

jointly; the company alone was trustee of the insurance moneys; therefore the two had a claim for money paid to the use of the daughters, but only the company owed the insurance fund. No set-off could be allowed where the parties were not the same: *McEwan v. Crombie* (1883), 25 Ch.D. 175.

The main appeal should be dismissed with costs.

The other difficulties in the way of allowing a set-off were not considered.

Cross-appeal dismissed without costs.

HIGH COURT DIVISION.

BOYD, C.

DECEMBER 13TH, 1915.

*EXCELSIOR MINING CO. v. LOCHEAD.

Assessment and Taxes—Sale of Land for Taxes—Assessment Act, 1904, 4 Edw. VII. ch. 23—Clerk's Return—Sec. 122—"Not Occupied"—"Built upon"—Question of Fact—Derelict Derrick of Small Value—Advertising—Time of Sale—Sec. 144—Inadequacy of Sale-price—Sale Openly and Fairly Conducted—Duty of Treasurer to Inquire as to Value of Land—Sec. 142—Notice to Owner—Sec. 165—Address not Furnished—Effect of secs. 172 and 173—Curative Provisions—Sale not Attacked within two Years—Commencement of Period.

Action to set aside a sale to the defendant of the plaintiffs' land (lot 10 in the 9th concession of Loughborough) for taxes in arrear.

The action was tried without a jury at Kingston.

A. B. Cunningham, for the plaintiffs.

J. L. Whiting, K.C., for the defendant.

THE CHANCELLOR read a lengthy judgment dealing with the objections to the sale. The validity had to be considered in the light of the provisions of the Assessment Act of 1904, 4 Edw. VII. ch. 23 (O.) The sale was on the 7th November, 1912, when the taxes of 1909, 1910, and 1911, were unpaid.

The Clerk's return, under the corporate seal, to the Treasurer, dated the 20th July, 1912, of lands liable to be sold, con-

*This case and all others so marked to be reported in the Ontario Law Reports.