

14 on the north side of Richmond street west, on a plan of part of lot 7, sec. C. military reserve, as more particularly described in said deed.

W. J. Clark, for the vendors.

J. T. Richardson, for the purchaser.

HON. MR. JUSTICE BRITTON:—The facts are the following:—

Robert John Hay and his wife lived together until about the first day of January, 1880, and the only child born to them was one son, named William John Hay.

The land mentioned was purchased by Robert John Hay and conveyed to him by deed, dated the 23rd day of December, 1881, and in the conveyance the words describing Robert John Hay are "as trustee for Wm. John Hay"—his son. It is said that the age of the son was then about two years.

Matilda Agnes Hay deserted her husband about the first of January, 1880.

The infant son died on or about the 30th June, 1882.

The said Robert John Hay did not sign the deed—and he never signed any deed of trust. It was argued that he never was trustee in fact. Certain it is that the land was purchased by Robert John with his own money. He remained in possession until 22nd May, 1903, when he sold to John and Margaret Brennan the present vendors.

It is now suggested that Matilda Agnes, if living, may be entitled to an interest—by reason of her husband taking the land in trust for the son.

The facts are sufficient to warrant the order declaring that the wife is not, if living, entitled to dower.

It seems to me unnecessary to formally decide the questions of trusteeship. The son died on the 20th June, 1882, leaving no brother or sister, but only his father and mother. The law then in force in regard to descent of real property in Ontario was ch. 105, sec. 22, R. S. O. 1877. Robert John Hay was the sole heir at law of his son Wm. John. The mother of the infant took no interest in the land other than that of her inchoate right of dower.

The order should go declaring that the said Matilda Agnes Hay is not entitled to any interest in said land. No order as to costs.