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DRAPER v. RADENHURST.

*June 23.

*Dec. 13.

*Title to land—Purchaser at tax sale—Cloud upon title—Purchase money—
Distribution—Trustee.*

APPEAL from a decision of the Court of Appeal for Ontario reversing the judgment of the Divisional Court in favour of the plaintiffs.

John Radenhurst died leaving his estate to his widow and, in the event of her dying without disposing of it, to his surviving children. The estate having become involved an absolute deed of the realty was executed in favour of one of the testator's children by the widow and other children, and the grantee undertook to pay off the liabilities and reconvey the lands on repayment of the amounts advanced for the purpose. The grantee managed the estate for some years but was eventually obliged to convey it to trustees for the benefit of creditors, it then owing her some \$18,000.

A portion of the land so conveyed was sold for taxes and the purchaser, to perfect his title, obtained quit-claim deeds from the heirs of the original testator of such portion and of one hundred acres of timber land adjoining. The latter was not included in the assignment for benefit of creditors. Similar quit-claim deeds had previously been given for other portions of the estate and the moneys paid for the same equally distributed among the surviving children and grandchildren of the testator. Before the distribution of the purchase money in the last case, however, the deed executed by the widow and children of the testator, which had been mislaid for several years, was dis-

*PRESENT :—Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

covered, and the children of the grantee under it, who had died, claimed the whole of the money. The other heirs brought an action for their respective shares and obtained a verdict therefor at the trial, which was affirmed by the Divisional Court, on the ground that an agreement for the equal division of the money was proved. The judgment of the Divisional Court was reversed by the Court of Appeal.

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The Supreme Court held, Gwynne J. dissenting, that the purchaser at the tax sale paid the money to obtain a perfect title, and as the defendants were the only persons who could give such title, the legal estate being in them, plaintiffs could not claim any part of the money, and that the agreement to apportion the money was not proved, any agreement made by plaintiffs with the purchaser not binding the defendants.

The decision of the Court of Appeal was accordingly affirmed.

Marsh Q.C. for the appellants.

Donovan for the respondent.
