

RIDDELL, J.

FEBRUARY 4TH, 1911.

## McCABE v. BOYLE.

*Lunatic—Inspector of Prisons and Public Charities—Statutory Committee—Action for Partition Brought in Name of Lunatic as Plaintiff—R.S.O. 1897 ch. 317, sec. 56—Effect of Lunatic Recovering—Subsequent Proceedings by Inspector—Registration of Judgment—Cancellation—Dismissal of Action—Costs.*

Motion by the plaintiff for an order perpetually staying an action or proceeding, begun in the name of the plaintiff, for partition or sale of land, and staying proceedings upon the judgment for partition or sale entered in the action.

R. G. Smythe, for the plaintiff.

F. J. Roche, for the Inspector of Prisons and Public Charities.

C. Kappele, for the defendant.

RIDDELL, J.:—The plaintiff being in the Mimico Asylum for the Insane, and her recovery improbable, the Inspector of Prisons and Public Charities found it necessary to sell a portion of her real estate. He found the title clouded by a claim of the defendant, who asserted that he was a brother of the plaintiff. Acting on the advice of counsel, and with the approval of the Attorney-General, the Inspector began this action or proceeding for partition or sale in the name of the plaintiff; and a judgment for partition or sale was given by the Chief Justice of the Common Pleas on the 21st May, 1907.

Under the judgment the lands were offered for sale by auction in November, 1907, but no sufficient bid was obtained.

Upon the 21st May, 1909, the plaintiff was discharged from the Mimico Asylum. She never had been declared or found insane; and her mental indisposition was temporary only, as it now appears, although the physicians in charge at Mimico had reported that her recovery was improbable. She did not know of the partition proceedings.

In April, 1910, she made an agreement for sale of the land to A. D. C. Questions of title came up, and an application was made by her in June, 1910, to the Master of Titles in Toronto, to be registered as owner of the land. Notice of this claim was served on the defendant, and he appeared and filed his claim. In order to determine the rights of the plaintiff and defendant