

order sought, even if there is some irregularity in the proceedings.

I do not think the by-law should be regarded as a by-law under the section of the Municipal Act relating to the closing of streets, but rather as an expression of the municipality's assent to the arrangement for the diversion of the street under the Railway Act. So regarded, it is free from all objection.

The motion must be dismissed with costs.

HON. SIR JOHN BOYD, C.

NOVEMBER 7TH, 1912.

TRIAL.

BLAISDELL v. RAYCROFT.

RAYCROFT v. COOK.

4 O. W. N. 297.

*Executors and Administrators—Action to set aside Sale—Purchase by Executrix—Plaintiffs Joining in Conveyance—Good Price Obtained—Laches—Shifting of Onus—Action Dismissed—Costs.*

Actions by residuary beneficiaries to set aside a sale made by executrices of certain lands belonging to the estate. The evidence shewed that at the time of the sale, some four years ago, a good price was obtained for the lands, but since then, owing to unforeseen circumstances, the lands had more than doubled in value.

Plaintiffs had joined in the deed to the purchaser and obtained certain specific legacies out of the purchase-moneys, but claimed the lands had been in reality secretly purchased by one of the executrices and there had been a consequent breach of trust. The property had, in fact, been purchased to the knowledge of all by a daughter of the executrix, and shortly afterwards conveyed to the executrix.

BOYD, C., *held*, that the facts shewed that the sale was at a good price, and that there had been the utmost good faith on the part of the executrix, both at the time and subsequently.

That the onus was on the plaintiffs to get rid of the deed they signed, and no sufficient grounds had been shewn.

*Re Postlethwaite*, 59 L. T. n. s. 59; 60 L. T. n. s. 517, and *Williams v. Scott*, [1900] A. C. 499, referred to.

Action dismissed with costs.

Two actions tried together seeking to set aside a sale of certain estate property made by the executrices and trustees.

G. F. Shepley, K.C., for the plaintiffs in first action.

J. A. Hutchinson, K.C., for the defendant in first action, who was plaintiff in second action.

T. D'A. McGee, for the defendant, Mrs. Cook.