

COLEMAN ET AL. V. MOORE ET AL.

Trust deed in favour of Church—Provision for appointment of new trustees—Ejectment—Misjoinder—Right of surviving trustee to recover. R. S. O., ch. 216.

Land was conveyed to the plaintiff Coleman and four others, as 'the trustees of the congregation of the Independent Methodist Episcopal Church,' with a provision, in case of death or ceasing to be a member of the said church, for the appointment of a successor or successors. The congregation acting under the directions of what was called the "Book of Discipline," which provided for an annual election of trustees, elected annually trustees for the property in question, and at one of these elections among others elected the plaintiffs. One of the original trustees under the deed died, and all the others, except the plaintiff Coleman, ceased to be members of the Church. Subsequently, three of the defendants accepted a lease of the property from Coleman. In ejectment, *Held*, that the co-plaintiffs of Coleman had been improperly joined in the action, for that having been elected trustees under the "Book of Discipline" and not under the provisions of the trust deed in place of trustees dying or ceasing to be members of the church, they were illegally elected and never became trustees, and their names were therefore ordered to be struck out of the record. *Held*, also, that Coleman was entitled to recover against the defendants, who entered under the lease from him, as they could not deny his title, and there was sufficient evidence of a disclaimer on their part, so as to dispense with a notice to quit. *Held*, also, that if the deed did not create the grantees, by virtue of R. S. O. ch. 216, a corporation, and they were to be regarded merely as natural persons, the legal estate was in Coleman and the other three surviving grantees under the deed, and Coleman was entitled to recover an undivided fourth part of the land; but that if the grantees were created a corporation, then the legal estate was in the corporation or in the trustees in a corporate capacity, and Coleman was the only corporator, the other four having either died or ceased to

be corporators by reason of their having ceased to be members of the Church.

Objection having been made on the argument for the first time, that the action should have been brought in the corporate name, or at any rate under the designation in the deed, the court allowed the record to be amended in this respect and discharged the rule to set aside the plaintiff's verdict.

Irving, Q. C., for plaintiffs.

Bethune, Q. C., contra.

ROBINET V. PICKERING.

Dower—Report of Commissioners binding. R. S. O. ch. 55.

The husband of demandant, being possessed of the land in question, a 100 acre lot, conveyed it to S., 20 acres being at the time cleared. After alienation, some 70 acres more were cleared by the purchaser and his assigns. Defendant having admitted demandant's claim, the sheriff appointed commissioners who awarded demandant 7 acres of the cleared and 4 of the uncleared land. The land in question and in the neighbourhood had greatly increased in value, by reason of clearing, fencing, and buildings erected upon it, but no portion of the buildings was awarded to demandant. It appeared that the commissioners had considered the clearing of land a permanent improvement under sec. 35, subs. 3, ch. 55, R. S. O., but that they did not award any portion of the land cleared by the purchaser to demandant. *Held*, that the report of the commissioners was binding, as it was right on its face, and as it did not state how they had arrived at their award, the question of permanent improvements could not be discussed, and the court refused to refer the matter back, or to make any inquiry of the commissioners.

McMichael, Q. C., & C. McMichael, for plaintiff.

Fleming, contra.

REGINA V. CLARKE.

Conviction for selling liquor without license—Appeal to judge without jury instead of sessions. R. S. O. ch. 75, & ch. 181, secs. 51, 71. 40 Vic. ch. 27, D.

Defendant was convicted for selling li-