

Moss, C.J.O.:—The plaintiff, J. W. Beatty, claiming to be the owner in fee of two parcels of land, being the south-east quarter of section 8 in the 8th concession, and the north-east subdivision of the said section 8, all in the township of McTavish, in the district of Algoma, as the purchaser and grantee of the same from Mr. W. H. Beatty, brought this action against defendants to set aside a deed of conveyance of the said lands made by the Treasurer of the Province of Ontario to the defendant Bull, and a deed of conveyance of the same lands made by the defendant Bull to the defendant McConnell, and to remove said deeds from the records of the registry office as a cloud on plaintiff's title.

The defendant Gregory was made a party because—as is charged—he was concerned with his co-defendants in an alleged scheme to deprive plaintiff of the land.

At the trial the plaintiff applied for and obtained leave to add the Attorney-General as a party plaintiff.

The learned trial Judge in a considered judgment dismissed the action with costs as against the defendant McConnell, and without costs as against the other defendants. The plaintiff appealed on the whole case, and the defendant Gregory, by leave of the learned trial Judge, appealed from the judgment in so far as it deprived him of his costs. The main facts are sufficiently stated in the opinion delivered by the trial Judge.

After a careful consideration of the evidence, I am unable to agree with the Judge's conclusions as to the effect of the evidence concerning the dealings by defendant Bull with the certificates of the tax sale, and their subsequent receipt and retention by Mr. W. H. Beatty under the circumstances narrated in the evidence. It is not disputed that Mr. W. H. Beatty was the owner of the parcels up to the time of their sale for taxes. No question is raised as to the regularity of the sale for taxes and the purchase thereof by defendant Bull, nor as to his having received from the Provincial Treasurer the certificates required to be given to the purchaser by R. S. O. 1897 ch. 23, sec. 20. The dispute is as to what took place subsequent to these occurrences, and as to what should be the conclusion from the facts shewn in evidence.