asked a judgment declaring him entitled to all the rights and privileges contained in the verbal agreement or in the alternative for possession of the nine inches of his land which was covered by the wall of the building erected by C.

C. set up (amongst other defences) that whatever was done on the nine inches was done by the leave and license and at the express instance of B., and further that he never did, nor did he then, object to B. being allowed to build against and use the wall in question as a party wall, and that he had always acquiesced and conceded B.'s right so to do on payment of half the actual cost thereof.

Held, affirming the decision of FERGUSON, J. that under these circumstances the action must be dismissed.

B. had no ground for asking that the verbal agreement should be manifested in writing. No doubt he might be prejudiced if C.'s land was conveyed to a registered purchaser for value without notice of the agreement, and might also be prejudiced by the difficulty of preserving evidence to prove the oral agreement. The appropriate remedy for these possible wrongs would be a declaration of B.'s rights by virtue of the agreement, but, under the jurisprudence of England, there is no jurisdiction to ascertain and declare rights before a party interested has actually sustained damage. Here B.'s claim was virtually admitted, and it was open for him at any moment to make use of the wall as a party wall upon payment of half the costs.

Dickson, Q.C., for plaintiff.

Dougall, Q.C., for defendant.

Full Court.] [Dec. 18, 1884.

FITZGERALD V. WILSON ET AL.

Tax sale.

A tax sale of certain lands made on February 13th, 1882, was impeached on the grounds:—

1. No proper proof of taxes being due.

The evidence supplied was by the production and proof of the original non-resident collector's roll for 1877 in which this land appeared in arrear for $20.60. That was the only roll in which the land appeared for that year. Similar rolls were proved for 1878, with the taxes at $18.60, and for the year 1879, with taxes at $20.60. These sums with interest amounted to $76.92, to realize which the land was sold. Proof was also made of the due preparation of the warrant to sell, and the due advertising in the official gazette. It was not disputed that the land was properly dealt with as non-resident land during these years.

Held, that the proof was sufficient, for the rolls produced showed in truth, the very inception of the rates and taxes in question by the entries on the non-resident roll in pursuance of 32 Vict. c. 36, s. 92.

Chryler v. *McKay*, 5 S. C. R. 436 distinguished:

2. Because the warrant to sell was not addressed to any one.

The warrant recited that the treasurer had submitted to the warden the land liable to be sold and proceeded: "Now I, the warden, command you to levy," etc. This was given to the proper officer to sell, *i.e.*, the treasurer, was produced by him, and was acted on by him. The warrant purported to be drawn up pursuant to the authority given by 32 Vict. c. 36, s. 128.

Held, that the warrant as drawn up and acted on justified the sale. The Court will not be punctilious in adhering to the letter of the statute where there is reasonable accuracy, and no possible prejudice resulting from literal inaccuracy in the frame of the warrant to sell.

J. Maclennan, Q.C., for the plaintiff.

S. H. Blake, Q.C., and *Walsh*, for the defendants.

Full Court.] [December 19.

LANGTRY V. DUMOULIN.

Rectory endowments — Rectory Lands — 29-30 Vict. c. 16—Construction—Maintenance.

Certain land was granted by patent from the Crown dated December 26, 1817, to D. B., J. B. R. and W. A. as trustees for the sole use and benefit of the parishioners of the Town of York forever as a churchyard and burying ground for the inhabitants of the said Town of York, and appurtenant to the church then built thereon. This patent was surrendered to the Crown and another patent dated September 4, 1820, was issued to the same trustees reciting the terms of the former patent, and that it was intended that so much only of the said land as was necessary for the purposes of a churchyard and burying ground should be so appro-