Held, that though these irregularities indicated want of care and accuracy in the officers of the municipality, they did not invalidate the assessment, as the land was sufficiently pointed out. *McKay* v. *Chrysler*, 3 S. C. R. 474 distinguished. *Held*, also, that the words "be the same more or less" following the description of the quantity of the land improperly inserted in the Sheriff's deed might be rejected as surplusage.

The Sheriff's certificate of the sale is made for the purpose of giving the purchaser certain rights in order to the protection of the property until it is redeemed or becomes his absolutely, and forms no part of his title, and its absence does not invalidate the Sheriff's deed.

The plaintiff was assignee in insolvency of H., who bought from the purchaser at the Sheriff's sale. H. leased to and put T. in possession, and had some small buildings put on the land. Subsequently the defendant, O'Neil, made untrue representations to T., which induced him to quit possession; whereupon O. went in and occupied, claiming under defendant W., who, he alleged, had an interest in the land. W., by his answer, adopted O.'s possession, and claimed under conveyance from the Crown, but failed to prove his title.

Held, following *Doe Johnson* v. *Baytum*, 5 A. & E. 188, that the possession so fraudulently obtained by O. did not entitle him to put the plaintiff on proof of his title.

Boyd, Q. C., and *Kew*, for plaintiff.

S. White and *G. C. Gibbons*, for defendant.

Spragge C.] [May 21.

WATSON v. DOUSER, *et al.*

Mortgage—Priority—Unpaid purchase money—Incumbrance.

C., being the equitable owner of land, contracted by writing (registered) to sell to the defendant on 13th February, 1877. Part of the purchase money was paid down. C. obtained an order on 17th April 1878 vesting the land in him—there were two mortgages on the registry prior to one in favor of the Loan Company. On the 17th May the defendant gave an order on the Loan Company to pay the proceeds of the loan to their local agent, who was informed by one J., a solicitor who had control of the two prior mortgages, that they were paid off and that he would get them discharged. Thereupon the agent paid C. the balance of his unpaid purchase money, and C. on 25th May, 1878, conveyed to defendant. The Loan Company's mortgage was dated the 15th May and registered the 25th May.

Held, on appeal from the Master affirming his report, that the Loan Company could not stand in C.'s place and claim priority in respect of his lien for unpaid purchase money over the prior mortgagees, following *Imperial L. & S. Co.* v. *O'Sullivan* 8 Pr. R. 162.

The Loan Company's mortgage contained this clause, "and it is hereby declared that in case the Company satisfies any charge on the lands the amount paid shall be payable forthwith with interest, and in default the power of sale hereby given shall be exercisable, and in the event of the money hereby advanced or any part thereof being applied to the payment of any charge or incumbrance, the Company shall stand in the position and be entitled to all the equities of the person or persons so paid off."

Held, that this provision could not effect prior mortgagees who were no parties to it, and *quære* whether it would apply to the discharge of unpaid purchase money which does not constitute charge or incumbrance in the proper meaning of those terms.

Boyd, Q. C. for plaintiff.

Moss, for the Loan Company.

Spragge C.] [May 21.

SMITH v. THE MERCHANT'S BANK.

Insolvency—Bills of Lading—Warehouseman—Warehouse receipts.

By the Act 34 Vict. ch. 5 (D) it is not necessary to the validity of the claim of a bank under a warehouse receipt, that the receipt should reach the hands of the bank by endorsement: the bank itself may make the deposit and receive from the warehouseman the receipt.

A bank had discounted for a trading firm, on the understanding that a bill of lading of a quantity of coal shipped to the firm would be transferred to the bank as collateral security, which was accordingly done, and the bank secured from one of the partners, who was a wharfinger and warehouseman, his receipt for