

to the inhabitants of the particular locality affected, though his property may be depreciated more than that of any of the others. The claimant in such a case would have no right of action at common law, and therefore his land was not injuriously affected within the meaning of the statutes, the test in such cases being, would the complainant have a right of action if the work had been done without statutory authority? *King v. McArthur*, 34 S.C.R. 570, followed; *Chamberlain v. West End, Etc. Ry. Co.*, 2 B. & S. 617; *Metropolitan v. McCarthy*, L.R. 7 E. & I. App. 243; *Caledonian Ry. Co. v. Walker*, 7 A.C. 259, and *Tate v. Toronto*, 10 O.L.R. 650, distinguished.

*Elliott and MacNeill*, for claimant. *J. Campbell*, K.C., and *T. A. Hunt*, for City of Winnipeg.

Prendergast, J.]

[August 4.]

EGGERTSON v. NICASTRO.

*Fraudulent conveyances*—27 Eliz. c. 4—*Voluntary settlement*—*Consideration*—*Subsequent purchaser for value*.

The wives of the defendants were sisters, and, on the death of Nicastro's wife, the defendant Pinaro, from motives of humanity and relationship, took over and afterwards maintained the infant children of Nicastro with his consent, as the latter was, through habitual and excessive drinking, unable to take care of them. About eight months afterwards, Nicastro conveyed to Pinaro the property in question, being all he had in the world, in trust for the maintenance of the children and Pinaro continued to support and maintain them. One year later, Nicastro gave an agreement of sale of the property to the plaintiff for a valuable consideration.

*Held*, 1. At the time of the conveyance to Pinaro, he had a good cause of action against Nicastro on the implied contract to pay for the support and maintenance of the children; and, as a pre-existing debt may be a valuable consideration, the deed was not voluntary in its inception. *Cracknall v. Janson*, 11 Ch. D. at p. 10, followed.

2. There was, at all events, an ex post facto consideration sufficient to support the deed in that Pinaro continued to maintain the children for a year before the conveyance to the plaintiff. *Prodgers v. Langham*, 1 Sid. 133; *Johnson v. Legard*, T. & R. at p. 294, and *Bayspoole v. Collins*, L.R. 6 Ch. A. at p. 292, followed.

*Anderson*, K.C., and *Garland*, for plaintiff. *Graham* and *Fullerton*, for defendants.