YOUNG AND YOUNG V. SCOBIE

(1853), 10 U.C.Q.B. 372

Upper Canada Queen's Bench, Robinson C.J., Draper and Burns JJ., 1853

***Receipts for purchase money of land -Omission of purchaser's name, effect of- Land sales acts,-4 & 5 Vic., ch. 100, 12 Vic., ch. 81- misjoinder of plaintiffs* in ejectment- 14 & 15 Vic. ch. 114.**

The plaintiff produced two receipts of certificates of deposits to the credit of the Receiver General, on a purchase of certain lands. In both receipts the money was expressed to have been received from the plaintiff: in the first a blank was left for the name of the person to whom the sale was made, the words "sold to" being inserted: in the second no mention was made of the purchaser. *Held,* that the receipts imported sale to the plaintiff, in the absence of any proof to the contrary.

The agent for disposing of the Indian Lands on the Grand River does not come under the designation of a district agent of he Commissioner of Crown Lands, so as to entitle purchasers holding his certificate to the benefit of the provisions in the land sales' acts.

***Quaere* as to the effect of a misjoinder of plaintiffs in ejectment under the new act, 14 & 15 Vic. ch. 114.**

EJECTMENT for lot 2, east side of Argyle street in Caledonia.

The defendant limited his defence to that part of the rear of lot No. 2, which is situated immediately in the rear of the residence of the defendant, and which is now occupied by him as a garden.

On the part of the plaintiffs, at the trial at Cayuga, before Sullivan, J., a receipt was produced, dated the 18th of June, 1830, signed by David Thornburn, Esq., the Commissioner, for the sale of the lands of the Six Nation Indians on the Grand River in these words: "Received from Christopher Young a certificate of deposit to the credit of the Receiver General, with the Gore Bank, of this day's date, for *L*25, being the first instalment, one third of the purchase money on Lot 2, east side of Argyle street, in the town of Caledonia, in the county of Haldimand, sold to-, at the rate of *L*75, the balance payable in six equal annual instalments, with interest to be reckoned from the date of this receipt."

"It is an express condition of the above sale, that the purchaser, or his heirs and assigns, shall regularly pay the instalments, together with interest, as they become due, till the whole shall have been paid and satisfied, under pain of forfeiture of the lot above sold, and also all of the instalments paid on account of the same."

They produced also a second receipt as follows: "Received, 24th June, 1852, from Christopher Young, a certificate of deposit to the credit of the Receiver General of the sum of *L*18 13s. 9*d*., as the 2nd and 3rd instalments on new sale, No. 1263, being for lot No. 2, on the east side of Argyle Street, in the town of Caledonia, in the county of Haldimand."

These receipts were relied upon as sufficient to entitle the plaintiffs to recover under the Land Sales Act.

It was objected that the receipts were only for payments from Christopher Young, and that this being a joint action by him and Abel Young, neither could recover separately. 2ndly. That it did not appear from the receipts to whom the sale was made.

The learned judge directed a verdict for the plaintiff, Christopher Young, reserving leave to move for a no suit to be entered for the defendants on these objections.

Martin obtained a rule nisi for a no suit, or new trial without costs, for misdirection and for the reception of improper evidence. He cited *Doe dem. Anderson et al. v. Errington*, 1 U.C.R., 159; *Doe dem. Barwick et al v. Clement*, 7 U.C.R., 549; 14 & 15 Vic. ch. 114.

Freeman shewed cause.

ROBINSON, C.J., delivered the judgment of the court.

Supposing, which it is not necessary to determine, that Mr. Thorburn stands in the place on one whose certificates comes within the Lands Sales Acts, we think the receipts import a sale to Christopher Young, who paid the money, and to him only, in the absence of any proof that the fact was otherwise; that no title was shewn in the other plaintiff; and therefore that, ejectment being no longer a fictitious action, ostensibly maintained by John Doe on a demise from others, but an actual claim of right in the plaintiffs who are suing, we must hold that there was a misjoinder of the plaintiffs, which, as in other actions, must be fatal in ejectment; and indeed if this action had been in the old form, the late case of *Doe dem. Wilton et ux. v. Beck* (20 L. Times, 67, 13th Nov. 1852), shews that the objection would have been fatal, and that it could not have been cured by any amendment that could be properly made at *Nisi Prius*.

Rule absolute (a)