

ments; when half was paid the vendor was to convey and give the usual statutory covenants; the purchaser was to pay taxes from the date of the contract.

In an action to recover instalments under the contract,

Held, that local improvement rates imposed by municipal by-laws, the work under which was done before the contract, were incumbrances to be discharged by the vendor, but rates imposed after the contract were not so.

Re Graydon and Hammill, 20 O.R. 199, followed.

Les Ecclesiastiques de St. Sulpice de Montreal v. City of Montreal, 16 S.C.R. 400, distinguished.

Held, also, that the covenant for payment of instalments and the covenant against incumbrances were independent, and the vendor was entitled to judgment for the instalments; but the purchaser was entitled to show the existence of incumbrances as an equitable ground of relief, and, the time for completion of the contract not having arrived, to pay into Court as much of the purchase money as might be necessary to protect him against the incumbrances.

McDonald v. Murray, 11 A.R. 101, and *Tisdale v. Dallas*, 11 C.P. 238, distinguished.

Fullerton, Q.C., for the plaintiffs.

Marsh, Q.C., for the defendant.

ROSE, J.] [Dec. 23, 1890.
Div'l Court.] [June 5, 1891.]

IN RE MCKAY v. MARTIN.

County Court—Jurisdiction—Ascertainment of amount—R.S.O., c. 47, s. 19, s-s. 2—Transferring action to High Court—54 Vict., c. 14, retrospective.

An action was brought in a County Court to recover the amount of a broker's commission on the sale of land. The defendant disputed his liability and the action was tried by a jury, who found that the plaintiff was entitled to recover \$250. The amount was not ascertained otherwise than by the agreement of the parties, as found by the jury.

Held, by ROSE J., that the amount was not ascertained within the meaning of R.S.O., c. 47, s. 19, s-s. 2, and the County Court had no jurisdiction.

Robb v. Murray, 16 A.R. 503, followed.

Held, by the Divisional Court, that the Act 54 Vict. c. 14, passed after the determination that the County Court had no jurisdiction, was retrospective, and enabled the action to be transferred to the High Court.

Carscallen, Q.C., for the plaintiff.

Furlong for the defendant.

STREET, J.]

[July 4

RE G.

Land Titles Act—R.S.O., c. 116, s. 23, s-s. 5—Evidence—Woman past child-bearing—Registration.

Land was devised to the petitioner for life, with remainder in fee to her children surviving her. At the age of fifty-six the petitioner and one of her children (all the other surviving children having conveyed their shares to her) applied under the Land Titles Act, R.S.O., c. 116, to be registered as owners with absolute title.

The petitioner's monthly periods began at the age of eleven; she was married in her twenty-second year, and bore children rapidly till her thirty-sixth year, when her tenth child was born; five months after this her periods, having regularly continued, suddenly ceased, and up to the time of the application had never returned.

The evidence of a physician, who had made a medical examination of the petitioner, showed that senile atrophy of the uterus and ovaries had proceeded so far that it would be a moral impossibility for pregnancy to take place.

Held, having regard to the provisions of s. 23, s-s. 5, of the Act, that the Master should have accepted the evidence as sufficient proof that the petitioner was physically incapable of child-bearing, and should have acted upon it by granting the registration.

H. W. Mickle for the petitioners.

J. R. Cartwright, Q.C., for the Attorney-General, representing the Land Titles Act Assurance Fund.

Practice.

STREET, J.]

[June 24

MCILROY v. MCILROY

Notice of trial—Service of before defence filed—Irregularity—Close of pleadings—Rule 654

On the last day for delivering the statement of defence, which was also the last day for