

the agreement. . . . See *Sherlock v. Powell*, 26 A. R. 407.

The judgment should be varied by providing that any surplus (after sale, &c.) shall remain in Court subject to further order, and by reserving leave to the plaintiffs to apply as they may be advised in respect of the lien, if any, which they have for work done or materials furnished for which payment has not been made or provided for by the judgment.

The judgment must also be varied by increasing the amount which the plaintiffs have recovered and for which their lien is declared, by \$991, the amount of the insurance premiums. . . .

With these variations appeal dismissed without costs.

DIVISIONAL COURT.

JANUARY 4TH, 1909.

BLAKEY v. SMITH.

Assessment and Taxes—Tax Sale—Invalid Assessment—Indefinite Description of Lots—Joining two Lots in one Assessment—Lands of Non-resident—Occupant Assessable—Purchaser at Tax Sale—Application of Curative Clause of Statute—Ejectment—Mesne Profits.

Appeal by the defendant from the judgment of RIDDELL, J., 14 O. W. R. 241, in favour of the plaintiff for the recovery of possession of part of the land in question in the action and \$325 for mesne profits.

The only questions involved in the appeal were as to the validity of the tax sale of 9 feet on the north side of Lennox street, in the city of Toronto, which took place on the 11th April, 1906, and in pursuance of which the 9 feet were conveyed to the defendant on the 15th June, 1907, and as to the amount allowed for mesne profits.

The warrant under the authority of which the sale took place was dated the 28th December, 1905, and the sale was for the taxes of 1901 and 1902, and the land advertised for sale was "part of lots 18 and 19, plan 120, 42 x 53, commencing at S. E. angle of lot 18, thence westerly." Upon the assessment roll of 1901 the land was set down thus: "Bathurst street; Jones, Joseph; Jones, Jane M.; rear 767-9; 53 x 50-3; 265, vacant. And upon the assessment roll of 1902: "Bathurst street; vacant lot; Smith, Jane M. N.E. part rear 767-9; 53 x 7-5; 265; vacant lot; Jones, Joseph; Jones, Jane M.; E. pt. rear, 767-9; 53 x 43-5; 265."