

Full Court.]

[March 7.]

## FONSECA v. SCHULTZ.

*Lien—Tax sale—Redemption of portion of land.*

Bill to establish lien on certain lots. The plaintiff and defendant owned three parcels of land which were sold for taxes, each lot being sold separately. The plaintiff, in seeking to redeem those parts of said parcels which she owned, was forced by the city treasurer to pay the whole amount of the arrears of taxes, interest thereon, and charges, for which the three parcels were sold. She then filed a bill to have a lien declared in her favor on the interest of the defendant in the said parcels.

The defendant demurred. Judgment by Bain, J., overruling demurrer. Defendant appealed.

Sec. 667 of Municipal Act, 1886, provides for redemption by "the owner . . . or his executors, etc., . . . or any other person on their or his behalf, but in his name only," of "the estate sold, by paying or tendering . . . for the use and benefit of the purchaser . . . the sum paid by him, etc." It contains no provision for the redemption of part of the land sold, and makes no mention of such redemption except in the concluding clause.

*Held*, that it was necessary for the plaintiff to pay the taxes upon the whole land in order to secure her own portion. Section 638 refers to payment of taxes before sale and does not apply to this case, distinguishing same from *Con. Stat. U.C., c. 55, s. 113*, and *Payne v. Goodyear*, 26 U.C.R. 448, decided thereon.

Appeal dismissed with costs.

*Tupper, Q.C.*, and *Phippen*, for defendant.

*Andrews and Harvey* for plaintiff.

Full Court.]

[March 7.]

## RE MATHERS.

*Real Property Act—Taxation of half-breed land—Allotment.*

Case stated by district registrar to Judge in Chambers under s. 120, R.P. Act, and by said Judge referred to Full Court. Certain lands were allotted some time prior to 1883 to one Ross, as the child of a half-breed head of a

family, but the Crown patent therefor was not issued till January 28th, 1886. Ross attained eighteen years on February 4th, 1883. The land was sold on November 21st, 1887, for arrears of taxes for years 1882-4-5. The following question was submitted: "Was such sale for arrears of taxes for 1884-5, for which years the land was assessed to the allottee Ross, legal when the legal title remained in the Crown until January 28th, 1886?"

By s. 125, B.N.A. Act, "no lands belonging to Canada or any province shall be liable to taxation."

By s. 30, Manitoba Act, all ungranted lands in the Province shall be vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion.

*Held* (1), that after the allotment of the land in question to the half-breed Ross, he was precisely in the same position as he would have been had he agreed to purchase this land from the Crown, and had become entitled to the patent; while the legal estate remained vested in the Crown, the beneficial interest belonged to and was vested in Ross, and it was competent for the Provincial Legislature to make such interest liable to taxation if it saw fit to do so. *Railway Co. v. Prescott*, 83 U.S. Sup. Ct. 603, approved of.

By Municipal Act, 1883, s. 239 and s. 4, s.s. 5, real property, and "all rights thereto and interests therein," were made liable to taxation.

*Held*, the interest or property of Ross was "real estate" or "real property," which both Acts (1883-84) made liable to taxation, except such of it as was specially exempted, and the fact that this land is not specially referred to in these sections as one of the kinds of unpatented lands that may be taxed should not be held to override the intention expressed in other provisions of the Acts, that it was liable to be taxed.

Question answered in the affirmative.

*C. P. Wilson* for the district registrar.

*Mathers* for applicant.