

and a roll, unsigned by the clerk, is not sufficient authority to entitle the collector to distrain, and he and his sureties are not liable, under their bond, for the amount of uncollected taxes.

Judgment of ARMOUR, C.J., reversed, BURTON, J.A., dissenting.

*J. A. O'Rourke* and *A. A. Abbott* for the appellant.

*Marsh, Q.C.*, for the respondents.

From ROSE, J.]

PALMATIER *v.* MCKIBBON.

[June 30.

*Ways—Dedication—50 Geo. III., c. 1—“Omnia præsumuntur rite esse acta.”*

A road was surveyed in 1834, and the surveyor's report was made to the Quarter Sessions in that year. The records were, however, lost or destroyed, and there was no evidence that the road had been adopted by the Sessions under the Act then in force, nor was there any order directing it to be opened. It was, however, actually opened in 1853 with the assent of the owners of the land, and was used for several years, and statute labour was done upon it.

*Held*, that the maxim, “*Omnia præsumuntur rite esse acta*,” applied, and that the due adoption of the road by the Quarter Sessions should be presumed.

*Held*, also, that the evidence of the dedication was sufficient.

*Held*, also, *per* MACLENNAN, J.A., that the expressions “laying out” and “opening” a road are used in the Act 53, Geo. III., c. 1, in an equivalent sense, and that actual work on the ground is not required before the road becomes a public highway.

Judgment of ROSE, J., reversed.

*Aylesworth, Q.C.*, for the appellant.

*Clute, Q.C.*, for the respondent.

From Chy. Div.]

INNIS *v.* FERGUSON.

[June 30.

*Statute of Limitations—Prescription—Easement.*

The time for acquisition of an easement by prescription does not run while the dominant and servient tenements are in the occupation of the same person, even though the occupation of the servient tenement be wrongful and without the privity of the true owner.

Judgment of the Chancery Division reversed.

*Bayly, Q.C.*, for the appellant.

*Purdom* for the respondent.

From ROSE, J.]

KERRY *v.* JAMES.

[June 30.

*Bills of sale and chattel mortgages—Agreement to give security—R.S.O., c. 125, s. 6—Assignments and preferences—55 Vict., c. 26, s. 2 (O.).*

An assignee for the general benefit of creditors is, by virtue of 55 Vict., c. 26, s. 2 (O.), entitled to take advantage of irregularities or defects in a chattel mortgage made by the assignor to the same extent as an execution creditor.