

Held (OSLER, J., dissenting), that the property in question was the wife's equitable separate estate, and was not effected by secs. 2 and 5 of the R. S. O. ch. 125.

The plaintiff was therefore held entitled to recover.

McCarthy, Q.C., for the plaintiff.

J. K. Kerr, Q.C., for the defendants.

BECKETT V. JOHNSTON.

Sale of land for taxes—Assessment, invalidity of—Sec. 155 of Assessment Act, 1868—Township Clerk—Right to purchase.

Ejectment by plaintiff under a tax deed, as the assignee of the tax purchaser, who was the township clerk: The sale was for the taxes alleged to be due for the years 1871 and 1872. The land was described on the assessment roll for 1871 as the "S. pt. 12, 53 acres," and for 1872 as "S. E. pt., lot 12, 53 acres." Parts of lot 12 were owned respectively by F. and C., and part laid out as a village, and it appeared that the land, whether taken as the south or south-east part, included parts respectively of F. and C.'s land, which was already assessed against them, and also certain of the village lots.

Held, that the plaintiff's bill failed; for that the assessment was invalid, and that the defect was not cured by sec. 155 of the Assessment Act of 1868.

Held also, that the purchase by the township clerk was a voidable transaction.

J. B. Clarke for the plaintiff.

Bethune, Q.C., for the defendants.

They further found that the plaintiff was not guilty of contributory negligence by reason of his piling his lumber on the defendants' ground, with their consent, within a short distance of the track, and not having sufficient means at hand for extinguishing fires should they occur.

Held, that the evidence set out in the case, fully supported the findings of the jury; that as to finding that the cone was too close to the netting, it could not be supported by the evidence if it meant that it in consequence acted prejudicially to the netting, but that the finding meant that the cone was too high above the bonnet rim and so too close to the netting, and in consequence the sparks deflected from it instead of being sent above the bonnet bed or below it, and thus escaped from the stack; and also that although the finding that the bonnet rim did not fit so completely as it should, was in a sense indefinite in not stating thereby sparks could or did escape, this was covered by the other findings.

The question as to the bonnet rim fitting the bed was not put to the jury until after they had rendered their verdict and answered the other questions, and after the learned Judge had been moved for judgment upon those answers, but it was done while all the parties and their counsel were present, and before the jury had left the court room.

Held, that the question was properly put to the jury.

McCarthy, Q.C., and *Creelman*, for the plaintiffs.

Bethune, Q.C., and *Walker* (of Ottawa), for the defendants.

WOODWARD V. SHIELDS.

Adding parties—Judicature Act, rule 90—Costs.

Action by plaintiffs for \$460, as assignees under an assignment from the assignee in insolvency, of the estate of W. and A., who had become insolvent in 1879. At the trial the learned Judge held that under the circumstances, set out in the case, this amount did not pass to the plaintiffs under the assignment to them, but if at all belonged to the insolvents; but refused to add the insolvents as co-plaintiffs, because the defendant was not in a position to know whether he had a defence as against them. During the sittings, the defendant having had sufficient time to acquaint himself of his rights, and showing no

MCLAREN V. CANADA CENTRAL RAILWAY CO.

Fire, loss by—Negligence—Contributory negligence—Evidence—Findings of jury.

In an action against the defendants, a railway company, for negligence, whereby the plaintiff's lumber caught fire from one of the defendant's locomotives and a large quantity thereof was burnt, the jury found that the fire which caused the damage came from the defendant's locomotive, from imperfection or structural defect in the smoke-stack, by reason of the cone being too close to the netting, and the bonnet rim not fitting to the bed so completely as it should have done.