tax sale purchaser took place on the date of the tax sale deed; that the execution and delivery thereof were premature, and, therefore, the conveyance was ineffectual and insufficient to justify the issue of a certificate of title under the provisions of the Land Registry Act or of the Torrens Registry Act, 1899, and, further, that the curative clauses of sections 125, 153 and 156 of the Assessment Act, 1903, could not be applied so as to have the effect of validating the void conveyance.

Appeal allowed without costs.

W. N. Tilley, K.C., for appellants. James A. Harrey, K.C., for respondent.

Alta.]

[June 24.

CANADIAN NORTHERN WESTERN RY. CO. v. MOORE.

*Railways—Expropriation of lands—Arbitration—Appeal—Jurisdiction of Court on appeal—Reference back to arbitrators—Proceedings by arbitrators—Receiving opinion testimony—Number of witnesses examined—Alberta Arbitration Act, 1909—Alberta Railway Act, 1907—Setting aside award—Evidence—Admission in prior affidavit—Ascertaining value of lands.*

The provisions of the Alberta Arbitration Act of 1909, in relation to references to arbitration, apply to proceedings on arbitrations under the Alberta Railway Act of 1907, and give power to the Court or a Judge, on an appeal from the award made, to remit the matters referred to the arbitrators for reconsideration. Anglin, J. inclined to the contrary opinion.

*Per Davies, Idington and Anglin, JJ.* (Fitzpatrick, C.J., *contra*). When arbitrators have violated the provisions of section 10 of the Alberta Evidence Act of 1910 by receiving the testimony of a greater number of expert witnesses than three, as thereby limited, upon either side of the controversy, their award should be set aside by the Court upon an appeal.

*Per Fitzpatrick, C.J., and Idington, J.* (Davies, J., *contra*). An affidavit of the party whose property has been expropriated, made for different purposes several years prior to the expropriation proceedings, cannot properly be taken into consideration by