

HON. SIR JOHN BOYD, C.

JUNE 22ND, 1912.

## RICHARDS v. COLLINS.

3 O. W. N. 1479.

*Assessment and Taxes — Tax Sale—Indian Lands—Indian Act, R. S. O. (1897), c. 51, ss. 58-60—Intervention of Superintendent-General.*

Action to set aside a tax sale of certain lands to defendant made in 1901. Defendant counterclaimed for improvements. The lands purporting to have been sold for taxes had not been properly assessed, statutory warning of the sale had not been given, and the sale took place within 3 years of the notice of the tax given the owner of the lands.

BOYD, C., set aside tax sale with costs; defendant given a lien on the lands in respect of matters set up in his counterclaim with costs.

Sections 58-60 of the Indian Act, R. S. C., c. 51, only apply to the case of an active intervention of the Superintendent-General between the tax purchaser and the original purchaser, where he has remained quiescent; the general law applicable to tax sales governs.

Action to recover possession of land and to set aside a tax sale.

F. E. Titus, for the plaintiffs.

R. R. McKessock, K.C., for the defendant.

HON. SIR JOHN BOYD, C.:—An objection not on the pleadings was raised *ore tenus* that by reason of some provisions of the Dominion Indian Act this action was not well founded.

The Indian Act as found in the Revised Statutes of Canada 1886, ch. 43, sec. 43, was amended in 1888 by 51 Vict. ch. 22, sec. 2, now found in the Revision of 1906 as ch. 51, secs. 58, 50, and 60, and brings in an entirely new provision as to dealing with Indian lands which have been sold for taxes. The substance of this new legislation appears to be that when a conveyance has been made by the proper municipal officer of the province purporting to be based upon a sale for taxes the Superintendent General may "approve of such conveyance and act upon it and treat it as a valid transfer" of the interest of the original purchaser (sec. 58 (1)).

When the Superintendent General has "signified his approval of such conveyance by endorsement thereon," the grantee shall be substituted (in all respects in relation to the land) for the original purchaser; sec. 58 (2).