

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac. Cases.]

Boyd, C.]

[April 25.]

SMITH V. THE MIDLAND RY. CO.

Sale of railway lands for taxes—Statute of Limitations in regard to tax sales—Validity of tax sale—R. S. O. c. 18, ss. 105, 141, 109, 110, 115.

The lands of railways may be sold for taxes. Under the Assessment Act, R. S. O. c. 180, sect. 105, accrued taxes are made a special lien on the land, having preference over any claim, lien, privilege, or encumbrance of any party except the Crown, and in view of the English decisions there is no impropriety in giving effect to the statutory lien for unpaid taxes, by means of a sale of the land.

The Statute of Limitations does not begin to run against a tax purchaser until the period for redemption has expired. There is a qualified ownership during the year for redemption, to protect the property from spoliation and waste, under R. S. O. c. 180, s. 141, but the estate is not vested in the purchaser till the execution of the deed.

It appears to be the intention of the Assessment Act not to vitiate a tax sale on account of the default of subordinate officers in observing statutory requirements. Therefore, where it appeared that, as far as the county treasurer was concerned, all the steps taken by him in regard to the sale of certain lands for taxes, were regular, and authorized by R. S. O. 180, although it was not clear, on the evidence, whether the county clerk and the assessor had or had not properly complied with the requirements of ss. 109 and 110 of the said Act, but it appeared that the sale had taken place for taxes actually in arrear for the required length of time, followed by a tax deed thereafter, which had not been questioned within two years.

Held, the sale and deed were not afterwards impeachable for the default (if there was default) of the subordinate local officers in carrying out the special provisions of the said Act.

Sect. 115 of the said R. S. O. c. 180, imposing penalties upon defaulting clerks and assessors who fail to carry out the statutory directions regarding the list of lands liable to be sold, affords suggestive evidence that this is the remedy intended by the legislature, and not the avoiding

of the tax sale and deed, at all events, after the two years. (See sect. 131).

Ferguson, J.]

[April 26.]

MERCHANTS BANK V. MOFFATT.

Deeds executed under mistake.

Where it appeared that the defendant, a man of education and well acquainted with commercial business, had executed a certain agreement and bond to pay certain sums of money in certain events, to the plaintiffs; that this agreement and bond had been executed by him under a misunderstanding as to their effect, and relying on misrepresentations made to him as to this, not by the plaintiffs, but by one of those who had joined with him in executing the said document, and without having read over the said documents, or taken any legal advice hereon; but that the plaintiffs had not, either by themselves or any agent, made any representations to the defendant as to the effect or contents of the said documents.

Held, after a review of the authorities, the defendant was bound by the said documents according to their tenor and purport.

C. Robinson, Q.C., and J. Smith, for the plaintiffs.

D. McCarthy, Q.C., and Ferguson, for the defendants.

PRACTICE CASES.

Osler, J.]

[Jan. 3]

MAITLAND V. GLOBE PRINTING CO.

Examination—Corporate company—Officer of—R. S. O. ch. 50.

Held, that the sub-editor or assistant editor of the defendants was an officer of the Company examinable for the purpose of discovery, under R. S. O. ch. 50, sec. —.

C. Millar, for the plaintiff.

Aylesworth, for the defendants.