

C. L. Cham.]

RE STREET.—ASSESSMENT OF DAVID DOWNEY ET AL.

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petitioner's affidavit that one Hicks, to whom the petitioner agreed to sell the land in 1866, was still in possession, and that possession had always accompanied the title.

No notice appeared to have been given to the person who was in possession.

No affidavit was put in as to adverse claims served upon the person directed to receive them.

The evidence as to possession and the existence of the power of attorney was held insufficient, and a certificate of title was refused until further evidence should be given to clear up the suspicious circumstances in the deed, said to be executed in pursuance of the power of attorney, and affording positive proof of the existence of the power, or else showing the exercise of acts of ownership, which would justify the presumption that a conveyance of the legal estate had been made by the patentee.

Notice was directed to be given to the person in possession, and an affidavit as to adverse claims ordered to be furnished.

The facts sufficiently appear in the judgment.

MR. TAYLOR, INSPECTOR OF TITLES. The Master has certified that the petitioner is entitled to a certificate of title as prayed by his petition, but in my opinion the petitioner has wholly failed to show his right to such a certificate. It must be borne in mind that there is no evidence of possession except a statement on this petitioner's affidavit, that one Edward Hicks, to whom he, in 1866, agreed to sell the land, is in possession, and that possession has always accompanied the title under which he (the petitioner) claims. Whether there is now or has at any time been actual occupation of the land does not appear.

The paper title on which the petitioner relied was as follows: the Crown to Wm. B. Brown, Wm. Johnston to Josiah Page, and Josiah Page to the petitioner. No conveyance from Brown, the patentee, to Johnston is produced, indeed it is said there was none. Brown, it is said, sold to Johnston, and instead of a conveyance, gave him a power of attorney to sell and convey. In pursuance of this power, Johnston sold and conveyed to Page. The deed to Page is not, however, the deed of Brown at all. He is not once named in it; Johnston is the granting party. It is true the deed is executed by Johnston as attorney for Brown, but there are two suspicious circumstances apparent. The name of the patentee as given on the patent is "William B. Brown." The deed is signed, and so is the receipt for purchase money "Wm. W. Brown, William Johnston, attorney." Then it is quite evident both from the position of the words and also from the difference in colour of the ink that the words "Wm. W. Brown" "Attorney" were in both places written at a different time from the signature "William Johnston."

Then there is no evidence of Brown having ever given any power of attorney to Johnston, except Johnston's own evidence, and he does not swear positively to the fact. He only says that Brown "gave me to the best of my knowledge and belief, a power of attorney, &c." It is true in another paragraph of his affidavit he says the power of attorney under which he conveyed was valid, and of full legal effect, but no one except himself gave any evidence as to his power of attorney, or of ever having seen it. He and another person have searched among his papers and cannot find it. Page, the grantee, and another have also made vouchers, and have also been unable to find it. When I say there is no evidence of the power of attorney except Johnston's own, I exclude the affidavit of Page.

He says Johnston bought from Brown, who instead of a conveyance gave him a power of attorney, and he believes it was in existence at the time Johnston conveyed to him, but this evidence is valueless. He does not say he ever saw the power of attorney, and he does not state his source of knowledge. He lives in another part of the country from both Brown and Johnston, and the transaction he is speaking of is one which took place before he had any connection with or interest in the property.

Perhaps the petitioner may be able to give such evidence of the purchase by Johnston from Brown to account for the difference of name—Wm. B. Brown and Wm. W. Brown, and to give such positive proof of the existence and due execution of the power of attorney as to establish a good equitable conveyance to Page of the patentee's estate in the land. He may also be able in addition to shew such possession, and the exercise of such acts of ownership, payment of taxes for a long series of years, &c., as would justify the court in assuming a conveyance of the legal estate to have been made, but in the absence of very clear and distinct evidence on those points, it is impossible for the petitioner to obtain a certificate of his title under the Act.

I may mention two more points. No notice appears to have been given to Hicks, who is in possession. If the petitioner should proceed further this would be essential. There is no affidavit from the person named in the advertisement as the person upon whom notice of claim is to be served, showing that no notice of any such claim has been received by him.

ASSESSMENT CASES.

(Before the Judge of the County Court of the County of Prince Edward.)

IN THE MATTER OF THE ASSESSMENT OF DAVID DOWNEY AND OTHERS.

Assessment Act of 1869, (Ont.)—Time for service of notice of appeal.

The three days allowed for service of notice of appeal from assessment counts from the time of the decision of each case by the Court of Revision, and not from the day the court closes.

[Picton, June 13th, July 3rd, 1872.]

The appellants, on the 6th day of May last past, served the Municipal Clerk with notices of appeal from the decision of the Court of Revision, respecting the assessment of the above parties. The Clerk refused to receive the notices or consider them as filed in these cases, on the ground that they were served too late, as the Assessment Act of 1869, (Ontario,) required them to be served within three days after the decision of the Court of Revision; the Court of Revision held its first Session on the 25th day of April, 1872, adjourned until the following day; adjourned until and again met on the 29th of the same month, disposed of balance of cases on list, then adjourned until the 6th day of May last, upon which day the minutes of the previous session were approved and the roll confirmed.

Appellants considered the notices were served in proper time—that the three days commenced