

and asked him if he had given any written agreement to plaintiffs, and McKay told him that he had not done so.

*Held*, that there was not sufficient proof of actual notice to defendant of the assignment to plaintiffs to defeat his priority of registration. By the execution of the first assignment, as between McKay and the plaintiffs, the latter became entitled to his interest in the contract with the trustees, and to acquire the land from them. As between them and the defendant, the plaintiffs were the first assignees of the contract, and had become entitled to obtain the legal estate.

Except, then, for the effect of the Registry Act, the issue should be found for the plaintiffs. A second assignment, in proper form, if first registered without notice of the previous one, would take priority, even though the first assignee should have completed the purchase and acquired the legal estate.

There was not, on the deed, an affidavit of execution by the grantee.

*Held*, that, notwithstanding that, the deed was properly registered.

*H. M. Howell*, Q.C., for plaintiffs.

*J. S. Ewart*, Q.C., for defendant.

TAYLOR, C.J.]

[Jan. 21.]

JAMES v. BELL.

*Injunction to restrain issue of tax sale deed—Costs—Sale rescinded by municipality.*

The plaintiff, owner of land sold for taxes, filed a bill against the purchaser, and the mayor and secretary-treasurer of the town, to restrain the issue of a deed to the purchaser. The principal objection taken was that no by-law had ever been passed authorizing the sale. Before the motion for injunction came on for hearing, the sale was rescinded by the Council.

*Held*, that, as it was shown by plaintiff on his bill, that no by-law had been passed, the issuing of the deed could not prejudice the owner's right to set aside the sale, even after the deed had been issued.

*Ryan v. Whelan*, 6 Man.R., 565, followed.

The plaintiff was not justified in applying for the injunction against the mayor and treasurer, and they were entitled to their costs of the motion.

*J. D. Cameron* for plaintiff.

*C. P. Wilson* for defendants.

KILLAM, J.]

[Jan. 24.]

SAWYER v. BASKERVILLE.

*Sale of machinery—Possession resumed by vendors—Re-sale—Bill to enforce lien for balance due.*

The plaintiffs agreed to sell, and defendants to buy, a threshing machine and outfit, the property not to pass until payment; terms to be part cash and part notes, plaintiffs to have a lien on defendants' farm for balance due. The machine was delivered, but defendants considered it did not work according to the warranty which they alleged was given them, and they returned the machine to plaintiffs' agent, refusing to make any payment or to sign the notes. The plaintiffs took the machine and re-sold it; they then filed a bill seeking to charge defendants with the difference, asking for an order for payment and that the balance due might be declared a charge on defendants' lands.

Bill dismissed without costs, and without prejudice to any action at law for breach of the contract. Decree to contain a declaration that plaintiffs had no charge on defendants' lands. Plaintiffs might bring an action at law for damages for refusing to accept and pay for the machinery, but not for the price, as such, they having sold the machinery.

In re-selling the machinery the plaintiffs must be taken to have elected to rescind the contract, and to rely upon their claim for damages.

*J. A. M. Atkins*, Q.C., and *W. H. Culver*, Q.C., for plaintiffs.

*J. S. Ewart*, Q.C., and *J. E. Porter*, for defendants.

TAYLOR, C.J.]

[Jan. 26.]

RE LAKE WINNIPEG TRANSPORTATION CO.

*Petition to wind up company—Preliminary objections—Charter not ultra vires—Execution against company, "unsatisfied."*

An execution creditor applied to wind up the company. The company did not appear, but several other creditors opposed the application. The petitioner took the objection, that on the application for the winding up order, only the company could be heard to oppose it; creditors could be heard on the appointment of a liquidator.