

McPHERSON v. FERGUSON—MIDDLETON, J.—JUNE 27.

Assessment and Taxes—Tax Sale—Action by Purchaser to Recover Possession of Land—Defence—Tender—Redemption—Mortgages—Appointment of Guardian or Committee for Defendant—Settlement of Action.—Action to recover possession of land, tried at Hamilton. The learned Judge said that it was quite clear that no defence was disclosed. The land in question was sold by the Sheriff under a fi. fa., and the plaintiff became the purchaser on the 16th May, 1903. The defence upon the record was, that, prior to the sale, the defendant (the execution debtor) paid or offered to pay to the Sheriff the money due under the fi. fa. This defence was not made out. The tender was in the year after the sale.—The mortgages upon the land were upheld as valid in the former action of Ferguson v. McPherson. At the suggestion of the learned Judge, the plaintiff in this action—a daughter of the defendant—agreed to accept less than the amount due to her upon the mortgages and in respect of the purchase-money, and to allow the land to be redeemed. The plaintiff stated her readiness to accept \$2,000, although the amount due was some \$300 more than this. The land had so increased in value recently that it was now worth more than \$5,000. The defendant refused to listen to this suggestion; seeking to go back of the former judgment.—From what took place at the trial, the learned Judge was satisfied that the defendant, by reason of brooding over her troubles and from other causes, was not in a position properly to protect her own interests; and, before judgment could be given in this action, she must be represented by a guardian or committee. He accordingly directed that the case should stand over until the necessary application could be made. The case seemed to be one in which the statute 1 Geo. V. ch. 20 (O.) might well be resorted to. If, upon a guardian being appointed, he should think that the plaintiff's offer ought to be accepted, then application might be made for judgment upon that basis; or he should have liberty to tender further evidence if he should so desire.—The learned Judge added that, as he was given to understand that the action was brought only for the purpose of preventing the Statute of Limitations from running, and so barring the plaintiff's title, he would suggest that a settlement might be worked out by which the defendant would be allowed to remain in possession of the land during her life, and upon her death some benefit might be secured to the younger daughter, who was now living with her mother. M. J. O'Reilly, K.C., for the plaintiff. The defendant in person.