THE MASSAWIPPI VALLEY RAILWAY COMPANY (PLAINTIFFS)..... } APPELLANTS;

AND

JAMES B. REED, (DEFENDANT)..... .....RESPONDENT.

1903

*May 22.

*June 8.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Railways—Location of permanent way—Fencing—Laying out of boundaries—Construction of deed—Estoppel by Conduct—Words of limitation—Registry laws—Notice of prior title—Riparian rights—Possession—Acquisitive prescription—Tenant by suffrance—Arts. 569, 1472, 1487, 1593, 2193, 2196, 2242, 2251 *C. C.—Art.* 77 *C. P. Q.*—14 *&* 15 *Vict. ch.* 51—25 *Vict. ch.* 61. *s.* 15—*Findings of fact—Assessment of damages—Emphyteutic lease—Contrat innommé—Domaine direct—Domaine utile—Alienation—Right of action—Adding parties.*

A railway company purchased land from P., bounded by a non-navigable river, as "selected and laid out" for their permanent way. Stakes were planted to show the side lines and the railway fencing, at the points in dispute, was placed, here and there, above the water-line, although the company could not have the quantity of land conveyed unless they took possession to the edge of the river. P. remained in possession of the strip of land between the fence and the water's edge and of the bed of the stream *ad medium filum* and, after the registration of the deed to the company, sold the rest of his property including water rights, mills and dams constructed in the stream to the defendant's *auteur*, describing the property sold as "including that part of the river which is not included in the right of way, etc." The plaintiffs never operated their line of railway but, immediately on its completion, under powers conferred by their charter, and *The Railway Act*, 14 & 15 Vict. ch. 51, leased it for 999 years to another company and the railway has been ever since operated by other companies under the lease. The plaintiffs' *action pétitoire*, including a claim for damages, was met by pleas (1) That the lease was an alienation of all plaintiffs' interest in the lands occupied by the railway and left them without any right of action; (2) that the right of way sold never extended

* PRESENT:—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies and Nesbitt JJ.

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

beyond the fencing, such being the interpretation placed upon the conveyance by permitting P. to retain possession of the strip of land in question and the river *ad medium filum* ; (3) that by ten years possession as owner in good faith under translatory title the defendant had acquired ownership by the prescription of ten years and (4) that, by thirty years adverse possession without title, the defendant and his *auteurs* had acquired a title to the strip of land and riparian rights in question. On appeal the Supreme Court held :

1.—That the description in the deed to the railway company included, *ex jure naturæ*, the river *ad medium filum aquæ* as an incident of the grant and that their title could not be defeated by subsequent conveyance through their vendor and warrantor, notwithstanding that they may not have taken physical possession of all the lands described in the prior conveyance.

2.—That the possession of the strip of land and the waters and bed of the river *ad medium filum* by the vendor and his assigns, after the conveyance to the company, was not the possession *animo domini* required for the acquisitive prescription of ten years under article 2251 of the Civil Code of Lower Canada, but merely an occupation as tenant by suffrance upon which no such prescription could be based.

3.—That the failure of the vendor to deliver the full quantity of land sold and the company's abstention from troubling him in his possession of the same could not be construed as conduct placing a construction upon the deed different from its clear and unambiguous terms or as limiting the area of the lands conveyed.

4.—That the terms of the description in the subsequent conveyance by P. to the defendant's *auteur* were a limitation equivalent to an express reservation of that part of the property which had been previously conveyed to the company and prevented the defendant acquiring title by ten years prescription, and further that he was charged with notice of the prior conveyance through the registration of the deed to the company.

5.—That the acquisitive prescription of thirty years under article 2242 of the Civil Code could not run in favour of the original vendor who had warranted title to the lands conveyed to the company because, after the sale, his occupation of the part of the property the possession of which he had failed to deliver, was merely on suffrance.

The judgment appealed from was reversed on the questions of law as summarized, Davies J. *dubitante*, but the findings, on conflicting testimony in respect of damages, made by the trial judge were not disturbed on the appeal.

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

On the question raised as to the right of action to recover the lands and for damages caused to the permanent way, it was

Held, affirming the judgment appealed from, that the lease to the companies which held and operated the railway, amounted to an emphyteutic lease assigning the *domaine utile* and all the plaintiffs' rights in respect of the railway reserving, however, the *domaine direct*, and, consequently, the plaintiffs had the right of action *au pétitoire* as the party having the legal estate, although the right of action for the damages, if any, sustained would belong to the lessees, who held the beneficial estate.

Semble that, if necessary, the lessees might have been allowed to be added as parties, plaintiffs in the action, in order to recover any damages which might have been sustained, if there had been any satisfactory proof that damages had been caused through the fault of the defendant.

APPEAL from the judgment of the Court of King's Bench, appeal side, which affirmed the judgment of the Superior Court, District of Saint Francis, dismissing the plaintiffs' action with costs.

The action was *au pétitoire* for a declaration of the plaintiffs' title to lands in the Township of Hatley on the bank and in the bed of the Massawippi River and for the demolition of a mill and mill-dam constructed thereon by the defendant and his grantors and also for $2,000 damages resulting from the penning back of the waters of the river by the mill-dams which caused damages to the permanent way of the company on the shores of Lake Massawippi.

The plaintiffs had, in January, 1870, purchased from one Putney a parcel of land adjoining his mill property, in the Township of Hatley, containing four and three-tenths acres in superficies and described as bounded on one side "by the Massawippi River" and they alleged that they immediately took possession thereof, constructed their line of railway thereon and that, as riparian proprietors, they were entitled to all the riparian rights thereto appertaining. The fences along the right of way, at the point in question, had

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

been built a short distance from the edge of the river and Putney had continued to use the strip of land between the fence and the water's edge and also the bed of the river in connection with his mills and in the construction of the mill-dam. The deed to the company was duly registered and, afterwards, Putney sold the mill property and his rights in the river bed to persons from whom the defendant acquired, the description of the property sold including "that part of the Massawippi River which is not included in the right of way of the Massawippi Valley Railway on said lot, which lies easterly of said right of way." The possession of the strip between the fence and the water's edge by Putney and his assigns, including the defendant, deprived the company of the full quantity of land conveyed to them, but they took no measures in ejectment, nor to prevent those persons using the bed of the river, until November, 1899, when the action was brought principally on account of the inconvenience and damage the company suffered through the damming of the river at the mill-site causing the waters of Lake Massawippi to rise and wash away part of their permanent way.

The plaintiffs were incorporated under charter (25 Vict. ch. 61,) with power to construct the railway, and it was provided that The Railway Act (14 & 15 Vict.ch. 51) should be considered as incorporated in the special Act. Section 15 of the special Act provided that the company might enter into agreements with any other railway company for leasing the railway or the use thereof for any period, and under these powers the company immediately, upon the completion of construction, leased the railway with all its appurtenances to the Connecticut & Passumpsic Railway Co. which operated the railway till it was merged in the Boston & Lowell Railway Co. which was afterwards merged

in the Boston & Maine Railway Co. which held and operated the railway at the time of the present action.

The pleas material to the issues on the present appeal were those denying the plaintiffs' title and right of action, *au pétitoire* or for damages; the pleas claiming title by possession of ten years with translatory title and of thirty years without title, and the general traverse of the claim for damages.

In the trial court F. X. Lemieux J. held that the plaintiffs had alienated all their interest in the railway and had no right of action; decided the questions as to title and possession in favour of the defendant and, in appreciating contradictory testimony as to the damages, found as a fact that, giving preference to the testimony of the witnesses for the defence, there had been no damages caused through the fault of the defendant and the action was dismissed with costs. The judgment appealed from held that the plaintiffs had reserved the *domaine direct* and had a right to bring the action *au pétitoire* and, on the sole ground that the defendant had acquired ownership by effective possession during ten years under a valid translatory title and considering that "for this reason" there had been no error in the judgment of the trial court, the court below affirmed "the enacting part of the decree" with costs against the present appellant, (Hall J. dissenting).

Lafleur K.C. and *Cate* for the appellants. The plaintiffs reserved the *domaine direct*, the legal estate, in the railway and all their rights in respect thereof; the lease is emphyteutic and consequently they are fully entitled to the petitory conclusions as to all the land and rights between the railway fence and the centre line of the Massawippi River, and to have all constructions on the west half of the river demolished, subject to such compensation as experts may determine to be their actual value. We have established damages

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

largely in excess of the amount prayed for, and there is sufficient evidence upon which to make an award without the necessity of further expertise as suggested by Mr. Justice Hall.

As to the claim by thirty years possession, the deed by Putney to the company bears date the 3rd of January, 1870, the action was served on 5th December, 1899, less than thirty years afterwards and, at any rate, Putney cannot prescribe against his own conveyance in which he became warrantor of plaintiffs' title.

The prescription of ten years cannot apply as there was notice of the prior title in the registry office which charged all subsequent grantees with knowledge and prevented any possession in good faith.

The appellants must succeed on the petitory conclusions, so far as concerns the strip of land between the railway track and the river. The title deed in distinct and positive terms covers this land. The appellants' rights to the half of the river bed should also be maintained. The deed describes the property as bounded "on the south-easterly side by the Massawippi River," a stream, floatable *à buches perdues*. This description would convey all rights in the river to the middle of the stream; *Hurdman* v. *Thompson* (1). The bed of the river to mid-channel is an adjunct of the grant of adjacent land upon the bank unless it is especially excluded therefrom. In the present case there is no exclusion. In fact there is, in the subsequent deeds, an admission that it was intended to be included. In the deeds from Putney to LeBaron, and from LeBaron to respondent's immediate *auteur*, in which the land on the opposite shore and the remaining rights in the river were conveyed, the property is described as "including that part of the Massawippi River which is not included in the right of way of the Massawippi Valley Railway,"

(1) Q. R. 4, Q. B. 409.

thus recognizing that a portion of the river was included. If any portion was included it must be the full half of the river because there is no reference to the subject except in the general description "bounded by the Massawippi River."

As to the damages, the dam was gradually but materially added to from time to time increasing its height and more particularly increasing its width. The effect of widening the dam was to make it tighter, increasing the height of the water, and giving a larger head. The damages growing more pronounced from year to year, became so serious that, in 1899, appellant instituted the present action for damages to the road-bed and to recover possession of the property illegally detained, and by removing the dam, to prevent further damages. The railway is built along the lake shore, close to its waters, for a distance of eight or nine miles. The dam is about three-quarters of a mile from the outlet of the lake, and the fall from the waters of the lake to the crest of the dam is only an inch or two, the water being practically level between the dam and the lake. The expert evidence is that the dam must of necessity raise the water in the lake and that the rise would correspond with the height of the dam. The respondent's witnesses, however, testify that the dam does not have any effect. So remarkable a result would seem to require explanation.

H. B. Brown K.C. for the respondent. The transfer made by plaintiffs to the Connecticut & Passumpsic Railroad Co. for the term of 999 years, and called a lease, and by which, in express terms, the plaintiffs demised the road with all its franchises, rights and privileges, is in effect an alienation. Art. 1593 C. C.; 25 Vict. ch. 61, s. 15. A lease for 999 years is, for all purposes under our law, a transfer in perpetuity. Arts. 389, 390, 391 C. C.; 27 Laurent, nos. 47, 48;

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

Fuzier Herman, Code Annotée, Art. 530, note 2; Art. 1709, note 7; Lorrain, "Locateurs et Locataires," p. 3, nos. 9, 10. If the contract be regarded, however, as a *contrat innommé* a *bail-à-rente*, or an emphyteutic lease, it operates an alienation during the term of its existence. 4 Pothier (ed. Bugnet). "Bail à rente," no. 111: Arts. 567, 568, 569, 570, 571 C. C.; *Lampson et al.* v. *Bélanger* (1). If the contract operates as an alienation, plaintiffs have no right of action and are without interest. Art. 77 C. P. Q.

Nor can the plaintiffs claim damages. The question as to whether the lessors and lessees can join in an action for damage, is not in issue here. They are not joined. The lessor, who has not suffered any damage, can not maintain the action in its own name alone. Even under an ordinary lease, it is not competent for the landlord and tenant to bring a joint action against a trespasser for damages, although both parties in such case may sustain injury, their injury being entirely separate and distinct; Beaudry-Lacantinerie, "Contrat de louage," p. 227, Nos. 532, 533. The lessees and their successors have, in fulfilment of the terms of the lease, maintained the road-bed, and there is no recourse of the lessees, in any form, against plaintiffs. Where then is the interest that can warrant a condemnation for damages in favour of the plaintiffs who have not suffered any damage?

The sale from Putney, dated 31st Jan., 1870, is of a strip of land described as having the line of the Massawippi Valley Railway running through it, and bounded on one side by a line drawn at a distance of three rods north-west from the centre line of said railway, and on the other side by the Massawippi River, as "selected and laid out by the company for the purposes of their railway." This is the form given in

(1) Q. R. 7 S. C. 162.

the Act, 25 Vict. c. 61 At this time the company had already taken the land which they required for their railway, and which Putney intended to sell. Within a few months they put up their permanent fences along the right-of-way as already established and left Putney in possession of this narrow strip outside of the fence, which is in dispute. Under the Act, 14 & 15 Vict. ch. 51, sec. 13, the company was required to construct and maintain these fences, "to divide and to keep their land from the neighbouring properties." They interpreted their own deed, by erecting the fence in the position where it has ever since remained, and which is in accordance with the pretentions of the defendant; *Langevin* v. *Morrissette* (1). The possession of defendant and his *auteurs* has ever since been acquiesced in by the company which also has taken freight from defendant's mill, and put in a siding up to the mill at his expense, to encourage him to enlarge his business, and the idea of now claiming the land on which the mill stands comes very late. The fact that for upwards of 29 years since their title, and for upwards of 30 years since their possession, the companies have treated the disputed land as outside of their limits, lays a very heavy onus upon the plaintiffs, especially in view of the money expended in good faith and the business built up on the territory now disputed. See *Dunn* v. *Lareau* (2) at page 230 and *Delorme* v. *Cusson* (3).

The company could only acquire title to land "necessary for the construction, maintenance, accommodation and use of the railway." 14 & 15 Vict. c. 51, s. 9, ss. 2. See the remarks of Halsbury L. J. in *London Brighton & South Coast Ry. Co.* v. *Truman* (4). The presumption of ownership *ad medium filum aquæ* may

(1) 19 R. L. 476.
(2) 57 L. J. P. C. 108 ; 32 L. C. Jur., 227.
(3) 28 Can. S.C.R. 66.
(4) 11 App. Cas. 45.

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

be rebutted; *Duke of Devonshire* v. *Pattinson* (1). As regards this company with power to acquire land simply for the purposes of a railway, the presumption of ownership *ad medium filum aquæ*, beyond their right of way as laid out, would not exist at all. Cf. 14 & 15 Vict. c. 51, s. 9, ss. 3; *Norton* v. *London & North Western Ry. Co.* (2).

Twenty years before the action Putney sold the property in question to LeBaron, and posts were planted, showing the westerly side line outside the railway fence as it then was and as it is to-day. One of these posts still exists undisturbed. The thing sold had been seen, examined, surveyed, and was known as lying between the railway fence on one side and the middle of the river on the other; *Dunn* v. *Lareau* (3). Sixteen years before action, LeBaron sold the same property to Wilder Reed, and in 1895, Wilder Reed sold to defendant, who, by himself and his *auteurs*, has been in possession under translatory title in good faith. When in the deed from Putney to LeBaron the property sold is described as "including that part of the Massawippi River which is not included in the right of way of the Massawippi Valley Railway", the parties meant, it is manifest, the right of way as it existed and had been fenced off, then, for over nine years.

Although the period between the date of the deed from Putney to the Company, to the date of service of the action, falls short of thirty years by about a month, yet that deed was merely an amicable settlement of the compensation for an expropriation, which had already taken place more than a year previously, with the consent of Putney. The deed is retroactive to the date the company took possession. Abbott's Railway

(1) 20 Q. B. D 263. (2) 9 Ch. Div. 623; 13 Ch. Div. 268.
(3) 32 L. C. Jur. 227.

Law of Canada, p. 211; art. 1085 C. C. There has consequently been 30 years acquisitive prescription in favour of the defendant.

Defendant is, in any event, entitled to retain the property until he has been paid for his improvements, which have been made in good faith.

The question as to whether or not the dam has been the cause of the damage claimed to the road-bed along Lake Massawippi is a question of fact, and the trial Judge before whom the witnesses were examined, came to the conclusion that the plaintiffs had failed to establish this feature of their action. This decision should not been interfered with on appeal; *The Village of Granby* v. *Ménard*, (1).

THE CHIEF JUSTICE.—This seems to me a simple case. Both parties have Putney as their warrantor. Though as to the respondent he is but remotely so, that makes no difference. Art. 187 C. P. Q. So that the solution of the controversy between the parties depends exclusively upon the question, 1st. whether the piece of land that Putney sold to the appellants in 1870 is bounded by the River Massawippi or not, and 2ndly. whether that sale includes the bed of the river *ad filum aquæ*. If not, their action must be dismissed whether the respondent has any title to the property or not. And, *à converso*, if the land purchased by the appellants from Putney includes the land up to the river, with the river *ad filum aquæ*, the respondent's contentions are untenable and he must surrender the property in dispute to the appellants.

Now there seems to me but one possible answer to that question. First, the deed of sale to the appellants in express terms gives the river as the boundary of the land sold; secondly, they purchased four acres and

(1) 31 Can. S. C. R., 14.

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

The Chief Justice.

three-tenths, and they would not have that quantity if they did not go as far as the river; thirdly, on the plan deposited with the Government as required by the statute then in force (14 & 15 V. ch. 51), it appears unmistakably that the land previously indicated by the appellants as wanted for their railway was bounded on the east by the river. *Micklethwait* v. *Newlay Bridge Co.* (1).

The respondent contends that the words "the same having been selected and laid out" in the deed should be read as if the description of the land previously given were immaterial. But that contention cannot prevail. If anything in that deed is immaterial, it is those very words and not the description. Then they cannot be read with the addition of the word "as" preceding them for the simple reason that that word is not there. They mean if anything at all "selected as laid out as per the plan filed according to the statute." It must be held consequently that the appellants' purchase from Putney includes the strip of land between the railway fence and the river. That being so, there is no room for the contention that their title does not include the river.

It is settled law that a deed of sale which gives a non-navigable river as the boundary on one side of the land sold cannot be read as implying a reservation of the river, or as excluding it from the sale; and in such a deed, if the description is doubtful, it has to be construed against the vendor. Duranton, Vol. 5, No. 223; 2 Demolombe. Servit. no. 275. In other words, the bed of the river is included in the sale of the land

unless the terms of the sale clearly denote the intention to stop at the edge of the river. Kent's Comment. Vol. 3, p. 427, unless there be *decided* language showing *a manifest intent* to stop at the

(1) 33 Ch. D. 133.

water's edge". Angell, on Watercourses, No. 10; *Hurdman* v *Thompson* (1); *The Queen* v. *Robertson* (2).

The French law and the jurisprudence of the Province of Quebec are in the same sense. And it is not strictly accurate to call this a presumption. The river is, *ad filum aquæ*, included in the sale itself *ex jure naturæ*, as an incident of property, as a part and parcel of the land sold, just as the windows and doors of a house, or its chimneys and heating apparatus, form part of a sale of the house if not reserved in clear language. This deed must be read as if the property sold was described in express words as bounded by the middle of the river. *Lord* v. *The Commissioners for the City of Sydney* (3). The intention to include the river in the sale is proved by the fact that it was not excluded.

Now the appellants' deed having been duly registered in 1870, Putney could not in 1879 give any title of the same property to LeBaron. He did not do so in fact, but simply sold whatever of that lot 24 he had not sold to the appellants; but assuming that he has done so, the sale is a complete nullity, according to the express provisions of Art. 1487 C. C. The appellants' title could not be defeated by their vendor and warrantor himself. The sale to them was as perfect in 1870 for the part not delivered by their vendor, as it was for the part they took physical possession of. Art. 1472 C. C. And not only between them and Putney, but also as to third parties they became the legal owners of all the property they purchased the moment that their deed was registered. Art. 1027-1027, 2089, 2096 C. C. Le Baron then had no title to this property and consequently could not convey any to W. Reed, nor the latter to the respondent. *Kaigle* v. *Pierce* (4).

(1) Q. R. 4 Q. B. 409
(2) 6 Can. S. C. R. 52.
(3) 12 Moo. P. C. 473.
(4) 15 L. C. Jur. 227.

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

The Chief Justice.

The possession that Putney kept of the river is of the same charac er and cannot be viewed in any other light than the possession that he was allowed to keep of the strip of land bordering it; *Rondeau* v. *Charbonneau* (1); that is to say, a possession not distinct and separate from that of the shore, and not as proprietor, but by sufferance of the owner, upon which no plea of prescription of ten years can be based.

It is no doubt true that in construing a deed the manner in which it has been executed by the parties may furnish a guide for its interpretation, but that rule can be invoked only when the intent of the parties appears by the deed itself to be doubtful; it cannot defeat a clear and unambiguous written agreement; Putney could not be admitted, under the circumstances of this case, to contend that his failure to deliver the thing sold is by itself evidence against his contract to do so sufficient to defeat it.

The respondent would contend that the clear stipulation in the deed of sale to the appelants must give way before the presumption resulting from Putney's possession up to 1879. But when a vendor so continues to remain in possession with the consent express or implied of the vendee, the legal presumption is that thereafter he possesses as tenant. Art. 1608 C. C. He clearly cannot possess *animo domini* anything that he has sold.

Then Putney himself subsequently acknowledged appellants' rights in the river by selling to LeBaron whatever of that lot he had not sold to the appellants,

including that part of the river which is not included in the right of way of the Massawippi railway,

terms that necessarily imply the admission that the appellants' right of way included a part of the river and are equivalent to an express reservation of that

(1) 11 R. L. 292.

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

The Chief Justice.

part in their favour, and the Reeds acquired what LeBaron himself had bought from Putney, not more nor less. They consequently have no title to the property in dispute. *Chalifour* v. *Parent* (1). But assuming that they have, they cannot in good faith have believed that Putney had the right to sell to LeBaron in 1879 what they knew by the registry office and their own title deeds he had sold in 1870 to the appellants.

Under any view of the case, therefore, the respondent's plea of prescription by ten years cannot prevail.

Then as to the thirty years' prescription, it could not under any circumstances have run during Putney's possession, for Putney could not possess *as proprietor* what he had himself sold the appellants. Arts. 2193, 2196 C. C. He being their warrantor could not, if he had been called *en garantie*, be admitted to impugn himself the title he gave them and attempt thereby to derive a benefit from his failure to perform his obligation to deliver what he had so sold

As to the appellants' right of action, I am of opinion, with the Court of Appeal, that the respondent's contentions on this point, as on the others, are unfounded. Then if necessary I would have allowed the joining of the appellants' lessees as co-plaintiffs by way of amendment.

As to the damages, I see nothing in the case that would justify an interference with the findings of fact of the trial judge upon this part of the action against the appellants' contentions upon contradictory evidence.

The appeal should, in my opinion, be allowed with costs in all the courts against the respondent, less however the costs of enquête which are to be borne by each party, (*chacun ses frais d'enquête et d'exhibits*),

(1) 31 Can. S. C. R. 224.

1903

MASSAWIPPI VALLEY RWAY. CO. v. REED.

The Chief Justice.

and less half the cost of the printing thereof in this court; the record to be remitted back to the Superior Court for the expertise necessary for the valuation of the improvements made on the property by the respondent; (Arts. 411 to 418 C. C.); which improvements the appellants have agreed to pay. The Superior Court thereafter upon the payment of such improvements, less the costs due by the respondent *s'il y a lieu*, to enter judgment according to the appellants' conclusions *au pétitoire*.

SEDGEWICK and GIROUARD JJ. agreed with His Lordship the Chief Justice.

DAVIES J.—I do not dissent though I entertain grave doubts based upon the decision of the Privy Council in *Dunn* v. *Lareau* (1).

NESBITT J. concurred for the reasons stated by His Lordship the Chief Justice.

Appeal allowed with costs.

Solicitors for the appellants: *Cate, Wells & White.*

Solicitors for the respondent: *Brown & Macdonald.*

(1) 57 L. J. P. C. 108; 32 L. C. Jur. 227.