

defendants for taxes, when none were in arrear; the tax purchaser having afterwards obtained a certificate of title for the land under the Real Property Act.

By sec. 192 of the Assessment Act, R.S.M. c. 101, "In case any lands should be sold for arrears of taxes when no taxes are due thereon, the owner, in case the land cannot be recovered back by reason of its having been bought under the operation of the Real Property Act, shall be indemnified by the municipality for any loss or damages sustained by him on account of such sale of said lands; and the amount of such indemnity may be settled by agreement between the municipality and the person entitled thereto, or, if an agreement cannot be effected by arbitration, in a manner similar to that provided in the case of expropriation, except that the amount of the indemnity payable by the municipality shall be the amount which the arbitrators shall award, with twenty-five per cent. of the amount of such award added thereto." The declaration showed no agreement between the plaintiff and defendants as to the amount of indemnity, nor that any arbitration had been held to ascertain such amount.

*Held*, following the practice in England under the Land Clauses Consolidation Act, that the amount of the indemnity to be paid must first be settled in the manner pointed out by the statute before an action can be brought to recover it, and that the defendant's demurrer must be allowed. See *Lloyd on Compensation* p. 55; *Adams v. London and Blackwall Railway Co.*, 2 Mac. & G. 118; *Bruce v. Great Western Railway Co.*, 2 B. & S. 402, and *Pearsall v. The Brierley Hill Local Board*, 11 Q.B.D. 735.

*Semble*, if the municipality would not join in steps to determine the amount of indemnity by arbitration, the plaintiff could have applied for a mandamus to compel it to do so.

*Elliot*, for plaintiff.

*Perdue*, for defendant.

BAIN, J.]

WATEROUS ENGINE WORKS CO. v. WILSON.

[March 25.]

*Contract—Retrospective legislation—Implied covenant—Lien on land.*

This was a suit in which the plaintiffs claimed a lien on certain lands of the defendants for a balance of the price of an engine sold to them in 1885, under a written contract signed by the defendants under seal, by which they agreed to purchase the engine for a certain price and to give their promissory notes therefor, and that the notes should be a charge upon the lands in question.

It appeared that the parties had, subsequent to the making of the contract, agreed to substitute a second hand engine at a lower price for the one described in the contract; that there was no covenant or express promise to pay the money in the contract; and that the claim on the notes which had been given was barred by the Statute of Limitations. The defendants also raised the objection that the plaintiff company was not licensed under the