

WINCHESTER, MASTER.

OCTOBER 23RD, 1902.

CHAMBERS.

' FARMERS' LOAN AND SAVINGS CO. v. HICKEY.

Third Parties—Action to Set aside Tax Sale—Claim by Purchaser to Relief over against Municipality.

Motion by the corporation of the town of Toronto Junction to set aside an order making them third parties herein.

The action was brought, to set aside a tax sale, against a person who had obtained a conveyance from the mayor and treasurer of the applicants under such sale.

The defendant claimed that she was entitled to some relief over against the corporation by virtue of the deed of conveyance.

W. E. Raney, for the third parties.

H. F. Gooderham, for defendant.

F. J. Dunbar, for plaintiff.

THE MASTER.—The deed does not purport to bind the corporation, and, besides, the statute provides for the relief to which a tax purchaser is entitled. I am, therefore, of opinion that the third party notice must be set aside.

The plaintiff was unnecessarily served with notice of this application. There will be no costs to the plaintiff. The third party will be entitled to the costs of this application, to be paid by the defendant forthwith.

BOYD, C.

OCTOBER 23RD, 1902.

TRIAL.

GRAND TRUNK R. W. CO. v. VALLIEAR.

Way—Private Way—Easement—Prescription—Railway Lands—User not Incompatible with Requirements of Railway.

Action for damages for forcible removal and destruction of plaintiffs' fence by defendant, and for destruction of other property of plaintiffs, and for an injunction. Counterclaim for damages for removal of defendant's gate and interference with right of way.

Wallace Nesbitt, K.C., for plaintiffs.

S. W. McKeown, for defendant.

BOYD, C.:—The facts in this case are all one way. The defendant has used openly, continuously, and without interruption, for over 30 years, a foot-path, well defined, from the rear of his lot to the common, public roadway opening on the station grounds. The entrance to the station yard is protected by a gate which is frequently kept locked at night, and