

RICHARDS v. COLLINS.

4 O. W. N. 375.

Assessment and Taxes—Tax Sales—Indian Lands—Indian Act, R. S. C. 1906, ch. 81, secs. 58-60—Intervention of Superintendent—General—Improvements by Defendant on Lands—4 Edw. VII., ch. 23, sec. 176—R. S. O. 1897, ch. 119, sec. 30—Mistake of Title—General Principles of Equity—Discretion of Judge as to Costs—4 Edw. VII., ch. 23, sec. 228.

Action to set aside a tax sale of certain lands to defendant made in 1901. Defendant counterclaimed for improvements. The lands purporting to have been sold for taxes had not been properly assessed, statutory warning of the sale had not been given, and the sale took place within 3 years of the notice of the tax given the owner of the lands.

BOYD, C. (22 O. W. R. 592; 3 O. W. N. 1479), set aside tax sale with costs, defendant given a lien on the lands in respect of matters set up in his counterclaim, with costs.

Sections 58-60 of the Indian Act, R. S. C. (1906), ch. 81, only apply to the case of an active intervention of the Superintendent-General between the tax purchaser and the original purchaser; where he has remained quiescent of general law applicable to tax sales governs.

DIVISIONAL COURT, *held*, on plaintiff's cross-appeal, that even if defendant's improvements did not come within the statute as to improvements under mistake of title, yet, as a matter of equity, before they would grant plaintiff the relief sought by him, they would compel him to do equity by paying for the outlays made by defendant on the property.

Appeal and cross-appeal dismissed without costs.

An appeal by defendant and cross-appeal by plaintiffs from the judgment of HON. SIR JOHN BOYD, C., 22 O. W. R. 592; 3 O. W. N. 1479.

The appeal was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., and HON. MR. JUSTICE RIDDELL, and HON. MR. JUSTICE LENNOX.

A. G. Murray, for the defendant.

F. E. Titus, for the plaintiffs.

HON. MR. JUSTICE RIDDELL:—Upon the argument we dismissed the defendant's appeal entirely agreeing with the Chancellor's view of the law. The plaintiffs' cross-appeal is as follows:—

The defendant counterclaimed for \$400 for improvements and for money expended for taxes and statute labour for an account to take the same and for an order declaring a lien on the lands for such amount. The formal judgment de-