

Province of Manitoba.

QUEEN'S BENCH.

Killam, C. J.]

IN RE BUCHANAN.

[July 29

*Real Property Act, R.S.M., ss. 127, 128—60 Vict., c. 21, s. 1, (M. 1897)**—61 Vict., c. 33, ss. 8-10—Cancelling certificate of title issued in error**—Jurisdiction of Court to order cancellation without fraud being shown**—Title to lands bought at tax sale.*

Application by District Registrar to cancel certificate of title issued to James Buchanan under "The Real Property Act," R.S.M., c. 133. Under ss. 126, 127 of the Act, if it appears to the satisfaction of the District Registrar that any certificate of title or other instrument has been issued in error or fraudulently or wrongfully obtained, he may take proceedings for summoning before a Judge of the Queen's Bench the person holding the certificate or other instrument and for the cancellation of the same by order of the judge. By s. 128, "In any proceeding respecting land . . . or in respect of any instrument . . . affecting land, it shall be lawful for a Judge in Chambers by decree or order to direct the District Registrar to cancel, correct, substitute or issue any certificate of title, or make any memorial or entry in the register, or otherwise to do every such act and make every such entry as may be necessary to give effect to the judgment, decree or order of the Court. (a) Provided that no certificate of title shall be cancelled or set aside save in the cases specially excepted in the 57th section of this Act. By 57, as amended by 55 Vict., c. 38, s. 4, a certificate of title is made conclusive evidence of the title certified to, subject to the right of any person to show that the land described is subject to any of certain exceptions or reservations (which could have no application in this case), or to show fraud; and it was contended that the effect of the above proviso to section 128 is that it is necessary to show fraud to which the holder of the certificate was a party, before a Judge can direct cancellation of it under section 127.

Held, that the proviso referred to in no way affects or qualifies the powers given by s. 127, and a certificate issued through an error on the part of the District Registrar may be ordered to be cancelled without showing fraud on the part of the holder.

Under 60 Vict., c. 21, s. 1, as amended by 61 Vict., c. 33, ss. 8-10, regulating the proceedings to obtain title to lands purchased at a sale for arrears of taxes, it was error in law for the District Registrar to issue the certificate of title within six months from the date of the application, although he had the consent of the only person who to his knowledge had a right to oppose the issue. When he issued the certificate he was not