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ERRATA ET ADDENDA.

P. 36.—Section 5, sub-section 13. After *Leprohan* v. *City of Ottawa,* it may be noted that in *Bucke* v. *City of London,* argued before a Divisional Court on the 28th of September, 1905, it was decided that the principle of *Leprohan* v. *City of Ottawa* did not apply to a superannuated civil servant of the Dominion of Canada, so as to exempt his superannuation allowance from assessment and taxation, that income so derived was not exempt, and that the Ontario Legislature had power to enforce taxation thereon.

P. 99.—In note 1, line 2, after "reside" insert "or have places of business."

P. 129.—At the foot of the page insert "For 'actual value of land' see the notes on section 199, page 438."

P. 155.—Instead of "yars" read "years" in line 4 of section 51.

P. 197.—Insert a reference to *Re Dundas Street Bridges; Re Hunter and City of Toronto,* 8 O.L.R. 52, at the foot of the page.

P. 247.—For "there" read "these," in line 27.

P. 260.—For "*respondent*" read "*respondeat*".

P. 289.—For "license" read "licence" in line 7.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short Title.

PRELIMINARY PROVISIONS.

1. This Act may be cited as "*The Assessment Act.*" *See* R. S. O. 1897, c. 224, s. 1.

This Act is a consolidation of R.S.O. 1897, c. 224 and the subsequent amendments, with, however, numerous changes and additions. The most radical change in the policy of the Act is the abolition of all assessment of personal property other than income, and the substitution therefor of a "business assessment" based on the value of the realty occupied by the business carried on. The stock in trade and other personal property belonging to the business are no longer assessable. A percentage of the value of the realty occupied, varying for different kinds of business, but uniform for each business of the same class, is taken as the basis for all contributions to municipal revenue, other than for land or income.

Telegraph and telephone companies in urban municipalities are to be assessed on a fixed percentage of their gross receipts, in addition to all other assessments to which they are subject. In Townships they are to be assessed at a fixed rate per mile on their lines.

The means provided for enabling assessors to ascertain correctly the amount of taxable income each person in the municipality has, by returns from employers paying salaries, and corporations paying dividends, and by returns from the persons assessed, have been extended.

The provisions formerly contained in the successive assessment Acts relating to Statute Labour have been carried into a separate Act.

Interpretation Clause.

2. Where the words following occur in this Act or the Schedules hereto, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:

"Gazette."

1. "Gazette" shall mean *The Ontario Gazette;*

"Township."

2. "Township" shall include a union of townships;

"County Council."

3. "County Council" shall include provisional county council

"Town." "Village."

4. "Town and Village" shall mean respectively incorporated town and village;

"Municipality."

5. "Municipality" shall mean and include a city, town, incorporated village or township, but not a county. R.S.O. 1897, c. 224, s. 2, par. 6, *amended.*

"Municipality" in *The Consolidated Municipal Act,* 1903, "shall mean, any locality the inhabitants of which are incorporated, or are continued or become so under this Act"; sec. 2, subs. 10.

"Local Municipality" in *The Consolidated Municipal Act,* 1903, "shall mean a city, town, township, or incorporated village," sec. 2. subs. 9. *The Interpretation Act,* R.S.O. 1897, c. 1, s. 10, provides that, "The interpretation section of *The Municipal Act,* so far as the terms defined can be applied, shall extend to all enactments relating to municipalities." In the Municipal Act "Municipality" is used in its ordinary sense to to denote any incorporated body, from a county to an incorporated village. When it is desired to exclude the county, the term used is "Local Municipality." In the Assessment Act "Municipality" is the "local Municipality" of the Municipal Act. These Acts are in *pari*

materia, and should be construed together: *Re Montgomery and Raleigh*, 21 C.P., at p. 394. It is awkward and confusing to have the same word used in different senses.

"Tenant."

6. "Tenant" (1) shall include (2) occupant (3) and the person in possession (4) other than the owner. *New.*

This clause is new.

(1) "Tenant," "one that holds land of anyone, inclusive of the Sovereign; it is therefore applicable to every subject holding land in this country, but the word is always used relatively, and as the relation to the Sovereign is seldom called in question, it more commonly signifies one who holds of another subject; the owner is seldom characterized as tenant, except where it is necessary to particularize the quantity of his estate. (2) One that has temporary possession and use of the land of another, correlative to landlord." Wharton's Law Lexicon. "A tenant is a person who holds of another; he does not necessarily occupy. In order to occupy, a person must be personally resident by himself or his family." Per Littledale, J., in *R.* v. *Ditcheat*, 9 B. & C. 183. It includes the assignee of a lessee; *Williams* v. *Bosanquet*, 1 Broad. & B. 238; and a sublessee, *Doe d. Wyatt* v. *Byron*, 1 C. B. 623.

(2) The word "include" implies addition. Jarman on Wills, 5 Ed., page 1090; *Re Harkness*, (1905) 8 O.L.R. 720. The effect of the clause is to make "tenant" include "occupant" and "person in possession" in addition to its ordinary meaning.

(3) "Occupant"—An occupant is one who is in the use and enjoyment of a thing. Occupancy denotes something more than mere possession, and something less than tenancy or ownership. Occupancy arises from "actual possession and manurance of the land," Vin. Abr. title "occupancy," H.. See Co. Litt. 249 b. Occupancy includes possession as its primary element, but it also includes something more. Legal possession does not of itself constitute an occupation. The owner of a vacant house is in possession and may maintain trespass against anyone who invades it, but so long as he leaves it vacant, he is not rateable as occupier. *R.* v. *St. Pancras*, 2 Q. B. D. 588, per Lush, J. The actual, visible,

continuous and exclusive possession of a right of way through a park, the fee being vested in the Crown, the right of way being occupied for the profitable use of an electric railway, constitutes the Electric Railway Company an occupant, and makes it liable for taxation thereon, though the land itself is not liable for the taxes: *Niagara Falls Park & River Railway Co.* v. *Town of Niagara Falls*, 31 O. R., 29. The occupant is assessed in respect of the property: *Reg. ex rel Latchford* v. *Frizell* (1872), 9 U.C. L.J. N.S. 27. —*Semble*. The lessee of a house cannot be assessed as an occupant when he no longer in fact occupies it, although his term continues: *McCarrall* v. *Watkins*, 19 U.C.R. 248. Twenty or thirty acres of a lot on which no one lived were cleared and fenced, and a barn erected thereon, in which the hay grown upon the clearing was stored for winter by a person occupying the adjoining lot, under the authority of the proprietor. The owner was a non-resident, and had given no notice to have his name put on the roll: *Semble*. The lot should have been assessed as occupied: *Bank of Toronto* v. *Fanning*, 17 Gr. 514, 18 Gr. 391.

A municipality is not an owner or occupant of the highway within the meaning of The Act to Prevent the Spread of Noxious Weeds: *Osborne* v. *City of Kingston*, 23 O.R. 382. Meaning of "proprietor," "tenant," and "occupant," discussed under the Railway Act, 1879: *Conway* v. *C.P.R.*, 7 O.R. 673, 12 A.R. 708.

See also *Chatillon* v. *Canadian Mutual Insurance Co.*, 27 C.P.450; *Russell* v. *Shenton*, 3 Q.B. 449; *Metropolitan Ry. Co.* v. *Fowler* (1893), A.C. 416; *Warne* v. *Coulter*, 25 U.C.R. 177; *Paterson* v. *Gas, Light and Coke Co.* (1896), 2 Ch. 476. The tenant, though absent, is, speaking generally, the "occupier" of premises: *R.* v. *Poynder*, 1 B. & C. 178. But a servant or other person who may be there by virtue of his employment, is not an occupier : *Clark* v. *St. Mary Bury St. Edmunds*, 1 C.B.N.S. 23; *R.* v. *Spurrell*, L.R. 1, Q.B. 72; *Bent* v. *Roberts*, 3 Ex. D. 66. To constitute a person an occupant, he must be in control of the property for the time being, merely living upon it is not sufficient: *Robinson* v. *Briggs*, L.R., 6, Ex. 1; *Brewer* v. *McGowen*, L.R. 5 C.P., 239. A lodger is not an occupant: *Pitts* v. *Smedley*, 7 M. & G. 85. A person who occupies a part of a house, the landlord also residing upon the premises and keeping the key of the outer door, is a mere lodger: *Ib.*

(4) "Occupation" and "possession" are sometimes distinguished. "Occupation includes possession as its primary element,

but it also includes something more. Legal possession does not of itself constitute occupation. The owner of a vacant house is in possession, and may maintain trespass against anyone who invades it, but as long as he leaves it vacant he is not rateable for it as an occupier. If, however, he furnishes it and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year. On the other hand, a person who, without having any title, takes actual possession of a house or piece of land, whether by leave of the owner or against his will, is the occupier of it.": *Reg.* v. *Assessment Committee, of St. Pancras*, 2 Q.B.D. 581, per Lush, J., at p. 588.

" Possession is said two waies, either actuall possession or possession in law. Possession in law is when lands or tenements are descended to a man and he hath not as yet, actually and in deed entered into them ": *Termes de la Ley*, possession. An estate or interest in possession does not, primarily, mean the actual occupation of the property, but the present right thereto, or to the enjoyment thereof: *Re Morgan*, 24 Ch. D. 114; *Re Atkinson*, 31 Ch. D. 577.

" Land."

7. " Land,"(1) " Real Property " (2) and " Real Estate " (3), shall include:

(*a*) Land covered with water (4);

(*b*) All trees and underwood growing upon land (5);

(*c*) All mines (6), minerals (7), gas (8), oil (9), salt (10), quarries and fossils (11), in and under land;

(*d*) All buildings, or any part of any building and all structures, machinery, and fixtures, erected or placed upon, in, over, under, or affixed to, land (12);

(*e*) All structures and fixtures erected or placed upon, in, over, under, or affixed to any highway, road, street, lane, or public place or water (13); but not the rolling stock of any railway, electric railway, tramway or street railway, (14). See R.S.O. 1897, c. 224, s. 2, par. 9; 3 Edw. VII., c. 21, s. 7 (1).

"Include" imports addition. See Sec. 2, subs. 6, Note (2). But in this section the things set out are rather by way of explanation and elucidation than of addition, as appears from the meanings of the three terms "land," "real property," and "real estate," which are apparently intended to be synonymous throughout the Act.

(1) Land "comprehendeth any ground, soile, or earth whatsoever," though it anciently meant "whatsoever may be plowed": *Co. Litt.* 4 *a.* "Land also hath in its legal signification an indefinite extent upwards as well as downwards. *Cujus est solum, ejus est usque ad coelum*, is the maxim of the law upwards; therefore no man may erect any building or the like, to overhang another's land; and downwards, whatever is in a direct line between the surface of any land and the centre of the earth belongs to the owner of the surface, as is every day's experience in the mining countries. So that the word "land" includes not only the face of the earth, but everything under or over it, and therefore if a man grants all his lands, he grants thereby all his mines of metal and other fossils, his woods, his waters and his houses, as well as his fields and meadows": *Blackstone's Commentaries*, Vol. 2, Cap. 2. The word "lands" did not include leaseholds unless the testator had no lands in fee to which the devise could apply: *Rose* v. *Bartlett*, Cro. Car. 293. See now The Wills Act of Ontario, sections 2 and 28. In law "land" signifies any ground forming part of the earth's surface which can be held as individual property, whether soil or rock, or water-covered, and everything annexed to it, whether by nature, as trees, water, etc., or by the hand of man, as buildings, fences, etc.: *The Century Dictionary*. "Lands" usually extends to messuages, lands, tenements and hereditaments of any tenure: *G. W. Ry. Co.* v. *Swindon*, 22 Ch. D. 677; *Re Aylesford*, 32 Ch. D. 162; it includes a dignity or title of honour; *Re Rivett-Carnac*, 30 Ch. D. 136. But not an advowson: *Westfaling* v. *Westfaling*, 3 Atk. 464.

(2) All kinds of property and all kinds of proprietary rights are either "real property" or "personal property." "Things real are such as are permanent, fixed and immovable, which cannot be carried out of their place; things personal are goods, money and all other moveables:" *Bl. Com.*, Vol. 2, Cap. 2. The term real property includes: (1) lands; (2) tenements, which signifies everything of a

permanent nature that may be holden; whether of a substantial and sensible, or of an unsubstantial and ideal kind. Tenements is applicable to franchises, offices, commons, peerages; and (3) hereditaments. "This is by much the largest and most comprehensive expression, for it includes not only lands and tenements, but whatsoever may be inherited,be it corporeal or incorporeal, real, personal or mixed. Thus an heirloom, or implement of furniture which by custom descends to the heir, together with an house, is neither land or tenement, but a mere moveable; yet being inheritable, is comprised under the general word hereditaments": *Co. Litt.* 6. Keys of the house, title deeds and titles of honour are realty: *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U.C.R. 194, per Wilson, J. A small building of thin boards lathed and plastered inside, with three rooms,and resting by its own weight on loose bricks laid on the ground, is land,: *Miles* v. *Ankatell*, 25 A.R. 458; *Phillips* v. *Grand River etc. Insc. Co.*, 46 U.C.R. 334. An engine sold for the purpose of driving a saw-mill, and affixed to the land by bolts and screws let into a concrete bed, is a fixture, and becomes a part of the realty in favour of a mortgagee of the land,who has no noticeof the lien, as against the vendor of the engine, who by express contract reserved to himself the ownership of the engine and the right to retake it upon default in payment: *Hobson* v. *Gorringe* (1897), 1 Ch. 182; *Lainé* v. *Beland*, 26 S.C.R. 419; *Reynolds* v. *Asby* (1904), A.C. 466. The vendor's lien has now priority over a purchaser, mortgagee or other incumbrancer on such realty, under 5 Edw. VII. c. 13, s. 14, which is as follows:

14. Section 10 of the *Act respecting Conditional Sales of Chattels* is repealed and the following substituted therefor:

10. (1) Where any goods or chattels which have been sold on special conditions as in section 1 of this Act mentioned are affixed to any realty, such goods and chattels shall notwithstanding remain subject to such conditions as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other incumbrancer on such realty shall have the right as against the manufacturer, bailor or vendor of such goods or chattels or any person claiming through or under them to retain the said goods and chattels upon payment of the amount due and owing thereon.

(2) The provisions of this section are to be deemed retroactive and shall apply to past as well as to future transactions.

Looms attached to the floor by nails driven through holes in two of the four legs of each loom are fixtures: *Holland* v. *Hodgson* (1872), L.R., 7 C.P. 328. A hot air furnace fixed to the floor by screws and placed in a dwelling during its construction by the mortgagor, cannot be removed by him as against the mortgagee. It is a part of the freehold: *Scottish American Investment Co.* v. *Sexton*, 26 O.R. 77. Between mortgagor and mortgagee there may be constructive annexation, as the watchman's clock ; other articles may be necessary parts of fixed machines, as the dynamometer scales; a safe enclosed by wooden pigeons holes so that it could not be removed without destroying part of the realty, is a part of the freehold; but machines not themselves affixed at all, though connected with fixed counter-shafting, are not thereby fixtures, they not being parts of the one article; nor are a copying press and table, an anvil, a hand sawing machine, a platform scale on wheels, fire hose, and hose reel: *Haggart* v. *Town of Brampton*, 28 S.C.R. 174; see also *McCosh* v. *Barton*, 2 O.L.R. 77.

Between landlord and tenant, however, fixtures put in by the tenant for the purposes of trade, domestic convenience, or ornament, are removable. Of this class are: Shelving nailed to strips fastened by nails to the wall; an office built on a platform nailed to the floor, the office being nailed on two sides to the building; gas fixtures; awnings; a mirror without a frame secured in place by a moulding nailed to the wall; brass window fixtures for the display of goods: *Argles* v. *McMath* (1895), 26 O.R. 224.

But between vendor and purchaser, shelving affixed to the wall so as to be removable without injury, and gas and electric light fixtures, are part of the realty, and pass to the buyer of the land: *Stack* v. *T. Eaton Co*, 4 O.L.R. 335. Between chattel mortgagee and mortgagee of land, see *Bacon* v. *Rice Lewis & Son, Limited* (1897) 33 C.L.J. 680, and the cases therein cited.

(3) Real estate and real property may perhaps be taken as synonymous.

(4) The word "lands" in the Public Health Act, 1875, obviously includes lands covered by water. Per Lindley, L.J., in

Durant v. *Branksome Urban Council* (1897), 2 Ch. 301. "Not only by reason of the definition, and not only by reason of the common law, 'lands' includes land covered with water," per Chitty, L. J. *Ib.*; *R.* v. *Leeds & Liverpool Navigation Co.*, 7 A. & E. 685; *R.* v. *Regents Canal Co.*, 6 B. & C. 720; also a wet dock, *R.* v. *Newport Dock Co.*, 31 L.J. M.C. 226; *R.* v. *Birmingham Waterworks*, 1 B. & S. 84. A water company's reservoir for storing water is land covered with water, and is taxable as such: *Hampton Urban Council* v. *Southwark etc. Water Co.* (1900), A. C. 3. A harbour has been held not to be land: *Buffalo and L. H. Ry. Co.* v. *Town of Goderich*, 21 U.C.R. 87.

(5) All trees and underwood growing upon land are land. See note (1).

An agreement to give the right to cut pine timber for a period of twenty years is a sale of an interest in land: *McNeill* v. *Haines*, 17 O.R. 479; *Summers* v. *Cook*, 28 Gr. 179; *Macdonnell* v. *McKay*, 15 Gr. 391; *Johnston* v. *Shortreed*, 12 O.R. 633; *Steinhoff* v. *McRae*, 13 O.R. 546. The tendency of the later cases is to hold that, as a general rule, a contract for the sale of standing timber, which is not to be severed immediately, is a sale of an interest in land; and in case of a parol agreement, part performance is necessary to take it out of the Statute of Frauds: *Handy* v. *Carruthers*, 25 O.R. 279; *Lavery* v. *Pursell*, 39 Ch. D. 508. See also *Stephens* v. *Gordon*, 22 S.C.R. 61; *Laurence* v. *Errington*, 21 Gr. 261; *Hamilton* v. *McDonnell*, 5 O.S. 720; *Chamberlain* v. *Smith*, 21 U.C.R. 103; *Hedley* v. *Scissons*, 33 U.C.R. 215; *McGregor* v. *McNeel*, 32 C.P. 538. But a sale of standing timber to be taken away as soon as possible by the purchaser is not a sale of land, or any interest therein: *Marshall* v. *Green*, L. R., 1 C.P.D. 35

(6) Mines and mineral lands are to be assessed as other agricultural lands; but the income from mining and mineral work is to be assessed as other income. Sec. 36, subs. 3. The primary meaning of the word *mine* standing alone is an underground excavation made for the purpose of getting minerals: *Bell* v. *Wilson*, *L. R.* 1 Ch. 303; *Hext* v. *Gill*, L.R. 7 Ch. 699. Upon a sale of land the vendors cannot reserve the minerals upon the plea that their custom was to denote by land only surface rights, the buyer not having notice of such reservation: *Hobbs* v. *Esquimalt & Nanaimo Ry.*, 29 S. C.R. 450.

An agreement by the owner of a gold mine to transfer to another a portion of the proceeds of a future sale of the mine, when such sale is made, does not relate to an interest in land. The mine is land, but the proceeds of the sale are not: *Stuart* v. *Mott,* 29 S.C.R. 384.

Upon the sale by the Crown of lands without more, the purchaser is entitled to a grant conveying such mines and minerals, including coal, as pass without express grant: *The Queen* v. *Canadian Coal & Colonization Co.,* 24 S.C.R. 713. See also *Johns* v. *Beck,* 24 C.P. 219; *Burn* v. *Strong,* 15 Gr. 651; *Baker* v. *McLelland,* 24 S.C.R. 416; *Esquimault and Nanaimo Ry. Co.* v. *Bambridge* (1896), A.C. 561.

The lessee of mining rights for 99 years, the lessor having the option of taking a lump sum in lieu of a royalty upon the proceeds of the mine, is a purchaser of land for value, so as to render a prior voluntary conveyance void against him: *Conlin* v. *Elmer,* 16 Gr. 541.

(7) The primary meaning of *minerals* is all substances of value commercially, other than the agricultural surface of the ground, whether from a mine or from an open working: *Midland Ry.* v. *Checkley,* L.R. 4 Eq. 19; *Rosse* v. *Wainman,* 14 M. & W. 859; *Mid. Ry.* v. *Haimchward Co.,* 20 Ch. D. 552; *Tucker* v. *Linger,* 8 A. C. 508.

Minerals includes every substance which can be got from underneath the surface of the earth for the purpose of profit: *Hext* v. *Gill,* 7 Ch. 699; *Glasgow Lord Provost* v. *Farie,* 13 A.C. 657; *Jersey* v. *Heath Union* (1889), 22 Q.B.D. 555.

Gold and silver mines are part of the prerogative of the Crown: *Attorney General of British Columbia* v. *Attorney General of Canada,* 14 A.C. 295, 14 S.C.R. 345.

Asphaltum is a mineral: *Gesner* v. *Cairns,* 7 N. Bruns. 595.

The expression " minerals " is a very indeterminate one, sometimes it will include such things as gravel and sometimes not, the object of the Statute must be looked at: *Scott* v. *Midland Ry. Co.* (1901), 1 K.B. 317. *Minerals* may be shown by the context to denote substances got from mines as distinguished from quarries: *Darvill* v. *Roper,* 3 Drew. 294.

Clay, forming the surface or subsoil of land, is not a mineral within the meaning of the Railway Clauses Act (1845), Sec. 77, 78

and 79; *Re Todd, Birleston & Co, and N. E. Ry.* (1903), following *Glasgow* v. *Fairie*, 13 A.C. 657; but see *Midland Railway Co.* v. *Haimchward Brick & Tile Co.*, 20 Ch. D. 552, in which minerals, whether got by mining or open workings, are within the same sections, and brickclay is held to be a mineral.

(8) Natural gas is a mineral within the meaning of the clauses in the Municipal Act, which empower the sale or lease of mineral rights under highways: *Ont. Natural Gas Co.* v. *Smart, re Ont. Natural Gas Co. and Township of Gosfield South*, 19 O.R. 591, 18 A.R. 626; *Murray* v. *Allred*, 100 Tenn. 100.

(9) Petroleum oil is a mineral: *Gill* v. *Weston*, 110 Ps. St. 313; *Stoughton's Appeal*, 88 Ps. St. 198.

(10) Salt is a mineral, though brine formed by the percolation of rain water through rock salt was in one case held not to be a mineral: *Re Dudley*, 26 Solis. Journal, 359.

(11) Quarries and fossils. The following have been held to be minerals:

Brickclay: *Jersey* v. *Neath*, 22 Q.B.D. 555; *Midland Ry.* v. *Haimchward Co.*, 20 C.L.D. 552, but see *Todd, Birleston & Co. and N. E. Ry.* 1903, contra.; china clay: *Hext* v. *Gill*, 7 Ch. 699; Coal and iron: *Bell* v. *Wilson*, 1 Ch. 303; *Midland Ry.* v. *Robinson*, 57 L. J. Ch. 441; *Midland Ry. Co.* v. *Checkley*, 4 L.R. Eq. 19; free stone and limestone: *Dixon* v. *Cal. Ry.*, 5 A.C. 820; granite: *Attorney General* v. *Welsh Granite Co.*, 1 Times Rep. 549; stone got by quarrying: *Bell* v. *Wilson*, supra.; *Micklethwaite* v. *Winter*, 6 Ex. 644; gravel and sand: *Scott v. Midland & Great Northern Ry.* (1901), 1 K.B. 317.

The distinction between a mine and a quarry depends wholly on the mode of working, not on the nature of the material attained: *Rex.* v. *Sedgley*, 2 B. & Ad. 65.

(12) Sub-sec. (*d*) (1) Buildings and parts of buildings, (2) structures, (3) machinery, and (4) fixtures, are land, whether erected or placed (*a*) upon, (*b*) in, (*d*) under, or (f) affixed to land: *Bald* v. *Hagar*, 9 C.P. 382; *Gardiner* v. *Parker*, 18 Gr. 26; *Haggart* v. *Town of Brampton*, 28 S.C.R. 174; *McCosh* v. *Barton*, 2 O.L.R. 77; *Stack* v.

T. Eaton Co., 4 O.L.R. 335; *Bacon* v. *Rice Lewis & Sons, Limited*, (1899), 33 C.L.J. 680; *Hobson* v. *Gorringe* (1897), 1 Ch. 182; *Lainé* v. *Beland*, 26 S.C.R. 419; *Holland v. Hodgson* (1872). L.R. 7 C.P. 328; *Reynolds* v. *Ashby* (1904), A.C. 466; *Burke* v. *Taylor*, 46 U.C. R. 371; *McCausland* v. *McCallum* 3 O.R. 305; *Scottish American Investment Co.* v. *Sexton*, 26 O.R. 77. A small building of thin boards, lathed and plastered inside, and resting by its own weight on loose bricks laid on the ground is land: *Miles* v. *Ankatell*, 25 A.R. 458; *Phillips* v. *Grand River Etc. Inse. Co.*, 46 U.C.R. 334.

The masonry on the sides of a canal do not constitute it a building, though it is land; a street paved with stone is land, while the Holborn viaduct is a building: *R.* v. *Neath Canal Nav. Co.*, 40 L.J. M.C. 197. A covenant not to erect any building in advance of a house is broken by putting on a bay window, which is a building: *Manners* v. *Johnston*, L. R. 1 Ch. D. 673; a wooden advertisement boarding is a building or erection: *Pocock* v. *Gilham*, 1 Cab. & El. 104.

A scaffold is an erection: *R.* v. *Whittingham*, 9 C.& P. 234; so also is a wooden trough for conveying water to a mine: *Barwell* v. *Winterstake*, 14 Q.B. 704.

A building, sold as material, to be taken down and removed without delay, is land, within section 4 of the Statute of Frauds: *Lavary* v. *Purcell*, 39 Ch. D. 508.

A bridge is land, though only one end of it is in this province, the other being in the State of New York: *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U.C.R. 194. So also are bridges used by a Street Railway Co.: *Re London Street Railway Assessment* (1900), 27 A.R. 83.

For the classes of machinery exempt from assessment see sec. 5, sub-sec. 16.

(13) Sub-sec. (e). This would include poles, wires, rails, transmitters, pipes, etc. for the supply of water, light, heat, power, transportation and other service. Gas pipes, the property of a private corporation, laid under the highways of a city, are real estate and liable to assessment under the Assessment Act of 1892: *Consumers Gas Co.* v. *City of Toronto*, 27 S.C.R. 453, overruling *Toronto Street Railway Co.* v. *Fleming* (1875), 37 U.C.R. 116, and

following *Metropolitan Ry. Co.* v. *Fowler* (1893), A.C. 416. The poles, wires, conduits, and cables of a telephone company are land, though laid on the public highway: *Re Bell Telephone Co.*, 25 A.R 351. The rails, poles and wires of a street railway company laid and erected in and upon the public highways of a city are land, and taxable as such under the Assessment Act, 1892; *Re Toronto St. Ry. Co. Assessment* (1898), 25 A.R. 135; *Re London St. Ry. Assessment* (1900), 27 A.R. 83; *Toronto Ry. Co.* v. *City of Toronto*, 6 O.L.R. 187. As these were formerly all assessable in wards, they were assessed only as material to be removed—a " scrap iron " assessment; but see now section 42. The lamps, hangers, and transformers of an electric light company, erected upon the highway, though easily moveable from one place to another, are " superstructures " and are assessable as land: *Toronto Ry. Co.* v. *City of Toronto*, 6 O.L.R. 187. See also *Re Toronto Electric Light Co. Assessment*, 3 O.L.R. 620; *Queenston Heights Bridge Co. Assessment*, 1 O.L.R. 114.

(14) The rolling stock of electric railways is not land, and is not assessable: *Toronto Street Ry. Co.* v. *City of Toronto* (1904), A.C. 809, overruling *Kirkpatrick* v. *Cornwall Electric Street Ry. Co.*, 2 O.L. R. 113.

" Income."

8. " Income " shall mean the annual profit or gain or gratuity (whether ascertained and capable of computation as being wages, salary or other fixed amount or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling) directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and also profit or gain from any other source whatever. *New.*

For the mode of assessing income see sec. 5, ss. 11-15 and 17-20, sec. 10, ss. 7 and secs. 11, 12 and 13. For income derived from mineral work or mines, see sec. 36, subs. 3.

A bank, apart from certain losses made there, had an income of $46,000, in 1875, at its branch in St. John, but the losses were sufficient to leave a shortage on the year's operations at that branch. The lower Courts decided that these losses were properly losses of capital, and should not be taken into account in estimating "income," which, they thought, was different from "net profits." The Judicial Committee of the Privy Council decided, however, reversing the Supreme Court of Canada, that "income," when applied to a commercial business for a year, was used in its commonly accepted and natural sense, as the balance of gain over loss, and where no such gain had been made in the year, there was nothing assessable: *Lawless* v. *Sullivan* (1881), 6 A.C. 373.

The word "income," not having been defined in the British Columbia Assessment Act, 1897, and returns to the assessor being required on "income whether derivable from salary or otherwise," "income" was intended to include, and does include all gains and profits derived from personal exertions, whether such gains or profits are fixed or fluctuating, certain or precarious, so as to include the earnings of locomotive engineers who were paid by a mileage rate: *Attorney General of British Columbia* v. *Ostrum* (1904), A. C. 144.

The premiums received by an insurance company at one of its branch offices are not assessable as income there. The taxable income is the ultimate profit ascertained by placing the sum total of gains and losses against each other, and no distinct, integral part of this is referable to a branch office: *The Corporation of the City of Kingston* v. *The Canada Life Assurance Company*, 19 O.R. 453, reversing 18 O.R. 18: *City of Brantford* v. *Ontario Investment Co.*, 15 A.R. 605; *Timmerman* v. *City of St. John*, 21 S.C.R. 691.

The amount deposited by an insurance company with the Dominion Government for the protection of policy-holders, may properly be deducted from the gross income of the company in determining the net profits liable to taxation: *Peters* v. *City of St. John*, 21 S.C.R. 674.

The net interest and dividends received from investments of their reserve fund, by an insurance company, though ninety per cent. thereof is not under the control of the company, but must be divided as profits amongst participating policy-holders, is

income: *Re Canada Life Assurance Company and City of Hamilton* (1898), 25 A.R. 312; *Confederation Life Association* v. *City of Toronto* (1894), 24 O.R. 643, (1895), 22 A.R. 166; *Last* v. *London Assurance Corporation* (1885), 10 A.C. 438.

But see *New York Life Ins. Co.* v. *Styles*, 14 A. C. 381, in which it was held that the surplus premium income of a strictly mutual insurance company, annually derived from, and returned to, policy holders, is not assessable. The surplus profits distributed to policy-holders of a joint stock life insurance company are, however, income and liable to taxation: *Equitable Life Insurance Co.* v. *Bishop* (1900), 1 Q.B. 177. A life insurance society which sells annuities either for a lump sum, or for periodical premiums in the case of deferred annuities, is entitled in England to deduct from its gross income the annual amounts paid out on its annuity contracts: *The Gresham Life Assurance Society* v. *Styles* (1892), A.C. 309, reversing L.R. 25 Q.B.D. 351. The difference between the cost of supplying power, and the payments received for it, is a profit assessable as income: *Armitage* v. *Moore* (1900), 2 Q.B. 363. A foreign merchant selling goods in England through agents, who forward orders to him abroad for the exercise of his discretion as to acceptance, the goods being in his foreign warehouse, there to be packed and shipped at the expense and risk of the purchaser, who usually forwarded the price to him, is not assessable for income tax, as he did not exercise a trade in England. The contract and the delivery were made abroad, as there was no binding contract until acceptance by the foreign principal, and there was no profit made in England: *Grainger* v. *Gough* (1896), A.C. 325. A bank doing business at home and abroad is taxable on the profits abroad and in England, less the expenses abroad and in England, the net income having been treated as if it had all been produced at home: *London Bank of Mexico and South America* v. *Apthorpe* (1891), 2 Q.B. 378. British companies holding shares in foreign companies, are, in regard to the foreign companies, taxable only for the profits actually received in the United Kingdom: *Bartholomay Brewery Co.* v. *Wyatt, Nobel Dynamite Co.* v. *Wyatt*, (1893), 2 Q.B. 499.

Professional bookmakers, who systematically attend race-courses, and bet upon races, are assessable in respect of their profits as income: *Partridge* v. *Mallandaine*, L.R. 18 Q.B.D. 276.

Upon the sale of a railway, the purchase money was paid by an annuity during the term limited in the contract, interest being

calculated at a named rate. The annuity was a repayment of principal and interest combined, as is often the case with municipal debentures. The interest only was assessable as income, the principal was the repayment of an outstanding debt. Income tax was payable only on so much of the annuity as represented interest: *Secretary of State in Council of India* v. *Scoble* (1903), A.C. 299. Regarding the taxation of an annuity in the proper sense of that term, see *Foley* v. *Fletcher* (1858), 3 H. & N. 769.

Under the English Act a clergyman is not liable for income tax on grants made to him by the council of a charitable fund for providing adequate remuneration for beneficed clergymen. "Such a sum cannot be treated as either salary, fees, wages, perquisites or profits . . . . It is a payment which did not accrue to the appellant by reason of his office . . . . though by reason of holding the office he had the opportunity of receiving it:" *Herbert* v. *McQuade*, 70 L.J.K.B. 725, (1901), 2 K.B. 761. In *Turner* v. *Rev. G. A. Cuxson*, 22 Q.B.D. 150, a grant made to a curate by the council of the Curates' Augmentation Fund, the grant being renewable, on certain conditions at the discretion of the council, was held not to be "an annual gain or profit from any kind of property," or "from any profession, trade, employment or vocation." "It clearly does not so arise, it comes at the mere will of the charitable society; it does not arise from the curate's vocation, and it is not an annual sum." It is not taxable.

The English Income Tax Act, 1842, expressly enacts that in estimating the balance of profit and gain, or for the purpose of assessing the duty thereon, no sum shall be deducted from such profits or gain for any sum employed, or intended to be employed, as capital in such trade, manufacture, adventure or concern. A company owning nitrate grounds abroad, from which they sell nitrate and iodine, the process necessarily gradually exhausting the supply, is not entitled under this Act to deduct any allowance for such exhaustion of capital: *Alianza Co.* v. *Bell*, 73 L.J.K.B. 755; 1904, 2 K.B. 666; *Coltness Iron Co.* v. *Black*, 6 A.C. 315.

A brewery company claimed to deduct from income the amount of repairs to "tied houses" owned by them, under the rule which allowed an abatement "from such profits or gains on account of any sums expended for repairs of premises occupied for the purposes of such trade"; but it was held that this applied only to the

premises occupied by the brewery itself, and the deduction was disallowed: *Brickwood & Co.* v. *Reynolds* (1898), 1 Q.B. 95.

By the Statute in force in New South Wales, a tax payer is entitled to deduct from taxable income, " losses, outgoings . . . . actually incurred in the production of his income." This gives him the right to deduct the losses and outgoings necessary to produce the whole of his income, and not that part only which is subject to taxation: *N. S. W. Commissioners of Taxation* v. *Teece* (1899), A.C. 254.

A firm of brewers is not entitled to deduct from profits the sums expended by them in trying to obtain new and additional licenses to houses owned and leased by them, and to other houses not owned by them, but for which they promoted the application, to increase their trade. These sums are not " money wholly and exclusively laid out or expended for the purpose of their trade," but were a capital expenditure within the meaning of the Income Tax Act, 1842: *Southwell* v. *Savill* (1901), 2 K.B. 349. " These expenses are not an expenditure which ought to be treated as a loss—as a something to be deducted from what has been gained in the year as profits—but as sums which may properly be treated as an investment, and which ought to go to capital account. *Ib. per* Kennedy, J.

A bank agent who was assessable on his " total income from all sources," including " salaries, fees, wages, perquisites, profits or emoluments," was obliged to occupy the bank house as custodian of the bank premises, and could not sublet or vacate it without leave. If he arranged to occupy other premises, he received no increase of salary. It was held that the yearly value of the house was not to be included as income: *Tennant* v. *Smith* (1892), A.C. 150. If substantial things of money value were capable of being turned into money they might be taxable.—*Per* Halsbury, L.C., *ib.* 156.

Brewers carrying on business as bankers and money-lenders in connection with the brewery, and solely with customers of the brewery, there being no permanent loans or investments, are entitled to deduct losses made on money-lending by bad debts, from profits made on the other branch of their business, under an Act which forbade deductions on account of lost capital: *Reid's Brewery Co.* v. *Male* (1891), 2 Q.B. 1. A husband and wife,

appointed master and mistress of a school at a joint salary, are not entitled to deduct the wages of a domestic servant whose employment is necessitated by the wife's engagement as a teacher: *Bowers* v. *Harding* (1891), 1 Q.B. 560.

By the Income Tax Act of the Colony of Victoria of 1895, a tax is imposed on all income derived by any person (including company) from the produce of property within Victoria, but exempting therefrom the income of all trusts, societies, associations, institutions and public bodies not carrying on any trade, or being engaged in any trade for the purpose of gain, to be divided among the shareholders or members thereof. "Trade" included, by the definition clause, every profession, vocation, trade, business, calling, employment, and occupation. A mutual insurance company carrying on business with strangers for gain, and which did no insurance business in Victoria, but loaned money there on the security of land, was held to be taxable on the income therefrom. The Company not being strictly mutual was not within the exception: *England* v. *Webb*, 67 L.J.P.C. 120; (1898), A.C. 758.

Held also that this company, as it was not trading in Victoria, but only holding investments there, was not entitled to the exemptions accorded to companies so trading, and must be assessed on the whole of its income, as the holding of investments is not the trade of an insurance company, but an incident of every business: *Scottish Provident Institution* v. *Commissioner of Taxes*, 70 L.J.P.C. 50; (1901), A.C. 340.

The company had sent money abroad for investment, and sums were sent home out of a bank account in which principal and interest were not separated, but the whole amount remaining abroad still was greater than the sums originally sent abroad. The remittances received in the United Kingdom must be considered as representing interest or profits, and as liable to taxation. *Scottish Provident Institution* v. *Allan*, 72 L.J.P.C. 70, (1903), A.C. 129.

"Insurance Company." Rev. Stat., c 203.

9. "Insurance Company" shall mean any company or friendly society or other corporation transacting within Ontario any class of insurance to which *The Ontario Insurance Act* applies, or may hereafter be made applicable by any general or special Act of this Legislature. *New.*

The Ontario Insurance Act, R.S.O., 1897, chap. 203, sec. 2. ss. 41, as amended by 1 Edw. 7, Chap. 21, S.L. ss. 3, defines " insurance " as follows:

" Insurance " shall include the following, whether the contract be one of primary insurance, or of re-insurance, and whether the premium payable be a sum certain, or consist of sums uncertain or variable in time, number or amount.

(*a*) Insurance against death, sickness, infirmity, casualty, accident, disability, or any change of physical or mental condition;

(*b*) Insurance against financial loss; or against loss of work, employment, practice, custom, wages, rents, profits, income or revenue;

(*c*) Insurance of property against any loss or injury from any cause whatsoever, whether the obligation of the insurer is to indemnify by a money payment, or by restoring or reinstating the property insured;

(*d*) Contracts of endowment, assessment-endowment, tontine, semi-tontine, lifetime benefits, annuities on lives, or contracts of investment involving tontine or survivorship principles for the benefit of persisting members; or any contract of investment involving life contingencies;

(*e*) Any contract made on consideration of a premium and based on the expectancy, expectation or probability of life, or any contract made on such consideration and having for its subject the life, safety, health, fidelity or insurable interest of any person, whether the benefit under the contract is primarily payable to the assured or to a donee, grantee or assignee, or to trustees, guardians or representatives, or to (or in trust for) any beneficiary, or to the assured by way of indemnity or insurance against any liability incurred by him by or through the death or injury of any person;

(*f*) Any investment contract under which lapses or payments made by discontinuing members or investors, accrue to the benefit of persisting members or investors, except where a corporation (other than an insurance corporation) is expressly authorized to undertake such contract by a statute in force in Ontario;

(*g*) Generally any contract in the nature of any of the foregoing, whereby the benefit under the contract accrues payable on or after the occurrence of some contingent event.

"Loan Company." Rev. Stat., c. 205.

10. "Loan Company" shall mean a "Loan Corporation" within the meaning of *The Loan Corporations Act*. *New*.

The Loan Corporation Act, R.S.O., 1897, Chap. 205, sec. 2., sub-sec. 5, defines a Loan Corporation as follows:

5. "Corporation," or "Loan Corporation," shall include every corporation, incorporated company, association or society (not being a chartered Bank of Canada or an insurance corporation standing registered under the law of the Province), now or hereafter constituted, or authorized, or operated either under the law of the Province or otherwise, for the purpose (solely, or conjointly with other purposes) of lending money on real estate, or investing money in real estate securities, or lending on or investing in other securities hereinafter mentioned, (whether the corporation so loans or invests as principal or as agent, or as legal representative, or as trustee or guardian, or guarantees such loan or investment); or for the purpose of aiding its members or others in acquiring real property, in making improvements thereon, or in removing incumprances therefrom; or for the purpose of issuing terminating shares, or for the purpose of accumulating a fund to be returned to the holders of the terminating shares in specified cases.

"Trust Company." Rev. Stat, c. 206.

11. A "Trust Company" shall mean a trust company within the meaning of *The Ontario Trust Companies Act*. *New*.

The Ontario Trust Companies Act, R.S.O., 1897, Chap. 206, sec. 2, defines a Trust Company as follows:

2. In this Act the expression "trust company" shall mean a company incorporated for the purpose of exercising the powers set forth in the schedule to this Act or any of them. 60 V. c. 37, s. 2.

SCHEDULE.

(Sections 2 and 7).

Powers which may be given to Trust Companies.

To take, receive and hold all estates and property, real and personal, which may be granted, committed, transferred or con-

veyed to them with their consent, upon any trust or trusts whatsoever (not contrary to law), at any time or times, by any person or persons, body or bodies corporate, or by any Court in the Province of Ontario.

To take and receive on deposits, upon such terms and for such remuneration as may be agreed upon, deeds, wills, policies of insurance, bonds, debentures, or other valuable papers or securities for money, jewelry, plate or other chattel property of any kind, and to guarantee the safe keeping of the same;

To act generally as attorney or agent for the transaction of business, the management of estates, the collection of loans, rents, interest, dividends, debts, mortgages, debentures, bonds, bills, notes, coupons and other securities for money;

To act as agent for the purpose of issuing or countersigning certificates of stock, bonds or other obligations of any association, or corporation, municipal or other;

To receive, invest and manage any sinking fund therefor on such terms as may be agreed upon;

To accept and execute the offices of executor, administrator, trustee, receiver, assignee, or of trustee for the benefit of creditors under any Act of the Legislature of the Province of Ontario; and of guardian of any minor's estate, or committee of any lunatic's estate; to accept the duty of and act generally in the winding up of estates, partnerships, companies, and corporations;

To guarantee any investments made by them as agents or otherwise;

To sell, pledge or mortgage any mortgage or other security or any other real or personal property held by the company from time to time, and to make and execute all requisite conveyances and assurances in respect thereof;

To make, enter into, deliver, accept and receive all deeds, conveyances, assurances, transfers, assignments, grants and contracts necessary to carry out the purposes of the said company, and to promote the objects and business of the said Company;

And for all such services, duties and trusts, to charge, collect and receive all proper remuneration, legal, usual and customary costs, charges and expenses.

"Last Revised Assessment Roll."

12. "Last revised assessment roll" shall mean the last revised assessment roll of a municipality; and an assessment roll shall be understood to be finally revised and corrected when it has been so revised and corrected by the Court of Revision for the municipality, or by the Judge of the County Court on appeal as by this Act provided, or when the time within which appeal may be made has elapsed.

For the revision of the assessment roll by the Court of Revision, see secs. 57 to 67.

For appeals from the Court of Revision to the County Judge, see secs. 68 to 75.

For the time within which appeals may be made to the Court of Revision, see sec. 65, subs. 2; and to the County Judge, sec. 68, subs. 2.

The roll is finally revised (*a*) when the County Judge has given judgment on the appeals, if any, to him from the Court of Revision; (*b*) if there are no appeals from the Court of Revision, the roll is finally revised on the expiration of five days after the time limited in the Act for the closing of the Court of Revision, if one is held, which time is fixed by sec. 65, subs. 20, or secs. 53, 54 and 56; (*c*) if there are no appeals to the Court of Revision, the roll is finally revised at the expiration of fourteen days after the date limited by law for the return of the roll, which date is governed by secs. 47, 53 and 56; or within 14 days after the return, whichever is the later.

"List of Voters." Rev. Stat., c. 7.

13 "List of voters" shall mean the alphabetical list referred to in *The Ontario Voters' Lists Act*. R.S.O., c. 224, s. 2, pars. 11, 12.

The Ontario Voters' List Act is R.S.O., 1897, chapter 7; sections 6 and 7 of that Act deal with the contents of these lists, which consist of three parts:

The first part contains the names alphabetically arranged of all male British subjects 21 years of age, and appearing by the assessment roll to be entitled to vote both at municipal and provincial elections.

The second part contains the names of those who are entitled to vote at municipal elections only, including widows and spinsters with the necessary assessment.

The third part contains the names of those who are entitled to vote at elections for the Legislature only. See the notes on secs. 23, 24 and 25.

See also R.S.O. 1897, c. 1, s. 10.

The interpretation section of *The Municipal Act* so far as the terms defined can be applied shall extend to all enactments relating to municipalities: *The Interpretation Act*, R.S.O. 1897, c. 1, s. 10. See note to sec. 2, subs. 5.

All Taxes to be Levied equally upon all Assessments, where no other Provision made.

3. All municipal, local or direct taxes or rates shall where no other express provision is made be levied upon the whole of the assessment for real property, income and business or other assessments made under this Act, according to the amounts assessed in respect thereof, and not upon any one or more kinds of property or assessment or in different proportions. R.S.O. 1897, c. 224, s. 6, *amended.*

Exemptions from taxation must not give one manufacturer a preference over another engaged in the same kind of manufacturing: *Re Pirie and the Town of Dundas*, 29 U.C.R. 401.

Under the authority given to municipal corporations to fix the rate or rent to be paid by each owner or occupant of a building, etc., supplied by the corporation with water, the rates imposed must be uniform. A city by-law excepting Government institutions from the benefit of a discount on rates paid within a certain time, is invalid as regards such exception: *Attorney General of Canada* v. *City of Toronto*, 23 S.C.R. 514, reversing 18 A.R. 622 and 20 O.R. 19.

The defendants were the owners of vacant lands in the City of Windsor, abutting on streets on which were water mains and hydrants, from which, however, they did not use any water, as they had a waterworks system of their own. A uniform rate for "water supplied or ready to be supplied" upon all lands in the city, including those of the defendants, based on their assessed value, was held

to be validly imposed: *City of Windsor* v. *Canada Southern Railway, Co.* 20 A.R. 388. See also *Les Ecclésiastiques de St. Sulpice* v. *Montreal,* 16 S.C.R. 399.

The district councils had no power to impose a tax for repairing the roads and bridges generally, nor to confine such a tax to unoccupied lands only, nor to impose a tax of so much per acre, instead of an assessment of so much in the pound on the assessed value: *Doe d. McGill* v. *Langton,* 9 U.C.R. 91; *Williams* v. *Taylor,* 13 C.P. 219.

An assessment for school rates cannot be levied by an unequal rate in different wards of a city: *Re Scott* v. *City of Ottawa,* 13 U.C.R. 346. The special school tax required by the Trustees of a public school section in which there are no separate school supporters is an example of a local tax to be levied on the whole assessment of the section for real property, business assessment and income. But "other express provision is made" in reference to the assessment of separate school supporters, and these are exempt from levies for public school purposes. Local improvements on the basis of the frontage of the land benefited, under the Municipal Act, secs. 664-686 are "under other express provisions" charged on the lands expressly assessed therefor. So also under the Municipal Drainage Act.

Rateable Property, what to Include. 3 Edw. VII., c. 19.

4. Wherever in *The Consolidated Municipal Act,* 1903, or in any other general or special Act of this Legislature heretofore or hereafter in force or in any by-law heretofore or hereafter passed under any such Act, the yearly rates or any special rate are expressly or in effect directed or authorized to be levied upon all the rateable property of the municipality for any municipal or school purposes, such rates shall hereafter be calculated at so much in the dollar upon the total assessment of the municipality and shall be calculated and levied upon the whole of the assessment for real property, income and business or other assessments made under this Act. (*New*).

See the notes on sec. 3. See also *Tylee* v. *County of Waterloo,* 9 U.C.R. at p. 575, and sec. 86 and the notes thereon.

Taxable Property and Exemptions.

5. All real property (1) in this Province and all income (2) derived either within or out of (3) this Province by any person resident (4) therein, or received in this Province by or on behalf of any person resident out of the same (5) shall be liable to taxation, subject to the following exemptions (6), that is to say:—

This section provides for the assessment subject to certain exceptions, of

(*a*) All real property in the Province.

(*b*) All income derived within the Province by any person resident therein.

(*c*) All income derived out of the Province by any person resident therein.

(*d*) All income received in this Province by any person resident out of Ontario.

(*e*) All income received by any other person in Ontario on behalf of some person resident out of Ontario.

(1) For the definition of real property, see sec. 2, subs. 7 and the notes thereon.

(2) For the meaning of income, see sec. 2, subs. 8 and the notes.

(3) "Derived out of the Province"—For a discussion of this phrase see *Leprohon* v. *City of Ottawa*, 2 A.R. 522. See also *Polson* v. *Town of Owen Sound*, 31 O.R. 6.

(4) "Resident." "Resides". . . . "denotes the place where an individual eats, drinks and sleeps, or where his family or his servants eat, drink and sleep," per Bayley *J.*, in *R.* v. *North Curry*, 4 B. & C. 959. "A man's residence is where he habitually sleeps:" per Blackburn, J., in *Oldham*, 1 O'M. & H. 158.

"*Prima facie*, no doubt, a man's house is where his wife lives. But he may be only a sojourner there or an occasional visitor:" per Blackburn, J., in *R.* v. *Norwood*, L.R. 2 Q.B. 457. A physician living, and required by his duties to live, in an asylum, while there marries, and keeps his wife in lodgings in another parish,

where he always spends from Saturday to Monday with her, resides at the asylum. *Ib.* A foreign incorporated company resides in a country if it has an office there at which it carries on one of the principal parts of its business: *Haggin* v. *Comptoir d' Escompte*, 23 Q.B.D. 519; *Badcock* v. *Cumberland Gap Park Co.*, 1893, 1 Ch. 362. But this rule is not applicable to an individual or a private firm: *Russell* v. *Combefort*, 58 L.J.Q.B. 498, 23 Q.B.D. 526. A domestic company is only resident where its principal office is: *Jones* v. *Scottish &c. Inse. Co.*, 17 Q.B.D. 421; *Carron Co.* v. *McLaren*; 5 H.L. Ca. 416. A mining company, though incorporated, registered and holding its general meetings and carrying on its actual mining operations abroad, but having its head office in London, where the accounts were made up, the books kept, and the dividends declared, is a person residing in the United Kingdom so as to be liable for income tax: *Goerz & Co.* v. *Bell* (1904), 2 K.B. 136.

Where a foreign corporation has an office in the city of New York, with an agent to take orders, to be approved by the home office, for goods to be manufactured and paid for at the home office, but to be delivered from the New York office, and the corporation has no bank account in the state, and pays its agent a commission monthly for sales during the previous month, the rent of the New York office being paid partly by the corporation and partly by the agent, with only an office boy in addition to the agent, it is carrying on only a transitory business in the state, so that it is not liable for a tax on the capital invested, as a non-resident doing business in the state: *People* v. *Wells*, 85 N.Y.S. 533.

See also *Mellish* v. *Van Norman*, 13 U.C.R. 451; *Reg. ex rel. Blasdell* v. *Rochester*, 7 U.C.L.J. 102; *Bank of Toronto* v. *Fanning*, 17 Gr. 514; *LaPointe* v. *Grand Trunk Ry. Co.*, 26 U.C.R. 479; *Re Ladoucer* v. *Salter*, 6 P.R. 305; *Marr* v. *Village of Vienna*, 10 U.C.L.J. 275.

(5) See sec. 13, subs. 1 and notes thereon.

(6) The exemptions referred to are contained in sub-sections 1 to 20 of this section, sec. 10, subs. 7, and sec. 36. See sec. 6 in reference to assessment of exempted property for local improvements. Municipal councils may also pass by-laws to exempt certain property from taxation, or to fix its assessment for a term of years. Such exemptions are governed by *The Consolidated Municipal Act*,

1903, sec. 366*a*, subs. 12 of sec. 591, sec. 591*a*, sec. 591*b*, sec. 700, sec. 700*a*, sec. 700*b* and sec. 700*c*; also 4 Edw. VII. ch. 22. sec. 34, and 5 Edw. VII. ch. 22. secs. 28 and 29. The assessment of property exempt by law from assessment is so far a nullity that an appeal therefrom is not necessary, and even though the assessment be confirmed by the Court of Revision and the County Judge it is void: *Toronto Street Railway Company* v. *City of Toronto*, 1904, A.C. 809; *Watt* v. *City of London*, 22 S.C.R. 300; *City of Brantford* v. *Ont. Investment Co.*, 15 A.R. 605; *Janes* v. *O'Keefe*, 23 A.R. 129; *G.T.R. Co.* v. *Rouse*, 15 U.C.R. 168; *London* v. *G.W.R. Co.* 17 U.C.R. 262; *Shaw* v. *Shaw*, 21 U.C.R. 432; *Shaw* v. *Shaw*, 12 C.P. 456; *Nickle* v. *Douglas*, 37 U.C.R. 51. See also *Toronto* v. *G.W.R.* 25 U.C.R. 570; *Scragg* v. *City of London*, 26 U.C.R. 263, 28 U.C.R. 457; *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U.C.R. 194, in which the contrary view now overruled was affirmed. Exemptions from taxation are construed strictly and the burden of clearly establishing the right to the exemption is on the person claiming it. "I am quite willing to admit that the intention to exempt must be expressed in clear and unambiguous language; that taxation is the rule and exemption the exception, and therefore to be strictly construed." Ritchie, C. J., in *Wylie* v. *City of Montreal*, 12 S.C.R. 384.

"Exemptions are to be strictly construed and embrace only what is within their terms: "*Les Commissaires d' Ecoles etc.* v. *Les Soeurs etc.*, 12 S.C.R. at p. 54; *Stourbridge Canal Co.* v. *Wheeley*, 5 B. & A. 793; *Commissioners of Inland Revenue* v. *Scott* (1892), 2 Q.B. 152; *Re New University Club*, 18 Q.B.D. 720.

Numerous American decisions are to the same effect. They are collected in Dillon's Municipal Corporations, 4 Ed. par. 776, where they are epitomized as follows: "As the burden of taxation ought to fall equally upon all, statutes exempting persons or property are construed with strictness, and the exemption should be denied to exist unless it is so clearly granted as to be free from fair doubt. Such statutes will be construed most strongly against those claiming the exemption."

When a ship-building company ceased to carry on business and winding-up proceedings were instituted, their property was no longer exempt from taxation under a municipal by-law granting them exemption for a term of years as a manufacturing establishment: *Polson* v. *Town of Owen Sound*, 31 O.R. 6.

The Officers' Convalescent Home at 460 Jarvis street, the former home of the late Capt. Trumbull Warren, was given a cancellation of their assessment, which was $27,-742.

Interest of the Crown in any Property.

1. The interest of the Crown in any property, including property held by any person in trust for the Crown, or in trust for any tribe or body of Indians. R.S.O. 1897, c. 224, s. 7, par. 1, *amended.*

Section 35 deals with the assessment of the interest of others in lands which belong to the Crown, or in which the Crown has an interest. The rights of the private owner or tenant, in lands in which the Crown has an interest, are subject to taxation and are liable to be sold for taxes subject to all the rights of the Crown in the lands.

Lands having been patented by mistake, and leave to surrender having been given by the Crown on the petition of the patentee, a tax sale of the land was invalid though the Surveyor General had given no notice of the cancellation of the patent: *Moffatt* v. *Scratch,* 12 A.R. 157, affirming 8 O.R. 147. When the Bank of Upper Canada became insolvent its assets were, by statute, vested in the Crown. The interest of a mortgagor of land, the mortgage on which had become vested in the Crown as an asset of the Bank, could be sold for taxes; but the interest of the mortgagee therein could not, as it is exempt from taxation: *Reg.* v. *County of Wellington,* 17 O.R. 615, affirmed 17 A.R. 421 and 19 S.C.R. 510, *sub.nom. Quirt* v. *Reginam.* Crown lands which had been sold, and paid for, a receipt being given for the payments, but no license, lease or patent having been issued, are not assessable: *Street* v. *County of Kent,* 11 C.P. 255. Property, whether leasehold or freehold, in the occupation of servants of the Crown in their official capacity, is not assessable: *Shaw* v. *Shaw,* 12 C.P. 456; *Shaw* v. *Shaw,* 21 U.C.R. 432. Land leased to a commissariat officer on behalf of the Secretary of State for War is exempt: *Principal Secretary of State for War* v. *City of Toronto,* 22 U.C.R. 551; *Principal Secretary of State for War* v. *City of London,* 23 U.C.R. 476. See also *Doe d. Bell* v. *Orr,* 5 O.S. 433; *Doe d. McGillis* v. *McDonald,* 1 U.C.R. 432; *Simcoe* v. *Street,* 2 E. & A. 211; *Perry* v. *Powell,* 8 U.C.R. 251; *Cotter* v. *Sutherland,* 18 C.P. 357. The Crown is not liable for municipal taxes upon real property belonging to the Dominion of Canada: *City of Quebec* v. *Reginam,* 2 Ex. C.R. 450.

Indian lands which have been surrendered to the Crown, and which have afterwards been sold, or located, are liable to assessment, and to the extent of the locatee's and purchaser's interest.

may be sold for taxes; following *Church* v. *Fenton*, 28 C.P. 384; 4 A.R. 159; 5 S.C.R. 239; *Totten* v. *Truax*, 16 O.R. 490. See also *Reg.* v. *Guthrie*, 41 U.C.R. 148; *Reg.* v. *McDonnell*, 41 U.C.R. 157.

Churches, etc.

2. Every place of worship and land used in connection therewith, churchyard or burying ground. R.S.O., 1897, c. 224, s. 7, par. 3. 3 Edw. VII., c. 21, s. 1, (2). See also 3 Edw. VII., c. 19, s. 683.

These were formerly exempt from assessments for local improvements: *Haynes* v. *Copeland*, 18 C.P. 150; but see now sec. 6. "Land used for or in connection with," was construed to apply only to the use and occupation of the land itself for the purpose indicated, and to exclude lands which were leased, but the revenue or income from which was applied to the specified purpose. Lands which the trustees have leased to other persons cannot be said to be lands used in connection with a church or chapel for public worship, because the rents are applied to the support thereof. It is the money derived from the rents that is so used, and not the land. "The words for or in connection with (say) a hospital or church, are probably intended to include not only the actual site of the hospital or church, but also other buildings or land occupied in connection with the principal building, as, for example, land used as a residence for the head or minister, or a room for church meetings or other similar purposes:" *Commissioners of Taxation* v. *St. Mark's Glebe Trustees* (1902), A.C. 416.

Where the only use of a certain tract of land belonging to a religious corporation was to take lumber therefrom, as occasion required, for improving other portions of the corporation's grounds such tract was not solely used for charitable and religious purposes, so as to be exempt from taxation: *People* v. *Reilly*, 70 N.E. 1107, N. Y. 85 App. Div. 71.

Public Educational Institutions.

3. The buildings and grounds of and attached to or otherwise bona fide used in connection with and for the purposes of every university, every college, every high school, public or separate school, or any incorporated seminary of learning, whether vested in

NEED NOT PAY TAXES

Havergal College Assessment is Struck Off

Havergal Ladies College made an appeal before the Court of Revision to-day for an exemption of business and property taxes. Under the Provincial Act that all seminaries are exempt from paying these

a trustee or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, but not if otherwise occupied. 3 Edw. VII., c. 21, s. 1 (1), *amended.*

This sub-section exempts

A. Buildings } (*a*) of and attached to (*b*) or otherwise used in
B. Grounds } connection with and for the purposes of

1. A University.
2. A College.
3. A High School.
4. A Public or Separate School.
5. Any Incorporated Seminary of Learning.

But only during actual use and occupation by such institution, and not if otherwise occupied. The liability to taxation for local improvements is governed by sec. 6.

"Incorporated seminary of learning . . . . obviously includes an incorporated proprietary school:" *Struthers* v. *Town of Sudbury*, 27 A.R. per Osler, J. A., at p. 220. See *Blake* v. *Mayor of London*, (1886), 18 Q.B.D. 437; (1887,) 19 Q.B.D. 79; *In re Sisters of Charity* (1859), 7 U.C.L.J. 157. Under an Act which exempted property belonging to educational institutions, possessed solely by them to derive a revenue therefrom, land used and worked as a farm by the institution is not exempt: *Le Seminaire du Quebec* v. *La Corporation de Limoliou* (1899), A.C. 288; *Les Commissioners de St. Gabriel* v. *Les Socurs de la Congregation*, 12 S.C.R. 45; see also *Wylie* v. *City of Montreal*, 12 S.C.R. 384. Under the Act in force in the Province of Quebec educational establishments were held not liable to taxation for local improvements: *Ecclesiastiques de St. Sulpice de Montreal* v. *City of Montreal*, 16 S.C.R. 399.

Sleeping rooms, drill rooms, armories, stables, library buildings, buildings occupied by principals as a residence, recreation halls and dining halls, which constitute a part of the foundation of an academy, and are used in its administration exclusively, are used exclusively for educational purposes, within laws exempting from taxation property used exclusively for educational purposes. *People* v. *Mezger*, 90 N.Y.S. 488, 98 App. Div. 237.

A general tax-law exempting from taxation the real estate of a corporation organized for charitable and educational purposes, etc., and used exclusively for carrying out thereupon one or more of

such purposes, does not exempt from taxation real estate owned by such corporation, but leased out to individuals, though the profits are used for the purposes of the corporation: *Pratt Institute* v. *City of New York*, 91 N.Y.S. 136.

Under laws exempting from taxation the real property of a corporation organized exclusively for educational purposes, and "used exclusively" for carrying out thereon one or more of such purposes, the athletic field of a college, being rented during vacations, is not exempt: *People* v. *Wells*, 72 N.E. 1147.

City and Town Halls, etc. Rev. Stat., c. 320.

4. Every city or town or township hall, or any hall by by-law of a township council declared to be a public hall, and every court house, gaol, house of correction, lock-up house and public hospital, receiving aid under *The Charity Aid Act* with the land attached thereto respectively. R.S.O. 1897, c. 224, s. 7, par. 5, *amended.*

The properties by this sub-section exempted from assessment and taxation are:—

(1) Every city, town or township hall;

(2) Any hall declared by by-law of a township council to be a public hall. See the Municipal Act 1903, sec. 534, subs. 32, which enables a township council to pass a by-law for having a township hall within a town or village in, or partly in, the township.

(3) Every court house,

(4) Gaol,

(5) House of Correction. See The Municipal Act, 1903, secs. 500 and 503.

(6) Lock-up house. See The Municipal Act, 1903, secs. 518-523.

(7) Public hospital receiving aid under *The Charity Aid Act*; i.e., a public hospital receiving aid from the Province under the provisions of R.S.O. 1897, cap. 320.

With the lands attached to any of the seven classes of buildings above enumerated.

A hospital owned and carried on by, and for the personal gain of, two physicians, and which is used mainly by paying patients, though indigent patients are received and treated, and which is in

receipt of a government grant under *The Charity Aid Act*, R.S.O. cap 320, is a public hospital, and is exempt from taxation: *Struthers* v. *Town of Sudbury*, 27 A.R. 217. "It is clear I think, that the words (public hospital) were not used as indicative of a hospital under public, in the sense of governmental or municipal control, but rather to designate a hospital that is public in the sense of its being open to all, and in the popular sense it would be none the less public because persons seeking admission to it were required to pay for the accomodation it afforded." S.C. 30, O.R. per Meredith, C. J., at p. 119. "The charitable element is not, I think, under The Assessment Act, essential to the claim to exemption, *ib.* p. 121. The words "receiving aid under the Charity Act" have probably been inserted in order to make some measure of the charitable element, and its recognition by the Legislature, essential to exemption.

Public Roads, etc.

5. Every public road and way or public square.

The Proof Line Gravel Road Co., incorporated under C.S.U.C. cap. 49, constructed and owned its road; it was nevertheless held to be exempt from assessment and taxation under 32 Vic. c. 36, sec. 7, subs. 6, because the road was a public highway, *Re Hamilton and The Township of Biddulph*, 13 C.L.J. 18. Toll roads not owned by a municipality are now assessable under sec. 37.

Public squares are as much public property as are public highways, and can be used only for the purposes for which they were established: *Guelph* v. *Canada Co.*, 4 Gr. 362; *Atty. General* v. *Goderich*, 5 Grant 406; *Atty. General* v. *Brantford*, 6 Grant 592; *Atty. General* v. *Toronto*, 10 Grant 436; *Village of Wyoming* v. *Bell*, 24 Grant 564; *Consumers Gas Co.* v. *City of Toronto*, 27 S.C.R. at p. 460.

Municipal Property

6. The property belonging to any county or municipality, whether occupied for the purposes thereof or unoccupied; but not when occupied by any person as tenant or lessee. R.S.O. 1897, c. 224, s. 7, par. 7, *amended.*

By this section, property acquired by a town, but situated in a neighboring township at a distance of 19 miles from the town, and

consisting of land, buildings, machinery and plant for generating and transmitting electricity to the town for lighting, heating and manufacturing, for public use and for sale, either in the town or within a radius of 25 miles, is exempt from taxation by the township: *Re Town of Orillia and Township of Matchedash*, 7 O.L.R. 389.

The lessee of land belonging to a municipal corporation is liable to pay taxes on it, and he has no right to deduct such taxes from the rent agreed upon: *Canadian Pacific Railway Company* v. *City of Toronto* (1905), A.C. 33, affirming 4 O.L.R. 142 5 O.L.R. 717; *Scragg* v. *City of London*, 28 U.C.R. 457, 26 U.C.R. 263.

Public Parks.

7. The property belonging to any municipality, and in use as a public park, whether situate within the municipality owning the same or in another municipality or municipalities.

It is not easy to see what this sub-section adds to sub-section 6 or why it was inserted. "Property belonging to a municipality, whether occupied for the purposes thereof or unoccupied," seems broad enough to include "property belonging to any municipality and in use as a public park."

Provincial Penitentiary, etc.

8. The Provincial Penitentiary, the Central Prison and the Provincial Reformatory, and the land attached thereto. R.S.O. 1897, c. 224, s. 7, pars. 8, 9.

Poor Houses, etc.

9. Every industrial farm, poor-house, alms-house, orphan asylum, and every boys' or girls' or infants' home or other charitable institution conducted on philanthropic principles and not for the purpose of profit or gain, house of industry, house of refuge, and public lunatic asylum, and every house belonging to a company for the reformation of offenders, and the real property belonging to or connected with the same. R.S.O. 1897, c. 224, s. 7, par. 10, *amended*.

See *Bray* v. *Justices for the County of Lancaster*, 22 Q.B.D. 484; *Commissioners of Inland Revenues* v. *Scott* (1892),

2 Q.B. 152. A lunatic asylum supported mainly by charitable contributions, but which had paying patients on whom a profit was made, not being self-supporting, was within the words "a hospital, charity school, or home, provided for the relief of poor persons" and so was exempt from taxation: *Cowse* v. *Committee of Nottingham Lunatic Asylum* (1891), 1 Q.B. 585; *St. Andrew's Hospital, Nottingham,* v. *Shearsmith,* 19 Q.B.D. 624; *Needham* v. *Bowers,* 21 Q.B.D. 436.

Property conveyed to trustees for (*a*) missions, (*b*) support and education of children of ministers, (*c*) support of Moravian homes for widows and others, was exempt as being applied to charitable purposes: *Commissioners of Income Tax* v. *Pemsel* (1891), A.C. 531.

Immigration Aid Societies, Rev. Stat., c. 262. Rev. Stat., c. 259.

10. The property of any incorporated society operating in Ontario under Chapter 262 of the Revised Statutes of Ontario, intitled *An Act to regulate the Immigration into Ontario of certain Classes of Children,* or of any children's aid society incorporated under *The Children's Protection Act of Ontario,* whether held in the name of such society or in the name of a trustee or otherwise, being only property used exclusively for the purposes of and in connection with such society. 63 V., c. 34, s. 2; 1 Edw. VII, c. 29, s. 1.

In order that the property may be exempt,

(*a*) The Society owning or occupying it must be incorporated under either of the Acts named.

(*b*) The property must be used exclusively for the purpose of, and in connection with, such society. See *Commissioners of Taxation* v. *St. Mark's Glebe Trustees* (1902), A.C. 416; *Le Seminaire du Quebec* v. *La Corporation de Limalion* (1899), A.C. 288.

Income from Surplus Funds of Friendly Societies.

11. The income of any nature or kind whatsoever arising from the surplus funds of any registered Friendly Society. *New.*

"Surplus funds" are, no doubt, intended to be funds not presently needed, and which have been invested to produce an income.

"Friendly Society" is defined by sec. 2, subs. 27 of *The Ontario Insurance Act*, R.S.O. (1897), cap. 203. The most notable examples of friendly societies are the organizations for fraternal insurance and similar benefits, composed of an aggregation of lodges, e.g., The Independent Order of Foresters.

"Registered" means registered under *The Ontario Insurance Act* with the Registrar of Insurance.

Scientific or Literary Institutions, etc.
Rev. Stat., c. 196.

12. The property of every public library, mechanics' institute and other public institution, literary or scientific, and of every agricultural or horticultural society, to the extent of the actual occupation of such property for the purposes of any of such institutions or societies; and the lands and buildings of every company formed under the provisions of *The Act respecting Joint Stock Companies for the Erection of Exhibition Buildings*, to the extent to which the council of the municipality in which such lands and buildings are situated consents that such property shall be exempt. R.S.O. 1897, c. 224, s. 7, par. 11, *amended*.

This section exempts the property of

(*a*) Public libraries,

(*b*) Mechanics' institutes,

(*c*) Similar public institutions, literary or scientific,

(*d*) Agricultural and horticultural societies,

To the extent of the actual use and occupation of such property for the purposes of such institutions or societies.

(*e*) Joint stock companies for the erection of exhibition buildings, to the extent only that the council of the municipality consents to exempt them. See R.S.O. 1897, cap. 196.

The institution of civil engineers, the property and income of which are legally appropriated to the general advancement of engineering science and not to the furtherance of the professional interests of its members, is exempt from taxation both on property and income: *Commissioners of Inland Revenue* v. *Forrest*, 15 A.C. 334.

It is not an uncommon use of the expression "property of" in connection with such a word as "institution" to employ it to describe property appropriated to the purposes of the institution, even though it belongs to others than the institution. It matters not in whom the legal ownership is, if the property is appropriated to the purposes of the institution: *Manchester (Mayor of)* v. *McAdam* (1896), A.C. 500.

The meaning of "literary institution" and "property of" discussed, *ib.*

Official Income of Governors.

13. The official income of the Governor-General of the Domiion of Canada, and the official income of the Lieutenant-Governor of this Province. R.S.O. 1897, c. 224, s. 7, par. 12, *amended.*

The Provincial Legislature has no power to tax the salaries of officials of the Dominion Government, or to confer such power on the municipalities: *Leprohon* v. *City of Ottawa*, 2 A.R. 522.

Income of Officers, etc., on full Pay.

14. The full or half-pay of any officer, non-commissioned officer or private of His Majesty's regular Army or Navy; and any pension, salary, gratuity or stipend derived by any person from His Majesty's Imperial Treasury, and the income of any person in such Naval or Military services, or full pay, on otherwise in actual service. 3 Edw. VII., c. 21, s. 2, *amended.*

A Major in the regular army went on half-pay and accepted the office of Deputy Adjutant General of Militia under the Dominion Government, with a salary and allowance including rent payable by them. He was, however, directed by the Imperial authorities to consider himself under the orders of the general officer of the regular army at Halifax, and after five years was recalled. His time of service in Canada was counted in as entitling him to promotion. During the time he held the office under the Dominion Government he was not an officer of the regular army in actual service so as to be exempt from taxation: *Jarvis* v. *City of Kingston*, 26 C.P. 526.

Income from Farms.

15. The income of a farmer derived from his farm. R.S.O. 1897, c. 224, s. 7, par. 17, *part.*

Machinery.

16. All fixed machinery (1) used for manufacturing (2) or farming purposes; but this shall not apply to fixed machinery used, intended or required for the production or supply of motive power including gas, electric and other motors, nor to machinery owned, operated or used by a railway company or by a person having right, authority or permission to construct, maintain or operate within Ontario in, under, above, on or through any highway, road, street, lane, public place or public water, any structures or other things, for the purposes of bridges, tramways or street railways, or for the purpose of conducting steam, heat, water, gas, oil, electricity, or any property, substance, or product capable of transportation, transmission or conveyance, for the supply of water, light, heat, power, transportation, or other service. *New.*

Machinery as fixtures is dealt with in the notes on sec. 2, subs. 7 (*d*), *Ante*, *Hobson* v. *Gorringe*; *Reynolds* v. *Asby*; *Holland* v. *Hodgson*; *Haggart* v. *Town of Brampton*, and *Bacon* v. *Rice Lewis & Son, Limited*, *supra*, p. 6.

Fixed machinery is exempt when used for
(*a*) manufacturing or
(*b*) farming purposes.

For "manufacturing" see the note on sec, 10, subs. 1 clause (*d*).

But this exemption does not extend to
fixed machinery (1) used
intended
or required } for the production or supply of
motive power, e. g., a steam engine, a gas engine or an electric motor.

Nor does the exemption extend to fixed
machinery (2) owned,
operated
or used } By a railway company.

Nor to fixed machinery (3) owned,
operated
or used
} By a person (including corporation)

having right,
authority
or permission
} to construct,
maintain or
operate
} in Ontario,

in
under
above
or through
} any highway
road,
street
lane
public place
or public water
} any structures or other things (*aa*) for the purpose of

bridges
tramways, or
street railways,
} (*bb*) or for the purpose of conducting

steam,
heat,
water,
gas,
oil,
electricity
} or any property, substance or product capable of transportation, transmission or conveyance, for the supply of
} water,
light,
heat,
power,
transportation
or other service.

It is to be noted that it is not the structures or other things on the highways, roads, streets, lanes, etc., that are exempt, but the machinery, owned, operated or used for the specified purposes. A machine is a piece of mechanism, which, whether simple or compound, acts by a combination of mechanical parts that serve to create or apply power to produce motion, or to increase or regulate the effect. One of the definitions of machinery is, the means and appliances by which anything is kept in action or a desired result is obtained. Am. & Eng. Ency. of Law, Vol. 19, p. 604.

''Machinery'' implies the application of mechanical means to the attainment of some particular end by the help of natural forces; ''operative machinery'' means machinery with the potentiality of operating or doing work: *Chamberlayne* v. *Collins*, 70 L.T. 27, per Davey, L. J.

Machinery and plant are two quite different things. In a brewery, machinery includes everything which by its action produces or assists in production; and plant might be regarded as that without which production could not go on, and includes such things as vats, pipes and the like: *Re Brooks*, 64 L.J. Ch. 27.

In a bill of lading which excepted accidents to boilers or machinery, the word applied only to the group of mechanical parts connected with the boiler and steam supply by which power was generated and applied, and the train of cars propelled, and did not include an axle of one of the cars: *Fairbanks* v. *Cincinnati etc., R. Co.*, 81 Fed. Rep. 289. Dies used in a stamping machine are machinery though there are hundreds of them and only one can be used at a time: *Seavey* v. *Central Mutual Fire Inse. Co.*, 111 Mass. 540; so also is an electric passenger elevator, *Lefler* v. *Forsberg*, 1 App. Cas. (D.C.) 36; but not the pipes, lamp posts and meters of a Gas Co.: *Covington Gas Light Company* v. *Covington*, 84 Ky. 98. See also *Commonwealth* v. *Lowell Gas Light Co.*, 12 Allen (Mass.) 75; *Dirdley* v. *Jamaica Pond Aqueduct Co.*, 100 Mass. 183; but a hammer is not a part of the machinery: *Georgia Pacific R. Co.* v. *Brooks*, 84 Ala. 138; neither are railings, posts and bridges: *Benedict* v. *New Orleans*, 44 La. Ann. 793; nor the shells used in a cloth printing machine, such machine when sold being complete without them: *Griggs* v. *Stone*, 51 N.J.L. 549. But a lead-pipe machine and a rolling-mill are machinery: *Lowber* v. *Le Roy*, 2 Sandf. (N.Y.) 202; the saw of a saw-mill is a part of the machinery of the mill: *State* v. *Avery*, 44 Vt. 629; an organ factory is, however, not a machine shop: *Goddard* v. *Monitor Mutual Fire Inse. Co.*, 108 Mass. 56. It was a question for the jury whether a building in which shingles were made was a machine and repair shop: *Chaplin* v. *Provincial Inse. Co.*, 23 C.P. 278; a derrick on a car is not a piece of machinery, but the car being operated as a single apparatus is an appliance: *Wagner* v. *N. Y. C. & St. L. R. Co.*, 78 N.Y.S. 696.

For what constitutes a fixture see notes 2 and 12 on subs. 7 of sec. 2, *ante* p.6.

(2) Are the words "manufacturing purposes" as used in this subsection restricted to the purposes of a "manufacturer" within the meaning of the term as used in sec. 10, subs. 1, clause (*d*)? If they are, then distillers and brewers are not entitled to the exemption given by this subsection, as they are not manufacturers within the meaning of the term as used in clause (*d*). They come under clauses (*a*) and (*b*) of subs. 1 of sec. 10. See also sec. 10, subs. 7.

Income from Stock in Companies.

17. The dividends or income from stock held by any person in any incorporated company, the income of which is liable to assessment in this Province. R.S.O. 1897, c. 224, s. 7, par. 20, *amended.*

The idea is not to assess the income twice, first as income of the company, and then as dividends forming a part of the income of the shareholders. If the income of the incorporated company is assessed, the dividends are not to be included in the assessable income of the shareholder. Incorporated companies, liable to business assessment under sec. 10, are not to be assessed for income, sec. 10, subs. 7; nor are toll road companies. See subs. 20 of this section.

Toll Road Stock.

18. The dividends or income derived from the stock or shares held by any person in any toll road. R.S.O. 1897, c. 224, s. 7, par. 22, *amended.*

The income of the company not being assessable, this clause is necessary to exempt the dividends or income of the shareholders.

Income from Personal Earnings, etc.

19. The annual income derived from personal earnings or from any pension, gratuity or retiring allowance in respect of personal services by any person assessable directly in respect of income under this Act to the amount of $1,000 where such person is resident in a city or town having a population of 10,000 or over, or to the amount of $700 where such person is resident in any other municipality, provided that such person is a householder in the city, town or other municipality and is assessed as a householder therein, and the annual income derived from personal earnings or from any pension, gratuity or retiring allowance in respect of personal services of any person, not being a householder and assessed as such as aforesaid, to the amount of $400. *New.* See 3 Edw. VII., c. 21 s. 3.

For the definition of income see sec. 2, subs. 8, and notes. This subsection exempts (*a*) personal earnings (*b*) any pension, gratuity

or retiring allowance in respect of personal services, up to $1000 in cities or towns over 10,000 and up to $700 in other municipalities, if the person assessed is a householder and assessed as such; but if he is not, then the amount exempt is only $400. Where a business tax is paid, the income from that business is not assessable, except as set out in sec. 11, subs. 1 (*c*).

Householder, though it be not of so strict a sense as house-keeper, will not include a lodger or temporary inmate, but will include a partner daily resorting to his firm's counting house in the place referred to, the dwelling part of which counting house is occupied by a servant of the firm: *R.*v. *Hall*, 1 B. & C. 123; *R.* v. *Poynder*, 1 B. & C. 178.

A servant who occupies premises belonging to his master may, or may not, be a householder. Though he occupies premises of the master rent free, as part of the wages that he would otherwise receive if he paid the rent, it does not follow that he may not hold as tenant. The essential element in the determination of the question is, whether or not the servant simply occupies as part remuneration for his services, or whether the occupation is sub-servient to and necessary to the service. In the former case he is a householder, in the latter he is not: *R.*v.*Spurrell*, L.R. 1 Q. B. 72. See also *Reg. ex rel. Taylor* v. *Caesar*, 11 U.C.R. 461; *Reg. ex rel. Forwood* v. *Bartels*, 7 I.C.P. 533; *Tennant* v. *Smith*, 1892, A.C. 150. See ante p. 17 as to when the rental value of a free house belonging to the employer should be added to the salary of the employee as partof his income. Under the terms of former Municipal Acts when householders voted, "every occupant of a separate portion of a house, such portion having a distinct communication with a public road or street by an outer door, shall be deemed a householder within this Act." 29 & 30 Vict. c. 51, s. 166. This section was repealed in 1897 when "householders" as such were no longer voters. *Reg.* v. *Deighton*, 5 Q.B. 896. A garret made use of as a workshop and rented with a sleeping room by the week, is the mansion of the tenant, if the landlord does not sleep under the same roof: *Rex* v. *Carrell*, 1 Leach, C.C. 237. Lofts over coach houses and stables converted into lodging rooms are the dwelling houses of the inhabitants if there is an outer door: *Rex.* v. *Turner*, 1 Leach, C.C. 305. A house, the whole of which is let out in lodgings, and has only one outer door common to all its inmates, is the mansion house of its several inhabitants: *Rex.* v. *Trapshaw*, 1 Leach, C.C.

305; *R.* v. *Rogers,* 1 Leach, C.C. 89. It seems to be settled in England, where the question has frequently arisen, that if separate portions of a house are let to different tenants, and the owner or landlord does not reside on the premises, though the tenants all use the outer doors in common, they are householders, and each portion so let is the house of its occupant. See 1 *Hale, P. C.* 557; *R.* v. *Sifton,* Russ. & Ry. 203; *R.* v. *Martha Jones,* 1 Leach 537; Chambers in the inns of court are all for purposes considered as distinct dwelling houses, and therefore whether the owner happens to enter at the same outer door or not, will make no manner of difference: 2 *East P. C.* 505; 1 *Hale P. C.* 556.

Rental of Real Estate, etc.

20. Rent or other income derived from real estate, except interest on mortgages. R.S.O., 1897, c. 224, s. 7, par. 27.

Assessments for Local Improvements.

6. The exemptions provided for by section 5 of this Act shall be subject to the provisions of *The Consolidated Municipal Act,* 1903, providing for the assessment of property for local improvements, which would otherwise be exempt from such assessment under the said section 4. 3 Edw. VII., c. 21, s. 5, *amended*

The sections of *The Consolidated Municipal Act* relating to local improvements are Nos. 664 to 693. Seetions 683 and 684 are as follows:

CERTAIN EXEMPT PROPERTIES MAY BE ASSESSED FOR LOCAL IMPROVEMENTS.

683 Land on which a place of worship is erected, and land used in connection with a place of worship, shall be liable to be assessed, in the same way and to the same extent as other land, for local improvements made or to be made. R.S.O., 1897, c. 223, s. 683. See also R.S.O. cap. 224, sec. 7 (3).

684. (1) The buildings and grounds of and attached to a university, college or other incorporated seminary of learning, whether vested in a trustee or otherwise, shall be liable to be assessed, in the same manner and to the same extent as other land is assessed, for

local improvements made or to be made. This section shall not apply to schools which are maintained in whole or in part by a legislative grant or a school tax. Provided that if the grounds of and attached to the school maintained in whole or in part by a legislative grant or a school tax are not owned by the school board or the municipality but are held under lease, agreement or other right of occupancy the unexpired term of which does not extend beyond the period of the proposed assessment the said grounds shall be liable to be and shall be assessed for local improvements and the municipal council shall assume and pay the special rates assessed against the same during the unexpired term of such lease, agreement or right of occupancy or any renewal thereof or until said lands are no longer used for school purposes, and as soon as said lands cease to be so used for school purposes and thereafter during the currency of the debenture issued to pay for said work the said special rates fixed by the by-law providing for the payment of the said work shall be payable by the owner of the said lands and be a charge upon the said lands and may be collected in the same manner as the rates imposed by the said by-law. R.S.O., 1897, c. 223, s. 684 (1); 3 Edw. VII., c. 18, s. 157.

(2) All land exempt from a local improvement rate imposed by any by-law as soon as it ceases to be used for any purpose that would render the same so exempt, or as soon as it ceases to be the property of any person entitled to exemption, or when the term of such exemption expires, as the case may be, shall thereupon become liable to be rated for the work, improvement of service at the rate fixed by the by-law providing for the payment for such work, improvement of service, and the same shall be a charge upon the said land, and may be callected in the same manner as the rates imposed by such by-law. 3 Edw. VII., c. 18, s. 158.

Exemption of certain Officers of Superior Courts Abolished as to future Appointments

7. The exemption to which certain officers connected with the Superior Courts were, at the time of their appointment, and on the 5th day of March, 1880, entitled by Statute, in respect of their salaries, is abolished as respects all persons appointed by the Lieutenant-Governor to such offices after the said 5th day of

March, 1880, and shall continue in respect of such officers only as were appointed before that date. R.S.O., 1897, c. 224, s. 12.

Assessment of Persons for Exempted Income at Request.

8.—(1) Where any person is entitled by law to exemption from assessment in respect of income, he may, upon making an affidavit stating the amount of his income and according to the form given in Schedule A to this Act, require his name to be entered upon the assessment roll for such income, for the purpose of being entitled to vote at elections for municipal councils; and upon such affidavit being delivered to the assessor at any time before the day fixed for the return of his roll, it shall be the duty of the assessor to enter the name of such person in the assessment roll; and such income shall in such case be liable to taxation like other assessable income. R.S.O. 1897, c. 224, s. 9, *amended.*

(2) Such affidavit may be made before the assessor or as provided in section 222 of this Act. *New.*

The person in receipt of income which is exempt, may waive the exemption, and may, as of right, insist on being assessed for income in order to entitle him to a vote at municipal elections. He must make, and deliver to the assessor, an affidavit in the prescribed form, before the day fixed for the return of the roll, to entitle him to be so assessed. There seems to be no provision for enabling him to be assessed for a sufficient portion of the exempt income to qualify him as a municipal voter, and to be exempt as to the residue. An assessment of $400 on income is necessary to give a vote; $700.00 of the personal earnings of an assessed householder is exempt in urban municipalities with a population under 10,000, and $1000.00 when the population exceeds that number.

Transfer of Property theretofore Exempt to a Person not Entitled to Exemption.

9.—(1) When a transfer is made of any property theretofore exempt from taxation under section 5 of this Act, to some person not thereafter entitled to such exemption, or whenever property used for some purpose which would entitle it to exemption under

the said section ceases to be so used, or whenever the period for which any property is declared to be exempt from taxation under any statute or by-law expires, such property shall immediately be liable to taxation for so much of the taxes as such property would have been liable for after such transfer, if it had not been exempt; and the taxes levied and collected in respect thereof shall form part of the general taxes of the municipality.

General Taxes.

(2) If the assessment for such municipality or the ward or part thereof where such property is situated has been completed before such transfer, or so far completed that the same cannot be assessed in the usual manner, then the assessor or assessment commissioner of the municipality shall assess the said property as though the assessment rolls were not completed, and the person assessed therefor shall have the right to appeal against such assessment within four days after receiving notice thereof; and, if he appeals therefrom, all the provisions of this Act as to appeals to or from the Court of Revision shall apply thereto; and thereafter such owner and occupant shall be liable for the taxes thereon at the rate fixed for such year as though the name of the owner and the description of the property and the value thereof and other particulars were inserted in the usual way.

Remedies for Collection.

(3) All remedies for collecting such taxes shall be applicable to such owner and property.

Not to Apply after Rate of Taxation for Year fixed.

(4) These provisions shall not apply to enable any taxes for the current year to be collected upon any property transferred after the by-law fixing the rate of taxation for such year has been passed. 3 Edw. VII., c. 21, s. 4.

Three occurrences are provided for:

(1) A transfer of taxable property from a non-taxable person, e.g., from the Crown to a subject.

(2) A change of property from a use for which it was not taxable to a use for which it is liable for taxes., e.g., from a company whose lands are exempt under by-law, to a person not exempt.

(3) The expiration of the period of exemption under statute or by-law.

Upon the happening of any of these occurrences, the property becomes immediately liable to taxation. The expression "for so much of the taxes as such property would have been liable for after such transfer, if it had not been exempt," suggests that the proportionate share only of the taxes of the current year, based on the rates of the expired to the unexpired portion of the year, may be leviable. But the concluding sentence of subs. 2 is consistent only with the taxation on the assessed value "at the rate fixed for such year" in the same way as any other property on the assessment roll.

Lands returned in the Surveyor-General's Schedule in June and which were liable to have taxes charged against them "from the time they are returned in the said Schedule," are charged with the taxes for the current year, though a large part of the year was antecedent to the date of the Schedule: Doe d. *Stata v. Smith*, 9 U.C.R. 658.

Subsection 2 provides for a special assessment when the transfer is made too late to admit of assessment in the ordinary way. The appeal to the Court of Revision is to be made within four days after service by the assessor of notice of the assessment. The decision of the Court of Revision is subject to appeal in the ordinary way.

After the rate of taxation is fixed for the year, property transferred as in subs. 1, cannot be taxed for that year. When an alteration is made creating a new exemption, after the roll is finally revised for the year, taxes must be paid for that year on the property exempted by the new law. The revision when made is final for that year: *Henderson* v. *Township of Stisted*, 17 O.R. 673; but when the premises were leased in April for the use of the Crown, having been previously assessed to the lessors, the roll not having been finally returned at the time of the lease, the property is

exempt: *Principal Secretary of State for War* v. *City of London*, 23 U.C.R. 476.

Business Assessment.

10.—(1) Irrespective of any assessment of land under this Act (1), every person *occupying or using land* (2) in the municipality *for the purpose of any business mentioned or described in this section* (3) shall be assessed for a sum to be called " Business Assessment " to be computed by reference to the assessed value of the land so occupied or used by him (4), as follows:—

This section is wholly new. The principle of assessment contained in it is a departure from the former policy of assessment legislation. Under 59 Geo. III., cap. 7, assessments were arbitrarily imposed at statutory rates on certain enumerated kinds of property, regardless of differences in value of the various specimens of the same class. Thus:—

" Every acre of arable, pasture or meadow land, twenty shillings; every acre of uncultivated land, four shillings; every town lot situated in the towns hereinafter mentioned, to wit: York, Kingston, Niagara and Queenston, fifty pounds; Cornwall, Sandwich, Johnstown and Belleville, twenty-five pounds; every town lot on which a dwelling house is erected in the town of Brockville, being composed of the front half of lots number ten, eleven, twelve and thirteen, in the first concession of the Township of Elizabethtown, in the District of Johnstown, thirty pounds; every town lot on which a dwelling house is erected in the town of Bath, being composed of the front or south half of lots number nine, ten and eleven, in the first concession of the Township of Ernestown, in the Midland district, twenty pounds; every house built with timber squared or hewed on two sides, of one story in height, and not two stories, with not more than two fireplaces, twenty pounds; for every additional fireplace, four pounds; every dwelling house built of squared or flatted timber on two sides, of two stories in height, with not more than two fireplaces, thirty pounds; and for every additional fireplace, eight pounds; every framed house under two stories in height, with not more than two fireplaces, thirty-five pounds; and every additional fireplace, five pounds; every brick or stone house of one story in height, and not more than two fireplaces, forty pounds; and for every addi-

tional fireplace, ten pounds; every framed, brick or stone house, of two stories in height, and not more than two fireplaces, sixty pounds; every additional fireplace, ten pounds; every grist mill wrought by water, with one pair of stones, one hundred and fifty pounds; every additional pair, fifty pounds; every saw mill, one hundred pounds; every merchant's shop, two hundred pounds; every storehouse owned or occupied for the receiving and forwarding goods, wares or merchandise, for hire or gain, two hundred pounds; every stone horse kept for the purpose of covering mares for hire or gain, one hundred and ninety-nine pounds; *Provided also,* that if any person shall bring into any township in this Province, any horse as aforesaid, after the Assessment Roll shall have been made up for such township, it shall and may be lawful for the collector of such township, and he is hereby required to demand and receive of any such person, the rate of such horse as aforesaid, unless the owner can satisfy such collector that the rate for such horse has been returned as paid for that year, and in case of a refusal of payment, to proceed to the recovery of such rate by distress and sale of such horse as aforesaid; every horse of the age of three years and upwards, eight pounds; oxen of the age of four years and upwards, per head, four pounds; milch cows, per head, three pounds; horned cattle from the age of two years to four years, per head, twenty shillings; every close carriage with four wheels, kept for pleasure, one hundred pounds; every phaeton or other open carriage, with four wheels, kept for pleasure only, twenty-five pounds; every curricle, gig or other carriage, with two wheels, kept for pleasure only, twenty pounds; every waggon kept for pleasure, fifteen pounds; *Provided always,* that every stove erected and used in a room where there shall be no fireplace be deemed and considered as a fireplace."

In 1850 this somewhat crude and primitive mode of assessment gave place to an enactment, the fundamental principles of which have been developed and extended, until superseded by the present Statute. By 13 & 14 Vict., cap. 67, as amended and interpreted by 14 & 15 Vict. cap. 110, land and personal property were assessed at their value, as estimated by the assessor. Income was included under "personal property," and assessed as such. The assessment Act of 1904 eliminates the assessment of personal property other than income, and introduces instead a business assessment.

(1) The business assessment is in addition to the assessment of land.

(2) The basis of the business assessment is the " occupying or using of land " in the municipality. Every person, no matter, where resident, who occupies or uses land for carrying on any sort of business mentioned or described in the classifications contained in this section, is liable to a business assessment. If he does not occupy or use land, though his business may be one of the designated employments, he is not assessable. For instance, a travelling oculist and aurist who goes from place to place periodically and receives patients at his hotel in each town he visits, but who has no permanent office in any of the places he visits, does not use or occupy land so as to be assessable.

(3) See "occupant" and notes thereon, sec. 2, sub-sec. 6.

Not everyone who uses or occupies land is liable to " business assessment " but only those persons who do so for the purposes included in the various sub-divisions of section 10, sub-sec. 1.

Power to Impose Taxes.

Taxing Acts must be construed strictly, and any ambiguity will entitle the subject to be exempt from the tax: *Hall Dock Co.* v. *La Marche*, 8 B. & C. 42; *Cox* v. *Rabbits*, 3 A.C. 473; *Re Thorley, Thorley* v. *Massam* (1891), 2 Ch. 613. Intention to tax must be clearly shown: *Oriental Bank* v. *Wright*, 5 A.C. 842 ; *Pryce* v. *Monmouthshire Canal & Ry. Co.*, 4 A.C. 197. Under the Statute, 29 Vict. ch. 57 (Can.) the City of Quebec was authorized to impose taxes on certain callings " and generally on all trades, manufactories, occupations, business, arts, professions, or means of profit, livelihood or gain, whether hereinbefore enumerated or not," carried on in the city. The city, under these provisions, was entitled to impose a business tax upon railways. The general terms were not restricted by the enumerated callings, and the principle " *Noscitur a sociis* " did not apply. It was excluded by the words " whether hereinbefore enumerated or not:" *C.P.R.* v. *City of Quebec*, 30 S.C.R. 73.

" A statute granting to a muncipality authority to levy taxes must be strictly construed. Thus the enumeratioh of particular objects of taxation is deemed to be an exclusion of all others not enumerated; and where general taxation alone is authorized the sum required may not be raised by special taxation, nor will

a grant of power to impose a special tax confer authority to accomplish the same purpose by a general tax. It is presumed that the legislature in granting the power has clearly indicated its intention, and doubts or ambiguities arising from the terms used by the legislature must be resolved against the legislature and in favor of the taxpayer. But the courts must not defeat the legislative intent by turning the language from its natural and obvious meaning, nor are powers expressly granted or necessarily implied to be defeated or impaired by a strict construction." Am. & Eng. Encyc. of Law, 2nd Edn. Vol. 27, p. 870.

(4) The " Business Assessment " is to be, for each business of the same kind, a certain fixed percentage of the assessed value of the land occupied or used. The percentage is different for different kinds of business, but the same for every business of the same kind.

Where a large building is occupied by a considerable number of tenants, each carrying on a separate business and liable to business assessment, it is difficult to determine the value of the land occupied by each. There are no actual sales of separate offices from which the assessor can judge the value of a number of rooms in a building. Perhaps, however, a fair result may be arrived at by distributing the value of the whole property amongst the various parts separately occupied in proportion to the rents which the various parts separately occupied, should reasonably pay. Offices which, for instance, produce a twentieth of the gross rental of the property, should fairly be valued at one-twentieth of the whole assessed value of the land and building.

(*a*) Every person (1) carrying on the business (2) of a distiller for a sum of equal to 150 per cent. of the said assessed value 3.

(1) The word " Person " shall include any body, corporate or politic, or party . . . . to whom the context can apply according to law." *The Interpretation Act*, sec. 8, sub-sec. 13.

(2) " Carrying on the business."

In *City of London* v. *Watt*, 22 S.C.R. 300, a merchant residing and doing business in Brantford had certain merchandise stored in a public warehouse in London. He kept no agent in charge of

such merchandise, but when sales were made a delivery order was given, upon which the warehouse keeper acted. A traveller attended once a week at the warehouse to take orders for the merchant. It was held that the merchant did not carry on business in London, and was not liable to assessment or taxation there.

A French merchant employed agents in England to solicit orders, on which they received a commission; the orders were sent to France, where the principal exercised his discretion as to executing them. The goods were sold as being in the warehouse in France. The buyer paid packing, carriage, etc., and assumed all risk of loss or damage in transit. Payment was usually, though not always, made to the principal. The foreign merchant did not, in these circumstances, exercise a trade in England, though he traded with, he did not trade within, that country: *Grainger* v. *Gough* (1896), A.C. 325.

The performance of a single act or even a number of isolated acts does not amount to carrying on business. One transaction does not amount to exercising a trade: *Reg. v. Andrews*, 25, U.C.R. 196 ; *Reg. v. Buckle*, 4 East 346.

(3) A distiller pays taxes on two and one-half times the assessed value of the land occupied or used for his business.

He pays taxes on the value of the land, and a business tax on a sum fixed at one and a half times the value of the land.

(*b*) Every person carrying on the business of a brewer for a sum equal to 75 per cent. of the said assessed value of the land occupied or used by him for such business, exclusive of any portion of such land occupied and used by him as a malting house, and for a sum equal to 60 per cent. of the assessed value, as to such last mentioned portion.

The brewery property pays on a business assessment of 75 per cent. of the land value.

The malting house pays on a business assessment of only 60 per cent of the land value.

The brewery, exclusive of the malting house, and the malting house should therefore be separately valued.

(*c*) Every person carrying on the business of a wholesale merchant, (1) of an insurance company, (2) a loan company, (3) or a trust company, (4) as defined by this Act, or of an express company, carrying on business on or in connection with a railway or steamboats or sailing or other vessels where such land is occupied or used mainly for the purpose of its business, or of a land company, or of a bank or a banker, or of any other financial business for a sum equal to 75 per cent. of the said assessed value.

Persons carrying on any of the businesses enumerated in this sub-section pay on 75 per cent. of the assessed value of the land occupied. They are:—

(1) A wholesale merchant.

(2) An insurance company.

(3) A loan company.

(4) A trust company.

(5) An express company carrying on business on or in connection with, a railway or steamboats, or sailing or other vessels, when the main use of the land is for the purpose of the company.

(6) A land company.

(7) A bank or a banker.

(8) A person engaged in any other financial business. In this phrase the financial business must be one similar to those already enumerated in clause (c).

(1) "A wholesale merchant is one who buys goods and sells them again to other dealers." He deals only in large quantities, and does not sell to the consumer: see *Treacher* v. *Treacher,* W.N. (74) 4. Even when a man sells goods not of his own manufacture, but sells only one class of those goods, he is not a merchant. A porter merchant is one who deals in all or many sorts of porter, not one only. A man travelling for a brewery does not offend against his bond not to travel for any porter, ale or spirit merchant: *Josselyn* v. *Parson,* L.R. 7 Ex. 127. In *R.* v. *Harper,* 2 Salk, 611, the Court said, " they did not know what a merchant taylor meant." A

merchant of or in an article is one who *buys and sells it*, and not the manufacturer selling it: *Ib.* p. 129, per Bramwell, B.

"Those who buy goods to reduce them by their own art or industry into other forms and then to sell them, are artificers, not merchants:" *Jacob's Law Dictionary.*

A dealer in shares or stocks is not a merchant, they are not "goods, wares, nor merchandise:" *Re Cleland,* L.R. Ch. A. 466.

(2) Insurance company—for definition see sec. 2, subs. 9.

(3) Loan company, see sec. 2, subs. 10.

(4) Trust company, see sec. 2, subs. 11.

(*d*) Every person carrying on the business of a manufacturer (2) for a sum equal to 60 per cent. of the said assessed value; and a manufacturer shall not be liable to business assessment as a wholesale merchant by reason of his carrying on the business of selling by wholesale the goods of his own manufacture on such premises(2).

(1) Manufacturer, one who manufactures. "The mere fact of the application of labour to an article, either by hand or by mechanism, does not necessarily make the article a manufactured article within the meaning of that term, as used in the tariff law, unless the application of such labour is carried to such an extent that the article suffers a species of transformation, and is changed into a new and different article, having a distinct name, character or use:" *Hartrauft* v. *Weigmann,* 121 U.S. 609.

The primary meaning of the word manufacture is to make by hand, but with the advance in mechanical invention, it has largely lost its primary signification. In popular speech, a person who makes articles by hand for the supply of his customers is not spoken of as a manufacturer, at most he is a tradesman or mechanic. It would seem that "manufacturer" as used in this clause, was intended to designate something different from a mechanic or tradesman.

"So as we think, it is equally clear that an individual or copartnership, carrying on the business of manufacturing for sale in the market, without reference to the supply of the community where their establishment is located, a particular article, as German silver spectacles, is not, within the meaning of the statute, carrying

on the business of a silversmith, or even of a spectacle-maker. Such a concern is a factory, and not a *mechanics' shop;* and the individuals carrying it on are *manufacturers,* and not tradesmen": *Attwood* v. *DeForest,* 19 Conn. 518.

A place where brooms are made by hand is not a manufactory. "Is not a manufactory or a factory, a building the main or principal design or use of which is to be a place for producing articles as products of labor? There is no difficulty in understanding what is meant when we speak of a *factory* or manufactory. It is something more than a place where things are made": *Franklin Fire Inse. Co.* v. *Brock,* 57 Pa. St. 82.

A manufactory is something more than a building. It includes not only the building, but the machinery necessary to produce the particular goods manufactured, and the engines or other power requisite to propel such machinery. A building with only bare walls and a roof would no more be a manufactory than it would be an hotel": *Schott* v. *Harvey,* 105 Pa. St. 227. "A building is no more a factory without machinery, than machinery would be a factory without a building": *Mahew* v. *Hardisty,* 8 Md. 495.

The following cases as to what are "manufactories" were decided under the English Land Clauses Act. An establishment in which tea is stored, blended and milled, by such processes special teas of a distinct quality being produced, is not a manufactory. "Manufacture" means producing something new from raw material: *Bennington* v. *Metropolitan Board of Works,* 54 L.T. 837. A candle manufactory is within the Act: *Richards* v. *Swansea Improvements, etc. Co.,* 9 Ch. D. 425; so also are tin plate works: *Sparrow* v. *Oxford, Worcester and Wolverhampton Ry.,* 2 De G.M. & G. 94. Premises used for the preparation of oils and colors: *Pinchin* v. *London and Blackwell Ry.,* 1 Kay & J. 34, 5 De G.M. & G. 851; a dust contractor used a large piece of land for the purpose of collecting and disposing of the contents of dust heaps, one part being used as a sorting place, another for the conversion of part of the refuse into cement, and another for converting other parts into manure. The manufacturing processes were merely auxiliary to the general business of a dustman, and the premises were not a manufactory: *Reddin* v. *Metropolitan Board of Works,* 4 De G.F. & J. 532. See also *Gibson* v. *Hammersmith, etc. Ry. Co.,* 32 L.J. Ch. 337. Under the Hosiery Act (1845), 8 and 9 Vict. c. 77 s. G. "Manufacturer" means "any person furnishing the materials of

work to be wrought into hosiery goods to be sold or disposed of on his own account."

"Manufactured goods in relation to a Statute regulating charges for carriage must be understood in a popular sense, and must mean not merely goods produced from the raw state by manual skill and labour, but such as are ordinarily produced in manufactories, and we should therefore exclude statuary, and include shoes, iron mongery, glass and drapery. The application of that meaning to particular articles is a question of fact, not of law": *Parker* v. *G. W. Ry.*, 6 E. & B. 109.

Ten acres of land used for making cement from chalk and clay, the operations being carried on chiefly in the open air, is not a factory under The English Factory Act: *Redgrave* v. *Lee*, L.R. 9 Q.B. 363. Nor is a slate quarry: *Kent* v. *Astley*, L.R. 5 Q.B. 24. "Factory" is but a contraction of "Manufactory." By 30 & 31 Vict. c. 103, s. 3, a factory is defined as any premises in which steam, water or other mechanical power is used for moving machinery employed for the purpose specified in the Act: see *Palmers' Ship Building Co.* v. *Chaytor*, L.R. 4 Q.B. 209.

Under a statute exempting manufacturing establishments, there is no power to exempt an establishment furnishing and distributing electric light and power: *Williams* v. *Park*, 56 Atlantic Reporter, 463.

Speaking generally, in popular language a manufacturer is distinguished from a mechanic, or tradesman, even though the latter is engaged in making some of the same articles, by the following:

(*a*) The much larger amount of capital invested.

(*b*) The mechanical power, steam, water or electricity by which the manufacturer runs his machinery.

(*c*) The extent to which machinery replaces hand labour.

(*d*) The larger number of persons employed.

(*e*) The market for the product is frequently not local, amongst consumers in the vicinity, but amongst dealers often at a distance.

(*f*) The manufacturer, or his manager, is engaged in organizing, supervising, financing and managing the business, making contracts, etc. For instance, all these points of difference would be found between a manufacturer who runs a shoe factory, and the

skilled mechanic who makes shoes to order for his customers. It is not easy, however, to say just when, as he becomes more prosperous, adds machinery, employs more hands, increases his output, and widens his market, a mechanic passes the limit, and becomes a manufacturer.

Statutes imposing taxes are construed strictly, and the right to impose the tax must be clearly shown; see note 2 on this section.

(2) A manufacturer pays on a business assessment of 60 per cent., the wholesale merchant pays on a business assessment of 75 per cent. The man who sells goods of his own manufacture by wholesale, is not to be assessed as a wholesale merchant. A manufacturer who confines himself to selling his own manufactures is not a merchant: *Josselyn* v. *Parson*, L.R. 7 Ex. 127.

(*e*) Every person carrying on the business of what is known as a departmental store, or of a retail merchant dealing in more than five branches of retail trade or business in the same premises or in separate departments of premises under one roof, or in connected premises, where the assessed value of the premises exceeds $20,000, or of a coal or wood or lumber dealer, lithographer, printer or publisher, or of a club, in which meals or spirituous or fermented liquors are sold or furnished, or the business of selling, bartering, or trafficking in fermented, spirituous or other liquors in any premises in respect of which a shop license has been granted, for a sum equal to 50 per cent. of the said assessed value; but in cities having over 100,000 population coal dealers shall be assessed for a sum equal to 30 per cent. of the said assessed value.

This clause comprises:—

(1) A departmental store.

(2) A retail merchant dealing in more than five branches of retail trade or business in the same premises, or in separate departments of premises under one roof, or in connected premises, where

the assessed value of the premises is more than $20,000. See clause (*g*) of this sub-section.

(3) A coal or wood dealer.

(4) A lumber dealer.

(5) A lithographer.

(6) A printer or

(7) Publisher.

(8) A club where meals or intoxicants are sold or furnished.

(9) A shop licensed to sell intoxicating liquors.

The business assessment under it is 50 per cent. of the land value.

(*f*) Every person practising or carrying on business as a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, aurist, medical electrician, dentist, veterinarian, civil or mining or consulting or mechanical or electrical engineer, surveyor or architect, and subject to subsection 5 of this section, every person carrying on a financial or commercial business as agent only, for a sum equal to 50 per cent. of the said assessed value. Provided that where a person belonging to any class mentioned in this clause occupies or uses land partly for the purposes of his business and partly as a residence, 50 per cent. of the assessed value of the land occupied or used by him shall for the purpose of the business assessment be taken as and construed to be the full assessed value of the land so occupied or used.

This clause deals with every person who practices as a

(1) Barrister.

(2) Solicitor.

(3) Notary Public.

(4) Conveyancer.

(5) Physician.

(6) Surgeon.

(7) Oculist.
(8) Aurist.
(9) Medical electrician.
(10) Dentist.
(11) Veterinarian.
(12) Civil Engineer.
(13) Mining Engineer.
(14) Consulting Engineer.
(15) Mechanical Engineer.
(16) Electrical Engineer.
(17) Surveyor.
(18) Architect.

(19) An agent carrying on a financial or commercial business, but subject to sub-sec. 5. The agent in this clause is one who has the actual custody of the goods to be sold. An agent who has not the actual custody of the goods or has samples only, is not assessable.

The business assessment for all of the foregoing is one half of the land value. When a person carries on any of the callings mentioned in this clause, at his residence, the value of the land used or occupied is, for the purposes of the business assessment, taken to be one half of the actual value. See section 11, sub-sec. 1, clause (*c*) for the exceptional mode of assessing the income of those engaged in any of the callings dealt with in this clause of the Act.

(*g*) Every person carrying on the business of a retail merchant in cities having a population of over 50,000 for a sum equal to 25 per cent. of the said assessed value; in other cities and towns having a population of 10,000 or over for a sum equal to 30 per cent. of the said assessed value; and in all other municipalities for a sum equal to 35 per cent. of the said assessed value.

The business assessment of retail merchants decreases with the increase of population. If the retail merchant is in a township or in an urban municipality the population of which is under 10,000, he is assessed at 35 per cent. of the land value; in towns and cities

having from 10,000 to 50,000 people, at 30 per cent., and in cities of 50,000 and upwards, at 25 per cent. A retail merchant is one who sells to the consumer: *Treacher* v. *Treacher*, W.N. (74) 4. See notes on clause (*c*).

See clause (*e*) of this sub-sec. for the assessment of the retail merchant in a departmental store.

(*h*) Every person carrying on the business of a photographer, or of a theatre, concert hall, or skating rink, or other place of amusement, or of a boarding stable, or a livery, or the letting of vehicles or other property for hire, or of a restaurant, eating house, or other house of public entertainment, or a hotel in respect of which a tavern license has been granted, or any trade (1) or commercial business not before in this section or in clause (*i*) specially mentioned, for a sum equal to 25 per cent. of the said assessed value.

This clause fixes the business assessment of:—

(1) A photographer.

(2) A theatre.

(3) A concert hall.

(4) A skating rink or

(5) Other places of amusement.

(6) A boarding stable.

(7) A livery.

(8) A bicycle or automobile livery, or other similar establishments, where vehicles, etc., are hired out.

(9) A restaurant.

(10) An eating house, or

(11) Other house of public entertainment, similar to a restaurant or eating house.

(12) A licensed hotel.

(13) Any trade or commercial business not mentioned before in this section or in clause (*i*).

At 25 per cent. of the land value.

Trade was formerly used in the sense of an art or mystery, *e.g.*, that of a brewer or tailor: *Norris* v. *Staps*, Hob. 211.

" How does a wine merchant exercise his trade? I take it by making or buying wine, and selling again with a view to profit ": *Grainger* v. *Gough* (1896), A.C., per L. Herschell, at p. 336. " *Trade* in its largest sense is the business of selling, with a view to profit, goods which the trader has either manufactured, or himself purchased:" *Ib.* per Ld. Davey, at p. 345.

" It is unnecessary to refer to the authorities to show that " business " has a more extensive signification than " trade." It was never doubted that farming is a " business," but not a " trade." Banking is not strictly a trade: *Harris* v. *Amery*, L.R. 1 C.P., at p. 154, per Willis, J.

The lessee of a quarry who digs rock, and works it up into slates for sale, is not a trader, " using the trade of merchandise by buying and selling " within the meaning of the bankruptcy laws, though he sold tools and gunpowder to his workmen, and supplied iron and timber to a builder to be used in buildings on the quarry: *Re Cleland*, L.R. 2 Ch. A. 466.

It is not essential to a trade that a person carrying it on should make, or desire to make, a profit: *Re Law Reporting Council*, 22 Q.B.D. 279. " Tradesman " cannot reasonably be intended to include a farmer: *R.* v. *Cleworth*, 4 *B.* & S. 927 ; *Ryhope Co.* v. *Foyer*, 7 Q.B.D. 485. The proper meaning of *trade*, frequently found in old English, is trodden away, beaten path or course, and hence a way of life; the business of buying and selling by barter or for money, commerce; the business which a person has learned and which he carries on for a livelibood; mechanical or mercantile employment as distinguished from a learned profession; occupation: *Stormonth's Dictionary*. " In ordinary language, the word ' trade ' is employed in three different senses; first, in that of the business of buying and selling; second, in that of an occupation generally; and third, in that of a mechanical employment in contradistinction to agriculture and the liberal arts:" Am. & Eng. Ency. of Law, 2nd Edn., Vol. 28, p. 338.

Trade, in the connection in which it is here used, and especially having in view the phrase " not before in this *section* or in clause (*i*) specially mentioned," must, it is submitted, be taken to apply only to occupations similar to those enumerated earlier in this section and in clause (*i*). It is *ejusdem generis*. Contrast the

language here used " not before in this section or in clause (*i*) specially mentioned," with the phrase " whether hereinbefore enumerated or not," used in *The Canadian Pacific Railway* v. *City of Quebec,* 30 S. C. 73.

It is to be noted that no class of mechanics, or skilled labourers is mentioned—distillers, brewers, manufacturers, merchants, professional and quasi-professional men, printers, or publishers, loan companies, financial and commercial agents, keepers of places of amusement or refreshment, boarding and livery stable keepers, are enumerated; but no one is mentioned who is, for instance, of the same class as a blacksmith who keeps a shop for jobbing, repairs, horseshoeing, etc., a custom tailor, a carpenter, or other mechanic. In the case of a printer printing a book, a solicitor drawing a deed, an artist making a picture, a photographer taking a photograph, or an engineer preparing plans for an intended patent, while something physical and tangible is produced and delivered, the substance of the contract is the personal skill required, the value of the material used being so small in comparison to the value of the result as to be negligable: *Clay* v. *Yates,* 1 H. & N. 73; *Lee* v. *Griffin,* 1 B. & S. 272; *Grafton* v. *Armitage,* 2 C.B. 336. A photographer is not a mechanic: *Mullinix* v. *State,* 60 S.W. Rep. 768. " *Mechanic* does not include persons engaged in the liberal arts and similar occupations, as artists in painting or sculpture, and photographers, or architects, abstracters of titles, etc., or men, capitalists and owners of machinery and factories": Am. and Eng. Encyc. of Law, 2nd Edn,. Vol. 12, p. 100.

It is submitted that in the phrase " any trade or commercial business," in this clause, the word " trade" is used in its largest sense as defined by Davey, L.J., in *Grainger* v. *Gough,* supra, note 3, sec. 10, to denote the business of selling, with a view to profit, goods which the trader has either manufactured himself, or has purchased. The context indicates that it is closely allied to a commercial business. It would for example, include an ice-dealer, who in the winter stores large quantities of ice, which he in the summer sells to his customers.

" A Taxing Act must be constructed strictly, you must find words to impose the tax, and if words are not found which impose the tax, it is not to be imposed." Cox v. Rabbits, 3 A.C. 473, per Lord Cairns at p. 478. The intention to impose a charge on the subject must be shown by clear and *unambiguous*

language: *Oriental Bank* v. *Wright,* 5 A.C. at p. 856. See also Note 3 on Section 10.

It is submitted that the assessment of mechanics and artisans for business assessment, under the words "any trade or commercial business," is without warrant and unlawful.

(*i*) Every person carrying on the business of a telegraph or telephone company, or of an electric railway, tramway or street railway, or of the transmission of oil or water, or of steam, heat, gas, or electricity for the purposes of light, heat or power, for a sum equal to 25 per cent. of the assessed value of the land (not being a highway, road, street, lane, or public place or water or private right of way), occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under, or affixed to such land.

Two deductions are to be made from lands used or occupied for any business mentioned in this section.

1. The value of the
   (*a*) highway,
   (*b*) road,
   (*c*) street,
   (*d*) land or
   (*e*) public place, *e.g.* public park, or square,
   (*f*) or water or
   (*g*) private right of way,

is not to be taken into account or included in the value of the lands used or occupied, for computing the business Assessments.

2. The value of the machinery, plant, and appliances, erected or placed in, on, over, under, or affixed to the lands, other than those lands included in (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), or (*g*), above, is also to be excluded.

Having excluded all lands comprised in (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), and (*g*), above, and having also deducted the value of machinery

plant and appliances from the value of the other lands, 25 per cent. of the assessed value of the residue, after these deductions, is the business assessment of any of the following businesses:—

(1) A telegraph company.

(2) A telephone company.

(3) An electric railway.

(4) Tramway.

(5) Street railway.

(6) The transmission of oil, *e.g.* pumping stations and pipe lines.

(7) The transmission of water, *e.g.* a water company with mains on the highways, etc.

(8) The transmission of steam.

(9) The transmission of heat.

(10) The transmission of gas, or

(11) The transmission of electricity for the purpose of light, heat or power.

But see Sec. 42 as to Assessment of Land.

Persons Carrying on More than One Class of Business.

(2) No person shall be assessed in respect of the same premises under more than one of the clauses of sub-section 1, and where any person carries on more than one of the kinds of business mentioned in that subsection on the same premises, he shall be assessed by reference to the assessed value of the whole of the premises under that one of the said clauses in which is included the kind of business which is the chief or preponderating business of those so carried on by him in or upon such premises.

A person could not be assessed in respect of the same business as a distiller under clause (*a*), and also as a wholesale merchant under clause (*c*) or as a manufacturer under clause (*d*). There is to be only one business assessment of a person in respect of the same premises. If, however, a person carries on several kinds of business on different premises which he occupies, each business, if of a kind that is assessable for business assessment, will be assessed at the proper percentage for that kind of business,

on the basis of the value of the land which it uses or occupies. If, for instance, he carries on business as a banker in one building, and practises his profession as a physician in another set of offices, he will be assessed in regard to the bank at 75 per cent. of the assessed value of the premises occupied by it, and in regard to the offices where he practices medicine at 50 per cent. of their assessed value. Being on separate premises, each business will be assessed as if the two belonged to separate persons.

If there are several kinds of business carried on upon the same premises, by the same person, there is only one business assessment. That will be made on the basis of the chief or preponderating business. A retail merchant in a country village may chance also to act as a conveyancer. If his business as a merchant is the chief business carried on, his business assessment would be 35 per cent. of the assessed land value; if the conveyancing were the chief or preponderating business, the business assessment would be 50 per cent.

If there are several kinds of business carried on upon the same premises by different persons, who use the premises in common, each would be assessed for a proper proportion of the land. His business assessment would then be the proper percentage of his share of the land value.

Minimum Assessment.

(3) Where the amount of the assessment of any person assessable under this section, would under the foregoing provisions be less than $250, he shall be assessed for the sum of $250.

A person who occupies or uses land for e.g., business as a photographer, the land including buildings being valued at say $800, would under subs. 1, clause (*h*) if it were not for this subsection, be liable to a business assessment of only 25 per cent. of $800, or $200; but this subsection fixes the minimum at $250. This subsection applies only to persons who are assessable under same clause of subs. 1.

Where Land used partly for Business and partly for Residence.

(4) Where any person mentioned in subsection 1 occupies or uses land partly for the purpose of his business and partly for the pur-

pose of a residence, he shall be assessed in respect of the part occupied for the purpose of his business only; but this provision shall not apply to persons assessed under clause (*f*) of subsection 1.

The business assessments provided for by section 10, are "irrespective of any assessment of land under this Act." It is, therefore, only the business assessment that is restricted to the proper percentage of the value of the part occupied "for the purpose of his business only." There is no fixed rule given for determining the relative assessment of the residence and the business part of the premises. Perhaps the rental values of the residence and the business part of the premises fairly indicate the proportion in which the value of the land should be apportioned.

The proportion of the assessed value of land used as a residence and also for business purposes, to be taken as the value for fixing the business assessment in the case of any of the occupations enumerated in clause (*f*), is fixed by clause (*f*) itself at one-half the assessed value of the land.

Certain Businesses not Included.

(5) A financial or commercial business, in subsection 1 mentioned, shall not include a business carried on by operating vessel property of the following description, namely, steamboats, sailing or other vessels, tow barges or tugs, nor the business of a steam railway; nor the business of a broker or financial agent, or a manufacturer's agent, or other agent or intermediary in the business of the sale of goods who has not the actual custody of the goods, or has the custody of samples only.

Clause (*e*) of subs. 1 deals with a financial business; clause (*f*) deals with a financial or commercial business carried on by an agent; clause (*h*) deals with every commercial business not before mentioned in this section or in clause (*i*).

A financial or commercial business is not to be interpreted as including

(1) The operating of steamboats, sailing or other vessels, tow barges or tugs.

(2) The business of a steam railway.

(3) The business of a broker or financial agent, though subject to this subsection, clause (*f*) deals with a financial agent.

(4) The business of a manufacturer's agent or other such intermediary who has not the actual custody of the goods, or who has samples only.

Just what the financial business as agent only is, which is taxable under clause (*f*) and not exempt under this subsection, it is not easy to say.

There is no provision in the Act for assessing those engaged in operating steamboats, sailing or other vessels, tow barges or tugs, except for income.

Farmers, Market Gardeners and Nurserymen.

(6) No person occupying or using land as a farm, market-garden or nursery shall be liable to business assessment in respect of such land.

The only expression in subs. 1 likely to be erroneously construed as including a farmer, market-gardener, or nursery man, is the phrase "or any trade . . . . not before in this section or in clause (*i*) mentioned." Farming is, however, a "business" but not a "trade": *Harris* v. *Amery*, L.R. 1 C.P. 154; *Re Cleland*, L.R. 2 Ch. 466.

Income from Business not Assessable.

(7) Except as provided in clause (*c*) of subsection 1 of section 11 of this Act every person liable to assessment in respect of a business under subsection 1 shall not be subject to assessment in respect of income derived from such business, nor shall any person be subject to assessment in respect of dividends derived by him from shares in the stock of a corporation carrying on a mercantile or manufacturing business and which corporation is subject to assessment under subsection 1; nor shall the premiums or assessments of an insurance company be assessable by any municipality.

The income derived by any person from a business which is paying a tax on a business assessment, is exempt, except in the

case of the professional men and others who are included in clause (*f*) of subs. 1 of this section. The latter are liable to assessment for the excess of their assessable professional or other income from personal earnings, over the amount of their business assessment.

Dividends from the shares in the stock of an incorporated company which pays taxes on a business assessment are assessable as part of the income of those receiving such dividends, except in the case of companies carrying on (*a*) a manufacting or (*b*) a mercantile business. These two classes of dividends are exempt from assessment as income in the hands of the shareholders.

(*b*) Mercantile, i.e. relating to trade and commerce. The Century Dictionary defines *mercantile* as having to do with trade or commerce; of or pertaining to merchants or the traffic carried on by merchants; trading; commercial.

Manufacturing business:—A distiller or brewer is, in the strict sense of the term, a "manufacturer." See note 1 on clause (*d*) of subs. 1 of this section. But "manufacturer" as used in clause (*d*) of subs. 1 of this section does not include either. The distiller comes under clause (*a*) and the brewer under clause (*b*) of subsection 1. If "manufacturing business" in this subsection means the business of a "manufacturer" assessable under clause (*d*) then shareholders in distilleries and breweries would be liable to assessment on the dividends derived from their stock. It may be that it was the intention of the Legislature to use the terms "manufacturer" and "manufacturing business" consistently throughout the Act.

Exemptions from taxations are construed strictly. See note 6 on sec. 5. See the note on "manufacturer" under clause (*d*) of subs. 1 of this section.

Tax not a Charge on Land.

(8) Every person assessed for business assessment shall be liable for the payment of the tax thereon and the same shall not constitute a charge upon the land occupied or used. *New.*

Taxes are to be levied upon (*a*) land, (*b*) business assessment, and (*c*) income. Taxes based on the last two are not chargeable

against the land occupied or used by the person assessed. See section 89.

Where a municipality has by agreement fixed the assessment of the real and personal property of any person, such fixed assessment shall be deemed to include any business assessment or other assessment. See section 226.

Taxable Income.

Taxation on income (1) *directly.*

11.—(1) Subject to the exemptions provided for in sections 5 (2) and 10 (3) of this Act the following persons shall be assessed and taxed in respect of income:—

(*a*) Every person not liable to business assessment under section 10, and

(*b*) Every person although liable to business assessment under section 10 shall also be liable in respect of any income not derived from the business in respect of which he is assessable under that section,(4).

(*c*) Every person liable to business assessment under clause (*f*) of subsection 1 of section 10 in respect of the income derived by him from his business profession or calling, to the extent to which such income exceeds the amount of such business assessment. *New*, (5).

(1) For the definition of income, and cases illustrating it, see section 2, subs. 8, *ante* page 13.

(2) The incomes exempted by sec. 5 are:—

1 Income from the surplus funds of a Friendly Society; subs. 11.

2 Official income of the Governor-General, and Lieutenant Governor; subs. 13.

3 Full pay and half-pay of officers, non-commissioned officers and men in the imperial army or navy, imperial pensions and income of persons in actual service, naval or military; subs. 14.

4 A farmer's income from his farm.

5 Dividends from stock, when the Company's income is assessed; subs. 17.

6 Dividends from stock in toll roads.

7 Personal earnings of householders up to $700, or $1,000 as the case may be, and of others up to $400; subs. 19.

8 Rent and similar income from land, but not interest on mortgages; subs. 20.

(3) The incomes exempted by sec. 10 are:—

1 Income derived from a business which is liable to business assessment; but subject to sec. 11, subs. 1, clause (*c*).

2 Dividends from stock in manufacturing or mercantile corporations, such corporations being subject to business assessment.

(4) By section 5 all income of every person resident in Ontario no matter where derived, is intended to be assessed; also all income made within the Province, without regard to the residence of the person making it; subject in each case to the exceptions contained in sec. 5 itself, and in sec. 10.

This section contains substantially the same provisions, but somewhat differently expressed. Subject to the exemptions already mentioned above, it provides in clause (*a*) that every person not liable to business assessment shall be assessed for income; and in clause (*b*) that even if he is liable to a business assessment, he shall pay taxes on all income not obtained from the business for which the business assessment is made; for instance, a wholesale merchant is not assessable for the profits of his mercantile business as income, but he would be liable to be assessed and to pay taxes on income, amongst numerous other sources, from bank stock, interest on mortgages, and other investments and earnings outside his wholesale business.

(5) Clause (*c*) introduces an exception to the exception contained in sec. 10, subs. 7. Notwithstanding sec. 10, subs. 7, and clause (*a*) of this section, the professional men and others enumerated in sec. 10, subs. 1, clause (*f*) are liable to be assessed for the excess of their personal earnings over the amount of their business assessment, the $1,000, $700, or $400 exempted from personal earnings having been first deducted. Suppose a dentist has a net income of $3000, after paying for office rent, dental supplies, and other expenses incident to obtaining his income; his business assessment is say $1000; he resides in a place of less than 10,000 people and is a householder, so that $700 of his personal earnings are exempt. To find his assessable income from personal earnings in his calling, deduct $700 from $3000, then deduct the $1000 business assessment from the remainder, his assessable income is $1300. Clause (*c*) of this section only applies to income from the callings mentioned in clause (*f*) of subs. 1, sec. 10. The income of a person mentioned in clause (*f*) from sources outside his business mentioned in clause (*f*) is not exempt by reason of the business assessment, if not otherwise exempt.

(2) When such income is not a salary or other fixed amount capable of being estimated for the current year, the income of such person for the purposes of assessment shall be taken to be not less than the amount of his income during the year ending on the 31st day of December then last past. *New.* *See* R.S.O. 1897, c. 224, s. 35.

If the income is a salary or other fixed amount, such salary or fixed amount is the assessable income for the current year, subject to the exemptions of $1,000, $700 or $400, as the case may be, of personal earnings. Where the income is derived from interest on mortgages, etc., which is fixed, and capable of being estimated the income is based on the estimated earnings of interest during the current year. But in the case of a lawyer paid by fees which fluctuate and are of varying amounts in different years, his income is taken to be not less than his income for the previous year. Income includes all gains and profits derived from personal exertions, whether fixed or fluctuating, certain or precarious: *Attorney-General of British Columbia* v. *Ostrum* (1904), A.C. 144.

Place of Assesment for Income.

12.—(1) Every person assessable in respect of income under section 11 shall be so assessed in the municipality in which he resides but may be so assessed in such municipality either at his place of residence or at his office or place of business. *New.* See R.S.O. 1897, c. 224, s. 42.

''Person'' ordinarily includes ''corporation and partnership''. *The Interpretation Act*, sec. 8, subs. 13. But in this section corporations and partnerships are provided for by subs. 2.

''Resides.'' See note on this word under sec. 5, *ante* p. 25. The place of assessment is determined, in the case of income, wholly by the place of residence of the person assessed, and not by the place whence the income is derived. For instance, interest derived from mortgages is assessable in the municipality in which the mortgagee resides, not in the municipality in which the mortgaged property is situate. Income from mining lands is assessable where the person assessable resides, not where the mine is located. This section is new, though it may be that the former provisions were not materially different. See *Cartwright* v. *City of Kingston*, 6 U.C.L.J. 189; *Re Hepburn and Johnston*, 7 U.C.L.J. 46; *Marr* v. *Vienna*, 10 U.C.L.J. 275.

Interest accruing upon Indian securities held by a Life Inse. Co. with head office in England, which interest is retained in India but treated as a part of the divisible profits on which dividends are declared and paid at the head office, although never actually received is constructively received in the United Kingdom and is liable to income tax under the Act of 1842, case 4, schedule D.: *Universal Life Inse. Society* v. *Bishop*, 68 L.J. Q.B. 962.

Income derived from investments in foreign countries, the income being re-invested there, but included in and treated as part of the divisible profits in England, is liable to assessment under case 4, schedule D of *The Income Tax Act*, 1842, (Imp.): *Gresham Life Inse. Co.*, v. *Bishop*, 68 L.J.Q.B. 967.

Interest arising from foreign securities of a British Life Inse. Co. re-invested in the foreign countries, or expended in the company's business or sent to other foreign countries or remitted to the United Kingdom but included in the estimate of profits on

which dividends were declared, was "received" in the United Kingdom and was liable for income tax there, the tax on income from foreign countries being based on "the sums which have been or will be received in Great Britain in the current year." *Gresham Life Inse. Society* v. *Bishop*, 70 L.J.K.B. 298; 1901, 1 K.B. 153.

"A receipt on account is just as much a receipt as a receipt in specie." A. L. Smith, M. R., *Ib.*

Partnerships.

(2) The income of a partnership, or of an incorporated company, if assessable, shall be assessed against the partners at their chief place of business, and against the company at its head office, or if the Company has no head office in Ontario, at its chief place of business in the municipality. *New.* *See* R.S.O. 1897, c. 224, ss. 39, 40.

The assessable income of a partnership is assessable against the partners at their chief place of business.

"A merchant has one *principal* place in which he may be said to trade, viz: where his profits come home to him. That is where he exercises his trade." *Attorney General* v. *Sulley*, 5 H. & N. at p. 717, per Cockburn, C. J.

The assessable income of an incorporated company is assessable at its head office if it has its head office in Ontario. If its head office is out of the Province, then it is assessable at its chief place of business in the municipality. In the latter case a difficulty often arises. There may be no income referable to that municipality, as the income may not be divisible by localities.

The ultimate profit represents the year's taxable income, this could only be ascertained by placing the total gains and losses against each other, and no distinct integral part of such income was referable to the agency at Kingston of a Life Insurance Company having its head office at Hamilton: *City of Kingston* v. *Canada Life Inse. Co.*, 19 O.R. 453. See also *North of Scotland Canadian Mortgage Co.*, 31 C.P. 552.

If a company is assessed for "business assessment" its income from such business is not assessable. Sec. 5, subs. 17.

Income in Control of Agent, etc., of Non-resident, assessable against Agent.

13.—(1) Every agent, trustee or person who collects or receives, or is in any way in the possession or control of income for, or on behalf of, a person who is resident out of the Province, shall be assessed in respect of such income.

By the New South Wales Land and Income Tax Assessment Act, 1895, income tax is assessable on income: I. " Arising or accruing to any person wherever residing from any profession, trade, or employment or vocation carried on in New South Wales." II. " Derived from lands of the Crown held under lease or license." IV. " Arising or accruing in from any other source whatsoever in N. S. W." But by sec. 27 (III.) No tax was chargeable on income earned outside the colony. Mining companies with their head offices in Melbourne in the Colony of Victoria conducted mining operations on lands which they held in New South Wales, where they mined the crude ore and converted it into a merchantable form, but they made no contracts of sale in New South Wales. But as some of the processes of the production of the income were carried on in New South Wales, namely the mining and treating of the ore, the companies were liable to income tax: *Commissioners of Taxation* v. *Kirk,* 69 L. J. P. C. 87; (1900) A.C. 588.

Income received by agent. Where goods are consigned by a foreign merchant to an agent in England for the purpose of sale only, the foreign merchant exercises a trade within England, and is liable to taxation in consequence: *Watson* v. *Sandie,* 67 L.J.Q.B. 319 ; (1898), 1 Q.B. 326.

A firm of meat packers in Boston, shipping lard and bacon to commission merchants at regular intervals, in Liverpool for sale on commission, but without any arrangement or agreement between them as to the amount of business to be done or the time of its continuance, so that shipments may be stopped at any time by the principals without notice, took all the risks of loss or gain, but the agents were given full discretion as to the prices at which they sold, and sold customers in their own names. The goods remained the property of the principals until sold. Held that the foreign shippers " exercised a trade within the United Kingdom " and that the commission merchants were their agents within the meaning of section 41 of the Income Tax Act, 1842. *Ib.*

In England a person resident therein is chargeable with income tax on the full amount of the average gain or profits of trade for the last three years, if the trade is carried on wholly or partly within the United Kingdom, but if the trade is exclusively carried on outside Great Britain and Ireland, the income tax is chargeable, on the full amount of the actual sums received in Great Britain: *San Paulo Brazilian Railway* v. *Carter*, 65 L.J. Q.B. 161; (1896), A.C. 31. Where the head office and board of directors of a Brazilian railway are in London, the business, is wholly or partly carried on in Great Britain. *Ib*

"Property owned out of the Province" was by the Act in force then (1875) exempt from assessment. Bank stock owned by a person residing in Kingston, the head office of the bank being in Montreal, was exempt by coming within the exception: *Nickle* v. *Douglas*, 37 U.C.R. 51, affirming 35 U.C.R. 126.

The income or profits of a foreign company having a branch office and carrying on business in Ontario by a resident agent, though remitted to the foreign head office for distribution there as dividends, is assessable at its branch office in Ontario: *Re North of Scotland Canadian Mortgage Co.*, 31 C.P. 552.

The statute authorizing such assessments is within the powers of the Provincial Legislature, under sec. 92 of the British North America Act, 1867. *Ib.*

But see the note on Income, sec. 2, sub-sec. 8, and *The Corporation of the City of Kingston* v. *Canada Life Inse. Co.*, 19 O.R. 453, overruling *Phœnix Inse. Co.* v. *City of Kingston*, 7 O.R. 343. See also cases cited *ante* p. 14.

(2) Every person assessed under this section shall be so assessed at his place of business, if any, or if he has no place of business, at his residence. *New.* See R.S.O. 1897, c. 224, ss. 11, 38, 44, 46; 63 V., c. 34, s. 4.

Place of residence. See note on sec. 5, p. 25, *ante.*

Illustration of Assessment of Income.

A physician with an income from his practice and from numerous investments, has also an income from farming and from mining operations. His net receipts in 1904 from his practice, after

deducting the expenses incident to procuring that income, were $4,000. His office premises are worth $2,000; his residence $6,000. His farms and mining properties are in other municipalities than the one in which he resides. The town in which he lives has a population under 10,000.

He receives in 1904 rents, interest, dividends, etc., as follows:

(1)	(*a*) Interest on mortgages	$600
	(*b*) Rents from lands in other municipalities	400
	(*c*) Income from lands which he farms in other municipalities	600
(2)	Dividends from distillery shares	500
(3)	Dividends from brewery shares	100
(4)	Dividends from shares in a company doing business as wholesale merchants	200
(5)	Dividends from shares in an insurance Co.	400
(6)	Dividends from shares in an express Co...	50
(7)	Dividends from bank stock	300
(8)	Dividends from shares in a Company making threshers	600
(9)	Dividends from shares in a Departmental Store Co.	400
(10)	Dividends from shares in a Company doing business as Retail Druggists	100
(11)	Dividends from Skating Rink Co. shares..	50
(12)	Dividends from Street R.R. shares	200
(13)	Dividends from toll road stock	100
(14)	Net income from mining operations	1000
	Total income other than personal earnings..	$5600

He would be assessed in the municipality in which he resides as follows:

(*a*)	Land—Residence	$6000	
	Land—Office	2000	
			$8000
(*b*)	Business assessment, 50 per cent. of office assessment under sec. 10, sub-sec. (2)	1000	1000

(*c*) As his income liable to assessment exceeds his business assessment, he would be assessed for income as follows, under sec. 11: Personal earnings $4000, less $700 exempt under sec. 5, sub-sec 19, and less $1000 business assess--ment 2300

Also:—

(1) (*a*) Interest on mortgages 600

(*b*) But rent is not assessable, Sec. 5, sub-sec. 20.........

(*c*) Nor is the income from his farms, sec. 5, sub-sec. 15 ...

(2) Dividends from distillery shares. Does this come under the head of a manufacturing business in sec. 10, sub-sec. 7? If so, it is exempt. But distillers and manufacturers are separately classed in sub-sec. 1, clauses (*a*) and(*d*), and the terms may possibly have been intended to be mutually exclusive, in which case this income is taxable 500

(3) Brewery dividends on the same principle as distillery dividends 100

(4) Dividends from a mercantile company are exempt. sec. 10, sub-sec. 7 ....

(5) Insurance Company dividends .. 400

(6) Express Co. dividends 50

(7) Bank stock dividends 300

(8) Thresher Co. dividends are exempt under sec. 10, sub-sec. 7 ....

(9) Dividends from a Departmental Store Co. are exempt under sec. 10, sub-sec. 7		
(10) Dividends from Retail Drug Co. exempt, under sec. 10, sub-sec. 7		
(11) Dividends from skating rink ...	50	
(12) Dividends from Street R. R. ...	300	
(13) Dividends from shares in Toll Roads are exempt under sec. 5, sub-sec. 18		
(14) Income from mining properties under sec. 36, sub-sec. 3	1000	5600

Summary.

Total assessment of income	$5600
Land as above	8000
Business assessment	1000
Total assessment	$14600

He would be assessed for his farms, and the properties from which he derived his rent, in the municipalities in which they are situate; and also for his mining properties at the value of similar agricultural land in the neighbourhood where they are located, in addition to the assessment of the income from them where he resides.

Illustrations of the mode of assessing different properties and callings.

Distillery.—A person, or joint stock company, carrying on business as a distiller would be assessed for:—

(1) Land, comprising (*a*) the actual value of the land, apare from the buildings; (*b*) the value of the buildings, that is, the amount by which the value of the property is increased by them, sec. 36. Whether the value of fixed machinery, other than that used, intended or required for the production or supply of motive power,

is assessed or not will depend on whether a distiller is a manufacturer under sec. 5, sub-sec. 16.

(2) Business assessment, amounting under sec. 10 to 150 per cent. of the assessed value under (1), comprising the total of lands and buildings.

(3) The Distillery Company, or the individual, if the distillery is assessed to a person, cannot be assessed for income derived from the excess of gain over loss on the previous year's operations, sec. 10, sub-sec. 7.

Can the shareholders be assessed for dividends as a part of their income under sec. 10, sub-sec. 7? Does a distiller who is assessed, not under sec. 1 (*d*), as a manufacturer, but under sec. 1 (*a*), carry on a manufacturing business? See sec. 5, sub-sec. 16, and sec. 10, sub-sec. 7.

A *Wholesale Merchant* would be assessed for:—

(1) Land, including buildings, but not including machinery, if any.

(2) Business assessment, 75 per cent. of the land value.

The income of shareholders in a mercantile business, derived from dividends paid by the business, is exempt by reason of sub-sec. 7, nor is the income of the Company assessable.

An *Insurance Company, Trust Company, Loan Company, Express Company* or *Bank* would be assessed for:

(1) Land—including buildings, fixtures, and machinery, if any, used in connection therewith.

(2) Business assessment under clause (*c*) of sec. 10, sub-sec. 1, of 75 per cent.

(3) The income of the Company is not assessable.

The dividends of shareholders in the Company are assessable against the shareholders as income.

A *Manufacturer* may be assessed for:—

(1) Land apart from buildings, and the value of buildings, including fixtures, but exclusive of fixed machinery other than machinery used for supplying power,

(2) Business assessment, 60 per cent, of the value of the real property occupied. He is not liable to assessment at 75 per cent. as a wholesale merchant. In the case of a Manufacturing Company, the dividends are not assessable against the shareholders as income.

A *barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, aurist, medical electrician, dentist, veterinarian, civil engineer, mining engineer, consulting engineer, mechanical engineer, electrical engineer, surveyor* or *architect* pays on a business assessment of 50 per cent. of the value of the premises he occupies.

Any person above enumerated who uses the same land for residence and business shall be assessed as though business and residence occupied an equal share of the land. The business assessment is on the assumption that half the land is used for business purposes.

A conveyancer draws deeds, etc., in his residence. His house is assessed at $2000. The assessed value of his land for the purposes of business assessment is taken at $1000. He therefore pays taxes on the land for $2,000 and on $500 of a business assessment. He may also be assessed for the excess of his income over his business assessment, after allowing the statutory exemption.

A *telephone company* in cities, towns, villages and police villages should be assessed for:—

(1) Land, which includes (*a*) the actual land apart from the buildings, which it owns or occupies, with offices, etc., not upon highways and other public property; (*b*) the value of buildings, fixtures, etc., thereon, but not including plant, appliances, machinery: sec. 14, sub-sec. 8, sec. 2, sub-sec. 7 (*d*), sec. 5, sub-sec. (16); (*c*) under "land" will not be included poles, wires, etc., on streets and lanes, etc.: sec. 2 sub-sec. 7 (*e*); sec. 4, sub-sec. 8. The property upon the highways is not assessable as against a telephone company.

(2) Business assessment, under sec. 10, sub-sec. 2, of 25 per cent. of the assessment under (1) but omitting the amount under (*c*).

(3) 60 per cent. of its last year's gross receipts in the city, town, village, or police village, sec. 14. In townships (not including

police villages, for which see above), the assessment would be a fixed rate per mile; $135 per mile for one ground circuit, or metallic circuit, and $7.50 per mile for each additional ground circuit.

An *Electric Railway, Street Railway* or *Tramway,* should be assessed for:—

(1) Land—including (*a*) land covered bv offices, barns, power houses, etc.; (*b*) buildings erected thereon, including all structures, fixtures and machinery erected or placed upon, in, on, or over the land assessed to the Company, but not "rolling stock." (*c*) All structures and fixtures erected or placed upon, in, on, over, or under the highway, etc., including poles, rails, ties, wires, etc., sec. 2, sub-sec. 7, at their actual cash value as set out in sec. 42, sub-sec. 1 and 2.

(2) Business assessment—25 per cent. of the value of the land only as set out in (*a*) above, and of the buildings as set out in (*b*), but leaving out machinery, plant and appliances and leaving out also the property of the company on highways, etc., not included in tax.

Gas and *Electric Light Companies* and Water Companies should be assessed for:—

(1) Land as distinguished from buildings and the structures and erections, machinery and fixtures thereon.

(2) Buildings erected on such land, including all fixed machinery thereon, and all structures and fixtures on the land—assessed as directed by sec. 42.

(3) All structures and fixtures upon the highways, lanes, roads, public places, etc., such as water mains and hydrants, gas pipes, poles, wires, lamps, etc., assessed as directed by sec. 42.

(4) A business assessment based on 25 per cent. of (1) and of so much of (2) as does not include machinery, plant or appliances. This business assessment does not include any proportion of the assessment under (3) above. The structures and fixtures upon the highways are not included in computing the business assessment.

Assessment of Telephone Companies, on Income in Cities, Towns, Villages and Police Villages.

Telegraph and Telephone Companies.

14.—(1) Every telephone company carrying on business in a city, town, village, or police village, shall in addition to any other assessment to which it may be liable under this Act, be assessed for 60 per cent. of the amount of the gross receipts belonging to the company in the city, town, village, or police village, from the business of the company for the year ending on the 31st day of December next preceding the assessment. Provided that in cities having a population of over 100,000 inhabitants such company shall be assessed for 75 per cent. of such gross receipts.

This subsection deals with the assessment of telephone companies in cities, towns, incorporated villages and police villages. This assessment, in addition to (*a*) the assessment for land occupied other than streets, highways, lanes, squares, etc., and also (*b*) in addition to the business assessment under section 10, subs. 1, clause (*c*), is 60 per cent. of the total receipts belonging to the company in such city, town, etc. without any deduction. It is only in places in which the company "carry on business" that they are assessable. For instance if they have no subscribers in a village and no office there, they do not carry on business in such village even though their lines connecting other points pass through the village. The telephone company being liable to business assessment is not assessable for income.

Are the shareholders of a telephone company assessable for dividends as a part of their income ? It is not a manufacturing or mercantile company, and the dividends are not therefore, exempt under sec. 10, subs. 7. The telephone company is not assessed for income. The fixed percentage of the gross receipts in cities, towns, villages and police villages for which the company is assessed bears no relation to the income of the company, as defined by sec. 2, subs. 8. The balance of gain over loss which constitutes income could only be determined for the whole business of the company: *City of Kingston* v. *Canada Life Inse. Co.*, 19 O.R. 453. The shareholders are not therefore exempt under sec. 5. subs. 17. It would seem that such dividends form a part of the assessable income of the shareholders.

Assessment of Telephone Companies on Mileage in Townships.

(2) Every telephone company shall be assessed in every township for one ground circuit (being a single wire for carrying a message) or metallic circuit (being two wires for carrying a message as the case may be, placed or strung on the poles or other structures operated or used by the company in the township and in use on the 31st day of December next preceding the assessment at the rate of $135 per mile and in case any line of poles or other structures carries more than one ground circuit or metallic circuit at the rate of $7.50 per mile for each additional ground circuit or metallic circuit, as the case may be, placed or strung on the 31st day of December next preceding the assessment.

A ''ground circuit'' is a single wire for carrying a message, the earth itself completing the circuit. A ''metallic circuit'' consists of two wires for carrying the message, the circuit being completed by the second wire, instead of by the earth itself as in the case of the ''ground circuit.''

The mileage in the township is to be determined by the length of the ''ground circuit'' or ''metallic circuit,'' as the case may be, *strung or placed* on the poles and in use on the preceding 31st of December.

For the first complete circuit, whether ''ground circuit'' or ''metallic circuit'' the assessment is $135 per mile. For each circuit after the first on the same poles, the rate is $7.50 per mile.

Wires in Police Villages and Branch Lines Included.

(3) In the computation of the length of said telephone wires and additional wires for assessment in a township as aforesaid, the wires placed or strung within the area of any police village, and the wires of all branch and party lines, which do not exceed 25 miles in length, shall not be included.

This subsection exempts

(*a*) Telephone lines in police villages, which are dealt with by subs. 1.

(*b*) Branch and party lines, which do not exceed 25 miles in length.

A branch line is a line connecting one or more places with the main line. It usually terminates with a "blind end." A party line is a line connecting one or more subscribers with a telephone office. The parties are all on the one line, and each subscriber has his own call signal which is given when his instrument is wanted. Branch and party lines which do not exceed 25 miles in length are not assessable.

A private telephone line, that is a line operated for the business purposes of its owners and only incidentally if at all for hire, is assessable under different rules from that operated by a company for commercial purposes. It is within the definition of land given in sec. 2, subs. 7, clause (*e*) and is assessable as such. See note 13 on sec. 2 *ante* p. 12. It is to be valued at its actual value like other land. If it extends into more than one municipality the portion in each would have to be assessed separately; and as it is not within section 42 it could be valued only as so much material. In other words the assessment would be as "scrap iron." See sec. 42 and notes thereon. Sec. 14 has no application to such a telephone line. It does not belong to a telephone company, and its owner does not "carry on business" as such.

Telegraph Companies. Assessment on Income in Cities, Towns, Villages and Police Villages.

(4) Every telegraph company carrying on business in a city, town, village or police village, shall in addition to any other assessment to which it may be liable under this Act be assessed for 50 per cent. of the amount of the gross receipts belonging to the company in such city, town, village or police village from the business of the company for the year ending on the 31st day of December next preceding the assessment.

Assessment on Mileage in Townships.

(5) In every township there shall be assessed against every such telegraph company a sum equal to $40 for every mile of the length of one wire placed or strung on the poles or other structures

operated or used by the company in the township and in use on the 31st day of December next preceding the assessment and a sum equal to $5 per mile for each additional wire so placed or strung on the 31st day of December next preceding the assessment.

Wires in Police Villages and Branch and Loop Lines Excluded.

(6) In the computation of the length of said telegraph wires and additional wires for assessment in a township as aforesaid the wires placed or strung within the area of any police village and the wires of all branch and loop lines which do not exceed twenty-five miles in length shall not be included.

The assessment of telegraph companies under subs. 4, 5 and 6 is similar to the assessment of telephone companies under subs. 1, 2 and 3.

What to be Measured as Separate Wires.

(7) In the measurement of such additional wires, the length of every telegraph wire and of every telephone wire forming a ground circuit or pair of telephone wires forming a metallic circuit, as the case may be, placed or strung in cables or other combinations and used or capable of being used as an independent means of conveying messages shall be computed.

Exemption from other Assessments.

(8) Every company assessed as provided in this section shall, in townships, be exempt from assessment in any other manner (1) or on any other property for municipal purposes, and shall, in cities, towns, villages and police villages be exempt from assessment in respect of all plant, appliances and machinery wherever situated and in respect of all structures placed on, over, under, or affixed to any highway, road, street, lane, or public place or water.

(1) In townships the only assessment which can be made against a telegraph or telephone company is that based on the mileage of wires used. Consequently in an unincorporated village

in a township, the village not being a police village, there is no business assessment of the company, and no assessment based on a percentage of the gross receipts. These are "assessments in any other manner." But the company is also exempt from assessment "on any other property." The real property occupied by its office in such village would be "other property." But when this village becomes a police village the company becomes liable for business assessment on 60 per cent. of the gross receipts and assessment of land occupied by offices.

Poles and Wires on Township Boundaries.

(9) Where the poles or wires of a telegraph or telephone company are placed on the boundary line between two townships or so near thereto that the poles or wires are in some places on one side and in other places on the other side of the boundary line or are placed on a road which lies between two townships, although it may deviate so as in some places to be wholly or partly within either of them, the company shall be assessed in each township for one-half of the amount assessable against it under subsection 2 or subsection 5, as the case may be, in both the townships taken together.

Tax to be a Lien on Lands of Company.

(10) The taxes payable by a company in any municipality under this section shall be a lien on all the lands of the company in the municipality. *New.*

"Lands of the company" would include poles, wires and other structures on highways and other public property. See sec. 2, subs. 7.

Returns by Telegraph and Telephone Companies.

15.—(1) Every telegraph and telephone company doing business in Ontario shall on or before the 1st day of February in each year:

1. Deliver to the Provincial Secretary a statement in writing showing:—

(*a*) The gross receipts of the company in the Province and the gross receipts of the company in each city, town, village and police village in the Province, from its business for the year ending on the 31st day of December then last past:

(*b*) The length in miles of one wire or of a pair of wires forming a metallic circuit placed or strung on all the poles or other structures operated or used by the company in each township in Ontario:

(*c*) The number of miles in length of one wire or of one pair of wires, as the case may be, forming a metallic circuit operated or used by the company in each township in Ontario, including in the measurement the length in each township of every wire or pair of wires, as the case may be, placed or strung in cables or other combinations and used or capable of being used as an independent means of conveying messages.

2. Deliver or mail to the assessment commissioner, or if there be no assessment commissioner, to the clerk, of every city, town and village and to the clerk of the township in the case of a police village in which the company does business, a statement in writing of the amount of the gross receipts of the company in such city, town, village or police village for the year ending on the 31st day of December then last past.

(2) Every such statement shall be signed by or on behalf of the company and shall be verified in the same manner as assessment returns are required by section 19 to be verified. *New.*

This section relates to companies, not to private individuals having telephone lines, or telegraph lines. It compels these companies to compile and furnish to the Provincial Secretary all the information necessary to enable the assessors of the various municipalities in the Province to make the proper assessments under sec. 14. It enables the central authority to tabulate the information for the Province and to furnish a check on any omission. For

greater convenience the necessary information for each municipality must be supplied to its officers. Each statement must be verified by a statutory declaration made by the proper officer of the company.

Section 21 provides a penalty of $100 for making default in the delivery of any statement required by this section, and an additional penalty of $10 for each day during which default continues. These penalties may be recovered summarily before any Justice of the Peace having jurisdiction in the municipality in which the assessor, or other officer interested in the return, has his address.

Assessment Returns by Tax-payers.

Information to Assessors Generally.

16. It shall be the duty of every person assessable in any municipality to give all necessary information to the assessors, if required by them, for the purposes of enabling the assessors to properly assess him. *New.* *See* R.S.O. 1897, c. 224, s. 47.

On the request of the assessors each person must give full information on all of his affairs so far as is necessary to enable them to make a proper assessment. But the assessors have no right to ask information on any matters which are not relevant to their duties. For instance they cannot insist on knowing the income a merchant derives from his mercantile business, as such income is not assessable, and it furnishes no clue to the value of anything which is assessable. See sec. 21. The way in which the assessor is to make his request is governed by sec. 18.

Information by Employers as to Employees.

17. It shall be the duty of every person employing any other person in his trade, manufacture, business or calling within 10 days after demand therefor to furnish or cause to be furnished to the assessors information concerning the names, places of residence, and wages, salary or other remuneration, of all persons employed by him whose wages, salary or other remuneration exceed $1,000 per annum in cities and towns having a population of 10,000 or over and $700 in other municipalities in the case of householders and in all municipalities $400 in the case of non-householders.

Person includes corporation when the context will justify such a meaning. *Interpretation Act,* sec. 8, subs. 13.

The employer must furnish the information to the assessors, or cause it to be furnished. Only those employees whose salaries are assessable need be included in the return.

Requisitions by Assessor for Information.

18.—(1) Any assessor requiring information from any person pursuant to section 16, shall cause to be delivered or mailed to the address of such person a notice according to the form given in Schedule E to this Act, accompanied by such blank forms of the assessment return to be made by such person as may be necessary; and such person shall, within ten days thereafter, enter in the said forms all the particulars required by the notice to be given, in the proper blanks and columns, and deliver or mail such assessment return to the assessor.

(2) Before delivering or mailing the said assessment return to the assessor the same shall be signed by or on behalf of such person, and shall be verified by a statutory declaration in writing attached thereto.

(3) Such declaration may be made before the assessor or as provided in section 222. *New.*

For Schedule E see page

The assessor must supply the person from whom he seeks information with blank forms. These the person from whom the information is required must fill up, sign, and verify by a statutory declaration which is of the same legal force and effect as an affidavit. To knowingly make a false statutory declaration is perjury. The assessor is empowered by the section to take a statutory declaration, which may also be made before a Justice of the Peace, a notary public or a commissioner for taking affidavits, as provided by sec. 222.

The notice given annually by the assessor to a railway company under sec. 44, subs. 3, is the statutory equivalent in that case of the notice herein mentioned.

Return by Corporation to Provincial Board.

19.—(1) Every corporation whose dividends are liable to taxation against the shareholders as income (1), upon the receipt of a notice from the assessor or assessment commissioner (2), (such notice to be given by delivering or mailing the same by registered letter prepaid, to the principal officer of the corporation in this Province, or to the manager, cashier or other chief officer of any branch or agency of such corporation in any municipality in the Province, or by leaving the same at such principal office, or the office of such manager, cashier or other chief officer) (3), shall within thirty days after the delivering, mailing or leaving of such notice, deliver or mail to the assessor or assessment commissioner a statement (4), in writing setting forth the names of shareholders who are resident in the municipality or who ought to be assessed for their income by the municipality, the amount of stock held by every such shareholder on the day named for that purpose by the assessor or assessment commissioner in his said written notice, and the amount of dividends and bonuses declared during the twelve months next preceding. R.S.O. 1897, c. 224, s. 48, *amended.*

(2) Every such statement shall be verified by a statutory declaration in writing attached thereto, made by some officer of the corporation having a knowledge of the facts. *New*, (5).

(3) Such declaration may be according to the form given in Schedule E to this Act with such variations as may be necessary. *New*, (6).

(1) "Every corporation whose dividends are liable to taxation as income." All income (which includes dividends) is assessable unless excepted by some special provision of the Act. See sec. 5. When the income of a corporation is assessable, the dividends, or income from its stock held by any person is exempt from assessmen against that person as a part of his income. See sec. 5, subs. 17. A corporation liable under section 10, subs. 1 to a business assessment is exempt from assessment for income, sec.10, subs. 7. But if the corporation is not assessable for income, its dividends, except in the case of mercantile and manufacturing corporations, are

assessable against the individual shareholders as part of their income. Mercantile and manufacturing corporations though assessable for business assessment under sec. 10, and so exempt from taxation for income, are in a different position from other companies. Their dividends, by sec. 10, subs. 7, are exempt from assessment as income of the individual shareholder.

(2) "Upon the receipt of a notice from the assessor or assessment commissioner."—This notice is a condition precedent to the request to obtain the required information.

(3) This notice may be given either to the principal officer of the corporation in the Province or to the chief officer of the branch or agency in the municipality.

(4) The Company must make a return showing (*a*) the name of every shareholder in the municipality, (*b*) the amount of stock held by each, and (*c*) his dividends and bonuses for the preceding twelve months.

(5.) The Canada Evidence Act, 1893, authorizes the making of statutory declarations. They are "of the same same force and effect as if made under oath." To knowingly make a false declaration is a criminal offence.

(6.) See Schedule E.

Assessor not bound by Returns.

20.—(1) The assessor shall not be bound by any statement delivered under the next four preceding sections, nor shall the same excuse him from making due inquiry to ascertain its correctness; and, notwithstanding any such statement, the assessor may assess every person for such amount as he believes to be just and correct, and may omit his name or any property which he claims to own or occupy, if the assessor has reason to believe that he is not entitled to be placed on the roll or to be assessed for such property. R.S.O. 1897, c. 224, s. 49, *amended.*

Information to be Confidential.

(2) Except when examined as a witness before any Court (1) no assessor, assessment commissioner, assistant or other person

employed by the municipality shall communicate or allow to be communicated to any person except to the solicitor of the municipality in the discharge of his duty any information obtained under the provisions of sections 16 to 19 inclusive or allow any person to inspect or have access to any written statement furnished under the provisions of sections 18 or 19, and no person other than the assessor or assessment commissioner and their assisstants shall be entitled to any information respecting the assessment of any person other than as provided in section 47 (2). *New.*

Penalty.

(3) Any person who contravenes subsection 2 of this section shall upon conviction thereof before a court of competent jurisdiction be liable to a fine not exceeding $200 and to imprisonment until the fine is paid, in the common gaol of the county or city for a period not exceeding six months, or to both such fine and imprisonment in the discretion of the court. *New.*

(1) " Except when examined as a witness before any Court." This exception would enable the assessor, etc., to disclose before the Court of Revision or the County Judge the information given him, if in the opinion of the Court it was necessary for him to disclose it.

(2) The assessment roll when returned to the clerk is open for public inspection during his office hours, and the amount of each person's assessment for income may be ascertained. See sec. 47, sub-sec. 3.

Penalty for Neglect to give Information.

21.—(1) Any person who, having been duly required to deliver or furnish any written statement or information mentioned in the next preceding five sections, makes default in delivering or furnishing the same and any company which makes default in delivering the statement in writing in section 15 mentioned, shall incur a penalty of $100 and an additional penalty of $10 for each day during which default continues.

For making False Statements.

(2) Any person knowingly stating anything falsely in any such statement or in furnishing such information shall incur a penalty of $200.

Recovery of Penalties.

(3) The penalties imposed by this section may be recovered on summary conviction before any justice of the peace having jurisdiction within the municipality in which is the address of the assessor or other person to whom the statement is required to be delivered or mailed, and shall be paid over to the municipality. *New. See* R.O.S. 1897, c. 224, s. 50.

Any person whose duty it is to give any information which he is lawfully required to give under any of the provisions of section 16 to 20, is liable to a penalty of $100 and to $10 per day for each day during which the default continues.

Where the like default is made in giving information by a company, such company is liable to the penalties of this section.

Duties of Assessors.

As to the Appointment of Assessors, see section 295 *of the Consolidated Municipal Act,* 1903.

Sections 295 and 296 of The Consolidated Municipal Act, 1903, are as follows:—

295.—(1) The council of every city, town, township, and village, shall, as soon as may be convenient after the annual election, appoint as many assessors and collectors for the municipality as they may think necessary, and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; but the council shall not appoint as assessor or collector a member of the council or the clerk or treasurer of the municipality.

(2) No person convicted of treason, felony, or any infamous crime (unless he has obtained a free pardon or served the term of imprisonment or paid the penalty imposed under the sentence),

and no person under outlawry, shall be qualified to act as assessor or collector.

(3) The council may assign to such assessors and collectors the assessment district or districts within which they are to act, and may prescribe regulations for governing them in the performance of their duties.

(4) The same person may, in a city, town or township, be appointed assessor or collector for more than one ward or polling sub-division.

(5) In municipalities which have passed by-laws requiring taxes to be paid on or before the 14th day of December, it shall be the duty of the collectors, on the 15th day of December in each year, to return, upon oath, to the treasurer the names of all persons who have not paid their municipal taxes on or before the 14th day of the said month of December. R.S.O., 1897, c. 223, s. 295.

296.—(1) In cities and towns, the council, instead of appointing assessors under the preceding section, may appoint an assessment commissioner, who, in conjunction with the mayer for the time being, shall, from time to time, appoint such assessors and valuators as may be necessary, and such commissioner, assessors, and valuators shall constitute a board of assessors, and shall possess all the powers and perform the duties of assessors appointed under the last preceding section.

(2) The council shall also have power, by by-law, to determine the number of collectors to be appointed, and to prescribe their duties.

(3) Any commissioner, assessor or collector appointed in any city need not be appointed annually, but shall hold office at the pleasure of the council.

(4) All notices (in other municipalities required to be given to the clerk of the municipality in matters relative to assessment), shall in such city be given to the assessment commissioner, R.S.O., 1897, c. 223, s. 296.

(*As to delivery by registrars to the assessment commissioners in cities on request, of duplicate plans or maps of every survey or subdivision of the lands therein, and the furnishing of lists of absolute conveyances*, see R.S,O., Cap. 136, sec.s. 112 and 125.)

Section 312 of The Consolidated Municipal Act requires every assessor or commissioner before entering on the duties of his office to make and subscribe a solemn declaration to the effect following:

"I, A. B., do solemnly promise and declare that I will truly, faithfully, and impartially, to the best of my knowledge and ability, execute the office of (*assessor, assessment commissioner, or as the case may be*) *or in the case of a person who has been appointed to two or more offices which he may lawfully hold at the same time,* that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the offices of assessor and collector (*or as the case may be*), to which I have been appointed in this township (*or as the case may be*), and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality or malversation or other undue execution of the said office (*or offices*), and that I have not by myself or partner, either directly or indirectly, any interest in any contract with or on behalf of the said corporation, save and except that arising out of my office as assessor (*or assessor and collector, assessment commissioner, or as the case may be*)."

This declaration may be made before any person authorized to administer oaths. It should be made within twenty days after notice or knowledge of the appointment. Sec. 319 of *The Consolidated Municipal Act*, 1903, prescribes a penalty of not less than $8 nor more than $80 for the omission or neglect to comply with this requirement.

Preparation of Assessment Rolls.

Assessment Rolls, Form and Contents.

22.—(1) Every assessor shall (1) prepare an assessment roll in which after diligent inquiry (2) he shall set down according to the best information to be had, the particulars hereinafter mentioned, and in doing so he shall observe the following provisions:—

(1) "Shall" is imperative, and any serious departure from the requirements of this sub-sec. may invalidate the assessment. For the purposes of taxation the requirements of sub-sec. 1 are essential. Much of the information required under sub-secs. 2 and 3 is for other purposes than taxation.

(2) It is the duty of the assessor "to make diligent inquiry" to obtain correct information. Negligence in the discharge of his duty often results in serious loss to the municipality and to others.

Names of Persons Assessed.

(*a*) He shall set down the names and surnames, in full, if the same can be ascertained, of all persons, whether they are or are not resident in the municipality, ward, or district for which the assessor has been appointed, who are taxable therein.

See *Applegarth* v. *Graham*, 7 C.P. 171. The plaintiff's name was inscribed in the assessment roll as C. H. Coleman, instead of being given in full. Held immaterial: *Coleman* v. *Kerr*, 27 U.C.R. 5.

The names of non-residents when they can be ascertained must now be inserted when they are taxable for property within the municipality. This applies to townships as well as to urban municipalities. See clause (*g*) of this sub-section.

Amount Assessed against Them.

(*b*) He shall set down the amounts assessable against each person, opposite his name in the proper columns for that purpose. R.S.O. 1897, c. 224, s. 13 (1), *amended.*

" The amounts assessable " include the value of his land, his business assessment, and his taxable income.

Subdivisions to be Designated.

(*c*) Land known to be subdivided shall be designated in the roll by the numbers or other designation of the subdivisions, with reference where necessary to the plan or survey thereof; land not subdivided into lots shall be designated by its boundaries or other intelligible description.

An assessment of lots as " water lots 436 x 660," is invalid, as not identifying them: *Wildman* v. *Tait*, 32 O.R. 274; 2 O.L.R. 307.

In describing lands for assessment " the north east part," is an ambiguous description and *quaer* as to its effect upon the validity of a drainage by-law: *Re Jenkins and the Township of Enniskillen*, 25 O.R. 399. The designation of lots by their numbers on a plan on which the lots numbered consecutively throughout without

reference to the streets, is sufficient to justify a sale for taxes, even though the lots are described as on the wrong streets, as everything more than the lot number on such a plan, is surplusage, and the validity of the sale is not affected by an irregularity in the registration of the plan: *Aston* v. *Innis*, 26 G. 42,

Certain land was described in the assessment, in the certificate of the tax sale, and in the tax deed, as " thirty acres, the north part " of a certain lot. This description was held to include the most northerly thirty acres only; and as part of this belonged to the Crown, part to other owners, and part was a highway, the assessment was void as to these parts, and therefore void as to the whole, and the tax deed was also void: *Ley* v. *Wright*, 27 C.P. 522; *Fleming* v. *McNabb*, 8 A.R. 656.

The description given by the assessor in his roll forms the basis of the description of the property against which taxes are charged in the collection roll prepared by the clerk under sec. 94. The clerk has no guide but the assessment roll. It must also form the the basis of the collector's return under secs. 113 and 114 ; and of the return made by the local treasurer under sec. 116 to the county treasurer. It thus forms the foundation of the "List of lands liable to be sold for arrears of taxes" prescribed by sec. 121; and enters into every step to be taken subsequently in the sale of lands for arrears of taxes.

As a vague, indefinite or erroneous description of the land sold for taxes vitiates the sale, too great care cannot be exercised by the assessor in obtaining accurate descriptions of the land assessed, and in entering them in his roll. See the cases collected under secs. 94 and 121 in reference to defective descriptions. See especially the cases collected under sec. 136 in note. By sec. 94 the clerk is required to enter the taxes separately against each lot or parcel. Sec. 136 requires the treasurer to enter the amount of the arrears *against each lot* in the warrant to sell. These directions cannot be carried out if the assessor has not been careful to assess each lot separately. The description should be such as would enable a surveyor to stake out the parcel described. By sec. 89 it is enacted that arrears of taxes form a lien upon the land on which they are charged. If, however, the description is so uncertain that the land cannot be ascertained, the lien is worthless.

For special provisions in cities, towns and villages in regard to the assessment *en bloc* ol land which has been sub-divided, but which is vacant or used as agricultural land, see sec. 40.

Each Lot to be Assessed.

(*d*) Each subdivision shall be assessed separately, and every parcel of land, (whether a whole subdivision or a portion thereof, or the whole or a portion of any building thereon) in the separate occupation of any person, shall be separately assessed. *New.* *See* R.S.O. 1897, c. 224, s. 34.

Lot 11 was assessed with another lot, and the arrears of taxes were chargeable against both, and lot 11 was sold for these arrears. The sale was held invalid: *Thomson* v. *Colcock,* 23, C.P. 505.

An assessment of lots *en bloc* after they have been subdivided by a registered plan, and without showing the known owner against whom particular parcels are assessable, is invalid: *Wildman* v. *Tait,* 32 O.R. 274 ; 2 O.L.R. 307.

Where several lots are included in one grant, but are described by separate numbers, each lot is liable only for the taxes upon that lot, and a sale of a portion of one lot for the taxes upon another is invalid: *Munro* v. *Grey,* 12 U.C.R. 647. See also *Doe d. Upper* v. *Edwards,* 5 U.C.R. 594.

The north half and the south half of a lot having been separately assessed, the taxes against the half lots were added together, and a portion of the whole lot was sold for taxes, the sale was held to be illegal: *Laughtenborough* v. *McLean,* 14 C.P. 175.

Three adjoining but separate lots, 291, 340 and 341, having been assessed in bulk for one common sum, the assessment was invalid; and the subsequent sale for taxes based thereon was illegal and void. It may be that an assessor neglecting the plain directions of the statute in such a case is liable for any loss which the municipality may sustain by reason of his blunders. *Christie* v. *Johnstone,* 12 Gr. 534.

It is the duty of the assessor to assess village lots, the property of non-residents, separately, placing a value opposite each. Where the assessor had included three village lots only two of which belonged to one person, in one assessment, the tax sale was set aside: *Black* v. *Harrington,* 12 Gr. 175.

The assessment of four lots containing about 400 acres in the name of the plaintiff embraced seven acres already sold, and separately assessed, of which fact the assessor was aware. The assessment was declared invalid, and a tax sale thereunder set aside: *Fleming* v. *McNabb,* 8 A.R. 656.

The assessor cannot be too careful in ascertaining all the subdivisions of original parcels, and the names of the parties who separately occupy them. See sec. 136, and the notes thereon.

Assessment of both Owner and Tenant.

(*e*) Subject to the provisions of subsection 5 of this section, where land is assessed against both owner and tenant, both names shall be placed on the roll and shall be bracketed opposite the land, and both names shall be numbered on the roll. R.S.O. 1897, c. 224, s. 24 (1) *amended.*

For a discussion of the effect of describing owner and occupant as freeholder and householder, see *Coleman* v. *Kerr*, 27 U.C.R. p. 10. See also sec. 103, and the notes thereon.

Deceased Persons.

(*f*) No assessment shall be made against the name of any deceased person, but when the assessor is unable to ascertain the names of the persons who should be assessed in lieu of the deceased person, he may insert, instead of such names, the words "Representatives of A. B. deceased," (*giving the name of such deceased person*). R.S.O. 1897, c. 224, s. 13 (2), *amended.*

For the mode of assessing land held by a trustee, guardian, executor or administrator, see section 33, subsection 12.

It is only when the assessor is unable "after diligent inquiry" to find the names of the names of the executors or administrators of the deceased person that he is justified in omitting their names. See *Applegarth* v. *Graham*, 7 C.P. 171.

Non-Residents.

(*g*) In assessing lands of non-residents (1) in municipalities to which sub-section 6 of section 33 (2), is applicable, the assessor shall enter such lands at the end of the ordinary assessment roll, separated from the other assessments and placed under the heading "Land of Non-residents"

and shall fill in as far as is possible under such heading with regard to such lands, the particulars mentioned in coulmns 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 23 of the roll (3). *New.* *See* R.S.O. 1897, c. 224, s. 34.

(1) "Lands of Non-residents" may be defined as unoccupied lands in townships, the owners of which do not reside in the township or being resident out of it, have not given the notice in writing required by sec. 33 (6).

(2) Sub-section 6 of section 33 is applicable to townships only. The reference here to sub-section 6 is, no doubt, intended to call attention to the provisions therein for assessing those owners of unoccupied lands in the township who, though not residing on the land in question, either (*a*) reside elsewhere in the township or (*b*) have given the required written notice to the clerk of the township. If the owner of the unoccupied land resides in the township or has given the notice required by sec. 33, subs. 6, the land will be assessed in the ordinary place in the roll, and not under "Lands of Non-Residents" at the end of the assessment roll.

(3) The names of the owners, their addresses, and all the other information contained in the columns enumerated must be entered by the asseessor, if he can ascertain the facts "by diligent inquiry,"

The non-resident owner is now entitled to notice of his assessment. He is a person "named" in the roll. See sec. 46 (1).

Under R.S.O. 1897, c. 224, s. 34 the names of owners of land who did not reside in the municipality, or had not given the requisite notice to the clerk were not inserted in the assessment roll. The assessment was made "without the names of the owners."

Inquiry as to Births and Deaths.

(2) The assessor when making the annual assessment, shall inquire of every resident taxable person whether there have been any births or deaths in the family within the previous twelve months, ending on the 31st day of December then last past, and the respective dates thereof and shall enter the number and respective dates of the same opposite the name of the person assessed, in the column headed "Birth" or "Death" as the case may be. R.S.O. 1897, c. 224, s. 13 (3), *amended.*

Further Particulars.

(3) The assessor shall set down the particulars in separate columns as follows:

Column 1.—The successive number on the roll.

Column 2.—Name (surname first) and post office address of taxable person (including both the owner and tenant in regard to each parcel of land, and persons otherwise taxable) or person entitled to be entered on the roll as a farmer's son.

Column 3.—The age of the taxable person.

Rev. Stat. c. 8; Rev. Stat. c. 9; 3 Edw. VII., c. 19, s. 86.

Column 3.—Statement whether the person is a freeholder or tenant, by inserting opposite his name the letter "F." or "T." as the case may be; and where, in any municipality in which *The Manhood Suffrage Registration Act* is not in force (1), the person is entitled to be entered upon the roll as qualified to vote under *The Ontario Election Act* (2), and, where in any municipality in which the first mentioned Act is in force the person is qualified to vote at municipal elections therein (3) as well as at elections for the Legislative Assembly, there shall also be inserted opposite his name in said column, in capitals, the letters "M.F." meaning thereby "Manhood Franchise;" and where the person is,, within the meaning of section 86 of *The Consolidated Municipal Act*, 1903, a "farmer's son," there shall also be similarly inserted the letters 'F.S.";and all such names shall be numbered on the roll.

For enactment prohibiting the assessor, in municipalities where The Manhood Suffrage Registration Act is in force, from placing on the roll the name of any person not liable to assessment for taxes, see R.S.O. 1897, cap. 8, sec. 2.]

(1) *The Manhood Suffrage Registration Act* shall apply to every city and county town which is an incorporated town, and shall also apply to the Town of Niagara Falls, the Town of Sault Ste. Marie, and the Town of Deseronto. R.S.O. 1897, c. 8, s. 1; 1 Edw. VII., c. 12, s. 3.

(2) For "Manhood Suffrage" under *The Ontario Election Act*, see sec. 24 of this Act.

(3) The provisions of *The Consolidated Municipal Act*, 1903, governing the qualifications of voters at municipal elections are as follows:—

Sec. 86 (1). Subject to the provisions of the next following seven sections the right of voting at municipal elections shall belong to the following persons, being men, or unmarried women, or widows, of the full age of twenty-one years, and subjects of His Majesty by birth or naturalization, and being rated, to the amount hereinafter provided, on the revised assessment roll of the municipality upon which the voters' list used at the election is based, for real property held in their own right (or, in the case of married men, held by their wives), or for income, and having received no reward, and having no expectation of reward, for voting:

Firstly. All persons, whether resident or not, who are in their own right, or whose wives are, at the date of the election, freeholders of the municipality.

Secondly. All residents of the municipality, who have resided therein for one month next before the election, and who are, or whose wives are, at the date of the election, tenants in the municipality.

Thirdly. All residents of the municipality at the date of the election who are rated on the last revised assessment roll thereof, in respect of an income from some trade, office, calling or profession of not less than $400.00, and have received such income during the twelve months before the date of the final revision and correction of the assessment roll or for twelve months prior to the last day for making complaint to the county judge under *The Voters' List Act*, and have since the said date continuously resided in the municipality.

Fourthly. All residents of the municipality at the date of the election, who are farmers' sons, and have resided in the municipality, on the farm of their father or mother, for twelve months next prior to the date of the final revision and correction of the assessment roll or for twelve months prior to the last day for making complaint to the county judge under *The Voters Lists Act*.

(*a*) If more sons than one are so resident, and if the farm is not rated and assessed at an amount sufficient, if equally divided between them, to give a qualification to vote to the father and all the sons where the father is living, or to the sons alone where the father is dead and the mother is a widow, then the right to vote shall belong to, and be the right only of, the father and the eldest or such of the elder of said sons, to whom the amount at which the farm is rated and assessed will, when equally divided between them, give the qualification to vote.

(*b*) If the amount at which the farm is so rated and assessed is insufficient, if equally divided between the father, if living, and one son, to give to each a qualification to vote, then the father shall be the only person entitled to vote in respect of such farm.

(*c*) Occasional or temporary absence from the farm for a time or times not exceeding in the whole six months of the twelve hereinbefore mentioned, shall not operate to disentitle a farmer's son to vote. R.S.O. 1897, c. 223, s. 86 (1); 62 V. (2), c. 26, s. 8, (1) (2). The remainder of this section is given under sec. 23 of this Act.

Sec. 87. In order to entitle a person to vote as aforesaid in respect of real property, such property, whether freehold or leasehold or partly each, must be rated at an actual value of not less than the following:

In townships and villages $100
In towns where the population does not exceed 3000 $200
In towns with a population of over 3000.......... $300
In cities $400

The population shall be determined by reference to the latest annual enumeration by the assessors. R.S.O. 1897, c. 223, s. 87.

(4) For "farmers' sons" see section 23 of this Act.

Column 5.—Occupation, and in the case of females, a statement whether the person is a spinster, married woman, or widow, by inserting opposite the name of the person the letter "S," "M," or "W," as the case may be, and in the case of any non-resident owner the letters "N.R." *See as to Trustees, etc.*, sec. 33 (12).

Column 6.—Number of concession, name of street, or other designation of the local division in which the real property lies;

residence, in the case of manhood suffrage voters and other persons not assessed for land.

Column 7.—Number of lot, house, etc., in such division. (*See also subsection* 4.)

Column 8.—Number of acres, or other measure shewing the extent of the property.

Column 9.—Number of acres cleared, (or, in cities, towns, or villages, whether vacant or built upon), including, as cleared land, all land cleared of trees, arable or otherwise fit for cultivation, or suitable for pasture.

Column 10.—Number of acres of woodland.

Column 11.—Number of acres of slash land.

Column 12.—Number of acres of swamp, marsh or waste land.

Column 13.—Actual value of the parcel of real property, exclusive of the buildings thereon.

Column 14.—Value of buildings.

Column 15.—Total actual value of the parcel of real property.

Column 16.—Total amount of taxable real property.

Column 17.—Total value of the parcel if liable for school rates only.

Column 18.—Total value of property exempt from taxation or liable for local improvements only.

Column 19.—Business Assessment under section 10.

Column 20.—Amount of income taxable under sections 11 to 13.

Column 21.—Total Assessment.

Column 22.—Religion.

Column 23.—School section, whether a public, or separate school supporter by inserting the letters "P" or "S" as the case may be.

Column 24.—Number of children between the age of 5 and 21. *See* 1 Edw. VII., c. 39, s. 12 (3).

Column 25.—Number of children between the ages of 5 and 16. *See* 1 Edw. VII., c. 39, s. 12 (3).

Column 26.—Number of persons in the family of each person assessed as a resident, including such person and all other persons residing on the premises.

Column 27.—Statute labour (stating the number of male persons from twenty-one to sixty years of age and the number of days' labour).

Column 28.—Births.

Column 29.—Deaths.

Column 30.—Dog tax—Number of dogs and number of bitches.

Column 31.—Date of delivery of notice under section 46.

Column 32.—Remarks. R.S.O. 1897, c. 224, s. 13 (4), *amended*,

Column 14.—Value of buildings—"The value of the buildings shall be the amount by which the value of the land is thereby increased." Sec. 36 (2).

Column 23.—Public or separate school supporter—The Court of Revision may correct errors in this column on appeal to it. *Re Roman Catholic Separate Schools*, 18 O.R. 606.

When Residence of Person Assessed to be Entered.

(4) Opposite the name of every person entitled to be entered on the assessment roll but not assessed for land the assessor shall, in columns 6 and 7 mentioned in subsection 3 of this section enter:

(*a*) In the assessment roll of a city, town or village, the residence of such person by the number thereof (if any and the street or locality whereon or wherein the same is situate;

(*b*) In the assessment roll of a township, the concession wherein and the lot or part of a lot whereon such person resides, and in all cases any additional description, as to locality or otherwise, which may be reasonably necessary to enable such residence to be ascertained and verified. R.S.O. 1897, c. 224, s. 13 (6), *amended*.

"Persons entitled to be on the assessment roll but not assessed for land" would include (*a*) manhood franchise voters at provincial elections whose names are to be entered on part 3 of the Voters' List, in municipalities to which *The Manhood Franchise Registration Act* does not apply, and (*b*) persons assessed for income.

Special Columns in Cities and Towns.

(5) In cities and towns the Assessment Commissioner or the assessor as the case may be, may vary the form of the assessment roll so as to shew in columns 1, 2, 3, 4, and 5 the name and other particulars relating to occupants of land or if no occupant by inserting in column 2 the words "vacant lot", and in an additional set of columns numbered 1*a*, 2*a*, 3*a*, 4*a*, and 5*a* similar particulars relating to the owner or lessee, if such lessee holds a lease extending over twenty-one or more years, and by inserting in column 4*a* the letters "O" or "L", as the case may require, opposite the name of the owner or lessee. 62 V. (2), c. 27, s. 2, *amended.*

Variations of Roll in Cities and Towns.

(6) In any city or town the form of the assessment roll may be varied so as to give any additional information required owing to changes in the boundaries of the municipality or other like causes, and columns may be omitted which are inapplicable to a city or town. *New.*

In cities and towns it is desirable to specially indicate what lands are vacant, because there "no distress for taxes in respect of vacant land shall be made upon goods or chattels of the owner except upon the land." Sec. 103, subs. 1, clause 4.

Under sec. 295 of *The Consolidated Municipal Act, ante* page 92, the municipal council may make regulations, not inconsistent with this Act, for governing assessors.

Farmers' Sons.

Interpretation. 3 Edw. VII., c. 19.

23.—(1) In this section the words and expressions "Farm," "Son," "Sons," "Farmer's Son," "Father," "Election," "To

Vote," and "Owner," shall respectively have the meaning given thereto by section 86 of *The Consolidated Municipal Act,* 1903. R.S.O. 1897, c. 224, s. 14 (1), *amended.*

The part of sec. 86 of *The Consolidated Municipal Act,* 1903, referred to is as follows:

Sec. 86, subs. (2). In this section: "Farm shall mean land actually occupied by the owner thereof, and not less in quantity than twenty acres;

"Son" or "sons" or "farmer's son" or "farmers' sons" shall mean any male person or persons not otherwise qualified to vote, and being the son or sons, stepson or stepsons of the owner and actual occupant of a farm;

"Father" shall include stepfather, and "mother" shall include stepmother.

"Election" shall mean an election of a member of a municipality council;

"To vote" shall mean to vote at an election; and

"Owner" shall mean a person who is proprietor in his own right, or whose wife is proprietor in her own right, of an estate for life, or any greater estate, either legal or equitable; except where the owner is a widow, in which case the word "owner" shall mean proprietor in her own right of any such estate. R.S.O. 1897, c. 223 s. 86 (2); 62 V. (2), c. 26, s. 8 (3).

(3) Any leaseholder the term of whose lease is not less than five years, shall be deemed an owner within the meaning of this section. R.S.O. 1897, c. 223, s. 86 (3).

Farmer's Son.

(2) Every farmer's son *bona fide* resident on the farm of his father or mother, at the date of the assessment, shall be entitled to be, and may be, entered on the roll, in the cases following:

(*a*) If the father is living, and either the father or mother is the owner of the farm, or if the father is dead, and the mother is the owner of the farm, and is a widow, and the farm is assessed at an amount sufficient, if equally divided between the father and the sons or the mother and the sons, to give to each a qualification to vote at a municipal election.

(*b*) Occasional or temporary absence from the farm for a time or times, not exceeding in the whole six months of the twelve months next prior to the date of the assessment by the assessor, shall not operate to disentitle a son to be considered *bona fide* resident as aforesaid.

(*c*) If there are more sons than one so resident, and if the farm is not assessed at an amount sufficient, if equally divided between them, to give a qualification to vote at a municipal election, to the father and all the sons, where the father is living, or to the mother and all the sons where the father is dead and the mother is the owner of the farm and is a widow, then the father or the mother, as the case may be, shall be assessed in respect of the farm, and the right to be entered on the roll as a farmer's son shall belong to and be the right only of the eldest or such of the elder of said sons to whom the amount at which the farm is assessed will, when equally divided between them and the father, or between them and the mother, as the case may be, give a qualification so to vote.

(*d*) If the amount at which the farm is assessed is not sufficient, if equally divided between the father, if living, and one son, or, where the father is dead and the mother is the owner of the farm and is a widow, between the mother and one son, to give to each a qualification so to vote, then the father or the mother, as the case may be, shall be assessed in respect of the farm, and no son shall be entitled to be entered on the roll as a farmer's son. R.S.O. 1897, c. 224, s. 14 (2) *a-e., amended.*

(*e*) When a farmer's son is entered on the roll, under any of the above provisions, the letters "F.S." shall be inserted after his name in the proper column of the roll. *See* R.S.O. 1897, c. 224, s. 14 (2) *f*.

Manhood Suffrage Voters.

Persons to be Entered on Roll as M. F. Voters; Rev. Stat., c. 8; Rev. Stat., c. 9.

24.—(1) In municipalities in which *The Manhood Suffrage Registration Act* is not in force (1) the assessor shall place on the

assessment roll, as qualified to be a voter under *The Ontario Election Act* the name of every male person of the full age of twenty-one years not disqualified from voting at elections for the Legislative Assembly of Ontario, and a subject of His Majesty by birth or naturalization, who delivers or causes to be delivered to the assessor, an affidavit signed by such person in one of the forms in Schedule B appended hereto, or to the effect therein set forth, if the facts stated are such as entitle such person to be placed thereon, and the affidavit may be made before any assessor, Justice of the Peace, commissioner for taking affidavits, or notary public; and every such officer shall, upon request, administer an oath to any person wishing to make the affidavit;

Proviso.

Provided that such person had resided within the Province for the nine months next preceding the time fixed by statute (or by a by-law authorized by statute) for beginning to make the assessment roll in which he is entitled to be entered as a person qualified to vote;

Proviso.

And provided that, such person was in good faith at the time fixed, as aforesaid, for beginning to make said roll, and still is a resident of, and domiciled in, the municipality on the roll of which he desires to be entered, and has resided in the said municipality continuously from the time fixed as aforesaid for beginning to make said roll.

(1) The Manhood Suffrage Registration Act applies to every city, and county town which is an incorporated town, and also to the Town of Niagara Falls, the Town of Sault Ste. Marie, and the Town of Deseronto.

The qualifications of a voter under The *Ontario Election Act* are set out in the section. Such voter must be (1) a male person; (2) 21 years of age; (3) a British subject by birth or naturalization; (4) a resident of the Province for nine months before the time fixed by statute or by-law for beginning to make the assessment

roll, and (5) he must be a resident of the municipality at such time; (6) he must not be disqualified from voting.

Section 47 provides that the roll shall be commenced not later than the 15th day of February in each year. Section 53 makes provision in cities, towns and villages for taking the assessment between the 1st day of July and the 30th day of September, and section 54 makes special provision in regard to the time of taking the assessment in cities. County councils may, under section 56, pass by-laws for taking the assessment in towns, townships and villages between the 1st day of February and the 1st day of July.

There is an alternative provision in *The Ontario Election Act*, which makes the necessary period of residence in the Province twelve months before the time up to which complaint may be made in reference to a voter, to the county judge. The voter must be resident in the municipality at the time of such complaint. R.S.O., 1897, c. 9, s. 8.

The time for making complaint is within thirty days after the posting up of the Voter's List by the clerk of the municipality.

The following are disqualified from voting:—

Judges of the Supreme Court of Canada, Judges of the Supreme Court of Judicature for Ontario, Judges of the Exchequer Court of Canada, County Court judges, officers of the Customs of the Dominion of Canada, Clerks of the Peace, county crown attorneys, registrars, sheriffs, deputy sheriffs, deputy clerks of the Crown, and agents for the sale of Crown lands, postmasters in cities and towns, stipendiary magistrates, police magistrates in cities having a population of over 30,000, and officers employed in the collection of duties payable to His Majesty in the nature of duties of excise, shall be disqualified and incompetent to vote at any election. Also those disqualified under sec. (2), sub-sec. 2 of this Act. R.S.O., 1897, c. 9, s.4.

This sub-section makes it obligatory upon the assessor, where the Manhood Suffrage Registration Act is not in force, to enter upon the assessment roll as a voter the name of every person who files the prescribed affidavit.

Temporary Absence not to Disqualify.

(2) A person may be resident in the municipality within the meaning of this section, notwithstanding occasional or temporary absence in the prosecution of his occupation as a lumberman,

mariner, or fisherman, or of his attendance as a student in an institution of learning in the Dominion of Canada; and such occasional or temporary absence shall not disentitle such person to be entered on the assessment roll as a qualified voter.

This sub-section permits temporary absence from the municipality on the part of a

(1) Lumberman.

(2) Mariner.

(3) Fisherman, or

(4) Student at an institution of learning in Canada.

Without interfering with his status as a voter.

The provisions of sec. 8 of *The Ontario Voters' List Act*, R.S.O., 1897, ch. 7, that the voter to be qualified must have resided continuously in the electoral district, does not mean a residence *de die in diem*, but that he has not acquired a new residence. A voter who went to Manitoba to engage in harvesting, intending to return, which he did, was not disqualified from voting by such temporary absence: *Re Voters' List of the Township of Seymour*, Election Cases, Vol. 2, p. 69.

Inquiries by Assessors. Rev. Stat., c. 9.

(3) The assessor shall also make reasonable inquiries in order to ascertain what persons resident in his municipality, or in the section of the municipality in respect of which the assessor is acting, are entitled to be placed on the assessment roll as qualified to be voters under *The Ontario Election Act*, and shall place such persons on the roll as qualified to be voters without the affidavit referred to in subsection 1, R.S.O. 1897, c. 224, s. 15. *See also* R.S.O. 1897, c. 9, s. 8.

It is the duty of the assessor to make " reasonable inquiries " in order to obtain the names of all persons entitled to be entered on the assessment roll as voters, whether they are assessable for the purposes of taxation or not, and to enter them on the roll. A wilful omission in regard thereto is a violation of the assessors' oath, and a breach of duty for which he is liable to punishment.

Students at College, etc. Rev. Stat., c. 9.

25.—(1) No person shall be entitled to be marked or entered by the assessor in the assessment roll as a qualified voter under

The Ontario Election Act, in respect of residence in a municipality where he is in attendance as a scholar or student at any school, university or other institution of learning, unless he has no other place of residence entitling him to vote under said Act.

This sub-section should be construed with sec. 24, sub-sec. 2. It is only when the student has no other place of residence entitling him to vote, that he is to be entered on the assessment roll under this sub-section.

Other Persons. Rev. Stat., c. 9.

(2) No person shall be entitled to be marked or entered by the assessor in the assessment roll as qualified to vote under *The Ontario Election Act,* who at the time of marking or entering is a prisoner undergoing punishment for a criminal offence in a gaol or prison; or is a patient in a lunatic asylum; or is maintained, in whole or in part, as an inmate receiving charitable support or care in a municipal poor-house or house of industry, or as an inmate receiving charitable support or care in a charitable institution receiving aid from the Province under any statute in that behalf.

The intention is to disfranchise—
(*a*) Criminals,
(*b*) Lunatics, and
(*c*) Paupers in public charitable institutions.

Complaints respecting Roll; Rev. Stat. c. 9; Rev. Stat. c. 7.

(3) Complaints of persons having been wrongly entered in the assessment roll as qualified to be voters under *The Ontario Election Act,* or of persons not having been entered thereon as qualified to be voters under said act, who should have been so entered, may, by any person entitled to be a voter under said Act, or to be entered on the voters' list in the municipality or in the electoral district in which the municipality is situate, be made to the Court of Revision as in the case of assessments; or the complaints may be made to the County Judge under *The Ontario Voters' List Act.* R.S.O. 1897, c. 224, s. 16.

There are two opportunities given to (*a*) strike off names wrongfully on the voters' list or (*b*) to put on names which ought to be on and are not.

The first opportunity is on application to the Court of Revision in the same manner as on an appeal from an assessment.

The second opportunity is by application to the County Judge within thirty days after the posting up of the Voters' List by the clerk of the municipality.

Entry of School Supporters on Roll.

Assessor to be Guided by Index Book ; Rev. Stat. c. 294.

26.—Where the index book required by section 48 of *The Separate Schools Act* is prepared, the assessor shall be guided thereby in ascertaining who have given the notices which are by law necessary in order to entitle supporters of Roman Catholic separate schools to exemption from the public school tax. R.S.O. 1897, c. 224, s. 54.

The section referred to is as follows:—

48.—(1) The clerk of every municipality shall keep entered in a convenient index book, and in alphabetical order, the name of every person who has given to him, or to any former clerk of the municipality, notice in writing that such person is a Roman Catholic and a supporter of a separate school in or contiguous to the municipality, as provided by section 42 of this Act, or by previous Acts respecting separate schools; the clerk shall also enter opposite the name, and in a column for this purpose, the date on which the notice was received, and in a third column opposite the name any notice by such person of withdrawal from supporting a separate school, as provided by sec. 47 of this Act, or by any such other Act as aforesaid, with the date of such withdrawal; or any disallowance of the notice of the Court of Revision or County Judge with the date of such disallowance. The index book may be in the form out set in Schedule G. to this Act, and shall be open to inspection by ratepayers.

(2) The clerk shall enter in the same book, and in the proper alphabetical place therein, all such notices from time to time received by the clerk.

(3) It shall be the duty of the clerk to file and carefully preserve all such notices which have been heretofore received, or shall hereafter be received. 53 V. c. 71, s. 1.

(4) The assessor shall be guided by the entries in the said Index Book in ascertaining who have given the notices which are by law necessary, in order to entitle supporters of Roman Catholic separate schools to exemption from the public school tax. 53 V. c. 71, s. 3; 55 V. c. 48, s. 478. See also Rev. Stat. c. 224, s. 54.

The following sections are also of importance to assessors:

49.—(1) The assessor or assessors of every municipality shall in the assessment roll set down the religion of the person taxable, distinguishing between Protestant and Roman Catholic, and whether supporters of public or separate schools; but nothing herein contained shall be deemed to interfere with the rights of public school trustees under the Public Schools Act.

(2) The assessor shall accept the statement of, or made on behalf of, any ratepayer, (by his authority, and not otherwise), that he is a Roman Catholic, as sufficient prima facie evidence for placing such person in the proper column of the assessment roll for separate school supporters, or if the assessor knows personally any ratepayer to be a Roman Catholic, this shall also be sufficient for placing him in such last mentioned column. R.S.O. 1887, c. 227, s. 48 (1) and (2); 53 V. c. 71, s. 4. See also Rev. Stat. c. 224, s. 13 (5).

(3) The Court of Revision shall try and determine all complaints in regard to persons in these particulars alleged to be wrongfully placed upon or omitted from the roll (as the case may be), and any person so complaining, or any ratepayer of the municipality, may give notice in writing to the clerk of the municipality of such complaint, and the provisions of The Assessment Act, in reference to giving notice of complaints against the assessment roll, and to proceedings for the trial thereof, shall likewise apply to all complaints under this section of this Act. R.S.O. 1887, c. 227, s. 48 (3).

The words in brackets in sub-sec. 2 were introduced in 1890.

The assessor is not bound by sub-sec. 2 above to accept the statements therein mentioned in case he is made aware, or ascertains before completing his roll that such ratepayer is not a Roman Catholic or has not given the notice prescribed by sec. 48

of the Separate School Act, or is for any reason not entitled to exemption from public school rates: *Re Roman Catholic Separate Schools,* 18 O.R. 606.

50.—(1) In case of its appearing to the municipal council of any municipality after the final revision of the assessment roll, that through some mistake or inadvertence any ratepayers have have been placed in the wrong school tax column, either as supporters of separate schools or supporters of public schools, it shall be competent for the municipal council after due inquiry and notice to correct such errors if such council sees fit, by directing the amount of the tax of such ratepayers to be paid to the proper school board. But it shall not be competent for the council to reverse the decision of the Court of Revision or the County Court Judge as to any ratepayer.

(2) In case of such action by a municipal council the ratepayer shall be liable for the same amount of school tax as if he had in the first instance been entered on the roll properly. 53 V. c. 71, s. 5.

The Court of Revision and the County Judge may both be appealed to for the purpose of placing ratepayers in their proper class as public school supporters or separate school supporters, in the same way as an appeal from an assessment. But if an error which has not been passed upon and disposed of by the Court of Revision or the County Judge on appeal, is brought to the attention of the municipal council, that body may, after inquiry and upon notice to all interested parties, correct such error by seeing that the tax of the ratepayer in question goes to its proper destination, notwithstanding the error in the assessment.

53. In any case where under section 24 [now sec. 33, sub-sec. 3] of The Assessment Act, land is assessed against both the owner and occupant, or owner and tenant, then the occupant or tenant shall be deemed and taken to be the person primarily liable for the payment of school rates, and for determining whether such rates shall be applied to public or separate school purposes, and no agreement between the owner or tenant as to the payment of taxes as between themselves shall be allowed to alter or to affect this provision otherwise; and in any case where, as between the owner and tenant or occupant, the owner is not to pay taxes, if by the default of the tenant or occupant to pay the same, the owner is compelled to pay such school rate, he may direct the same to be

applied to either public or separate school purposes, and if the public school rate and the separate school rate are not the same he shall only be liable to pay the amount of the rate of the schools to which in virtue of his right in that behalf he directed his money to to be paid. R.S.O. 1887, c. 227, s. 51; 55 V. c. 60, s. 1.

This is in conflict with the ordinary rule. Apart from express agreement to the contrary, the landlord pays the taxes: *Dove* v. *Dove*, 18 C.P. 424; *McAnany* v. *Tickell*, 23 U.C.R. 499.

The 54th section of *The Separate Schools Act*, as amended by 4 Edw. VII., c. 24, s. 6, and further amended by 5 Edw. VII., c. 13, s. 26, is as follows:—

6. Section 54 of *The Separate Schools Act* is repealed and the following section substituted therefor:—

54.—(1) A company may, by notice in that behalf to be given to the clerk of any municipality wherein a separate school exists, require any part of the real property of which such company is either the owner and occupant, or, not being such owner, is the tenant, occupant or actual possessor, and any part of the business assessment or other assessments of such company made under *The Assessment Act*, to be entered, rated and assessed for the purposes of the said separate school, and the proper assessor shall thereupon enter the said company as a separate school supporter in the assessment roll in respect of the real property and business or other assessments, if any, specially designated in that behalf, in or by the said notice and the proper entries in that behalf shall be made in the prescribed column for separate school rates, and so much of the real property and business or other assessments, if any, as shall be so designated, shall be assessed accordingly in the name of the company for the purposes of the separate school and not for public school purposes, but all other real property and the remainder of the business or other assessments of the company shall be separately entered and assessed in the name of the company as for public school purposes; provided always that the share or portion of the real property and business or other assessments of any company, entered, rated or assessed, in any municipality for separate school purposes under the provisions of this section, shall bear the same ratio and proportion to the whole of the assessment for real property, business or other assessments of any company within the municipality, as the amount or proportion of the shares or stock of the company, so far as the same are paid, or partly paid-

up, and are held and possessed by persons who are Roman Catholics bears to the whole amount of such paid or partly paid-up shares or stock of the company.

(2) A notice by the company to the clerk of the local municipality under the provisions of this section may be in the form or to the effect following:—

To the Clerk of (*describing the municipality*),

Take notice that (*here insert the name of the company so as to sufficiently and reasonably designate it*) pursuant to a resolution in that behalf of the directors of the said company requires that hereafter and until this notice is either withdrawn or varied so much of the whole of the assessment for real property, and business or other assessments of the company within (*giving the name of the municipality*) and hereinafter specially designated shall be entered, rated, and assessed for separate school purposes, namely, one-fifth (*or as the case may be*) of all real property of the said company liable to assessment in the said municipality and one-fifth (*or as the case may be*) of the business or other assessments of the said company in the said municipality.

Given on behalf of the said company this (*here insert date*).

R. S., Secretary of the said company.

26. Section 54 of *The Separate Schools Act*, as enacted by section 6 of chapter 24 of the Acts passed in the fourth year of the reign of His Majesty, King Edward VII., is amended by adding thereto the following subsections:

(3) Any such notice given in pursuance of a resolution in that behalf of the directors of the company shall for all purposes be deemed to be sufficient, and every such notice so given shall be taken as continuing and in force and to be acted upon unless and until the same is withdrawn, varied or cancelled by any notice subsequently given, pursuant to any resolution of the company or of its directors.

(4) Every such notice so given to such clerk shall remain with and be kept by him on file in his office, and shall at all convenient hours be open to inspection and examination by any person entitled to examine or inspect any assessment roll, and the assessor shall in each year, before the completion and return of the assessment roll, search for and examine all notices which may be so on file in the clerk's office, and shall thereupon in respect of said notices (if any) follow and conform thereto and to the provisions of this Act in that behalf.

(5) The word "company" in this section shall mean and include any body corporate.

Evidence on which Assessor to Enter Persons as Separate School Supporters. Rev. Stat., c. 294.

27. In any case where the trustees of any Roman Catholic separate school avail themselves of the provisions contained in section 49 of *The Separate Schools Act*, for the purpose (amongst others) of ascertaining, through the assessors of the municipality, the persons who are the supporters of separate schools in such municipality, the assessor (where the entry in the index book mentioned in section 26 does not shew a ratepayer to be a supporter of separate schools (shall accept the statement of the ratepayer, or a statement made on his behalf and by his authority, and not otherwise, that he is a Roman Catholic, as sufficient *prima facia* evidence for placing such person in the proper column of the assessment roll for separate school supporters, or if the assessor knows personally any ratepayer to be a Roman Catholic this shall also be sufficient for placing him in such last mentioned column. R.S.O. 1897, c. 224, s. 13 (5). See also R.S.O. 1897, c. 294, s. 49.

For sec. 49 of *The Separate School Act*, see *ante* page 113.

Section 47 of *The Separate School Act*, is as follows:

(1) Any Roman Catholic who desires to withdraw his support from a separate school, shall give notice in writing to the clerk of the municipality, before the second Wednesday in January in any year, otherwise he shall be deemed a supporter of the school.

(2) But any person who has withdrawn his support from a Roman Catholic school shall not be exempted from paying any rate for the support of separate schools or separate school libraries, or for the erection of a separate school house, imposed before the time of his withdrawing such support from the separate school. R.S.O. 1887, c. 227, s. 47.

Although a Roman Catholic or any other ratepayer assessed as a separate school supporter, has not given the notice mentioned in this section, he is not estopped in the following, or future year,

from claiming that he should not be assessed as a supporter of separate schools in the assessment of such year. *Re Roman Catholic Separate Schools*, 18 O.R. 606.

Notice to be given of Assessment as Public or Separate School Supporter.

28.—(1) In the case of a municipality in which there are supporters of a Roman Catholic separate school therein, or contiguous thereto, there shall be printed in conspicuous characters, or written across or on the assessor's notice to every ratepayer provided for by section 46 of this Act, and set forth in Schedule F hereto, in addition to the proper entry heretofore required to be made in the column respecting the school tax, the following words: "*You are assessed as a Separate School supporter*," or "*You are assessed as a Public School supporter*," as the case may be; or these words may be added to the notice to the ratepayer set forth in the said Schedule.

The design is to give every ratepayer ample notice so that he can not fail to know whether he is assessed as a public school supporter or as a separate school supporter. He thus has full opportunity to appeal if an error has been made.

School Census.

Assessors to make Lists of Children between 8 and 14 Years of Age.

29. The assessors of every municipality shall, upon request being made to the clerk of the municipality, by the board of education or school trustees or by the trustees of school sections before the date at which the assessors are by law required to commence the preparation of their assessment rolls when making their assessment, enter in a book, to be provided by the clerk of the municipality, in the form set forth in Scdedule C to this Act, the name, age and residence of every child between the ages of eight and fourteen years, resident in the municipality, and the name and residence of such child's parent or guardian, and shall return the said book to

the clerk of the municipality with the assessment roll for the use of the truant officer and others. R.S.O. 1897, c. 224, s. 17 (1).

It is only upon the request of the Board of Education, or school trustees, made to the clerk of the municipality that the assessor compiles the information set out in this section. The request must be made before the date fixed by law for the assessor to begin the work of assessment. The clerk procures, at the expense of the municipality, the proper book for recording the names, ages and residences of all children who may be compelled by law to attend school, with the names and addresses of parents and guardians. The object is to furnish information for the discovery of children within the specified ages who are not attending school as required by law. See R.S.O. 1897, cap. 296.

Census of Children between Five and Twenty-one.

30. The assessors of every municipality shall make an annual census of all the children in the municipality between the ages of five and sixteen years and between the ages of five and twenty-one years. The clerk shall report such census to the public school inspector and to the secretary of the board of education or trustees. In the case of townships the clerk shall report to the inspector of the division and to the secretary of each school section. R.S.O. 1897, c. 224, s. 17 (2), *amended*. *See* 1 Edw. VII., c. 39, ss. 12 (3), 65 (3); s. 22, cols. 24, 25.

The assessor's duty is to compile this information without request. The provincial statistics regarding the school population is compiled from these returns, which are furnished to the Education Department by the School Inspectors in their annual reports. There is no other means by which Boards of Education and school trustees can so readily ascertain the number of children for whom they have to provide school accommodation.

Information to Assessors.

Annual Lists of Lands Granted, etc., to be Furnished by Commissioner of Crown Lands.

31.—(1) The Commissioner of Crown Lands shall, in the month of February in every year, transmit to the treasurer of every county,

city or town, a list of all the land within the county, city or town, patented, located as free grants, sold or agreed to be sold by the Crown, or leased, or appointed to any person, or in respect of which a license of occupation issued during the preceding year. R.S.O. 1897, c. 224, s. 150, *amended.*

County Treasurers to furnish Copies of Lists to Clerks of Municipalities.

(2) The county treasurer shall furnish to the clerk of each municipality in the county a copy of the said lists, so far as regards lands in such municipality, and such clerk shall furnish the assessors respectively with a statement showing what lands in the said annual list are liable to assessment within such assessor's assessment district. R.S.O. 1897, c. 224, s. 151.

These returns enable the assessors to assess the owners of the land therefor, or to assess the lessee, licensee or locatee for his interest therein.

[*See the Registry Act* R.S.O. 1897, c. 136,s. 125, *requiring Registrars upon request of the clerk of a municipality or Assessment Commissioner to furnish lists of transfers of land.*]

R.S.O. 1897, c. 136, s. 125, is as follows:

125. The Registrar shall, upon request, furnish to the clerk or assessment commissioner of a city, a list of all absolute conveyances whereby property has been transferred, which have been registered in his office during the next preceding month, and in such list shall include the names of the grantor, the grantee, the consideration shown in each transfer, and a short description of the land conveyed; provided that such list shall not include leases for less than twenty-one years, mortgages, discharges of mortgage, or other like instruments, and that the Registrar shall be entitled to have and receive therefor a fee of five cents for every instrument included in said list. 56 V. c. 21, s. 118.

Mode of Asseesment of Land.

Land where Assessed.

32. Except as hereinafter provided for land shall be assessed in the municipality in which it lies, and in the case of cities and

towns in the ward in which it lies. *See* 2 Edw. VII., c. 31, s. 1, *first part.*

"Except as hereinafter provided for" seems to refer to the direction to assess land in cities and towns in the ward in which it lies. The exceptions "hereinafter provided" are the provisions for obviating the assessment of valuable properties of public utility as second-hand material, by reason of severing them along ward boundaries. These provisions are found in sections 42, 43 and 44. See cases cited under sec. 42.

Land is always assessed in the municipality in which it lies.

Owner occupying Land.

Land against Whom to be Assessed.

33.—(1) Land occupied by the owner shall be assessed against him. *See* R.S.O. 1897, c. 224, s. 19.

Resident Owner of unoccupied Land.

Unoccupied Land of Resident.

(2) Unoccupied land the owner of which is resident in the municipality, shall be assessed against him. *See* R.S.O. 1897, c. 224, s. 20.

Unoccupied land the owner of which is resident in the township in which the land lies, cannot be assessed as "Lands of Non-residents." See sec. 22, subs. 1, clause (*g*) and notes thereon; see also subs. 6 of this section. In towns and cities no distress can lawfully be made on goods of the owner elsewhere than on the unoccupied land. See sec. 103, subs. (1) 4 V.

See note on "occupant," sec. 2, subs. 6.

For the note on "resident" see sec. 5.

Sawers v. *City of Toronto,* 2 O.L.R. 717; *York* v. *Osgoode,* 24 S.C.R. 282; *Flett* v. *Prescott,* 18 A.R. 1.

For a discussion of "owner," see the notes on section 103, and the cases there cited.

Resident Owner, Land occupied by Tenant.

Land of Resident Occupied by Tenant.

(3) Land owned by a resident in the municipality and occupied by any person other than the owner shall be assessed against the owner and the tenant. *See* R.S.O. 1897, c. 224, s. 20.

If occupied land is assessed as unoccupied, and is thereafter sold for taxes as non-resident the sale will be set aside: *Street* v. *Fogle*, 32 U.C.R. 119. See also *City of Toronto* v. *Caston*, 30 S.C.R. 390; under Consol. Stat. U.C., cap. 55, there was power in cities to sell the lands of non-residents only, and the sale of land of a resident was set aside: *McKay v. Bamberger*, 30 U.C.R. 95. A lot, 20 or 30 acres of which were cleared and fenced, and a barn erected thereon into which hay made on these 20 acres was stored in winter by the owner of the adjoining land under the authority of the proprietor of the lot, on which no person resided, should have been assessed as occupied: *Bank of Toronto* v. *Fanning*, 18 Gr. 391. See also *Allan* v. *Fisher*, 13 C.P. 63; *Snyder* v. *Shibley*, 21 C.P. 518.

If lands which are occupied are assessed as unoccupied the consequences may be serious. The greatest care should be used by the assessor to ascertain whether land is actually occupied or not.

Note, however, that a change has been made in the Statute since these cases were decided. See section 89, subsection 1, last part.

Non-resident Owner, Land occupied by Tenant.

Occupied Land Owned by Non-Resident.

(4) Occupied land owned by a person who is not a resident in the municipality shall be assessed against the owner if known, and against the tenant. See R.S.O., 1897, c. 224, ss. 20, 21.

The intention is that, if the assessor can ascertain the name of the owner, it shall, in all cases, be inserted in the roll; only vacant lands in townships, the owner of which does not reside in the township, and has not given the requisite notice, shall be assessed as non-resident.

Non-resident Owner, Land unoccupied.

Unoccupied Land of Non-Resident in Cities, Towns, or Villages.

(5) In cities, towns and villages unoccupied land owned by non-residents shall be assessed in the same manner as the land of residents; and where the name of the owner cannot be ascertained, the assessor shall insert the word "non-resident" in the column in the assessment roll for the name of the owner opposite the description of the land. *New.*

This is a change in the law. There is now no special part of the assessment roll for "Lands of Non-residents" in a city, town, or village. All land is assessed in rotation in urban municipalities regardless of the place of residence of the owner, whether the land is vacant or not.

Unoccupied Land of Non-Resident in Townships.

(6) In townships unoccupied land shall be denominated "lands of non-residents" unless the owner thereof resides or has a place of business in the municipality where the land is situate, or gives notice in writing setting forth his full name, place of residence and post office address, to the clerk of the municipality, on or before the 20th day of April in any year that he owns such land, describing it, and requires his name to be entered on the assessment roll therefor, which notice may be in the form or to the effect of Schedule D to this Act; and the clerk of the municipality shall, on or before the 25th day of April in each year, make up and deliver to the assessor a list of the persons requiring their names to be entered on the roll and of the lands owned by them. R.S.O., 1897, c. 224, s. 3, *amended.*

(6) If land is occupied by any person it cannot be assessed as "lands of non-residents." See note on "Occupant" *ante,* sec. 2, sub-sec. 6, p. 3.

The following conditions must subsist, viz.: (1) The land must be in a township; (2)it must be unoccupied; (3) the owner must neither *reside* nor *have a place of business* in the township;

(4) nor have given the requisite notice to the clerk of the township, before land can be assessed as lands of non-residents. See section 34 as to lands of railways, etc., which are assessed as lands of residents, even though the company has no office in the municipality.

Under 16 Vict. c. 182, the name of a non-resident owner of land could be entered on the assessment roll only upon his request: *Municipality of Berlin* v. *Grange,* 5 C.P. 211, 1 E. & A. 279. But as the law then stood, the entry of the land as belonging to a resident, when in fact it was non-resident land, did not make the assessment nugatory: *De Blaquiere* v. *Becker,* 8 C.P. 167.

As the assessor, in the course of his work, traverses the whole township, and, in one capacity or another, enters the names of nearly all the adult male population upon his roll, either as assessed for property or otherwise, or as voters, it may reasonably be assumed that he will by inquiry find the names of all owners of vacant property in the municipality who reside therein. Whenever the owner's name can be ascertained, the assessor is to enter it on the roll, even though it goes on the "non-resident roll." Sec. 22, sub-sec. 1, clause (*g*) requires the names to be entered "as as far possible." For the use to be made of this roll see sec. 96.

The Separate School Act, R.S.O. 1897, Chap. 294, sec. 46, is as follows:—

46. Any person, who, if resident in a municipality, would be entitled to be a supporter of a separate school existing either therein or in any adjoining municipality, may, in giving notice under section 3 of *The Assessment Act,* [now sec. 33, sub-sec. 6], that he is the owner of unoccupied land situate in either of the said municipalities, require that all such land as is situate either in the municipality wherein the separate school is situate or within the distance of three miles in a direct line of the site of the separate school shall be assessed for the purposes of the separate school, and the proper assessor shall thereupon enter such person in the assessment roll as a separate school supporter, and the proper entries in that behalf shall be made in the prescribed column for separate school rates, and the land shall be assessed accordingly for the purposes of the separate school and not for public school purposes. R.S.O. 1887, c. 227, s. 46.

Record of Non-Residents' Notices.

(7) The clerk of the municipality shall keep in a book a record of such notices, and they shall stand until revoked. *New.*

The notice need not now be repeated each year. Upon the revocation of a notice, the revocation should be duly entered in the book. The revocation should be given to the clerk in writing.

It is the duty of the clerk of the municipality, each year before the 25th day of April, to furnish the assessor with a list of all the persons who have given such notice.

Rights of Appeal of Non-Residents not Named in Roll.

(8) Where the name of the owner of unoccupied land has not been entered upon the assessment roll in respect thereof by the assessor, such owner or his agent shall be entitled,—

(*a*) To apply to the Court of Revision to have the same so entered whether the notice in sub-section 6 has or has not been given, and the Court may order the name to be entered notwithstanding that such notice has not been given or has not been given by the time in the said sub-section provided;

Rev. Stat., c. 7.

(*b*) Within the time allowed by law for other applications in that behalf, to apply to the Judge to have the name of the owner entered upon the Assessment roll and the voters' lists, whether such notice has or has not been given; and the judge may direct that the same be so entered as provided in section 40 of *The Ontario Voters' Lists Act*, notwithstanding that such notice has not been given or has not been given by the time in sub-section 6 provided. R.S.O. 1897, c. 224, s. 4, *amended.*

The intention of the present Assessment Act is that as far as practicable, the names of the owners of all land, whether occupied or not, shall be inserted in the assessment roll. The Court of Revision and the County Judge are here given extensive powers in regard to inserting names.

(*a*) The application to the Court of Revision would be made on notice, as in the case of an ordinary appeal. The Court of Revision may deal with it, though notice has not been given within 14 days after the return of the roll.

(*b*) "The time allowed by law for other applications" is within 30 days after the clerk of the municipality has posted up the Voters' List in his office. Notice of the application should be given to the clerk of the municipality.

Several Owners of Undivided Shares, some non-resident.

(9) Where land is owned by more persons than one, and any one of the owners is not resident in the municipality:—

(*a*) If the land is occupied by any person other than the owners, it shall be assessed against the tenant and against such of the owners as are known; and

(*b*) If occupied by any of the owners, or if unoccupied, it shall be assessed against all the owners who are known. *See* R.S.O., 1897, c. 224, s. 25 (1).

Tenant of Non-Residents' Lands, when considered Owner.

(10) Where land is assessed against a tenant under either of the above sub-sections 4 or 9, the tenant, for the purpose of imposing and collecting taxes upon and from the land, shall be deemed to be the owner. *See* R.S.O., 1897, c. 224, s. 22.

Land is assessed against the tenant under sub-sections 4 and 9 only when the owner is not resident in the municipality, or when one or more of the co-owners is not so resident. When a tenant is "deemed to be the owner" he would be deprived of the benefit of the second proviso in sec. 103, sub-sec. 1, in regard to exemption from distress for taxes imposed before he was assessed, as the goods of the owner may be distrained, though his name does not appear upon the roll.

Married Woman—When Husband to be Assessed as Owner

Married Woman Owner, whether resident or non-resident.

(11) Where a married woman, whether resident or non-resident in the municipality, is assessed as owner, the name of her husband

shall also be entered in the roll as an owner. And where the property is assessed for a sum sufficient to entitle a sole owner, but insufficient to entitle two joint owners of the property to vote at municipal elections, the letter " O " shall be inserted in column 4 of the assessment roll after the name of the husband, who shall be entitled to be entered on the voters' list as the owner of the property. R.S.O., 1897, c. 224, s. 19, *amended.*

The intention is that the husband shall have a vote, though the value of the property is not sufficient to give two joint owners votes.

Lands Held by Trustees, etc.—Proviso

Trustees, Guardians, Executors, etc.

(12) Land held by a trustee, guardian, executor or administrator shall be assessed against him as owner or tenant thereof, as the case may require, in the same manner as if he did not hold the land in a representative capacity; but the fact that he is a trustee, guardian, executor or administrator shall, if known, be stated in column 5 of the roll. Provided, however, that such trustee, guardian, executor or administrator shall only be personally liable when and to such extent as he has property as such trustee, guardian, executor or administrator, available for payment of such taxes. *New.* R.S.O. 1897, c. 224, s. 46; 63 V., c. 34, s. 3.

Under Cons. Stats. of New Brunswick, ch. 100, section 16, " real estate where the assessors cannot obtain the names of any of the owners shall be rated in the name of the occupier or person having ostensible control, but under such description as to persons and property . . . . as to indicate the property assessed, and the character in which the person is assessed. The owner of real estate having died, his wife who continued to reside on it administered to his estate. In one year the assessment was made in her name as " Widow Gamble," without more. The assessment was held illegal as not indicating the character in which she was assessed. In previous years the property was assessed as "Estate of Thomas Gamble" (the deceased owner). This the Court did not pass upon: *Flanagan* v. *Elliott*, 12 S.C.R. 435.

Where executors who were also devisees of land in trust, were assessed as owners, they were properly so assessed, and their own goods were liable to seizure for taxes: *Dennison* v. *Henry*, 17 U. C.R. 276. The present section is intended to limit the personal liability of the trustee, etc. See *Applegarth* v. *Graham*, 7 C.P. 171.

Under section 46 of R.S.O. 1897, cap. 224, the income derived from property vested in trustees must be regarded for assessment as their own income, and they are personally liablie to taxation thereon, though they have no personal interest in it, and notwithstanding that the greater part of the income was in trust for McMaster University. The right of the beneficiary to receive the income could not permit it to be deducted from the amount of the trustees' annual receipts as a debt owing in respect of the property: *Re McMaster Estate Assessment*, 2 O. L. R. 474.

See sec. 22, sub-sec. 1, clause (*f*).

Lands of Railway Companies, etc.

34. The real estate of any transportation or transmission company shall be considered as land of a resident in the municipality although the company has not an office in the municipality. R.S.O. 1897, c. 224, s. 5, *amended*.

The intention is that the lands of such companies shall not go on the " non-resident roll " in townships, but that the collector shall collect the taxes thereon in the ordinary way as from a resident. See sec. 96.

Assessment of Land in which the Crown has an Interest.

35. The owner of any land in which the Crown has an interest, and the tenant of any such land (except a tenant occupying the same in an official capacity under the Crown) shall be assessed in respect of the land in the same way as if the interest of the Crown was held by any other person; and the interest of every person other than the Crown in such land, shall be subject to the charge thereon given by section 89 and shall be liable to be sold under the provisions of this Act for arrears of taxes accrued against the land. *New*. See R. S. O. 1887, c. 224, ass. 7. (2), and 23.

For "actual value of land" see the notes on Sec. 199, page 138.
Errata et addenda

This section makes the interest of any person in land in which the Crown has also an interest, assessable and liable to sale for taxes. The purchaser at the tax sale would stand in the same relation to the Crown in regard to the land as was the person whose interest is sold. At such a sale the interest of every person in the land, other than the Crown, would pass to the purchaser. See secs. 89 and 151.

The interest of the Crown is exempt from assessment and taxation, and a sale of such interest for taxes is invalid: *Reg.* v *County of Wellington*, 17 O.R. 615; 17 A.R. 421, 19 S.C.R. 510; *Street* v. *County of Kent*, 11 C.P. 255; *Moffat* v. *Scratch*, 12 A.R. 157; *City of Quebec* v. *Reginam*, 2 Ex. C.R. 450.

Property in the use or occupation of the Crown or of any person in his official capacity as a servant of the Crown, is not assessable: *Shaw* v. *Shaw*, 21 U.C.R. 432; *Principal Secretary of State for War* v. *City of Toronto*, 22 U.C.R. 551; *Do.* v. *City of London*, 23 U.C.R. 476; *Totten* v. *Truax*, 16 O.R. 490; *Cotter* v. *Sutherland*, 18 C.P. 357; *Ley* v. *Wright*, 27 C.P. 522; *O'Grady* v. *McCaffray*, 2 O.R. 309.

Lands described as unpatented, but which were patented, were sold for taxes. The sale was of " the right, title, and interest of the lessee, locatee, licensee, or purchaser from the Crown." The estate offered for sale being non-existant, there was nothing sold, and the tax deed was invalid: *Scott* v. *Stuart*, 18 O.R. 211.

See sec. 5, sub-sec. 1, and notes thereon.

Valuation of Lands.

36.—(1) Except in the case of mineral lands (1) hereinafter provided for real property shall be assessed at its actual value (2). R.S.O. 1897, c. 224, c. 28 (1), *amended.*

(1) Mineral lands. See sec. 2, sub-sec. 7 (*c*).

(2) It is no defence to proceedings to enforce payment of taxes, that the land was assessed for more than its value. So long as it is assessable, the Court of Revision and the county judge are the only tribunals having power to say whether the assessment is just: *London* v. *G. W. Ry. Co.*, 17 U.C.R. 267; *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U.C.R. 194; *Re Dickson and Galt*, 10 U.C.R. 395; *Toronto Street Railway Co.* v. *Toronto* (1904), A.C. 809.

Buildings.

(2) In assessing land having any buildings thereon, the value of the land and buildings shall be ascertained separately, and shall be set down separately in columns 13 and 14 of the assessment roll and the assessment shall be the sum of such values. The value of the buildings shall be the amount by which the value of the land is thereby increased. *New.*

An estimate is to be made of the value of the land without the buildings thereon. Then the value of the land only, is to be deducted from the value of the property with the buildings thereon. The difference is the value of the buildings, within the meaning of this section. It is a popular error that the cost of the buildings, less proper allowance for wear and tear and other deterioration, should be the assessed value. It may be that, from various causes, the value of the property as an asset is only a small fraction of what the buildings on it cost to erect. By "value of the land" and "actual value" in this section, is doubtless meant the market value, or the value as an asset of the owner's estate.

It frequently happens that some person erects a costly dwelling in a rural or small urban municipality—a building which if it were in a large city would readily sell for its full cost. But where it is located there is perhaps no other person than the owner who could afford to purchase it at that price, or perhaps even to live in it. If it had to be converted into money it would perhaps bring only a small fraction of its original cost. Its actual value must, however, be measured in dollars, and is not more than what, within a reasonable time and with due care can be realized from the sale of it. The provision that "the value of the buildings shall be the amount by which the value of the land is thereby increased" furnishes a test which should prevent land with buildings on it from being assessed for more than could be realized from it.

Mineral Lands.

(3) In estimating the value of mineral lands, such lands and the buildings thereon shall be valued and estimated at the value of other lands in the neighbourhood for agricultural purposes, but

the income derived from any mine or mineral work shall be subject to taxation in the same manner as other incomes under this Act. R.S.O. 1897, c. 224, s. 28 (2).

Minerals lands are lands from which minerals are, or may be obtained. Land and buildings are to be assessed only at their agricultural value; the only way in which the mineral value contributes to taxation is by the assessment of the income derived from mining operations. For a discussion of "minerals" see sec. 2. sub-sec. 7, clause (*c*). Income is assessable only where the owner resides.

Assessment of Toll Roads.

37. Plank, gravel, macadamized or other toll roads not owned by any municipal corporation shall be assessed as real estate in the municipality in which the same are situate; and in making the assessment the assessor shall take into consideration the value of (1) the land occupied by the road, (2) the materials employed in the superstructure, (3) toll houses, buildings and gates on the road, (4) quarries and gravel pits and roads to and from such places, and used in connection therewith; but this section shall not include bridges 100 feet in length or over, and the approaches thereto, which are on or along such toll road and which are used therewith. R.S.O. 1897, c. 224, s. 32.

The assessor takes into consideration the value of:—

(1) The land occupied by the road. This would be valued as other land in the locality is valued .

(2) The materials in the roadbed, plank, gravel, macadam, etc.

(3) The toll houses and other buildings and gates.

(4) Quarries, gravel pits and roads for access to them.

(5) Bridges under 100 feet in length, as part of the superstructure.

A gravel toll road was constructed by a joint stock company in a township as a place of public highway. The assessor assessed the road against James Hamilton as Secretary of the Company.

The assessment was bad for two reasons. The road was exempt under 32 Vic. c. 36, s. 9, sub.-sec. 6, and the assessment should have been against the Company and not against one of its officers.

Re Hamilton and Township of Biddulph, 13 L.J.N.S. 18.

Toll Roads not Owned by Municipalities.

38. Every toll road owned by any person or corporation other than a municipal corporation, upon which any toll is established, whether leased to a tenant or not, shall be assessed in the municipality in which the same is situate and where the road extends or runs into or through more municipalities than one, each municipality shall assess that part thereof which lies within its limits, and according to the value of that part, whether a toll gate or bar is or is not upon the road in the municipality. R.S.O., 1897, c. 224, s. 33.

A lease to a tenant does not affect the question of the assessment. When a toll road is partly in each of several municipalities the portion in each municipality shall be separately assessed in that municipality. The municipality in which the tolls are actually collected is not, on that account, entitled to any greater share of the taxation from the road than its porportion of the road would justify, regardless of where the tolls chance to be collected.

For the mode of computing the value of the toll road, see the last section.

Assessment of Farm Lands in Towns and Villages, etc.

39.—(1) In any town or village in which there are lands held and used as farm lands only, and in blocks of not less than five acres, by any one person, such lands shall be assessed as farm lands.

(*a*) Subject to the other subsections of this section, such assessment shall be on the principles provided by section 40 for cases under that section.

(*b*) This section and section 40 shall apply whether the lands assessed have or have not been divided into building lots.

This applies only to towns and incorporated villages. The intention is to make the burden of taxation on agricultural lands which chance to be within the limits of a town or village, less oppressive than if it were ordinary town or village property. There must be at least five acres in the block held or used by one person to entitle it to the relief here given. The land is to be valued at the price at which it could be sold for agricultural purposes, with such percentage added as its situation reasonably calls for. The valuation is made regardless of whether the land has been divided into building lots or not. "Shall" is imperative. The remedy, in case the assessor ignores this provision, is by appeal to the Court of Revision in the ordinary way.

Exemption of Farm Lands in Towns and Villages from Assessment for Certain Improvements.

(2) Where such lands are not benefited to as great an extent by the expenditure of moneys for and on account of public improvements of the character hereinafter mentioned in the municipality as other lands therein generally, the council of such town or village shall annually at least two months before striking the rate of taxation for the year, pass a by-law declaring what part of the said lands so held and used as farm lands only, shall be exempt or partly exempt from taxation for the expenditure of the municipality incurrred for water works, whether for domestic use or for fire protection or both, the making of sidewalks, the construction of sewers or the lighting and watering of the streets, regard being had in determining such exemption to any advantage, direct or indirect, to such lands arising from such improvements, or any of them.

Proviso.

(*a*) Nothing in this subsection contained shall exempt or relieve any lands therein mentioned from the general rate for the payment of any debenture debt contracted before the 14th day of April, 1892, or renewed since the said date in whole or in part.

Farm lands in the town or village may properly be exempt or partly exempt from taxation for (1) waterworks for domestic purposes or fire protection, (2) sidewalks, (3) sewers, (4) street lighting and watering, if they do not benefit as greatly thereby as other lands in the municipality. Regard must be had to any advantages to the farm lands from these improvements.

The town or village council, where requisite conditions exist, is obliged to pass a by-law each year, at least two months before striking the rate of taxation for the year, to determine what portion of farm lands shall be exempt under this subsection. "Shall" is compulsory. Debenture debts contracted before the introduction of this exemption are by clause (*a*) excluded from the operation of this subsection.

Persons Claiming Exemption to Notify Council.

(3) Any person claiming such exemption in whole or in part shall notify the council of the municipality thereof within one month after the time fixed by law for the return of the assessment roll, and shall by some intelligible description indicate the land and quantity as nearly as may be in respect of which exemption is claimed.

The exemption under subsection 2 is here referred to. The right to assessment as farm lands under sub-sec. 1 does not depend on a by-law.

Two sources of relief are afforded the urban farmer, (1) his land is assessed at its value as a farm, (2) on that assessment he is entitled to be exempted, wholly or in part, from the special expenditures enumerated in sub-sec. 2. Sub-sec. 3, however, requires him to apply for this exemption within the specified time, and he must indicate the land and its quantity in respect to which he seeks the exemption.

Appeal from By-laws to County Judge.

(4) Any person complaining that the said by-law does not exempt or sufficiently exempt him or his said farm lands from taxation as aforesaid, may within 14 days after the passing thereof notify the clerk of the municipality of the intention to appeal

against the provisions of such by-law or any of them to the Judge of the County Court who shall have full power to alter or vary any or all of the provisions of the said by-law and determine the matter of complaint in accordance with the spirit and intent of the provisions of this section.

Procedure Upon Appeals to County Judge.

(5) The provisions relating to appeals from a Court of Revision to the County Judge and to the amendment of the assessment roll thereon, shall, so far as applicable, regulate and govern the procedure to be followed upon appeals to the County Judge under this section and the amendment of the by-law thereon.

Appeals from Court of Revision not Affected.

(6) Nothing in the last two preceding sub-sections contained, shall be deemed to prevent or affect the right of appeal to the County Judge from the decision of a Court of Revision upon any appeal against an assessment. R.S.O. 1897, c. 224, s. 8.

The appeal to the County Judge is from a by-law actually passed. If the council refuses to pass a by-law, proceedings may be taken for a mandamus to compel them to do so. But as the passing of the by-law need not be more than a day over two months before the striking of the rate for the year, this remedy will seldom be effectual.

It may be that in addition to the remedy by mandamus, damages for failure to carry out the law might be recoverable; or the failure to comply with the law might be set up as a defence in an action to recover taxes.

Upon an appeal from an order of Armour, C.J., directing the reeve and councillors of a village to pass a by-law declaring what part of a certain farm of 140 acres should be exempt or partly exempt from taxation for waterworks, sidewalks, sewers, street lighting and watering, under sub-sec. 2 of this section, the court held that the sub-section contemplates the passing of such a by-law each year, so that a by-law of this character passed in any year would apply to an assessment or exemption for that year only.

The evidence showed clearly that the council of the municipality had not made any provision for using, had not used, and did not intend to use, any of the moneys raised or to be raised by way of assessment for taxes in the municipality for that year for expenditure of the kind mentioned in sub-sec. 2. There was, therefore, practically no need of passing a by-law of the character referred to, and the council did not pass it. Certain improvements of the kind indicated were being made, but they were being paid for by debentures, none of which would be repayable in that year, or would be a charge on that year's taxation, The motion for the the order was not made until after the rate for the year had been struck, and it included no sums for the purposes mentioned. The order for the mandamus was therefore set aside. *Re Giles* v. *Village of Wellington*, 30 O.R. 610.

For the procedure in the application for a prerogative mandamus, see *Toronto Public Library Board* v. *City of Toronto*, 19 P.R. 329.

The rule in England is, no doubt, that when a public body is required to perform a statutory duty at the instance of one entitled to call for such performance, the proper method is to move summarily for the prerogative writ of mandamus, according to the prescribed procedure in the Crown office. But in this Province all the divisions have co-ordinate jurisdiction, and the practice in cases of the prerogative writ is assimiliated to ordinary applications of a summary nature. The affidavits were directed to be intituled as they would be in an application (not in an action) for the prerogative writ. *Ib.*

But where the litigant is personally interested in the fulfilment of a duty of a *quasi* public character, the plaintiff has a right of action for a mandamus. As put by Erle, C.J. in *Fotherby* v. *Metropolitan Ry Co.*, L.R. 2, C.P.. at p. 194, wherever a Statute gives a right to a person to have an act fulfilled by another, and that other does not fulfil it, a cause of action arises. That would be (as said in that case) a substantial cause of action for which at least nominal damages may be recovered so as to carry costs in mandamus. But the recovery of damages is not essential in order to maintain an action for mandamus. Damages against a railway company which neglected to fence its railway where it crossed the plaintiff's land, and a mandamus to compel them to fence, were awarded: *Young* v. *Erie & Huron Ry. Co.*, 27 O.R. 530. *Re*

Blakely, 40 U.C.R. 102; *Re Goodwin* v. *Ottawa & Prescott Ry. Co.*, 13 C.P. 254; *Re Otonabee School Trustees and Casement*, 17 U.C.R. 275. Before a court will grant a mandamus to a municipal corporation to pass or submit a by-law to the electors granting a railway bonus a distinct demand upon and refusal by the corporation must be shown: *Re Peck and County of Peterborough*, 34 U.C.R. 129.

See also *Re Hamilton & Northwestern Ry. Co. and County of Halton*, 39 U.C.R. 93; *Hughes* v. *Mutual Ins. Co. of Newcastle*, 13 U.C.R. 153; *Meyers* v. *Baker*, 26 U.C.R. 16.

But a mandamus will not issue to compel a Court of Revision to hear an appeal, as there is another complete, appropriate and convenient remedy by appeal to the county judge from the refusal or neglect of the Court of Revision: *Re Marter and Court of Revision of the Town of Gravenhurst*, 18 O.R. 243. See also *Re Allan*, 10 O.R. 110; *Reg.* v. *Court of Revision of Cornwall*, 25 U.C.R. 286.

What shall be deemed Vacant Land, and how its Value shall be Calculated in Cities, etc.

40.—(1) In assessing vacant gronnd, or ground used as a farm, garden or nursery, and not in immediate demand for building purposes, in cities, towns or villages, whether incorporated or not, the value of such vacant or other ground shall be that at which sales of it can be freely made, and where no sales can be reasonably expected during the current year, the assessors shall, where the extent of such ground exceeds two acres in cities and ten acres in towns and villages, value such land as though it was held for farming or gardening purposes, with such percentage added thereto as the situation of the land reasonably calls for.

In cities, towns and villages, whether incorporated or not, the value of:

(1) Vacant ground.

(2) Ground used as a farm, garden or nursery, not in immediate demand for building purposes.

Shall be that at which sales can be freely made.

On the other hand, if in cities land of either of these classes exceeds two acres, or in towns and villages ten acres, and no sales

can reasonably be expected during the current year, it is to be assessed at its value for agricultural purposes, and such percentage added as the situation of the land reasonably calls for.

How Entered on Roll.

(2) Such vacant land, though surveyed into building lots, if unsold as such, may be entered on the assessment roll as so many acres of the original block or lot, describing the same by the description of the block, or by the number of the lot and concession of the township in which the same is situated, as the case may be.

This is an exception to sec. 22, sub-sec. 1, clauses (*c*) and (*d*), *ante* pages 95-97.

See secs. 94 and 136 and the notes thereon.

Assessment Thereof.

(3) In such case, the number and description of each lot, comprising each such block shall be inserted in the assessment roll; and each lot shall be liable for a proportionate share as to value, and the amount of the taxes, if the property is sold for arrears of taxes. R.S.O. 1897, c. 224, s. 29.

See notes to sec. 22 (1) clause (*d*) in regard to the sale of one of several lots which are assessed improperly for one sum.

Where not Held for Sale, but for a Park, Pleasure Ground, etc.

41. Where ground is not held for the purpose of sale, but is *bona fide* enclosed and used in connection with a residence or building as a paddock, park, lawn, garden or pleasure ground, it shall be assessed therewith, at a valuation which, at six per centum, would yield a sum equal to the annual rental which, in the judgment of the assessors, it is fairly and reasonably worth for the purposes for which it is used, reference being always had to its position and local advantages, unless by by-law the council requires the same to be assessed like other ground. R.S.O. 1897, c. 224, s. 30 (1).

Where ground is (1) not held for sale but is (2) *bona fide* enclosed and used with a residence or building as a:

(*a*) Paddock,
(*b*) Park,
(*c*) Lawn,
(*d*) Garden or
(*e*) Pleasure ground,

It is to be assessed with the residence or building. The assessors fix the rental which the ground would be fairly and reasonably worth for the purpose above specified for which it is used. This would probably in most instances be arrived at by estimating the rental of the dwelling (1) with the grounds and (2) without them. The difference might be said to be the rental the ground is fairly and reasonably worth. The principal sum which at six per cent. per annum would produce this rental is taken as the assessed value of the ground. The council may, however, pass a by-law requiring it to be assessed at its actual value.

A " residence " is a building. " Building " here means a building similar in character to a residence.

Assessment of Lands of Water, Heat, Light, Power, Telephone, Telegraph, Street Railway and Electric Railway Companies.

42.—(1) The property by clause (*e*) of paragraph 7 of section 2 of this Act declared to be " land " within the meaning of this Act, owned by companies or persons supplying water, heat, light and power to municipalities and the inhabitants thereof, and companies, and persons operating tramways, street railways and electric railways shall, in a municipality divided into wards, be assessed in the ward in which the head office of such company or person is situate, if such head office is situated in such municipality, but if the head office of such company or person is not in such municipality then the assessment may be in any ward thereof. 3 Edw. VII., c. 21, s. 6, *amended.*

The assessment of property under this section is the same whether the owner is a person or a company. It applies to property used for supplying

(*a*) Water,

(*b*) Heat,

(*c*) Light and

(*d*) Power,

whether supplied to the inhabitants or to the municipality itself, as under a contract to light the streets or supply water for fire protection. It also applies to

(*e*) Street railways and

(*f*) Electric railways.

The assessment of these kinds of property is to be made at the head office to avoid splitting the property up into as many parts as there are wards. Where that had to be done under former legislation, such property was assessed as second hand material. This came to be known as a " scrap iron " assessment.

Gas pipes laid in the streets of a city by a private corporation are real property, and liable to assessment as such, overruling *Toronto St. Ry. Co.* v. *Fleming*, 37 U.C.R. c. 116; *Consumers Gas Co.* v. City of *Toronto*, 26 O.R. 722. But under the Assessment Act of 1892 they should be assessed separately in each ward: *Consumers Gas Co.* v. *City of Toronto* (1897), 27 S.C.R. 453.

Under the Assessment Act, 1897, although a street railway is operated as a continuous system through all the wards of a city, the portion of the rails, poles and wires in each ward must be assessed in that ward as material situate in that ward, and not as a necessary part of a going concern operated in all the wards.

Bridges built and used by the street railway must be assessed in the same way as the poles, rails and wires: *Re Bell Telephone Co. Assessment* (1898) 25 A.R. 351 and *Re Toronto Railway Company Assessment* (1898), 25 A.R. 135 followed, and *Consumers Gas Co.* v. *Toronto* (1895), 26 O.R., at p. 731, overruled as to the mode of assessment: *Re London Street Railway Company Assessment*, 27 A.R. 83. The statute 2 Edw. VII., ch. 31, s. 1, makes the rails, ties, poles, wires, gas and other pipes, mains, conduits, substructures and superstructures upon the streets, roads, highways, etc., assessable as land, and the lamps, hangers, and transformers of an electric light company are assessable as such: *Toronto Railway Co.* v. *City of Toronto*; *Ottawa Electric Co.* v. *City of Ottawa*, etc., 6 O.L.R., 187.

See *Re Toronto Electric Light Co. Assessment,* 3 O.L.R. 620, for a discussion of an abortive effort to change the former law by 1 Edw. VII., ch. 29, s. 2.

Principle of Assessment.

(2) In assessing such property whether situate or not situate upon a highway, street, road, lane or other public place the same shall when and so long as in actual use be assessed at its actual cash value as the same would be appraised upon a sale to another company or person or possessing similar powers, rights and franchises in and from the municipality and subject to similar conditions and burdens, regard being had to all circumstances adversely affecting the value of such property, including the non-user of any of the same. See 2 Edw. VII., c. 31, s. 1 (3); 3 Edw. VII., c. 21, s. 7 (2).

See *Kirkpatrick* v. *Cornwall Electric St. Ry. Co.,* 2 O.L.R. 113, which is, however, overruled as to rolling stock by *Toronto Ry. Co.* v. *Toronto* (1904), A.C. 809.

This subsection is designed to make the kinds of property enumerated in sub-sec. 1 of this section pay taxes on their actual value as part of a going concern, and not on the value of the material for the purpose of sale as " junk." But its effect is restricted to companies of the specific description mentioned in this section. It does not apply to the pipe line of a company, laid upon the highway, for the purpose of procuring and transmitting crude petroleum: *Re Canadian Oil Fields Limited and Enniskillen,* 7 O.L.R. 101.

Unused gas services, put down provisionally in asphalted streets, so as to be ready without tearing up the street, when new services are required, " though not in use are worth all they cost, and are not at all like property that has gone out of use. What the Statute says is that when and so long as in actual use they shall be assessed at their actual cash value as the same would be appraised, etc., regard being had to all circumstanecs adversely affecting their values, including non-user. Now, it cannot be said that these unused services would be of no value upon a sale, nor that their value would be very much less than their original cost, nor can it be said with truth that they are not in use. They

were put down for a particular purpose, namely to save future trouble and expense, and they are serving that purpose": *Toronto Electric Light Co.* v. *City of Toronto* and other assessments, 6 O.L.R., per McLennan, J.A., at p. 196.

International and Intermunicipal Bridges.

Bridges over International Boundary Lines.

43.—(1) In the case of any bridge liable to assessment which belongs to or is in the possession of any person or incorporated company, and which crosses any river forming the boundary between the Province of Ontario and any other county or province, the part of such structure within Ontario shall be valued as an integral part of the whole and on the basis of the valuation of the whole, and at its actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights, and franchises and subject to similar conditions and burdens, (1) but subject to the provisions and basis of assessment set forth in subsection 2 of section 42 of this Act(2).

Bridges between Municipalities.

(2) Any bridge belonging to or in possession of any person or company between two municipalities in the Province shall be valued as an integral part of the whole and on the basis of the valuation of the whole. 2 Edw. VII., c. 31, s. 1 (5), *amended.*

(1) This section deals with (*a*) international or interprovincial bridges and (*b*) bridges between two municipalities. As the law formerly stood, such bridges were assessable only as second-hand material. The part lying within one municipality could not be assessed for a definite proportion of the value of the franchise, or of the whole bridge, or of the cost of construction, but only for the actual price obtainable for the land and materials situate within the township: *Re Queenston Heights Bridge Assessment,* 1 O.L.R. 114. See also *Niagara Falls Suspension Bridge Company* v. *Gardiner,* 29 U.C.R., 194.

Now the bridge is to be valued as it would be appraised upon a sale to another company with similar powers, rights, privileges

and burdens. Then, the whole value having been arrived at in this way, the assessor estimates what fraction of the whole is within Ontario.

(2) Regard must be had to all circumstances adversely affecting the value of such property including the non-user of the same.

Railways.

Railway Companies to Furnish certain Statements to Clerks of Municipalities.

44.—(1) Every steam railway company shall annually transmit on or before the first day of February to the clerk of every municipality in which any part of the roadway or other real property of the company is situated, a statement showing :—

(*a*) The quantity of land occupied by the roadway, and the actual value thereof (according to the average value of land in the locailty) as rated on the assessment roll of the previous year;

(*b*) The vacant land not in actual use by the company and the value thereof;

(*c*) The quantity of land occupied by the railway and being part of a highway, street, road or other public land (but not being a highway, street or road which is merely crossed by the line of railway) and the assessable value as hereinafter mentioned of all the property belonging to or used by the company upon, in, over, under, or affixed to the same;

(*d*) The real property, other than aforesaid, in actual use and occupation by the company, and its assessable value as hereinafter mentioned;

and the clerk of the municipality shall communicate such statement to the assessor. R.S.O. 1897, c. 224, s. 31, *amended.*

The returns to be made by the steam railway company shall show :

(*a*) The area of the roadway in the municipality, and its value as land, on the basis of the assessment of the previous year according to the average value of land in the locality. See *Great Western Ry. Co.* v. *Ferman,* 8 C.P. 221.

(*b*) The quantity and value of the vacant land not actually used by the company ;

(*c*) The area of those parts of streets, etc., along which the railway runs; andthe valuation of the rails, ties, poles, etc., on such streets, etc., but not including bridges, at their actual, cash value ;

(*d*) The quantity of other real property in actual use and its value.

Lands of railways may be sold for taxes. *Smith* v. *Midland Ry. Co.,* 4 O.R. 494.

There may be such a use of property belonging to the Crown, by a railway, as to leave the company taxable as occupants : *Niagara Falls Park and River Ry. Co.* v. *Town of Niagara,* 31 O.R. 29.

These returns are to be made ''annually'' by the railway company ; but, except where changes take place in the land or property owned by the company, the assessment when made remains the same for five years. See Sec. 45.

Assessment of Railway Land.

The assessor shall assess the land and property aforesaid as follows :

(*a*) The roadway or right of way at the actual value thereof according to the average value of land in the locality but not including the structures, substructures and superstructures, rails, ties, poles and other property theron.

The assessment, except where changes occur in the property of the railway company, when made remains fixed for five years : Sec. 45.

(*a*) Under 16 Vic. ch. 182, sec. 21, only the land of a railway is assessable, not the superstructure, such as the iron rails, bridges,

etc., and the decision of a County Judge upon a such a point is not final : *Great Western Ry.* v. *Rouse,* 275 U.C.R. 168. See also *Corporation of Town of St. Johns* v. *Central Vermont Ry. Co.,* 14 A.C. 590. The omission of the assessor to follow the direction of 29-30 Vic., ch. 53, sec. 33, to distinguish the value of the land occupied by the road from the value of the other real property of the company, does not avoid the assessment. The omission may be corrected by the Court of Revision and County Judge : *Great Western Ry. Co.* v. *Rogers,* 29 U.C.R. 245, approving of *Scragg* v. *Great Western Ry. Co.,* 26 U.C.R. 263, and disapproving of *London* v. *G. W. R. Co.,* 16 U.C.R. 500.

For the effect of assessing the roadway otherwise than at the average value of land in the vicinity, see *Great Western Ry. Co.* v. *Ferman,* 8 C.P. 221.

The value of the buildings on the farms should not be excluded in arriving at the average value of land in the locality : *Re Midland Ry. and Tps. of Uxbridge and Thorah,* 19 C.L.J. 330. The railway fences are part of the superstructure and therefore exempt : *Ib.* See also *Timmerman* v. *City of St. John,* 21 S.C.R. 691.

(*b*) The said vacant land, at its value as other vacant lands are assessed under this Act.

Sec. 33, sub-secs. 2,5 and 6, and sec. 40 deal with the assessment of vacant land.

(*c*) The structures, substructures, superstructures, rails, ties, poles and other property belonging to or used by the company (not including rolling stock and not including tunnels or bridges in, over, under, or forming part of any highway upon, in, over, under or affixed to any highway, street, or road (not being a highway, street or road merely crossed by the line of railway) at their actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises, regard being had to all circumstances adversely affecting the value including the non-user of any such property ; and

(*c*) The structures, superstructures, etc., upon the roadway of

the company on their own lands are not assessable under this subsection.

The rails, ties, telegraph poles, semaphores, posts, etc., but not the bridges or tunnels, belonging to or used by the company on a highway, street, etc., or under it, are assessable at their actual cash value as part of a going concern. See the notes to section 42, the language of which is very similar.

Where the railway merely crosses the highway, street, etc., this clause of the Act does not apply.

(*d*) The real property not designated in clauses (*a*), (*b*) and (*c*) of this subsection in actual use and occupation by the company, at its actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises. *New.*

but the telephone and telegraph plant, poles and wires which are used exclusively in running trains or for any other purposes of a steam railway and not for commercial purposes shall, as heretofore, be exempt from municipal assessment or taxation : 2 Edw. VII, c. 31, s. 1 *part, amended.*

(*d*) Land covered by the waters of a harbour which belongs to a railway company was not taxable under C.S.U.C., c. 55, s. 3 : *Buffalo & Lake Huron Ry. Co.* v. *Goderich*, 21 U.C.R. 97.

This clause would include up-town offices, and other buildings not on the right of way.

It has been sought quite often by assessors and others to construe clause (*d*) of this section as broad enough to include the superstructures, etc., which are exempted under clause (*a*). It is contended that such superstructures, etc., are land under the definition in clause (*e*) of sub-section 7 of section 2; and that, not being assessable under clause (*a*), they are other land within the meaning of clause (*d*). The obvious answer is that clause (*d*) does not say that real property not *assessed* under clause (*a*), (*b*) and (*c*) shall be assessed; but that real property not *designated* in clauses (*a*), (*b*) and (*c*) shall be so assessed under (*d*). To "designate" is to point out, to mark or describe. The "structures, sub-structures, superstructures, rails, ties, poles and other prop-

erty thereon'' are quite as distinctly pointed out, marked and described in clause (*a*) as the roadway itself, and they are there designated to be expressly exempted.

The superstructures, etc., if intended to be assessed, being more valuable by far than the roadway, would have been expressly mentioned for assessment. They are too important to be included as property not elsewhere enumerated. Moreover, if they were to be assessed, their valuation would have been provided for in the returns to be furnished by the company, along with the value of the roadway as land. Under the law as it has stood for many years, the rails, poles, ties, etc., included in the superstructures, etc., have not been assessable. So great a change in the law could not well be intended to be made by an uncertain inference. The rule of construction that statutes imposing taxes are construed strictly in favour of the person taxed is also strongly against the contention. The Boards of County Judges before whom such appeals have come, have, it would seem, unanimously concurred in the view that such property is not assessable.

The exemption of telephone and telegraph plant, poles, wires, etc., is applicable only when these are used *exclusively* in running trains or for the purposes of a steam railway. If the telephones and telegraphs are used, even to some extent, for commercial purposes they are liable to taxation.

Notice of Assessment.

(3) The assessor shall deliver at, or transmit by post to, any station or office of the company a notice, addressed to the company, of the total amount at which he has assessed the said land and property of the comapny in his municipality or ward showing the amount for each description of property mentioned in the above statement of the company ; and such statement and notice respectively shall be held to be the assessment return and notice of assessment required by sections 18 and 46 respectively of this Act. R.S.O. 1897, c. 224, s. 31, *last part amended.*

(4) A railway company assessed under this section shall be exempt from assessment in any other manner for municipal purposes except for local improvements. *New.*

The notice mentioned in this subsection takes the place of the demand for information required by sec. 18, and also of the formal notice of assessment required by sec. 46 to be given by the assessor to every ratepayer. It is to be addressed to the company, and delivered or mailed to the company at any of its offices or stations.

The assessor's notice shall show the assessment under each of the clauses (*a*), (*b*), (*c*) and (*d*) of subsection 2 of this section.

For the effect of omitting this notice or of giving an imperfect notice, see secs. 46 and 66, and the notes on them. Also the cases cited in the note on sub-sec. 2 of this section.

The notice may be personally delivered or sent by post to any office or station of the company.

A railway company cannot be assessed for anything which does not belong to one of the four classes in sub-sec. 2 of this section, except for local improvements.

The omission of the assessor to distinguish in his notice to the railway company between the value of the land occupied by the road and their other real property as required by the Act, does not avoid the assessment. Such an omission may be corrected on appeal by the Court of Revision or the County Judge: *Great Western Ry. Co.* v. *Rogers*, 29 U.C.R. 245 ; but their decision is final only as to the amount of the assessment, and would not be binding if they erroneously confirmed an assessment of the superstructures on the company's lands as well as of the road-bed: *Great Western Ry.* v. *Rouse*, 15 U.C.R. 168 ; *City of London* v. *Great Western Ry. Co.*, 17 U.C.R. 262.

Quinquennial Railway Assessment.

45.—When an assessment has been made under the provisions of section 44 the amount thereof in the roll as finally revised and corrected for that year shall be the amount for which the company shall be assessed for the next following four years in respect of the land and property included in such assessment ; but at any time before the return of the assessment roll, in any year the said amount may be reduced by deducting therefrom the value of any land or property included in such assessment which has ceased to belong to the company, and a further assessment may be made of

any additional land or property of the company not included in such assessment. *New.*

The assessment when made remains fixed for five years, except in so far as property is acquired or parted with by the company. The necessary changes in the assessment occasioned by such transfers, are made each year. The notice to be given by the company under sec. 44 is, however, annual.

Notice of Assessment.

46.—(1) The assessor, or his assistant, before the completion of the assessment roll for the municipality, or ward, as the case may be, shall, in manner hereinafter provided, leave for or transmit to every person named in the roll, a notice, according to the form given in Schedule F to this Act, of the sum or sums for which such person has been assessed, and the other particulars in Schedule F mentioned, and shall enter, in the roll opposite the name of the person, the date of delivering or transmitting such notice, and the entry shall be *prima facie* evidence of such delivery or transmission.

From the passing of the Assessment Act of 1850 down to 40 Vic. c. 8, s. 56, on the 2nd of March, 1877, the giving of this notice by the assessor was a condition precedent to the right to impose taxation on the assessment: *Nicholls* v. *Cumming*, 1 S.C.R. 395; *Town of London* v. *Great Western Ry. Co.*, 16 U.C.R. 500; *O'Brien* v. *Cogswell*, 17 S.C.R. 327; *Great Western Ry. Co.* v. *Ferman*, 8 C. P. 221.

The notice is to be given before the completion of the roll. The entry in the roll is presumptive evidence of the giving of the notice. The change brought about by the amendment above referred to, which is now embodied in section 66, has very greatly diminished the risk to the municipality consequent on the failure of the assessor to give notice. It is only where the person assessed has given his address in writing to the clerk of the municipality, as provided by subsection 6 of this section, that the failure to give this notice invalidates the assessment after the final revision of the roll. This exemption of those who give the prescribed notice in writing from the operation of the general rule, is new.

(2) If the person resides or has a place of business in the municipality, the notice shall be left at his residence or place of business.

(3) If the person is not resident in the municipality, the notice shall be transmitted by post to his address, if known.

(4) If the address of the person is not known the notice shall be left with some grown up person on the assessed premises, if there is any such person there resident. *See* R.S.O., 1897, c. 224, ss. 51 (1), 71 (10), (11).

(5) In any city the notice may be served upon a person resident or having a place of business within the municipality, either personally or by leaving such notice in the office or place of business of such person in the municipality; and where such office or place of business is situate in any public building, or in any building the apartments of which are occupied by different persons as places of business, the notice may be left with the person assessed, or in his absence, with some person employed in the particular office in which the person named in the notice is engaged, or, if there be no such person, the notice may be left in the particular office in which the person assessed is employed or engaged. R.S.O. 1897, c. 224, s. 52 *amended.*

(6) In case any person assessed furnishes the assessment commissioner, or if none, the clerk with a notice in writing giving an address to which the notice of assessment may be transmitted to him, and requesting that the same be transmitted to such address by registered letter, the notice of assessment shall be so transmitted; and any notice so given to the assessment commisioner or clerk as te case may be, shall stand until revoked in writing. *New.*

(7) Nothing in the preceding sub-sections contained shall be deemed to require the asssessor to give, leave or transmit any notice; to any person entered upon the assessment roll as a farmer's son. R.S.O. 1897, c. 224, s. 51 (2), *amended.*

The notice may be left at the residence or place of business of the assessed person, if he has a residence or place of business in the municipality.

If he is a non-resident, it shall be mailed to his address if known, if the address is not known, it shall be left with an adult on the assessed premises if there is a grown up person there.

In cities service may be made personally, or by leaving the notice at the office or place of business, if any, of the person assessed. If the office or place of business is in a public building or a building with different places of business in it, the notice may be left, in the absence of the person assessed, with some person in the office in which he works ; or if there is no such person it may be left in such office.

If any person specially furnishes the assessment commissioner, if any, and, if none, the municipal clerk, with his address in writing, the assessment notice must be sent to him at that address, by registered letter, from year to year until he changes the address in writing.

No notice need be given to a farmer's son. No error, omission or defect in the notice, and no failure to give the notice can invalidate the assessment, unless the notice was asked for under sec. 46 (6).

Time for Completion of Roll.

When Assessment Roll to be Complete.

47.—(1) Subject to the provisions of sections 53 to 56 inclusive, every assessor shall begin to make his roll in each year not later than the 15th day of February, and shall complete the same on or before the 30th day of April, and, in municipalities not having an assessment commissioner, the assessor shall attach thereto his affidavit or solemn affirmation, and, in municipalities having an assessment commissioner, the assessment commissioner, or his assistant, as the case may require, shall attach thereto his affidavit or solemn affirmation.

Form of Affidavit.

(2) The affidavit or affirmation may be according to the form given in Schedule G to this Act, and may be made before the clerk of the municipality or a Justice of the Peace having jurisdiction in the municipality or a commissioner for taking affidavits in the county, or a notary public for the Province. R.S.O. 1897, c. 224, s. 55, *amended.*

Assessment Roll to be Delivered to Clerk of the Municipality

(3) Subject to the provisions of sections 53 to 56 inclusive every assessor shall, on or before the thirtieth day of April, deliver to the clerk of the municipality the assessment roll, completed and added up, with the affidavits attached ; and the clerk shall immediately upon the receipt of the roll, file it in his office, and it shall, at all convenient office hours, be open to the inspection of all persons requiring to inspect the same. R.S.O. 1897, c. 224, s. 56, *amended.* (*See sections* 194 *and* 197.)

Assessment Rolls may be Returned up to 20th May, 1905.

The following amendment applies to this section : 1. Notwithstanding anything in contained *The Assessment Act* requiring the return of the assessment roll of any municipality on or before the 30th day of April every such assessment roll returned in the present year, 1905, after the 30th day of April, but on or before the 20th day of May shall be deemed to have been duly and legally returned, and the assessor of any such municipality shall not be liable to any penalty by reason of the non-return of such roll on or before the 30th day of April. 5 Edw. VII, cap. 23, assented to May 25th, 1905.

Sections 53 to 55 contain special provisions applicable to urban municipalities, which are empowered to pass by-laws for changing the time for making the assessment. Section 56 authorizes county councils to pass by-laws to have the assessment made in the towns, townships and villages in the county, between the 1st day of February and the 1st day of July.

Where these special provisions have been brought into force by by-law, they supersede the times set by this section.

Failure to complete the roll within the time fixed by law does not invalidate the assessment: *Nickle* v. *Douglas,* 35 U.C.R. 126; 37 U.C.R. 51. See also *Great Western Ry. Co.* v. *Ferman,* 8 C.P. 221, *Re Allan,* 10 O.R. 110 ; *Ronald* v. *Brussels,* 9 P.R. 232. Compare sec. 95 and the cases there cited in regard to the delivery of the collector's roll.

The affidavit or solemn affirmation of the assessment commissioner or other proper party is essential. See *Town of Trenton* v.

Dyer, 21 A.R. 379, 24 S.C.R. 474. See, however, sec. 66, and *Nicholls* v. *Cumming*, 1 S.C.R. 395.

"It is probable the omission to certify the roll by the assessor, or to verify the certificate by affidavits or some mistake in the date of the certificate or affidavit would not invalidate the roll, if these mistakes, errors or omissions did not deprive the ratepayer of his right to appeal, or of having the reasonable time required by law to do so : they may be properly considered as covered by the words referred to (making the roll as revised final) and so both the sections have proper operative effect." *Ib.* at p. 412 per Richards, C.J.

A sale for taxes and a deed thereunder are void where the town assessors failed to make and attach the statutory oath or affidavit to the town assessment roll for the year for which the land was sold: *Raquette Falls Land Co.* v. *International Paper Co.*, 84 N.Y.S. 836.

The omission to return the roll within the time limited was not under sec. 175 of 32 Vic. c. 36 (Ont.) (now sec. 197 of this Act) an indictable offence : *Reg.* v. *Snider*, 23 C.P. 330.

The assessment roll, as soon as it is filed with the clerk, is open to inspection by everybody who wishes to see it. Notwithstanding that returns made to the assessor are not open to inspection, the assessment made with the assistance of these returns is open to all inquirers during office hours.

Correction of Errors in Roll by Assessor.

48. Notwithstanding the delivery or transmission of any notice provided for by section 46, the assessor, at any time before the time fixed for the return of the assessment roll may correct any error in any assessment and alter the roll accordingly ; and he shall do so upon notice being given to him of any error ; and, upon so correcting or altering any assessment he shall deliver or transmit to the person assessed an amended notice. *New.*

C. was in possession of land when the assessors were assessing it, but he gave up possession to M. before the delivery of the assessment notice, and M. asked the assessor to correct the assessment, which he refused to do. The Court of Revision also refused to make the change, and the county judge refused to put M. on the voter's list as having the necessary qualification, on a technical objection to the form of the complaint. A mandamus was issued to compel the judge to enquire and determine whether M's name

was not improperly omitted from the list, and it was held also that his name should be on the list : *Re McCullough and Co. Judge of Leeds and Grenville*, 35 U.C.R. 449.

Up to the time for the completion of the roll the assessor's duty is to correct all errors brought to his attention, and in the case of a correction, he should give a new notice, if one has been previously given.

Amendment of Roll for Ward in Cities after Completion of.

49. In cities where the assessment is made by wards, in case any person removes from a ward before having been assessed therein into a ward for which the assessment roll has been completed, the assessor for the last mentioned ward may at any time before the 30th day of September amend the roll by entering therein the assessment of such person, and shall forthwith give to him the notice of assessment provided for by section 46 ; and the person so assessed shall be entitled to appeal to the County Judge from the assessment within ten days from the time of giving such notice. *New.*

This provisison is new. The assessor for any ward in a city may, up to the 30th day of September, assess all persons coming into such ward, who were not assessed in the ward from which they came. Notice must be given by the assessor, and an appeal is given, not to the Court of Revision, but direct to the County Judge.

Clerk to Report Errors or Omissions in Roll to Court of Revision.

50. It shall be the duty of the clerk to report to the Court of Revision the facts and particulars as to any errors or omissions in the assessment roll of which he may from time to time become aware ; and the Court of Revision shall thereupon take such steps as the Court shall deem advisable and necessary to cause such corrections to be made in the roll, and shall give such notices to persons interested as such corrections may render necessary. *New.*

To make corrections without notice so as to afford parties interested an opportunity to be heard, would be contrary to natural

justice, and opposed to the well settled policy of the law : *Nicholls v. Cumming*, 1 S.C.R. 395. The purpose is, however, that the clerk, in whose office the roll is filed and open for inspection, on finding errors in the roll, either from his own examination of it, or on having his attention called to them by others who inspect it, shall, as a part of his duty, bring such errors to the attention of the Court of Revision, so that they may be corrected, but upon notice to those who are affected by the corrections. The steps taken by the Court of Revision and the notice given should, having regard to all the circumstances, be fair and reasonable. See sec. 65, sub-secs. 19 and 21 for the provisions governing the powers of the Court of Revision to correct errors. Sec. 51 furnishes a remedy for the omission of property from the roll.

Correction of Omission to Assess Land.

51. If at any time it appears to any treasurer or other officer of the municipality that land liable to assessment has not been assessed for the current year or for either or both of the next two preceding years, he shall report the same to the clerk of the municipality, or if the omission to assess comes to the knowledge of the clerk of the municipality, in any other manner, he shall enter such land on the next collector's roll, or roll for non-residents, as the case may require, as well for the arrears of the preceding year or years, if any, as for the tax of the current year; and the valuation of the land shall be the average of the three previous years, if assessed for the said three years, but if not so assessed, the clerk shall require the assessor, for the current year, to value the land and it shall be the duty of the assessor to do so, when required, and to certify the valuation, in writing, to the clerk; and the owner of the land shall have the right to appeal, as provided in section 112. R.S.O. 1897, c. 224, s. 166, *amended*.

These proceedings may be taken "at any time" for the then current year and "either or both of the next two preceding years."

The treasurer, or other officer of the municipality reports the omission to the clerk, but the latter may act on information from any source.

The correction may be made for the current year, or for either or both of the two next preceding years. There is no power given to correct an earlier omission. The clerk enters the land upon the collector's roll, for the whole of the arrears owing for the two immediately preceding years, and for the taxes of the current year. He bases his calculation of the taxes on the average assessment of the "three previous years." If the land was not assessed in each of the three previous years, the assessor values the land anew. Notice must be given to the party assessed so that he may appeal, as provided by sec. 112.

This section relates only to "land." It gives no power to supply an omission to assess for "income" or "business assessment."

Assessor to make Inquiries so as to Prevent Creation of False Votes.

52.—(1) To prevent the creation of false votes, where a person claims to be assessed, or to be entered or named in any assessment roll, or claims that another person should be assessed, or entered or named in such assessment roll, as entitled to be a voter, and the assessor has reason to suspect that the person so claiming, or for whom the claim is made, has not a just right to be so assessed, or to be entered or named in the roll as so entitled to be a voter, it shall be the duty of the assessor to make reasonable inquiries before assessing, entering or naming any such person in the assessment roll.

If the assessor is not reasonably satisfied, as the result of his inquiries, that the claim to be assessed or entered as a voter is just, he should reject the request, and leave the person to his remedy by appeal to the Court of Revision or the County Judge.

Where, however, the affidavit prescribed by sec. 24, sub-sec. 1 is given to the assessor, and on its face shows the person to be enitled to vote, the assessor "shall" place his name on the roll. "Shall" is imperative. The affidavit may be sworn before the assessor.

The failure of the assessor to make due inquiries before placing the name of any person upon the roll whom he suspects should not be there, so as to satisfy himself that he is entitled to be

assessed or to be a voter, is a breach of his duty which may cause him to be visited with the costs of having his errors rectified. See *The Ontario Voters Lists Act*, sec. 34. See also sec. 51, sub-sec. 3.

Persons Entitled to be Assessed, etc., to be Entered on Roll without Request.

(2) Any person entitled to be assessed or to have his name inserted or entered in the assessment roll of a municipality, shall be so assessed, or shall have his name so inserted or entered, without any request in that behalf; and a person entitled to have his name so inserted or entered in the assessment roll, or in the list of voters based thereon, or to be a voter in the municipality, shall, in order to have the name of any other person entered, or inserted in the assessment roll or list of voters as the case may be, have for all purposes the same right to apply, complain or appeal to a Court or a Judge in that behalf as such other person would or can have personally, unless such other person actually dissents therefrom.

Penalty for causing Improper Entries on Roll.

(3) Any person who wilfully and improperly inserts or procures or causes the insertion of the name of a person in the assessment roll, or assesses or procures or causes the assessment of a person at too high an amount, with intent in any such case to give to a person not entitled thereto either the right or an apparent right to be a voter, or who wilfully inserts, or procures or causes the insertion of any fictitious name in the assessment roll, or who wilfully and improperly omits, or procures or causes the omission of the name of a person from the assessment roll, or assesses or procures or causes the assessment of a person at too low an amount, with intent in any such case to deprive any person of his right to be a voter, shall, upon conviction thereof before a Court of competent jurisdiction, be liable to a fine not exceeding $200, and to imprisonment until the fine is paid, or to imprisonment in the common gaol of the county or city, for a period not exceeding six

months, or to both such fine and imprisonment, in the discretion of the Court.

"Voter," meaning of. Rev. Stat. c. 7.

(4) The word " Voter " in this section shall have the meaning given thereto by *The Ontario Voters' Lists Act.* R.S.O. 1897, c. 224, s. 57.

Special provisions (applicable in Cities, Towns and Villages).

Time for Taking the Assessment and Revising the Rolls in Cities, Etc.

53.—(1) In cities, towns and villages (1), the council, instead of being bound by the periods above mentioned for taking the assessment (2), and by the periods named for the revision of the rolls by the Court of Revision (3), and by the County Judge (4), may pass by-laws for regulating the above periods, as follows, that is to say:—For taking the assessment between the 1st day of July and the 30th day of September, the rolls being returnable in such case to the city, town or village clerk on the 1st day of October (5), and in such case the time for closing the Court of Revision shall be the 15th day of November (6), and for final return by the Judge of the County Court the 15th day of December(7); and the assessment so made and concluded may (8) be adopted by the council of the following year as the assessment on which the rate of taxation for said following year shall be fixed and levied (9), and the taxes for such following year shall in such case be fixed and levied upon such assessment: Provided nevertheless, that in cities the assessment may be made between the 1st day of May and the 30th day of September. R.S.O. 1897, c. 224, s. 58 (1); 62 V. (2) c. 27, s. 3; 1 Edw. VII., c. 29, s. 3, *amended.*

(1) These provisions apply to urban municipalities only.

(2) The periods "above mentioned for taking the assessment" are from not later than the 15th of February to the 30th day of April, sec. 47, sub-sec. 1, the roll being returned on or before the 30th day of April, sec. 47, sub-sec. 3.

(3) "The periods named for the revision of the rolls by the Court of Revision" are those set out in sec. 65, which requires an appeal to be entered in fourteen days after the time when the roll should be returned or within fourteen days after the roll is actually returned, whichever is the later, and requires the Court of Revision to finally complete its work before the 1st day of July in each year.

(4) "And by the County Judge." An appeal may be lodged within five days after the date herein limited for closing the Court of Revision, section 68, sub-sec. 2, and all the appeals are to be determined before the 1st day of August, sec. 68, sub-sec. 7.

Instead of the foregoing statutory periods, the council of an urban municipality may by by-law fix the following time limits:—

(5) For taking the assessment, between the 1st day of July and the 30th day of September, the roll being returned to the clerk on or before the 1st day of October.

(6) For closing the Court of Revision, the 15th day of November, the appeals being lodged with the clerk not later than the 15th day of October, *i.e.* within fourteen days of the time limited for the return of the roll.

(7) Appeals to the County Judge from the Court of Revision would then have to be lodged with the clerk within five days after the 15th day of November, and the County Judge would then finally dispose of the appeals to him not later than the 15th day of December.

(8) "May" is permissive only, not compulsory: *Re Dwyer and Port Arthur*, 21 O.R. 175.

(9) When an assessment is made and completed under such a by-law, it may be adopted by the council of the following year as the basis of taxation for such following year. The assessment so made under 55 Vic. c. 48, s. 52 could not be adopted for the purposes of taxation for the year in which it was made: *Dyer* v. *Town of Trenton*, 24 O.R. 303, citing *Regina ex parte Clancy* v. *McIntosh*, 46 U.C.R. 77; and *Re Dwyer and Town of Port Arthur*, 21 O.R. 175. *Quaere*, to what extent has the language of sub-sec. 3 of the present section modified that enactment?

10. Cities may by by-law commence to make their assessment on the 1st day of May instead of on the 1st day of July.

(2) Where there has, from any cause, been delay in so completing the final revision of the said roll beyond the said 15th day of December, the council may notwithstanding adopt the assessment when finally revised, as the assessment on which the rate of taxation for the said following year shall be levied. R.S.O. 1897, c. 224, s. 58 (2); 1 Edw. VII., c. 29, s. 4.

Delay in completing an assessment roll does not invalidate it. See sec. 47 (1) and notes thereon; see also *Ronald* v. *Brussels*, 9 P.R. 232, *Re Allan*, 10 O.R. 110.

Council passing By-law for taking Assessment between 1st July and 1st October, may Act for that Year on Assessment already Made.

(3) In case the council deem it advisable to adopt the provisions of this section in any year for which there has been an assessment made under the previous sections of this Act, (1) the council instead of making a second assessment in the same year (2) may pass a by-law adopting the assessment roll previously made and revised in such year, and such assessment roll shall be subject to revision in the manner provided by sub-section 1 of this section, (3) and shall have the same effect as an assessment made under said sub-section 1. R.S.O. 1897, c. 224, s. 58 (4).

" In case the council deem it advisable to adopt the provisions of this section in any year for which there has been an assessment made," etc., suggests, to say the least, that the council might adopt it in a year in which no assessment has been already made, in which event the assessment made under the provisions of the by-law passed under this section, would be the only assessment, and taxation for that year would be based on it. This implication is not consistent with the decision in *Dyer* v. *Town of Trenton*, 24 O.R. 303.

(2) " Instead of making a second assessment in the same year may " etc. This language implies that a second assessment might be made.

(3) It seems that the assessment roll "previously made and revised" must be again revised under this sub-section 1 of this section if the assessment already made under the previous sections of the Act, is to be adopted under this section.

Taking Assessment by Wards or Sub-divisions in Cities.

54.—(1) The council of any city instead of proceeding in the manner set forth in section 53 of this Act, may by by-law from time to time, provide for making the assessment at any time prior to the 30th day of September, and may fix prior and separate dates for the return of the roll of each ward, or each sub-division of a ward, as defined in the by-law. R.S.O. 1897, c. 224, s. 59 (1), *amended.*

By-law to fix Time for Hearing Appeals to Court of Revision.

(2) Any such by-law shall also provide for holding a Court of Revision for hearing appeals from the assessments in each ward or sub-division, in the manner provided by this Act, upon the return of the assessment roll for such ward or sub-division. R.S.O. 1897, c. 224, s. 59 (2).

Appeals to County Judge.

(3) The County Judge may sit from time to time throughout the year, for the purpose of hearing appeals from the Court of Revision upon the determination of appeals made to the Court with respect to each roll; and the time for appeal to the Court of Revision shall be within ten days after the last day fixed for the return of the roll for each ward or sub-division of a ward; and the time for appealing from the Court of Revision to the County Judge shall be within three days after the decision of the Court of Revision is given. R.S.O. 1897, c. 224, s. 59 (3), *amended.*

When Revision by Judge to Take Place and be Completed.

(4) The Jndge shall arrange to hear all such appeals from time to time throughout the year, within ten days after the sitting of the Court of Revision for each ward or sub-division of

a ward, and shall complete his revision of the last of such rolls for the city by the 20th day of October, in each year. R.S.O. 1897, c. 224, s. 59 (4).

Adoption of Assessment for Following Year.

(5) The assessment so made and completed may be adopted by the council of the following year as the assessment on which the rate of taxation for such following year shall be fixed and levied and the taxes for such following year shall in such case be fixed and levied upon the said assessment. R.S.O. 1897, c. 224, s. 59 (5), *amended.*

When Rolls not Completed by 20th October.

(6) If from any cause the final revision of the rolls for all the wards or sub-divisions in the city has not been completed by the 20th day of October, the council may adopt the assessment, when finally revised, as the assessment upon which the taxes for the following year shall be levied.

Time for Giving Notice, Etc.

(7) In any city in which any by-law has been passed under this section, the provisions of sections 65 and 68 of this Act, so far as the same relate to the time for appealing and giving notice thereof, shall not apply, but the clerk shall give notice to every person appealing, or whose assessment or non-assessment is appealed against, at least five days before the sitting of the Court of Revision, such notice to be served upon such person, or left at his residence or place of business, or upon the premises concerning which such appeal arises, or addressed to such person through the post-office, but no advertisement of the Court shall be necessary; and in case of appeals to the County Judge, five days' notice of the day fixed by the County Judge for hearing such appeals shall be served in the manner provided in the case of appeals to the Court of Revision.

Application of ss. 65 and 68.

(8) The provisions of the said sections 65 and 68, so far as the same are not inconsistent with the provisions of this section, shall apply to appeals made hereunder. R.S.O. 1897, c. 224, s. 59, (6), (7), (8).

Section 54 enables a city to fix a different date for the return of the assessment roll in each ward, or sub-division of a ward, but all the dates must be prior to the 30th day of September.

The by-law must also fix a time in each ward or sub-division for holding a Court of Revision for that ward or sub-division, at a date more than ten days later than the date for the return of the roll.

Appeals to the Court of Revision must be made in each ward or sub-division, within ten days after the last day for the return of the roll for that ward or sub-division.

An appeal to the County Judge must be made within three days after the decision of the Court of Revision, which is appealed from.

The Judge shall arrange to hear the appeals in each ward or sub-division of a ward, within ten days after the sitting of the Court of Revision for such ward or sub-division of a ward, and his revision of the rolls shall be completed before the 20th day of October.

The times above set out for appealing and giving notice are substituted for the times set out in sections 65 and 68 of this Act, but all the provisions of these two sections not inconsistent with this section, are to be applied to assessments under this section.

The clerk must give five days' notice of the sittings of the Court of Revision to appellants and those appealed against. The mode of giving the notice is set out in sub-sec. 7 of this section.

The assessment so made in any year "may" be adopted by the Council of the following year. "May" is permissive only: *Re Dwyer and Port Arthur*, 21 O.R. 175.

Assessment of Localities added to Cities and Towns, 3 Edw. VII., c. 19.

55. Where an addition of any part of the localities adjacent to any city or town has been made to said city or town, in any

year subsequent to the 30th day of September, under the provisions of section 24 of *The Consolidated Municipal Act,* 1903, the council of said city or town may pass a by-law in the succeeding year, adopting the assessment of the said addition as last revised while a part of the adjoining municipality, as the basis of the assessment for said part for that year, although the assessment of the remainder of the city or town has been made, and the rate of taxation has been levied in accordance with the preceding provisions of this section; and the levying of a proportionate share of the taxation upon said addition shall not invalidate either the assessment of the remainder or the tax levied thereon; and the qualification of municipal voters in said addition shall, for the said succeeding year, be the same as that required in the municipality from which the part has been taken. R.S.O. 1897, c. 224, s. 58 (3).

Where an addition has been made to a city or town later than the 30th day of September in any year, the assessments and voters' lists in force in the added territory at the time it is taken into the city or town, may by by-law of the city or town be adopted for the next succeeding year.

Special Provisions applicable to Counties.

County Councils may Regulate Time for Taking Assessment

56.—(1) County councils may pass by-laws for taking the assessment in towns, townships and villages between the 1st day of February and the 1st day of July.

(2) If such by-law extends the time for making and completing the assessment rolls beyond the 1st day of May, then the time for closing the Court of Revision shall be six weeks from the day to which such time is extended, and the time for final return in case of an appeal shall be twelve weeks from that day. R.S.O. 1897, c. 224, s. 61.

The by-law may fix the time for beginning the assessment at any time after the 1st day of February, and for the return of the

roll at any time before the 1st day of July; or the by-law may extend the time for taking the assessment over the whole period from the one date to the other.

If the roll is not to be returned until after the 1st day of May, the Court of Revision shall close six weeks after the date fixed by the by-law for the return of the roll. If the date fixed for the return of the roll was, for example, the 1st day of July, the Court of Revision would close on the 12th day of August, and the time for the completion of the revision by the County Judge, on appeal from the Court of Revision, would be six weeks later, or the 23rd day of September.

Court of Revision in Cities, how Constituted. Rev. Stat., c. 227.

57.—(1) In every city the Court of Revision shall consist of three members, one of whom shall be appointed by the city council and one by the Mayor, and the third shall be the Official Arbitrator appointed for the city under *The Municipal Arbitrations Act*, and in the case of cities where there is no Official Arbitrator, or where such Official Arbitrator is a Judge or Junior Judge of the county in which the city is situated, the Sheriff of the county shall be the third member. R.S.O. 1897, c. 224, s. 62 (1); 1 Edw. VII., c. 29, s. 5.

The Court of Revision in cities is constituted under this section. It consists of (1) a person appointed by the mayor, (2) a second appointed by the city council, and (3) an ex-officio member. If the city has an official arbitrator he is the third member. If there is no official arbitrator, or if the official arbitrator is a judge or junior judge of the County Court, then the sheriff of the county is the third member. The city of Toronto, having a population of over 100,000, must, under *The Municipal Arbitrations Act*, R.S.O. 1897, cap. 227, have an official arbitrator, who must be a barrister at the Bar of Ontario of at least ten years standing, and who is appointed by the Lieutenant-Governor in Council. He is the sole arbitrator where claims for damages or compensation have to be arbitrated under the Municipal Act, or where contracts with or leases from the municipality provide for the settlement of disputes by arbitration. Other municipalities may by by-law bring themselves under the operation of the Act.

Remuneration of Members.

(2) In cities having a population of 100,000 or more, each member of such Court of Revision shall be paid such sum per annum for his services as the Council may by by-law or resolution provide; and in cities having a population of 30,000 or more, but less than 100,000, each member of such Court shall be paid at the rate of not more than $300 per annum, and in other cities each member shall be paid such sum per annum as the council may by by-law or resolution provide. R.S.O. 1897, c. 224, s. 62 (2); 63 V., c. 34, s. 5.

Certain Persons Disqualified.

(3) No member of the city council, and no officer or employee of the city corporation shall be a member of the Court of Revision.

It is only in cities that remuneration is provided for members of the Court of Revision.

Appointment of Members.

(4) The appointed members of such Court of Revision shall hold office until their successors are appointed, but the mayor or council may each or either of them, after the organization of a new council and before the 1st day or March in any year, appoint a member of such Court of Revision in place of any member appointed by the mayor or council in a preceding year.

Either the mayor or the council or both may make a new appointment in any year, after the organization of the council and before the 1st day of March. If the mayor does not make a new appointment, the arbitrator appointed by the former mayor continues in office until some future mayor makes a change. If the council does not make a new appointment, the arbitrator appointed by the former council continues in office until the council of a later year appoints his successor.

(5) Two members of any Court of Revision under this section shall form a quorum, and upon the death or resignation of any member of any such Court, a successor shall immediately there-

after be appointed by the authority which appointed the member so dying or resigning. In case of a vacancy in the office of Sheriff, or if the Sheriff is unable to act from any cause in cities where there is no Official Arbitrator, the Registrar of Deeds for the county or registry division of the County whose office is in such city, shall act as the third member of the court during such vacancy or inability of the Sheriff to act. R.S.O. 1897, c. 224, s. 62 (3-5).

Two members form a quorum, but it is necessary to have three members, otherwise in case of difference of opinion no decision could be reached. In case of a vacancy a third member must be immediately appointed. If the Official Arbitrator dies or resigns, the Sheriff succeeds. If the death or resignation of the Sheriff causes a vacancy, the Registrar of Deeds fills the vacancy. Under sec. 54 the sittings of the Court of Revision in cities may extend through a large part of the year.

In Other Municipalities.

Where Council Consists of Five Members Only.

58.—(1) In municipalities other than cities, if the council of the municipality consists of not more than five members, such five members shall be the Court of Revision for the municipality.

Where of More than Five.

(2) If the council consists of more than five members, it shall appoint five of its members to be the Court of Revision. R.S.O. 1897, c. 224, s. 63.

Oath of Members of Court of Revision.

(3) Every member of the Court of Revision before entering upon his duties, shall take and subscribe, before the clerk of the municipality, the following oath (or affirmation in cases where, by law, affirmation is allowed):—

"I, , do solemnly swear (*or* affirm) that I will to the best of my judgment and ability, and without fear, favor or partiality, honestly decide the appeals of the Court of Revision, which may be brought before me for trial as a member of said Court."

R.S.O. 1897, c. 224, s. 64.

From the heading under which sub-sec. 3 appears, and from the context, one would infer that it was intended to apply only to Courts of Revision in towns, villages and townships. But no good reason can be given for not exacting a similar oath from members of the Court of Revision in cities.

While the direction of the Statute that the members of the Court of Revision are to be sworn must not be ignored, it does not follow that neglect or failure to take the oath renders their acts void: *Re McCrae and Village of Brussels*, 8 O.L.R. 156.

Sub-secs. 1 and 2 of this section do not apply to cities. Sec. 59 is also inapplicable, as two members are a quorum in a city. On the other hand, secs. 62, 63 and 64, though under the same heading, contain provisions which are essential to the successful working of every Court of Revision.

The headings of different portions of a statute are to be referred to in order to determine the sense of any doubtful expression in a section ranged under a heading: *Hammersmith and City Ry.* v. *Brand*, L.R. 4 H.L. 171; *Eastern Counties Ry Co.* v. *Marriage*, 9 H.L.C. 41; *Bryan* v. *Child*, 5 Ex. 368.

Quorum.

59. Three members of the Court of Revision shall be a quorum; and a majority of a quorum may decide all questions before the Court. But no member shall act when an appeal is being heard respecting any property in which he is directly or indirectly interested. R.S.O. 1897, c. 224, s. 65, *amended*.

To act as a judge where one is personally interested is contrary to natural justice.

Who to be Clerk. Record of Decision.

60. The clerk of the municipality shall be the clerk of the Court, and shall keep in a book a record of the proceedings and decisions of the Court, which shall be certified by the chairman of the Court. R.S.O. 1897, c. 224, s. 66, *amended*.

It would seem that the clerk of the municipality is in all cases to be the clerk of the Court of Revision, as well as of the Court held by the County Judge. Section 60 comes under the heading " *In*

other Municipalities," which would suggest that it, perhaps, did not apply to cities. But in section 65, the term "clerk," "clerk of the municipality" and "clerk of the Court," seem to be interchangeable. Under sub-sec. 6 of sec. 68 it is assumed that the book mentioned in sec. 60 is kept in all municipalities, and is in the custody of the clerk of the municipality. Sections 65 and 68 apply to cities as well as to other municipalities, except as to the matters mentioned in section 54, sub-sec. 7.

Meetings of Court.

61. The Court may meet and adjourn, from time to time, at pleasure, or may be summoned to meet at any time by the head of the municipality; but the first sitting shall not be held until after the expiration of at least ten days from the expiration of the time within which notice of appeals may be given to the clerk of the municipality (1). R.S.O. 1897, c. 224, s. 67.

(1) The holding of the Court of Revision at an earlier date may invalidate its proceedings. When the statute gave fourteen days after the 1st day of May for filing notices of appeal from the assessment with the clerk, the proceedings of a Court of Revision held on the 19th of May were invalid: *Tobey* v. *Wilson*, 43 U.C.R. 230.

Court to try all Complaints, etc.

62. At the time or times appointed, the Court shall meet and try all complaints in regard to persons wrongly placed upon or omitted from the roll, or assessed at too high or too low a sum. R.S.O. 1897, c. 224, s. 68.

Appeals against the wrongful omission or insertion of the names of those entitled to vote are properly cognizable by the Court of Revision, and should be tried by it: *Re Marter and the Corporation of Gravenhurst*, 18 O.R. 243. Also appeals in regard to the assessment of public school supporters as separate school supporters, or *vice versa: Re Roman Catholic Separate Schools*, 18 O.R. 606. But a mandamus will not be granted to compel the Court of Revision to hear complaints, because the refusal to hear such complaints is a valid ground of appeal to the County Judge, and such appeal to him is the proper remedy: *Re Marter and Gravenhurst, ante.*

May Administer Oaths, etc.

63. The Court, or some member thereof, may administer an oath to any party or witness, (1) before his evidence is taken, (2) and may issue a summons (3) to any witness to attend such Court. R.S.O. 1897, c. 224, s. 69.

(1) To administer an oath without being authorized by some law to do so is an indictable offence, punishable by fine or imprisonment, under section 153 of *The Criminal Code*, 1892.

(2) The taking of evidence upon oath is discretionary with the Court. Evidence need be taken upon oath only where it is deemed necessary or proper to so take it, or when the party tenders evidence on his own behalf, or his evidence is required by the opposite party. Sec. 65, sub-sec. 17.

(3) No special form of summons is necessary. It should, however, indicate the time and place at which the witness is required to attend, the complaint in regard to which his evidence is required, and should show by what authority it is issued.

Compelling Attendance of Witnesses at Court of Revision.

64. If a person summoned to attend the Court of Revision or before a County Judge under the provisions of this Act as a witness fails, without good and sufficient reason, to attend, having first been tendered compensation for his time at the rate of 75 cents per day and his proper travelling expenses if he resides more than three miles from the place of trial, or if having attended, or being present in Court, he refuses to be sworn, if required to give evidence, he shall incur a penalty of not more than $25 to be recoverable with costs by and to the use of any person suing for the same either by suit in a Division Court or in any way in which penalties incurred under any by-law of the municipality may be recovered. R.S.O. 1897, c. 224, s. 70.

The Division Court scale of fees fixes the travelling expenses of witnesses as follows:

" The travelling expenses of witnesses, over three miles, shall

be allowed according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile one way."

If the witness is present in Court he must give evidence, whether summoned or not, if he is called upon to testify.

Notice of Complaint by Person Aggrieved.

65.—(1) Any person complaining of an error or omission in regard to himself, as having been wrongly inserted in or omitted from the roll, or as having been undercharged or overcharged by the assessor in the roll, may personally, or by his agent give notice in writing to the clerk of the municipality (or assessment commissioner, if any there be), that he considers himself aggrieved for any or all of the causes aforesaid, and shall give a name and address where notices can be served by the clerk as hereinafter provided.

The complaint may be made by any person either (*a*) personally or (*b*) by his agent. The burden of the complaint may be, under this subsection, in reference to his own assessment, or under sub-sec. 3 of this section in reference to any other person. Any person assessed may appeal in regard to his own assessment, but only a municipal elector may appeal against the assessment of others.

If he complains of his own assessment he may appeal on the ground:—

(1) That he is wrongly inserted in the roll.

(2) That he is wrongly omitted from the roll.

(3) That he is undercharged.

(4) That he is overcharged.

If there is an Assessment Commissioner the notice of appeal may be given to him or to the clerk. If there is no Assessment Commissioner, the notices are given to the clerk of the municipality.

The notice of appeal must give a name and address where the clerk can serve notices.

" Errors or omissions " may be corrected by the Court of Revision, without an appeal having been instituted, on such notices being given to persons interested, as such corrections may render necessary. Section 50. But it is submitted that it is not intended under that section to allow the Court of Revision to

increase, or reduce assessments without formal appeals. The Court of Revision has no authority to do so except upon complaint under sub-secs. 1 and 3, or in case of "palpable error," under sub-sec. 19 of this section: *Tobey* v. *Wilson*, 43 U.C.R. 230. See *Nicholls* v. *Cummings*, 1 S.C.R. 395.

The wrongful insertion or omission of names for the purpose of gaining votes, or of depriving those entitled to vote of their right to vote, may be the subject of appeal to the Court of Revision: *Re Marter and the Court of Revision of Gravenhurst*, 18 O.R. 243. Any ratepayer may also make complaint to the Court of Revision in regard to the wrongful assessment of any ratepayer as a public school supporter or as a separate school supporter, and the Court of Revision has power to deal with the question: *Re Roman Catholic Separate Schools*, 18 O.R. 606. The Court of Revision can on appeal deal only with the amount of an assessment, it cannot render valid an assessment which is without statutory authority: *Toronto Railway Company* v. *City of Toronto*, 1904, A.C. 809.

But if a person who is assessed as owner, though erroneously, does not appeal he is liable to taxation on the assessment: *McCarrall* v. *Watkins*, 19 U.C.R. 248; *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U.C.R. 194.

This section applies to all municipalities, except as to time for appealing and giving notice in cities which have passed by-laws under sec. 54, sub-sec. 7.

Time within which Notices of Appeal to the Court are to be given.

(2) The notice shall be given to the clerk (or assessment commissioner, if any there be), within fourteen days after the day upon which the roll is required by law to be returned, or within fourteen days after the return of the roll, in case the same is not returned within the time fixed for that purpose.

In cities which have passed by-laws under sec. 54, the time limits fixed by this section are not applicable. See sec. 54, sub-sec. 7.

The notice must be given within fourteen days after the time fixed for the return of the roll or within fourteen days after the return of the roll, whichever is the later date. In the case of pal-

pable errors the Court of Revision may extend the time. Sec. 65, sub-sec. 19.

When the assessment roll was returned on the 1st day of May, but was not sworn to by the assessor until the 4th day of May, notice of appeal on the 18th day of May was sufficient, and a mandamus issued to the County Judge to try the appeal: *Re Allan*, 10 O.R. 110. It would seem that the council having extended the time for the return of the roll to the 15th of June, the appeal would be in time if made on or before the 29th of June, *Ib.* See also *Re Downey*, 8 C.L.J. 198.

For the time for the completion of the roll, see sec. 47 and secs. 53 to 56.

Time is computed exclusive of the first and inclusive of the last day: *McCrea* v. *Waterloo Mutual Fire Inse. Co.*, 26 C.P. 431. When the last day for performing any act is a legal holiday, the act is in time if done on the next day which is not a holiday. R.S.O. 1897, c. 1, s. 8 (17).

When Elector thinks any Person Assessed at too low or too high a Rate.

(3) If a municipal elector thinks that any person has been assessed too low or too high, or has been wrongly inserted in or omitted from the roll, he may, within the time limited by the preceding subsection, give notice in writing to the clerk of the municipality, (or assessment commissioner, if any there be), and the clerk shall give notice to such person and to the assessor, of the time when the matter will be tried by the Court of Revision; and the matter shall be decided in the same manner as complaints by a person assessed.

For " Municipal elector " see *ante* p. 101-102.

Only a municipal elector can appeal against the assessment of other people. The clerk must give notice to the person appealed against and to the assessor, of the time when the Court of Revision will try the matter.

Clerk to give Notice by Posting up List.

(4) The clerk of the Court shall post up in some convenient and public place within the municipality or ward, a list of all com-

plainants on their own behalf against the assessor's return, and of all complainants on account of the assessment of other persons, stating the names of each, with a concise description of the matter complained against, together with an announcement of the time when the Court will be held to hear the complaints.

The clerk of the municipality is the clerk of the court. Sec. 60.

The place where the list is to be posted must be convenient and public. The list must show (*a*) the names of the complainants whether in regard to their own assessment or that of others; (*b*) a brief statement of the matter complained of and (*c*) the time when the appeals will be heard.

Sec. 223 imposes a fine of $20 for wilfully tearing down, injuring or defacing such lists.

(5) No alteration shall be made in the roll unless under a complaint formally made according to the above provisions. R.S.O. 1897, c. 224, s. 71, (1), (2), (3), (4).

To safeguard the rights of individuals it is essential that every person shall have due notice of an appeal in any way affecting him. The proceedings for altering the roll must be in accordance with the statute. The principle of the common law is that no person shall be condemned in his person or his property without being heard: *Tobey* v. *Wilson*, 43 U.C.R. 230; *Nicholls* v. *Cumming*, 1 S.C.R. 395.

Where the error is palpable, and its correction does not involve a change in the amount of the assessment, the correction may be made under sub-sec. 19 of this section; but if it affects the amount of an assessment, a palpable error can only be corrected on complaint.

Order of Hearing Appeals. Postponement.

(6) The clerk of the Court shall enter the appeals on the list, in the alphabetical order of the names of the appellants, and the Court shall proceed with the appeals in the order, as nearly as may be, in which they are so entered, but may grant an adjournment or postponement of any appeal. R.S.O. 1897, c. 224, s. 71 (5), *amended*.

The list to be posted up is arranged, and the cases are to be tried " as nearly as may be," in the alphabetical order of the names of the appellants. The Court may grant an adjournment or postponement at the request of either party to an appeal.

Form of List of Appeals.

(7) Such list may be in the following form:

Appeals to be heard at the Court of Revision to be held at on the day of , 19 .

Appellant.	Respecting whom.	Matter complained of.
A. B.	Self	Overcharged on land.
C. D.	E. F.	Name omitted.
G. H.	J. K.	Not *bona fide* owner or tenant.
L. M.	Self	Income overcharged.
	&c.	

R.S.O. 1897, c. 224, s. 71 (6), *amended.*

So long as the provisions of sub-sec. 6 are substantially complied with the list is sufficient. " May " is permissive.

Clerk to Advertise Sittings of Court.

(8) The clerk shall also advertise in some newspaper published in the municipality, or, if there be no such paper, then in some newspaper published in the nearest municipality in which one is published, the time at which the Court will hold its first sitting for the year, and the advertisement shall be published at least ten days before the time of such first sittings. R.S.O. 1897, c. 224, s. 71 (7).

" At least ten days," means ten clear days *i.e.*, ten days exclusive both of the day the advertisement appeared and of the day the Court of Revision sat: *Reg.* v. *Shropshire Justices*, 8 A. & E. 173; *Young* v. *Higgon*, 6 M. & W. 49; *Mercantile Trust* v. *International Co.*, (1893), 1 Ch. 484, note p. 489.

The newspaper in which the advertisement appears must be published in the municipality, if a newspaper is published in it. If no newspaper is published in the municipality, then the advertisement most be published in the nearest municipality in which a newspaper is published.

The advertisement must show the time of the first sitting of the Court of Revision for the year.

To Leave a List with Assessor.

(9) The clerk shall also cause to be left at the residence or office of each assessor, a list of all the complaints respecting his roll. R.S.O. 1897, c. 224, s. 71 (8), *amended.*

This is done that the assessor may know what complaints are made in regard to his assessment, so that he may be present at the Court of Revision prepared to support his roll, and give any information which in his opinion justifies his assessment.

And Prepare Notice to Parties Concerned.

(10) The clerk shall prepare a notice according to the form following for each person with respect to whom a complaint has been made:—

Take notice that the Court of Revision will sit at on the day of in the matter of the following appeal.

Appellant

Subject—(That you are not the *bona fide* owner or tenant (*or* are overcharged in assessment on (*as the case may be*)

(Signed) X. Y.
Clerk.

To J. K. *or* J. S.

and he shall also notify each person who has made a complaint of the date of the sittings of the Court. R.S.O. 1897, c. 224, s. 71 (9), *amended.*

Formerly, as the statute was worded, only those who were complained against by others under sub-sec. 3 of this section were entitled to notice: *Reg.* v. *Court of Revision of Cornwall*, 25 U.C.R. 286; *Vivian* v. *Township of McKim*, 23 O.R. 561. The only notice that a person who appealed against his own assessment was entitled to was by the advertisement under sub-sec. 8, and by the list posted up under sub-sec. 4. But now this subsection gives the person who makes a complaint a right to notice.

Service to be at Residence or Place of Business in Municipality.

(11) If the person resides or has a place of business in the municipality, the clerk shall cause the notice to be left at the person's residence or place of business. (1)

How Absentees Served.

(12) If the person is not known, then the notice shall be left with some grown up person on the assessed premises, if there is any such person there resident; or if the person is not resident in the municipality, then the notice shall be addressed to such person through the post office. R.S.O. 1897, c. 224, s. 71 (10-11) (2).

When Notice to be Completed.

(13) Every notice hereby required whether by publication, advertisement, letter, or otherwise, shall be completed at least six days before the sitting of the Court, and the clerk shall certify to the Court, at the first day of its sitting, the notices which have been so completed (3). R.S.O. 1897, c. 224, s. 71 (12), *amended.*

(1) Service of the prescribed notice must be made by leaving it at the residence or place of business of the person notified, if he resides or has a place of business in the municipality.

(2) If the clerk cannot discover who the person is, the notice shall be left with some grown up person on the assessed premises, if there is any such person there resident. Persons not resident in the municipality are served by mailing the notice. The name and post office address of every taxable person should be shown by the assessment roll. If the name and address of a non-resident owner of unoccupied land is unknown, the only notice that could be given would be by the posted list and the advertisement under sub-secs. 4 and 8.

(3) "At least six days," means six days exclusive of the day on which the notice is given, and of the day on which the Court of Revision first sits. This applies alike to the notices required by sub-secs. 4, 8 and 10 of this section: *Young* v. *O'Reilley,* 24 U.C.R. 172. In order to have attention specially directed to the time of

service and to ensure the sufficiency of the notices, the clerk shall certify to the Court at its first sitting the notices which have been so given. This certificate should fully cover everything required by sub-secs. 4, 8 and 10 in regard to each name covered by the certificate.

When only five clear days notice had been given instead of six clear days, the Court of Revision held that there was no jurisdiction to try the complaint, and this view was upheld by the Court of Queen's Bench. The direction in regard to the length of the notice is imperative. The defect is not waived by appearing at court to object to the notice. If it appeared that only five days notice had been given, it would hardly be contended that the court could have heard the appeals; and surely if their counsel appeared to notify the Court of the want of notice, they should not therefore be placed in a worse position. The language of the Act is plain and unambiguous. If the mode of proceeding provided by the Statute is insufficient or inconvenient or open to abuse, the remedy is with the Legislature. For this Court to say that five days notice or any less number is sufficient would be to assume a legislative authority: *Regina* v. *Court of Revision of Cornwall*, 25 U.C.R. 286.

" These provisions with regard to notice are imperative. Such notice is the foundation of the jurisdiction of the court, and if these provisions have not been complied with the Court has no authority to deal with the subject matter of the complaint. I think that on the evidence before us there is no room to doubt that none of these provisions were complied with, and I think therefore, that the court had no jurisdiction to alter the plaintiff's assessment; and having no jurisdiction to alter it, such alteration cannot be binding on the plaintiffs under 40 Vic. ch. 8, sec. 56 O." *Tobey* v. *Wilson* 43 U.C.R. 230.

These decisions were in reference to alterations in the assessment roll at the instance of some person other than the one assessed. But if a person appeals from his assessment, and the appeal through the error or neglect of the clerk is not on the list for hearing, or is heard in his absence, when no sufficient notice has been given, can it be successfully contended that the complainant is bound by the assessment? The alteration made by sub-sec. 10, which now requires notice to be given to the person who complains of his own assessment, would seem to make care on the part of the clerk in giving notice as essential in the case of the person complain-

ing of his own assessment, as in the case of a person complained against by another.

Clerk may require Assistance in Making Services. Power to Adjourn.

(14) Where necessary, the clerk of the municipality may, at the cost of the municipality, call to his aid such assistance as may be required to effect the services which he is required by law to make, and in the event of his failure to effect such services in time for the first sitting of the Court, the Court in its discretion, may appoint an adjourned sitting, for the purpose of hearing the appeals for which the services were not effected in time for the first day, and the proper services shall be made for such adjourned day. R.S.O. 1897, c. 224, s. 71 (13).

Appeals may be so numerous that it is impracticable for the clerk himself to give the notices within the proper time. This sub-section empowers him at the cost of the municipality, to procure the necessary assistance to make the proper services.

If the services are not all effected six clear days before the first sitting of the Court, the Court has power to appoint an adjourned sitting for those not served in time, and proper notice of such adjourned sitting must be given to all parties who were not notified six clear days before the first sitting of the Court. "Proper services," are services six clear days before the adjourned sitting begins.

Proceedings when Person Assessed Complains of Overcharge

(15) If the person assessed complains of an overcharge on his taxable income, he or his agent may appear before the Court and make a declaration, in case the complainant appears in person, in the form of Schedule I to this Act, and if the complainant appears by agent, such agent may make the declaration in the form of Schedule J; and the Court shall thereupon enter the person assessed at such an amount of taxable income as is specified in such declaration, unless the Court is dissatisfied with the declaration, in which case the person making the declaration, and any witnesses

whom it may be desirable to examine, may be examined on oath by the Court; respecting the correctness of such declaration; and the Court shall confirm, alter or amend the roll as the evidence seems to warrant. R.S.O. 1897, c. 224, s. 71 (14), *amended.*

This subsection deals with complaints of overcharges on taxable income.

The complainant may make a declaration in the prescribed form, Schedule I, in the Appendix.

In case his business affairs are in the hands of an agent, so that the agent has positive knowledge of the amount of the taxable income of his principal, the agent may make a declaration in the form of Schedule J. Unless the Court is dissatisfied with the declaration, the amount specified in the declaration shall be the assessment for taxable income. If, however, the Court is dissatisfied with the declaration, the person making it, and any witnesses that may be called, may be examined concerning the amount of the income. These witnesses may be exâmined on oath. The declaration required is of the same force and effect as if made under oath, and to wilfully make a false declaration is perjury. The assessment may be amended, altered or confirmed, as the Court deems the evidence to warrant.

Proceedings in Other Cases.

(16) In other cases, the Court, after hearing the complainant, and the assessor, or assessors, and any evidence adduced, and, if deemed desirable, the person complained against, shall determine the matter, and confirm or amend the roll accordingly. And the Court may, in determining the value at which any land shall be assessed, have reference to the value at which similar land in the vicinity is assessed, but shall nevertheless have regard to the terms of any by-law passed under section 39 of this Act. And in all cases which come before the Court it may increase the assessment or change it by assessing the right person, the clerk giving the latter or his agent four days' notice of such assessment, within which time he must appeal to the Court if he objects thereto. R.S.O. 1897, c. 224, s. 71 (15), *amended.*

" In other cases," means in cases other than a complaint respecting an alleged overcharge on taxable income.

The Court may hear:

(*a*) The complainant.

(*b*) The assessor or assessors.

(*c*) Any other evidence.

(*d*) The person complained against, if it is deemed desirable that he should be heard.

The Court " shall determine the matter, and confirm or amend the roll accordingly." Taxes were paid upon an assessment in regard to which an appeal was made, but the appeal was never determined by the Court of Revision. The clerk treated the assessment as confirmed. The taxpayers were ignorant of the facts when payment was made, but discovering them later, they sued for repayment of the amount. *Held*, they were entitled to recover: *Law Society of Upper Canada* v. *City of Toronto*, 25 U.C.R. 199. " When a person assessed appeals against the assessment, a duty is imposed upon the Court of Revision to try the complaint, and the appellant is entitled to the opinion and decision of the Court on the matter appealed against before he can be made liable to any taxes arising from the assessment, and until it is determined one way or the other, the assessment against the appellant is in effect withdrawn from the roll. I cannot assent to the view urged by the defendants, that if a matter appealed has not been decided by the Court in fact, it is nevertheless by implication of law decided and determined by the clerk certifying the roll as passed; in other words that the Court of Revision has given its decision, although in truth the Court after hearing the appeal refused or neglected to determine it ": *Law Society of Upper Canada* v. *City of Toronto*, 25 U.C.R., at p. 207, per Morrison, J.

The appeal to the County Judge cannot take place until the Court of Revision has decided upon the appeal to them, and their determination of each appeal to them is a part of the duty imposed upon them by sub-sec. 72 of section 60, and the performance of that duty must necessarily precede any confirming or altering of the roll. It would be a singular construction of the powers and duties of the Court of Revision, upon any appeal made to them by a ratepayer, which would enable them to withhold

giving a decision, and yet to confirm the roll as prepared by the assessor as if no appeal had been made. *Ib.* per Draper, C.J., at p. 205.

The dismissal of a complaint by the Court of Revision without hearing the complainant further than to read his appeal, is a sufficient adjudication thereon to enable the complainant to appeal to the County Judge: *Re the Judge of the County Court of Perth and J. L. Robinson*, 12 C.P. 252.

If assessments are relatively fair the burden of taxation is justly distributed. Reference may therefore be made to the value at which similar land in the vicinity is assessed, provided the provisions of section 39 are not ignored. If a complainant asks for a reduction of his assessment, the Court of Revision may, if the evidence seems to warrant it, increase it.

Where the wrong person is assessed, the name of the proper party may be entered, but the clerk must give him or his agent four days notice. Within that time the person whose name is being put upon the roll may appeal against the entry of his name.

Oaths of Certain Parties not Necessary.

(17) It shall not be necessary to hear upon oath the complainant or assessor, or the person complained against, except where the Court deems it necessary or proper, or where the evidence of the person is tendered on his own behalf or required by the opposite party.

A limited discretion is given to the Court of Revision about taking evidence on oath.

Evidence upon oath is necessary and there is no discretion to dispense with it in the following cases:

(*a*) Where the evidence of the person is tendered on his own behalf.

(*b*) Where the evidence of a person is required by the opposite party.

(*c*) Where the Court deems it necessary or proper.

Power to administer an oath is given by section 63 to the Court of Revision or some member thereof.

When to Proceed ex Parte.

(18) If either party fails to appear, either in person or by an agent, the Court may proceed *ex parte*. R.S.O. 1897, c. 224, s. 71 (16, 17.)

If either party fails to appear, upon due and sufficient notice, either in person or by an agent, the Court may proceed *ex parte*. The agent here referred to is an agent who is himself in a position to give evidence on behalf of his principal. It is optional with a Court of Revision to hear counsel or solicitors on behalf of parties to appeals. If the Court of Revision refuses to hear them, a mandamus will not issue to compel the Court of Revision to allow them to conduct appeals for their clients: *Re Rosbach and Carlyle*, 23 O.R. 37.

Correction of Errors.

(19) Where it appears that there are palpable errors in the roll of any municipality or of any ward which need correction, the Court may at any time during its sitting correct the same, if no alteration of assessed values is involved; and, if any alteration of assessed values is necessary, the Court may extend the time for making complaints for ten days further, and may then meet and determine the additional matter complained of, and the assessor may be or may be directed by the Court to be, for such purpose, the complainant. R.S.O. 1897, c. 224, s. 71 (18), *amended*. [*See also Section* 48.]

" Palpable errors," may be corrected without an appeal having been lodged, only when the correction makes no alteration of assessed values.

If the alterations which seem to be neccessary involve alterations in assessed values, the Court may extend the time for making complaints for ten days from that date, and the assessor may be directed by the Court to be the complainant.

" Palpable errors " are gross and obvious errors. It may be questioned " whether in case a person is assessed for $10,000, when he ought to be assessed for $12,000, such is a palpable error any more than in case a person is assessed for $12,000 when he

ought to be assessed for $10,000 would be." *Tobey* v. *Wilson*, 43 U.C.R. 230.

It is as essential to give notice under sub-secs. 10, 11, 12 and 13 to each person with respect to whom a complaint has been made under sub-section 19, as it is when the complaint is made under sub-sec. 1 or 3, and such notice must be given six clear days before the time set for the hearing: *Tobey* v. *Wilson*, 43 U.C.R. 230.

Business to be Finished by July 1st.

(20) Subject to the provisions of sections 53 to 56 inclusive, and to the provisions of *The Act respecting the establishment of Municipal Institutions in Territorial Districts* and to the provisions of any special Act affecting any particular municipality, all the duties of the Court of Revision, which relate to the matters aforesaid, shall be completed and the rolls finally revised by the Court before the 1st day of July in every year. R.S.O. 1897, c. 224, s. 71 (19).

Failure to complete the work of the Court of Revision before the 1st of July would, perhaps, not invalidate the findings of the Court of Revision made later.

See *Scott* v. *Town of Listowel*, 12 P.R. 77; *Ronald* v. *Brussels*, 9 P.R. 232. See also: *Re Nottawasaga and County of Simcoe*, 4 O.L.R. 1.

Compare the language of section 47 regarding the completion and return of the assessment roll on or before the 30th of April. The omission to complete and return the assessment roll within the time limited does not render the assessment void. " The enactment is sufficiently complied with by holding that the language is imperative as to the assessor; but that the time fixed is not final as regards the municipality or the public, but directory only ": *Nickle* v. *Douglas*, 35 U.C.R. at p. 141. Compare also section 95 in reference to the delivery of the collector's roll. See sections 53 to 56 inclusive for special provisions authorizing by-laws for fixing other dates for the completion of the work of the Court of Revision.

The Act Respecting the Establishment of Municipal Institutions in Territorial Districts is R.S.O. 1897, cap 225. Its sections relating to taxation are Nos. 40 to 59 inclusive, as amended by

62 Vic. cap. 27. s. 16, 4 Edw. VII., cap. 24, s. 5, and 5 Edw. VII., cap. 24. These sections as amended are as follows:—

Assessors to be Appointed to Enter in Assessment Rolls.

40. The council of every municipality in any of the said districts shall at or as soon as convenient after their first meeting appoint one or more assessors, who shall enter upon a roll to be provided for that purpose:—

Freeholders and Householders.

1. The names of all the freeholders and householders in the municipality, stating at the same time on the roll the amount of all the real property owned or occupied by such persons respectively, and the actual value thereof, and stating whether the owners are resident or not;

Persons Otherwise Taxable.

2. The names of all persons in other respects liable to taxation, including those who, though exempt from taxation in respect of income, have required their names to be entered on the roll, in respect of such income, stating the amount thereof;

Farmers' Sons.

3. The names of all farmer's sons entitled to be entered on the roll under the provisions of *The Assessment Act;*

Notice of Assessment.

and the said assessor or assessors shall duly notify every person so assessed by leaving a notice at his place of abode, or if a non-resident, by mailing the same to his address if known, or if not known then by fixing up the same in the nearest post office; and every such notice shall state the particulars of the said assessment. 4 Edw. VII., cap. 24, sec. 5.

41. The roll shall be returned to the clerk of the municipality

within such time as may be provided for by any by-law passed by the council. R.S.O. 1887, c. 185, s. 21.

42.—(1) The council for the year following the return of the first assessment roll may by by-law adopt the assessment therein, as finally revised, as the assessment for that year.

(2) The council may by by-law alter and fix the time for making the assessment in the municipality, and may by by-law adopt the assessment of the preceding year, as finally revised, as the assessment (subject to revision, as herein provided for in the case of the first assessment), on which the rate of taxation for that year shall be levied; provided always that a new assessment shall be made within a period of not more than three years from the date upon which the last assessment roll was finally revised. 60 Vic. c. 45, s. 74.

By 62 Vic. (2) cap. 27, sec. 16, it is enacted that: The provisions of sub-sec. 2 of section 42 of *The Act respecting the establishment of Municipal Institutions in the Territorial Districts* shall apply to every municipality composed of one or more townships in the districts named in the said Act, and incorporated under any special Act, as well as to municipalities formed under the said general Act.

43. Any person assessed, who thinks that he or any other person has been assessed too high or too low, or who complains of any error or omission in regard to the assessment of himself or any person, may within one month after the time fixed for returning the roll, give to the clerk written notice of his grounds of complaint. R.S.O. 1887, c. 185, s. 22. Amended by 4 Edw. VII., cap. 24, sec. 5, sub-sec. 2.

44. The council shall appoint a time and place for the hearing by it of complaints against the assessment as a Court of Revision, and shall, after hearing the persons complaining, as well as the assessor or assessors, and such evidence as may be adduced, determine the matter of the complaint and alter or amend the roll accordingly; and the roll shall be finally passed by the Court within two months after the time fixed pursuant to section 41 for returning the same to the clerk of the municipality. R.S.O. 1887, c. 185, s. 23; 60 Vic. 15, Schedule C (126).

45. Notwithstanding anything in *The Assessment Act* or in any special Act contained, an appeal shall lie from the decision

of the council or of any Court of Revision upon any complaint in respect of the first or any subsequent assessment to the district judge in the same manner as to the county judge in other municipalities, and such appeal shall lie whether the municipality was organized under any general Act relating to municipal institutions or to municipalities of any class, or was incorporated by special Act or otherwise. 5 Edw. VII., c. 24, s. 1.

46.—(1) The Judge shall hear such appeals and shall return the roll to the clerk of the municipality within six weeks from the date fixed by section 44 of this Act, for the final passing of the roll by the Court of Revision. 60 V. c. 15, Schedule C (127). Amended by 5 Edw. VII., c. 24.

(2) The Judge may note upon the roll that any assessment in respect of which an appeal is pending before him is undecided, and may return such roll to be acted upon in respect of the assessments which are concluded; and the said Judge shall thereafter certify to the clerk of the municipality his decision as to such appeal; and such certificate, whether given before or after the expiration of the said six weeks, shall have the like effect as if his decision were entered upon the roll by the said Judge. R.S.O. 1887, c. 185, s. 25 (2).

47. Notice of appeal shall, in all cases of appeal, be given within ten days after the date fixed by section 44 of this Act for the final passing of the roll by the Court of Revision and shall be left with the clerk of the Division Court of the diyision in which the municipality is situated, and a copy thereof shall also be left with the clerk of the municipality; and such notice shall be so given and left within the time, and the said clerks respectively shall, with regard to such appeal, perform all the duties and matters in the manner, in that behalf required by law in the case of a like appeal to the County Judge in other municipalities. R.S.O. 1887, c. 185, s. 26; 60 V. c. 15, Schedule C (128).

48. The Judge shall have the like powers and shall perform the like duties in respect of such appeals as are performed by the County Judge in like case in other municipalities. R.S.O. 1887, c. 185, s. 27.

48*a*.—(1) Where there is an appeal from any municipal council or Court of Revision under section 45 of this Act, to the district

judge, and a person desiring to appeal has been assessed upon one or more properties to an amount aggregating $10,000, such person may, if he so desires, appeal to a Judge of the High Court in Chambers at Toronto instead of to the said district judge, and such appeal to the said judge in chambers shall be upon the like notice and otherwise as in the case of an appeal to the district judge under this Act, and the said Judge of the High Court in Chambers shall have the like powers, and shall perform the like duties in respect of such appeal as are performed by the county judge in like cases in other municipalities.

(2) An appeal shall lie to the Court of Appeal from any judgment or decision of the said Judge of the High Court in Chambers, and subject to any rule of court relating to such appeals, the procedure shall be as far as may be the same as upon an appeal from the county court to the High Court. The appeal shall be heard by three or more judges of the Court of Appeal, and the decision of such judges or a majority of them shall be final and conclusive.

(3) Upon an appeal upon any ground against an assessment the district judge or the Judge of the High Court in Chambers or the Court of Appeal, as the case may be, may re-open the whole question of the assessment so that omissions from or errors in the assessment roll may be corrected, and the accurate amount for which the assessment should be made,and the person or persons who should be assessed therefor may be placed upon the roll by the judge of the court, and, if necessary, the roll of any particular ward or sub-division of the municipality even if returned as finally revised may be opened so as to make the same correct in accordance with the finding of such judge or court.

49. The roll when finally revised by the council, or by the Judge in case of appeal, shall be taken and held to be the roll of the municipality, for all purposes, until a new roll has been made as herein provided. R.S.O. 1887, c. 185, s. 28.

50. The council may, in each year after the final revision of the roll, pass a by-law for levying a rate of not more than two cents on the dollar, to provide for all the necessary expenses of the municipality, and also such sum or sums as may be found expedient for the purposes mentioned in section 32 of this Act. R.S.O. 1887, c. 185, s. 30. Amended 4 Edw. VII., cap. 24, sec. 5 (4).

51.—(1) All municipal taxes except for debenture debt levied in any township in a union formed in the districts of Rainy River and Thunder Bay shall, excepting ten per centum thereof, and the costs of collection, be expended within the township in which the same are levied, on roads, bridges, and other works of the like kind, necessary for opening up and settling the said township. R.S.O. 1887, c. 185, s. 31 (1); 53 V. c. 51, s. 1.

(2) The council of the said union shall be at liberty to retain and appropriate for the general and other expenses of the municipality the reservation of ten per centum and the expense of collection. R.S.O. 1887, c. 185, s. 31 (2).

52. The council shall, by by-law, fix the time for the collector to make his return, and the collector shall have the same powers as are conferred on collectors by The Assessment Act, except that the right to distrain under section 103 of The Assessment Act shall be confined to goods and chattels within the municipality. R.S.O. 1887, c. 185, s. 32. Amended 4 Edw. VII., c. 24, s. 5, ss. 5.

53. Subject to the provisions of sections 56 to 59, arrears of taxes due to any municipality in any of the said districts, shall be collected and managed in the same way as like arrears due to municipalities in counties; and the treasurer and reeve of such municipality shall perform the like duties in the collection and management of arrears of taxes as in the counties are performed by the treasurers and wardens thereof, and the various provisions of law relating to sales of land for arrears of taxes and to deeds given therefor, shall, unless otherwise provided by this Act, apply to the said municipalities and to sales of land therein for arrears of taxes due thereon, and to deeds given therefor. R.S.O. 1887, c. 185, s. 33; 52 V. c. 17, s. 5 (9).

54.—(1) No sale of any lands for taxes shall take place in any such municipality except during the months of July, August, September or October. R.S.O. 1887, c. 185, s. 34; 59 V. c. 55, s. 1.

(2) This section shall not apply to the districts of Parry Sound and Muskoka, whether the municipality has been established under the provisions of this Act or of *The Municipal Act.* 53 V. c. 52, s. 2.

55. Where lands have been sold for taxes in any of the municipalities in the districts of Muskoka and Parry Sound, before the 23rd day of March, 1889, the deeds for the lands so sold shall be executed by the treasurer and reeve of the municipality. 53 V. c. 52, s. 1.

Sales for Taxes in Muskoka and Parry Sound.

56. The powers and duties imposed by *The Assessment Act* upon the treasurer of a country in respect to the collection of arrears of taxes, and in respect to the sale of land for taxes, shall, in the districts of Muskoka and Parry Sound, be exercised and performed by the sheriffs of the said districts respectively, and all provisions respecting the sale of lands for taxes in counties shall, as far as practicable, and where not inconsistent with this Act, apply to sales under this Act; and all duties and proceedings required to be performed by the officers of local municipalities, in regard to the collection of such arrears upon lists received from county treasurers, shall, by the said officers, be performed in respect to similar lists received from the sheriffs of the said districts. 52 V. c. 17, ss. 1, 3.

57. Where any portion of the tax on lands in the districts of Muskoka and Parry Sound has been due for and in the third year, or for more than three years preceding the then current year, the sheriff of the district, unless otherwise directed by a by-law of any municipal council in the district, shall make out a list in duplicate of all the lands liable under the provisions of *The Assessment Act* to be sold for taxes in every municipality in the district, with the amount of arrears against each lot set opposite to the same, and transmit the same to the reeve of the municipality in which the lands are situate, and such reeve shall authenticate the list by affixing thereto the seal of the corporation and his signature, and one of the lists shall be deposited with the clerk of the municipality, and the other shall be returned to the sheriff with a warrant thereto annexed under the hand of the reeve and the seal of the municipality commanding him to levy upon the lands for the arrears due thereon, with his costs. 52 V. c. 17, s. 4.

58.—(1) Where lands liable to sale for taxes are situated in the townships of McMurrich, Ryerson, Strong, Laurier, Nipissing, Perry, Armour, Joly, Gurd, Bethune, Proudfoot, Machar, Hims-

worth, or in the villages of Sundridge or Burk's Fall's, the sale of such lands for taxes shall take place at Burk's Falls.

(2) Where the lands are situate in the townsbips of Spence, Ferris, Pringle, Croft, Lount, Hardy, Chapman, Mills, or Paterson, the sale shall take place at Maganetawan village.

(3) Where the lands are situate in the townships of Conger, Humphrey, Monteith, Carling, Shawanaga, Harrison, Wallbridge, Mowat, Cowper, McDougall, McKellar, Hagerman, McKenzie, lilson, McConkey, Foley, Christie, Ferguson, Burpee, Burton,K
lilson, McConkey, Foley, Christie, Ferguson, Burpee, Burton,u
Brown, Blair, the town of Parry Sound, or other parts of the District of Parry Sound, not named in this section, the sale shall take place at the town of Parry Sound.

(4) Where the lands are situate in the township of Medora, Wood, Morrison, Muskoka, Ryde, Baxter, Gibson, or Freeman, the town of Gravenhurst, or the village of Port Carling, the sale shall take place at the town of Gravenhurst.

(5) Where the lands are situate in the township of Chaffey, Brunel, Stisted, Stephenson or Sinclair, or in the village of Huntsville, the sale shall take place at the said village of Huntsville.

(6) Where the lands are situate in the township of Cardwell, Watt, Monck, McLean, Ridout, Macaulay, Draper, Oakley or other parts of Muskoka not named in this section, the sale shall take place in the town of Bracebridge.

(7) On an application of the council of any township, the place of sale may be directed by the Lieutenant-Governor in Council to be transferred thereafter from any one of the places herein named to any other of them.

(8) The advertisements for the sale shall be published in the *Ontario Gazette,* and in some newspaper published at the place of sale or elsewhere in the district, and for the periods required by law. 52 V. c. 17, s. 5 (1-8).

59.—(1) The Judge of the District Court of Muskoka and Parry Sound may, by his order in writing, direct that the said sheriffs respectively shall retain out of the moneys collected by them in the performance of their duties, with respect to the collection of taxes under this Act, a sum over and above the two and one-half

per cent. provided by section 196 of *The Assessment Act,* but such sum, including the said two and one-half per cent. shall not exceed the ten per centum, which under sectoin 169 of *The Assessment Act* may be added to arrears of taxes on the 1st day of May in each year, and is actually received from the parties concerned by the sheriff under the provisions of this Act in that behalf.

(2) The sheriffs shall on the 1st day of June and December in each year, pay over to the treasurers of the respective municipalities all moneys collected by them prior to the said dates in respect of lands in arrears for taxes.

(3) The books and accounts of the said sheriffs thall be audited annually on or before the 30th day of September in each year by the District Attorney of Muskoka and Parry Sound. 55 V. c. 50, s. 1.

Sales for Taxes in Free Grant Districts.

(As to restrictions upon purchases at tax sales of land in free grant districts, see cap. 224, sec. 185-187. Now secs. 152-154 of this Act.)

Procedure upon Appeals.

(21) Upon an appeal upon any ground against an assessment, the Court of Revision may re-open the whole question of the assessment, so that omissions from, or errors in, the assessment roll may be corrected, and the accurate amount for which the assessment should be made and the person or persons who should be assessed therefor may be placed upon the roll by the Court; and if necessary the roll of any particular ward or sub-division of the municipality, even if returned as finally revised, may be opened so as to make the same correct in accordance with the finding of the Court. 3 Edw. VII., c. 21, s. 8, *part.*

"Upon an appeal upon any ground *against an assessment.*" That is, against the assessment of some one person. Complaints deal only with specified individuals, whether made under sub-sec. 1 or sub-sec. 3 of this section, or under sub-sec. 19.

"May re-open the whole question of the assessment." Not the whole question of the assessment of the municipality, but the

whole assessment of the individual appealed against, so that omissions from or errors in his assessment may be corrected, even though it involves re-opening his assessment in other wards, the rolls for which are finally revised. The investigation of the roll is not to be restricted to the specific ground of complaint in regard to the person appealed against which is set out in the notice, if the evidence should disclose that his assessment is incorrect in other particulars or in reference to other property.

For the mode of correcting the collector's roll when the decisions of assessment appeals are unduly delayed, see sec. 97.

Alteration of Roll by Clerk.

(22) The clerk shall forthwith alter and amend the assessment roll in accordance with the decisions of the Court of Revision, and shall write his name or initials against every alteration or amendment. *New.* *See* R.S.O. 1897, c. 224, s. 76.

The alterations are authenticated by the initials or name of the clerk.

Roll to be Binding, Notwithstanding Errors in it, or in Notice sent to Persons Assessed.

66. The roll, as finally passed by the Court, and certified by the clerk as passed, shall, except in so far as the same may be further amended, on appeal to the Judge of the County Court, be valid, and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error, or mis-statement in the notice required by section 46 of this Act, or the omission to deliver or transmit such notice. Provided that the provisions of this section in so far as they relate to the omission to deliver or transmit such notice shall not apply to any person who has given the Clerk or Assessment Commissioner the notice provided for in sub-sec. 6 of section 46 of this Act. R.S.O. 1897, c. 224, s. 72, *amended.*

The roll as passed by the Court of Revision is final, unless it is amended on appeal to the County Judge. Two things must concur, in order to ensure finality: the roll must be passed by the

Court of Revision, and it must be certified by the clerk as passed. See sec. 65, sub-sec. 22 in regard to the mode of making and verifying alterations.

The roll when final binds all parties concerned, notwithstanding

(*a*) Defects or errors in the roll.

(*b*) Defects or errors committed with regard to it.

(*c*) Any defect, error or mis-statement in the notice required to be given to the person assessed by the assessor under sec. 46.

(*d*) The omission to deliver or transmit such notice at all.

The saving clause in reference to the omission of the assessor to deliver or transmit notices is cut down to some extent by the proviso in the last sentence of this section.

If the person assessed has furnished the written notice giving an address to which the notice of assessment may be transmitted to him, and requesting that the same be transmitted to him by registered letter, under sub-sec. 6 of sec. 46, then notice of the assessment must be given to him or the assessment is invalid.

The words in this section relating to the validity of the assessment roll notwithstanding the failure to deliver or transmit the notice under section 46, were introduced in consequence of the decision in *Nicholls* v. *Cumming*, 1 S.C.R. 395, which would be applicable yet when the provisions of sec. 46, sub-sec. 6 have been complied with by the party assessed, and the assessor has omitted the notice.

" I have arrived at the conclusion that the Legislature required the notice of the amount of his rateable property to be served on the taxpayer by the assessor, in order that he might protect himself against any improper valuation of his property; that being one of the safeguards provided by the Legislature for the protection of the taxpayer, it is essential to the validity of the tax that it should be given and served in time to enable the party assessed to exercise the right of appeal against the rating by the assessors." Per Richards, C.J., at p. 420, in *Nicholls* v. *Cumming*, 1 S.C.R. 395.

In that case the assessor gave notice of an assessment of the plaintiffs' personal property at $2,500, but on the assessment roll as finally revised by the Court of Revision it was entered at $25,000. It was held that the notice given to the plaintiffs, so far as it related to the assessed value of their property on the roll as returned, was not the notice required by the statute, and as to the amount in excess of that mentioned in the notice, the notice is as if no

notice had been given, and is void as to any such excess, but that the rates and taxes charged against the plaintiffs on the collector's roll on the amount of the excess of assessment cannot be collected from them. *Ib.* p. 420. See also sec. 46 and the notes thereon.

An erroneous assessment of electric cars as real estate (they being personal property, and as such exempt) though confirmed by the Court of Revision, by a Board of County Judges, and, on appeal from them, by the Court of Appeal, is not final or binding. "The jurisdiction of the Court of Revision and of the Courts exercising the statutory jurisdiction of appeal from the Court of Revision is confined to the question whether the assessment was too high or too low, and those Courts had no jurisdiction to determine the question whether the assessment commissioner had exceeded his powers in assessing property which was not by law assessable. In other words, where the assessment was *ab initio* a nullity, they had no jurisdiction to confirm it or give it validity. The order of the Court of Appeal of June 28th, 1902 [under sec. 76, sub-sec. 6 of the present Act] was not, therefore, the decision of a Court having competent jurisdiction to decide the question in issue in the action, and it cannot be pleaded in estoppel": *Toronto Railway* v. *Toronto Corporation*, 1904, A.C. 809, approving *Nickle* v. *Douglas*, 37 U.C.R. 51, in which the exact point was decided, and citing with approval the remarks of Haggarty, C.J., in *London Mutual Insurance Co.* v. *City of London*, 15 A.R. 629: "Where there was a total want of jurisdiction in enforcing the payment of an assessment here, as in England, the action would lie of trespass or by replevin of the goods seized, or by action to recover back money paid by distress," and also citing with approval the remarks of the Chief Justice of Canada in *City of London* v. *Watt*, 22 S.C.R. 300, as follows: "I agree with the Court of Appeal in holding that the 65th section of the Ontario Assessment Act [now section 66] does not make the roll as finally passed by the Court of Revision conclusive as regards questions of jurisdiction. If there is no power conferred by the statute to make the assessment, it must be wholly illegal and void *ab initio*, and confirmation by the Court of Revision cannot validate it."

"The foundation of the jurisdiction to assess being in this case non-existent, it follows that the defendants were not bound to appeal to the Court of Revision, and may question the assessment in an action": *City of Brantford* v. *Ontario Investment Co.*, 15 A.R., per Osler, J.A., at p. 608b. See also *Great Western Ry.* v.

Rouse, 15 U.C.R. 168; *Shaw* v. *Shaw*, 21 U.C.R. 432; *London* v. *Great Western Ry. Co.*, 17 U.C.R. 262; *Shaw* v. *Shaw*, 12 C.P. 456; *Re Dickson and the Village of Galt*, 10 U.C.R. 395; *Ex parte, James D. Lewin*, 11 S.C.R. 484.

At one time the courts took the contrary view which is, of course, overruled by the later decisions cited above. See *Scragg* v. *City of London*, 26 U.C.R. 263; *City of Toronto* v. *Great Western Ry. Co.*, 25 U.C.R. 570; *McCarrall* v. *Watkins*, 19 U.C.R. 248.

If, however, the Court of Revision refrains from disposing of an appeal which has been brought before them, and they neither dismiss the appeal nor give effect to it, the roll is not "finally passed" so as to bind the appellant: *Law Society of Upper Canada* v. *City of Toronto*, 25 U.C.R. 199.

The decision of the Court of Revision, if not appealed from, and of the County Judge on appeal from the Court of Revision is final, when the assessment deals with property that is assessable at all: *Confederation Life Association* v. *City of Toronto*, 22 A.R. 166; *Canadian Land and Emigration Co.* v. *Township of Dysart*, 12 A.R. 80.

The assessment of the Suspension Bridge at Niagara Falls was reduced from $150,000, at which sum it was fixed by the Court of Revision, to $1,000, on the erroneous view that the bridge itself was personalty, and only the land occupied by it on the Canadian side of the river was assessable as real property. The judgment of the County Judge, though erroneous, was held to be final: *Niagara Falls Suspension Bridge Co.* v. *Gardiner*, 29 U.C.R. 194. When property which should be taxed is held by the Court of Revision or the County Judge, if there is an appeal to him, not to be assessable, there is no remedy for the municipality. The person who is unlawfully assessed for property which there is no jurisdiction to tax, may resort to the Courts, and by action protect his rights and escape taxation; but as against the municipality the assessment roll is conclusive.

Copy of Assessment Roll Duly Certified to be Evidence.

67. A copy of any assessment roll, or portion of any assessment roll, written or printed, without any erasure or interlineation, and under the seal of the corporation, and certified to be a true copy by the clerk of the municipality, shall be received as *prima facie* evidence in any court of justice without proof of the seal or

signature, or the production of the original assessment roll of which such certified copy purports to be a copy, or a part thereof. R.S.O. 1897, c. 224, s. 73.

This furnishes a convenient way to prove an assessment in court, when for any reason it is inconvenient to produce and prove the original assessment roll.

The copy may be of the whole assessment roll or of any portion of it. It may be written or printed; but must be without erasure or interlineation; it must have the seal of the corporation affixed to it; and it must be certified " to be a true copy " by the clerk.

The copy is proof of the assessment until the contrary is shown by sufficient evidence. Neither the seal of the municipality nor the signature of the clerk need be proved in any way. The original assessment roll need not be produced. This evidence is receivable in any Court of Justice.

Appeals from the Court of Revision.

Appeal lies from Decision or Refusal to Decide.

68.—(1) An appeal to the County Judge shall lie, at the instance of the municipal corporation, or at the instance of the assessor, or assessment commissioner, or at the instance of any ratepayer of the municipality (1) not only against a decision of the Court of Revision on an appeal to the said Court, but also against omission, neglect or refusal of the said Court to hear or decide an appeal. 62 V. (2), c. 27, s. 6.

The appellants on an appeal from the Court of Revision to the County Judge may be:

(*a*) The municipal corporation.

(*b*) The assessor or assessment commissioner.

(*c*) Any ratepayer of the municipality.

Formerly the appeal from the Court of Revision to the County Judge, where such court allowed the appeal to it of the party assessed, could not be made by the assessor either in his official capacity or as a ratepayer, but must be made by the corporation itself: *Re British Mortgage Loan Co. of Ontario*, 29 O.R. 641. The corresponding section (75) of the Act then in force was silent as to who might appeal.

The appeal may be against:—

(*a*) A decision of the Court of Revision on an appeal to it.

(*b*) The omission,

(*c*) Neglect, or

(*d*) Refusal

of the Court of Revision (1) to hear or (2) to decide an appeal.

In case the Court of Revision hears an appeal without deciding it, there is no assessment on which taxes could be levied: *Law Society of Upper Canada* v. *City of Toronto*, 25 U.C.R. 199.

The High Court will not grant a mandamus to the Court of Revision to compel it to hear or decide an appeal, as there is another ample remedy under this section by a further appeal to the County Judge: *Re Marter and the Court of Revision of Gravenhurst*, 18 O.R. 243; but a mandamus will go to a County Judge to hear and determine an appeal to him from the Court of Revision, if he has refused to do so on an invalid technical objection to the form of the complaint: *Re McCulloch and the Judge of the County Court of the County of Leeds and Grenville*, 35 U.C.R. 449. The dismissal of a complaint by the Court of Revision without hearing it, is a sufficient decison of it to authorize an appeal to the County Judge, and a mandamus issued to compel him to hear it: *Re the Judge of the County Court of the County of Perth and Robinson*, 12 C.P. 252. See sec. 68, sub-sec. (7).

Service of Notice of Appeal. Rev. Stat., c. 225.

(2) Subject to the provisions of sections 53 to 56 inclusive, and to the provisions of *The Act respecting the establishment of Municipal Institutions in Territorial Districts* and to the provisions of any special Act affecting any particular municipality, the person appealing shall, in person or by his solicitor or agent, serve upon the clerk of the municipality (or assessment commissioner, if any there be), within five days after the date herein limited for the closing of the Court of Revision, a written notice of his intention to appeal to the County Judge.

This sub-section is subject to three classes of special enactments which govern when they are not consistent with the terms of this section. They relate to :

(1) Municipalities in which sections 53 to 56 or some of them are in force.

(2) Territorial districts under their special Act. See note to sec. 65, sub-sec. 20 for these provisions.

(3) Municipalities affected by special Acts.

For the first of these, see under the respective sections.

For municipalities affected by the second, see page 184.

For the third, reference must be made to the special Acts.

The appeal may be made:

(*a*) By the person appealing.

(*b*) By his solicitor.

(*c*) By his agent.

For a discussion of the difference between the wording of this section and section 65, sub-sec. 1 and 3, in reference to solicitors and counsel, see *Re Rosbach and Carlyle*, 23 O.R. 37.

The appeal is launched by filing the notice with the clerk. It must be in writing, and must indicate the intention of the appellant to appeal to the County Judge. No special form is requisite. It would be well to include in it all the information required by sub-sec. 5 of this section to be posted up, although that is not strictly necessary. Mere technical objections as to matters of form should not prevail. "Such objections as that 'the Judge' was irregular, because it was not 'the Judge of the County Court of the united counties of Leeds and Grenville,' when there was no mistake who was the judge meant, seems like returning to special demurrers. Objections such as these ought not to prevail when no one can be misled or injured by the alleged errors": *Re McCulloch and the County Judge of Leeds*, 35 U.C.R. at p. 451, per Richards, C.J.

The notice of appeal must be given to the clerk "within five days after the date herein limited for the closing of the Court of Revision." For the closing of the Court of Revision, see sec. 65, sub-sec. 20, which makes the 1st day of July the time for closing. In cities where sec. 53 has been brought into operation, the Court of Revision must close on or before the 15th day of November. See also the special times fixed by section 54, sub-sec. 7, and sec. 56, when they are in force by virtue of by-laws.

Appeals were heard by the Court of Revision on the 10th of June, and the decision was given the next day. Notices of appeals

dated the 15th of June were served upon the clerk on the 19th; but the Court of Revision did not end its sittings until the 5th of July; on the 15th of July the clerk notified the judge of the appeals to him from the Court of Revision, the judge duly notified the clerk of the date fixed for the hearing, and the clerk notified the parties. The limitation of time in this subsection was construed to mean that notice of appeal should not be served after the expiration of five days from the closing of the Court of Revision or of the time limited for its close; the service was within the five days, as the notices were in the hands of the clerk during the five days and were acted on by him; and, further, service before the commencement of the five days is good service. "The intention was to limit the time after which notice was not to be served." "I see no good reason for limiting the time prior to which notice shall not be given": *Scott* v. *Town of Listowel*, 12 P.R. 77.

Day for Hearing. Places for Hearing Appeals from Courts of Revision.

(3) The clerk shall immediately after the time limited for filing said appeals, forward a list of the same to the Judge, who shall then notify the clerk of the day he appoints for the hearing thereof, and shall, if in his opinion, the appeals or any of them appear to involve the calling or examination of witnesses, fix the place for holding such Court within the municipality, from the Court of Revision of which such appeal is made, or at the place nearest thereto where the sittings of the Division Court within his jurisdiction are held.

For the time limited for filing appeals, see the note on the last subsection.

The clerk notifies the judge of all the appeals. It is therefore necessary for the assessment commissionesr to give the clerk a list of the notices which have been filed with him under sub-sec. 1 or sub-sec. 3 of section 65. The judge must then appoint a day for hearing the appeals, and notify the clerk of the time so fixed. If, in the opinion of the judge, witnesses are required, he must fix the place for holding the Court either in the municipality or at the nearest place where he holds sittings of a Division Court. Convenience should be consulted in deciding upon the place of hearing.

Clerk to Notify Parties.

(4) The clerk shall thereupon give notice to all the persons appealed against in the same manner as is provided for giving notice on a complaint under section 65 of this Act; but in the event of failure by the clerk to have the required service of the notices in any appeal made or to have the same made in proper time, the Judge may direct service to be made for some subsequent day upon which he may sit.

The clerk is required to give notice to those who are *appealed against.* The appellants are left to discover the time of the hearing from the notice posted up by the clerk. See the next subsection. Compare sub-sec. 10 of sec. 65, under which both the appellants and those appealed against must be notified. For the effect of failure to give six clear days notice of the time and place of hearing, see sec. 65, sub-sec. 13. If the clerk has not given the proper notice, or has not given it in time, the judge may direct service to be made for some subsequent day, on which he may hear the appeals. The notice is essential. The notices are to be given in the manner specified in sec. 65, sub-secs. 11 and 12.

List of Appellants, etc., to be Posted up by Clerk.

(5) The clerk of the municipality shall cause a conspicuous notice to be posted up in his office, or at the place where the council of the municipality hold their sittings, containing the names of all the appellants and persons appealed against, with a brief statement of the ground or cause of appeal, together with the date at which a Court will be held to hear appeals. R.S.O. 1897, c. 224, s. 75 (2-5).

The clerk may post up the notice required by this sub-section either in his own office, or at the place where the meetings of the council are held. The notice must be conspicuous. The notice posted up must contain:

(*a*) The names of the appellants.

(*b*) The names of the persons appealed against.

(*c*) A brief statement of the ground or cause of appeal, and

(*d*) The date at which the Court will be held by the judge to hear these appeals.

Though, under sub-sec. 3 of this section, the judge is given a discretion in fixing the place of hearing, the notice to be posted up by the clerk is not, in express words, required to give the place of hearing.

The notice of appeal filed with the clerk under sub-sec. 2 by the appellant from the Court of Revision is " a written notice of his intention to appeal to the county Judge," from a decision of the Court of Revision on an appeal, or from the omission, neglect or refusal of the Court of Revision to hear an appeal. It should properly give all the information necessary to enable the clerk to prepare the proper notice for posting up.

Clerk of Court.

(6) The clerk of the municipality shall be the clerk of such Court; and he shall keep, in the book referred to in section 60, a record of the decision of the Judge upon each appeal. R.S.O. 1897, c. 224, s. 75 (6), *amended.*

See the note on section 60.

Hearing and Adjournment.

(7) At the Court so holden, the Judge shall hear the appeals (1) and may adjourn the hearing from time to time, and defer judgment thereon at his pleasure, but so that (subject to the provisions of sections 53 to 56 inclusive, and to the provisions of the *Act respecting the establishment of Municipal Institutions in Territorial Districts,* and to the provisions of any special Act affecting any particular municipality) (2) all the appeals may be determined before the 1st day of August (3).

(1) The Judge " shall " hear the appeals. If for any reason he neglects or refuses to hear and determine an appeal, a mandamus may be obtained out of the High Court to compel him to do so: *Scott* v. *Town of Listowel,* 12 P.R. 77; *Ronald* v. *Village of Brussels,* 9 P.R. 232; *Re McCullough and the County Judge of Leeds,* 35 U.C.R. 449; *Re Allan,* 10 O.R. 110; *Re the Judge of the County Court of the County of Perth and Robinson,* 12 C.P. 252.

(2) See sec. 65, sub-sec. 20 and the notes on it, for the time of hearing and disposing of appeals in the instances within these exceptions.

(3) Though the county judge is directed to complete the hearing, and give judgment, before a specified date, he may hear the appeals later: *Ronald* v. *Village of Brussels*, 9 P.R. 232; *Re Allan*, 10 O.R. 110; *Scott* v. *Town of Listowel*, 12 P.R. 77. "But so that all appeals may be heard before the 1st day of August," is directory, not imperative. See sub-sec. 1 of this section, and the notes thereon.

Subpœna.

(8) A subpœna to compel the attendance of any witness required before the County Judge upon any appeal under this Act may be issued by the clerk of the County Court of the county in which is situated the municipality whose assessment roll is in question, which said subpœna shall be tested as are other subpœnas issued out of the County Court of the said county in actions therein and may be intituled as is provided in section 71 of this Act. R.S.O. 1897, c. 224, s. 75 (7), (8).

The subpœna is, as a matter of course, issued on application for it at the office of the clerk of the County Court, and payment of the usual fee. The subpœna should be endorsed in the usual way with the name and address of the solicitor, if any, who issues it, and the name and address of the person on whose behalf it is issued.

It is tested in the name of the Judge of the County Court of the county in which it is issued, and it is intituled as directed by section 71.

Assessment Roll to be Produced to the Court, and Amended, etc. Amendments how Certified.

69. At the Court to be holden by the County Judge, or acting Judge of the Court, to hear the appeals hereinbefore provided for, the person having charge of the assessment roll passed by the Court of Revision (1) shall appear and produce such roll, and all papers and writings in his custody connected with the matter of

the appeal, and such roll shall be altered and amended according to the decision of the Judge, if then given, who shall write his initials against any part of the said roll in which any mistake, error or omission is corrected or supplied; and if the decision is not then given, the clerk of the Court shall, when the same is given, forthwith alter and amend the roll, according to the same, and shall write his name or initials against every such alteration or correction. R.S.O. 1897, c. 224, s. 76, *amended.*

(1) The clerk of the municipality has the costody of the assessment roll, and keeps it in his office after it is returned by the assessor. Sec. 47, sub-sec. 3. He is the clerk of the Court of Revision, sec. 60. The appeals are filed with him; he has charge of advertising the sittings and giving notice to all parties; he has the record of the alterations made by the Court of Revision, sec. 60; he certifies the roll as passed by the Court of Revision, section 66, after he has made the alterations ordered by the Court of Revision, sec. 65, sub-sec. 22; and he is required to attend the Court and produce the roll and all notices and other papers in his custody.

The intention is that alterations and amendments may be made in the roll at the Court by the clerk, they being then and there initialled by the Judge; if judgment is reserved, the decision is communicated by the judge to the clerk, who makes and initials the necessary changes in the assessment roll to make it conform to the judge's decision.

Powers of Judge Sitting in Appeal from Court of Revision.

70.—(1) In all proceedings before the County Judge, or acting Judge of the Court, (1) under or for the purposes of this Act, such Judge shall possess all such powers (2) for compelling the attendance of, and for the examination on oath of all parties, whether claiming or objecting or objected to, and of all other persons whatsoever, and for the production of books, papers, rolls and documents, and for the enforcement of his orders, decisions and judgments, as belong to or might be exercised by him, in the Division Court or in the County Court.

Appeal to County Judge where Question of Fact Involved.

(2) The hearing of the said appeal by the County Judge shall, where questions of fact are involved, be in the nature of a new trial, and either party may adduce further evidence in addition to that heard before the Court of Revision subject to any order as to costs or adjournment, which the Judge may consider just consider just, (3). R.S.O. 1897, s. 224, s. 77.

(1) A deputy judge may be appointed under R.S.O. 1897, cap. 54, section 9, and " in case of the death, illness or absence of the judge he shall have authority to perform in the place of the Judge in the county for which he is deputy, all the duties of and incident to the office of Judge of the County Court and Division Courts, and all acts required or allowed to be done by the Judge of the County Court under this or any other this or any other Statute, unless when by such Statute it is otherwise expressly provided." A deputy judge so appointed would be an " acting judge." Where County Court districts are established under section 19 of R.S.O. 1897, cap. 54: *The Local Courts Act*; any Judge of the district may hold the Courts of Appeal under *The Assessment Act* anywhere in the districts, regardless of the fact that such Courts are being held in a county other than that for which he was appointed County Judge. The powers of a junior judge are as extensive as those of the senior judge; and he may execute such powers, " subject, however, to the general regulation and supervision of the senior judge." R.S.O. cap. 54, section 14. The County Judge has power also, " if he see fit to perform any judicial duties in any county other than his own on being requested to do so by the judge to whom the duty for any reason belongs." R.S.O. 1897, cap. 54, sec. 16. A person may be convicted of perjury, committed in a Division Court held by a deputy judge. It is not necessary to prove the Order in Council appointing the deputy judge, and such conviction is valid though the county judge is not absent from the county, the deputy being appointed owing to his absence: *Regina* v. *Fee*, 3 O.R. 107; *MacKenzie* v. *Dancey*, 12 A.R. 317.

(2) The powers of the judge are for the following purposes:

(*a*) For compelling the attendance of,

(*b*) For the examination on oath of, and

(*c*) For the production of books, papers, rolls and documents by

(1) All parties whether appellants or respondents and

(2) Of all other persons whatsoever.

He has also power:

(*d*) For the enforcement of his orders, decisions and judgments.

Such powers are as ample as they would be for similar purposes in the Division Court or in the County Court. A by-law passed in contempt and disregard of an order made by a County Judge closing a street on a registered plan, will be quashed if the order shows jurisdiction on its face: *Waldie* v. *Burlington*, 13 A.R. 104. See *Anderson* v. *Vanstone*, 16 P.R. 243. If a person subpœnaed to produce documents wilfully fails to produce them, or if his employer orders the documents to be destroyed knowing that they are required as evidence, they are liable to punishment for contempt of Court: *Re Dwight and Macklem*, 15 O.R. 148; a local manager of a bank may be compelled to produce the books of the bank showing the state of a customer's account, and may be punished for contempt if he fails to obey: *Hannum* v. *McCrae*, 18 P.R. 185; every court of record has power to punish for contempt of court, a person using insulting language to the Court may be summarily punished by fine, which the Court has power then and there, by order of the Court, to impose: *Ex parte Lees*, 24 C.P. 214; an inferior Court or *persona designata* clothed with statutory judicial powers, has power, in the absence of express statutory authority, to commit only for a contempt committed in the face of the Court: *Re Pacquette*, 11 P.R. 463. See also *Re Allan*, 31 U.C.R. 458; *Re Clarke and Heermans*, 7 U.C.R. 223; *McLeod* v. *Noble*, 28 O.R. 528, 24 A.R. 459. By section 139 of *The Division Courts Act*, R.S.O. 1897, cap 60, every person who is duly subpœnæd and paid or tendered his witness fees and without sufficient cause disobeys the subpœna, and every person who being in Court is called upon to give evidence and refuses to be sworn or to give evidence, may be punished by fine not to exceed $8, and by imprisonment under verbal or written order of the Judge, for any time not exceeding ten days.

A County Court is a court of record, and the judge of such court may punish for wilful disobedience of a subpœna, for refusal

to be sworn or to give evidence, for disorderly conduct or insulting language in court, or for contempt in disobeying the orders of the Court, in the same way, and by the same procedure as in the High Court. See also: *Reg.* v. *Payne* (1896), 1 Q.B. 577; *McLeod* v. *St. Aubyn* (1899), A.C. 549; *Re Dunn and the Board of Education of Toronto*, 7 O.L.R. 451.

Scurrilous abuse of a judge, in a newspaper article, in reference to his judicial character and conduct may be a serious contempt of court, punishable by a term of imprisonment: *Reg.* v. *Gray* (1900), 2 Q.B. 36. A person knowingly aiding in defying an order of the Court is guilty of contempt: *Seaward* v. *Patterson* (1897), 1 Ch. 545. Notice of motion for committal must be personally served: *D.* v. *A. & Co.* (1900), 1 Ch. 484; and service of the order disobeyed, or at least knowledge of it, must be shown: *Hall* v. *Trigg* (1897), 2 Ch. 219; whether the High Court has power to punish by attachment for contempt by interference with any inferior tribunal seems not to have been expressly decided, and to be not wholly free from doubt: *Rex* v. *Parke* (1903), 2 K.B. 432.

(3) Formerly there was room for doubt regarding the right of either the appellant or the respondent to adduce new evidence. It was sometimes contended that the right to appeal meant nothing more than the right to have the evidence that was taken before the lower tribunal, re-considered by the appellate court. Sub-section 2 of this section fully disposes of the question. If there is any dispute about the facts, there is practically a new trial, the evidence is all given anew, and either party may bring new witnesses. The judge, if either party is taken by surprise by the production of evidence of a class, or upon grounds, not before the Court of Revision, or the fresh evidence seems to justify it, may grant an adjournment; or if he concludes that the production before the Court of Revision of the evidence given before him, would have prevented an appeal by securing a proper judgment by the Court of Revision, he may disallow the costs of appeal. On the giving of further evidence, he may make such order regarding costs as he considers just.

Style of Proceedings.

71. All process or other proceedings in, about or by way of appeal may (1) be intituled as follows;

In the matter of appeal from the Court of Revision of the
, of
...., Appellant,
and
...., Respondent,

and the same need not be otherwise entitled. R.S.O. 1897, c. 224, s. 78.

"May" is permissive. See section 68, sub-sec. 8. See also the notes on sub-sec. 1 of section 68.

Costs to be Apportioned by the Judge, and how Enforced.

72. The costs of any proceeding before the Court of Revision (1) or before the Judge (2) as aforesaid, shall be paid by or apportioned between the parties in such manner as the Court or Judge thinks fit, and where costs are ordered to be paid by any party claiming or objecting or objected to, or by any assessor, clerk of a municipality, or other person, payment of the same shall be enforced, when ordered by the Court of Revision, (3) by a distress warrant under the hand of the clerk and the corporate seal of the municipality, and when ordered by the Judge, by execution to be issued as the Judge may direct, either from the County Court or the Division Court within the county in which the municipality or assessment district, or some part thereof, is situated, in the same manner as upon an ordinary judgment for costs recovered in such Court. R.S.O. 1897, c. 224, s. 79.

(1) This section empowers the Court of Revision to award costs to or against either party or to apportion the costs between the parties, *i.e.* the appellant and respondent, in such manner as the Court of Revision thinks fit. The only costs to be awarded are the fees of witnesses and the cost of procuring their attendance, as provided by section 73. If the assessor, or the clerk of the municipality, has been guilty of negligence or misconduct in the performance of his duties, he may be ordered by the Court of Revision to pay the costs. For instance, if the assessor has through carelessness, or negligence, grossly undervalued or over-valued property so that an appeal is thereby occasioned, he may justly be ordered to pay the costs of the appeal. It would be difficult, if

not impossible, to find an instance in which a party who is successful before the Court, could justly be ordered to pay the costs of the opposite party.

(2) The County Judge has similar powers over costs.

(3) When payment of costs is ordered by the Court of Revision, payment is enforced by a distress warrant signed by the clerk and under the seal of the municipality. It should be addressed to the bailiff who makes the distress, and should direct the bailiff to seize and sell sufficient of the goods and chattels of the delinquent, not exempt from seizure under execution, to satisfy the amount of the costs, which should be set out in the warrant.

No provision is made in the Statute for the costs of making the distress and sale. Where execution issues under order of a judge, the costs of enforcing the execution are provided for. See sec. 73.

(4) When costs are ordered by the judge to be paid, he directs what Court the execution to enforce payment is to be issued out of. On filing the judge's order with the clerk of the proper court, the execution issues thereon, and the procedure under the execution would be the same as in the case of an ordinary judgment for costs in such court.

The costs of enforcing the execution are provided for by sec. 73.

Under *The Ontario Voters' Lists Act*, similar powers are given to the judge. Its language is as follows:—

34.—(1) In case of errors being found in the voters' list on the revision thereof, whether the errors are in the omission of names, the inaccurate entry of names, or the entry of names of persons not entitled to vote, if it appears to the judge that the assessor was blamable for any of the errors, the Judge shall order (Form 18) the assessor, either alone or jointly with any other person, to pay all costs occasioned by the same; and in case of errors for which the clerk was to blame, the clerk, either alone or jointly with any other person, shall be charged with the costs.

(2) In case of errors of the Court of Revision, the municipality shall, either alone or jointly with any other person, pay the costs, subject to any claim which the municipality may justly have against the guilty parties; or

(3) The Judge may order the assessor, clerk or municipality in such case, to pay the costs, if a party fails to recover the same from any other party named and ordered to pay the same;

(4) In all cases not herein provided for, the costs shall be in the discretion of the Judge. 52 V. c. 3, s. 29 (1).

What Costs Chargeable.

73. The costs chargeable or to be awarded in any case may be the costs of witnesses, and of procuring their attendance, and none other; and the same shall be taxed according to the allowance in the Division Court for such costs; and in cases where execution issues, the costs thereof as in the like Court, and of enforcing the same, may also be collected thereunder. R.S.O. 1897, c. 224, s. 80.

The costs recoverable are:

(*a*) Witness fees on the Division Court scale.

(*b*) The cost of procuring their attendance on the same scale.

Under the Division Court Rules the following is the

Allowance to Witnesses.

Attendance, per diem, to witnessses residing within three miles of the place where the Court is held, if within the County	$0 75
And if without the county	1 00
Attendance if witness resides over three miles from the place of sittings, and within the county, per diem	1 00
Attendance if witness resides without the county, and more than three miles from the place of sittings, per diem	1 25
Barristers and solicitors, physicians and surgeons, engineers and veterinary surgeons, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give professional opinions, per diem	4 00

(*Note.*—Disbursements to surveyors, architects and professional witnesses, such as are entitled to specific fees by statute, are to be taxed, as authorized by such statute.)

If witnesses attend in one case only, they will be entitled to the full allowance.

If they attend in more than one case, they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses, over three miles, shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.

The costs of procuring the attendance of witnesses are as follows:

Clerk's fees for subpœna.............	.25
Each copy for service	.05
Bailiff's fees for serving each witness..	.15
For every mile necessarily travelled to to make such service............	.12

When an execution issues the costs of the execution and of enforcing it will be the usual costs of the like proceedings in the Division Court, and the costs may be taxed and allowed by the clerk of the Division Court in the usual way.

Expenses of County Judges on Assessment Appeals.

74. County Court Judges shall be entitled to receive from the several municipalities as their expenses for holding Courts in such municipalities other than the county town, for the purpose of hearing appeals from the Court of Revision, under the provisions of this Act, the same sums as they are allowed for holding Courts for revising voters' lists. R.S.O. 1897, c. 224, s. 81.

The judge is allowed $4 per day while revising voters' lists, "for the time during which he is engaged therein and all reasonable personal expenses and disbursements." R.S.O. 1897, cap. 7, section 71.

These sums are payable out of the funds of the municipality, and are not in any event chargeable against any of the parties to an appeal.

Decision of County Judge to be Final.

75. The decision and judgment of the Judge or acting judge shall be final and conclusive in every case adjudicated upon. R.S.O. 1897, c. 224, s. 82, *amended.*

It is only when there is jurisdiction to make the assessment complained of, for some amount, that the decision and judgment of the judge or acting judge is final and conclusive. If there is no jurisdiction to assess certain property at all for any amount, then no decision and judgment of the County Judge can make the assessment of such property final and conclusive, and its validity may be questioned in a High Court action. The cases are collected in the note on section 66, *ante*.

Appeals where large amounts involved.

Appeals Where Large Amounts or Questions of Law Involved.

76.—(1) Where there is an appeal from any Court of Revision under section 68 of this Act to the Judge of the County Court of the county in which the assessment is made and a person desiring to appeal has been assessed on one or more properties to an amount aggregating $20,000, such person on depositing with the clerk of the Court of Revision appealed from the sum of $75 to pay the travelling expenses of the Board or Judge to be called in as hereinafter mentioned, shall have the right to have the appeal from the said Court of Revision heard by a Board consisting of the Judges of the counties which constitute the County Court District, if the property assessed be in a county which forms part of a County Court District, and if not, then the person appealing may request, in writing, the said County Court Judge to associate with himself in hearing the said appeal, the Judge or acting Judge of the County Court of the county whose county town is nearest to the court house where the said appeal will be heard, and the Judge or acting Judge of the County Court of the county, whose county town is the next nearest to the court house where the said appeal will be heard; and the said appeal shall thereupon be heard by the County Court Judge and the said Judges so called in as aforesaid; and in such cases the clerk of the municipality shall forthwith notify by post, prepaid, each of the Judges whose duty it is to attend upon such appeal as aforesaid, of all notices of appea

coming within the provisions of this section, which are from time to time served upon him; and the Judge of the County in which the city, town, township or village lies the decision of whose Court of Revision has been appealed against, shall arrange a day for the hearing of such appeals, and shall notify the clerk thereof, and the clerk shall immediately notify, by post, prepaid, the other Judges and the persons appealing.

This section applies to every case in which the person desiring to appeal from the Court of Revision has been assessed on one or more properties to an amount aggregating $20,000. The person appealing should make his deposit within the time limited for appeals from the Court of Revision, and indicate by his notice of appeal that he desires to have the appeal heard by a Board of Judges. If the county in which the property is, forms part of a County Court District, then the Judges of the counties which form the district shall hear the appeal. For the statutory provisions in reference to County Court Districts, see *The Local Courts Act*. R.S.O. 1897, cap. 54, sections 19 to 25.

If the County in which the property in question is situate, is not part of a County Court District, then the person appealing may in writing request the County Court Judge to associate with him the two County Court Judges or acting County Court Judges, whose county towns are nearest to the place of hearing of the appeal.

It is the right of the appellant, on making his deposit and filing his request in writing, to have his appeal heard by the tribunals constituted by this section. "He shall have the right," and "the said appeal shall thereupon be heard" are imperative.

The notice in writing asking to have the appeal heard as directed by this section is intended to be filed with the clerk; as the clerk is required to notify the judges of all "notices of appeal coming within this section which are from time to time served upon him." There is no time specially limited for making the deposit, and filing the written request. It is submitted that both steps must be taken within the time limited for filing appeals. "Immediately after the time limited for filing said appeals," the clerk must, under section 68, sub-section 3, forward the list to the Judge, who then notifies the clerk of the day he appoints for the hearing. When the Judge is notified by the clerk that the appeal

is filed, he is seized of it. The notices to be given to the Judges under this section are to be given by the clerk from time to time, " forthwith " as the appeals are received by him.

The Judge of the County Court of the county to which the Court of Revision appealed from belongs, arranges a day for the hearing. The clerk, on being informed by him of the date so fixed, notifies the other judges and the *persons appealing*. Nothing is said in this section about notice to the *persons appealed against*. See section 68, sub-section 4, and the notes on it. Notwithstanding the omission of specific directions to serve them, it is submitted that they must be notified. Sections 68 to 78 are applicable.

Appeals in Districts and Provisional Counties.

(2) Where an appeal against an assessment lies from a Court of Revision to the Stipendiary Magistrate of the district or provisional county in which the property assessed is situate, and a person desiring to appeal is assessed on one or more properties in any township or union of townships to an amount in the aggregate exceeding $20,000, such person shall have the right to appeal either to the said Stipendiary Magistrate or (on depositing with the clerk of the municipality the sum of $50 to defray the travelling expenses of the County Court Judge hereinafter mentioned) to the Judge of the County Court of the county to which the said provisional county or district is attached for judicial purposes; the notice of such appeal, the time for bringing the same on, and the procedure generally, shall be the same as in the case of an ordinary appeal from the Court of Revision to a County Court Judge.

Appeals to the Stipendiary Magistrate under sections 46, 48 and 49 of *The Act respecting the establishment of Municipal Institutions in Territorial Districts*, are abolished by 5 Edw. VII., cap. 24, section 2. For the portion of that Act as amended which relates to assessment and taxation, see under section 65, sub-section 20, p. 184.

Powers and Procedure upon such Appeals.

(3) Sections 68 to 78 inclusive, shall apply to all appeals taken under the preceding two subsections, and the said Judge or Judges shall have the powers and duties which by the said sections 68 to 78 are assigned to the County Court Judge therein referred to.

Majority of Judges to Decide.

(4) When three Judges hear the appeals (1) the decision of the majority shall prevail, subject to appeal to the Court of Appeal (2).

(1) When the Judges of a County Court District hear the appeal, there may be more than three of them. A majority of them may give judgment.

(2) The right of appeal to the Court of Appeal is given by sub-section 6 of this section.

Payment of Travelling Expenses of County Judges.

(5) The clerk with whom any money is deposited to pay the travelling expenses as aforesaid, shall pay out of the moneys so deposited upon requisition by the Judges respectively, such sums as the said Judges certify to him as their respective travelling expenses in connection with the said appeal (1), and shall repay the balance, if any, to the person, partnership or corporation who deposited the same (2), and each of the said outside Judges shall be entitled to be paid a sum not exceeding five dollars per day for his services (3), and the sum so paid shall be part of the costs of the appeal and shall be payable by such party as the majority of the Judges hearing the appeal determine.

(1) The clerk pays each Judge the amount he makes request for as his travelling expenses in connection with the appeal, on his certifying the amount.

(2) This deposit being for travelling expenses of the judges, not for the general costs of the appeal, the *per diem* allowance of the outside Judges is not deducted from it. After paying the travelling expenses, the remainder of the deposit, if any, is paid to the appellant, who made the deposit.

(3) Each of the "outside" judges is to be paid a sum not exceeding five dollars a day for his services. These sums are included in the costs of the appeal, and are to be paid by such party as the judgment directs.

The Judge of the county within which the appeal arises receives his remuneration under section 74, which is made applicable by sub-section 3 of this section.

Appeal to the Court of Appeal.

(6) An appeal shall lie to the Court of Appeal from any judgment or decision of the said Judges or a majority of them (1); and, subject to any Rule of Court relating to such appeals, the procedure thereon shall be, as far as may be, the same as upon an appeal from a County Court to the High Court (2). The appeal shall be heard by three or more Judges of the Court of Appeal, and the decision of such Judges or a majority of them shall be final (3). R.S.O. 1897, c. 224, s. 84.

(1) The decision of the Board of County Judges, whether it be unanimous or given by a majority of them, is appealable.

(2) For the procedure upon an appeal from the County Court to the High Court, see The Consolidated Rules of Practice, 793 to 797. See also: *The Toronto Railway Company and City of Toronto,* 18 P.R. 489.

(3) Finality is attained only if there is jurisdiction to make the assessment appealed against. If there is no right under the Act to make the assessment, its confirmation by the Court of Revision, the Board of County Judges and the Court of Appeal will not make it valid; and it may, notwithstanding such adjudications, be attacked in an action and set aside: *Toronto Railway Company* v. *City of Toronto,* (1904), A.C. 809. See section 66, and the notes on it, where the cases are collected.

But while, as in the last case cited, an action may be maintained for a declaration that the assessment is invalid, and that the plaintiffs are not liable to pay taxes thereon, or an injunction may be obtained to restrain the collection of the illegal tax, as in *Central Vermont Ry. Co.* v. *St. Johns,* 14 A.C. 590, the remedy of

the person illegally assessed is confined to some form of action; he cannot have a further appeal to the Supreme Court of Canada from a decision of the Court of Appeal given under this section. Such an appeal is not authorized by *The Supreme and Exchequer Courts Act: City of Toronto* v. *Toronto Railway Company*, 27 S.C.R. 640.

County Judge may State Case for Opinion of Court of Appeal

77. In order to facilitate uniformity of decision without the delay or expense of appeals,—

1. A County Judge may, after his judgment in the case or matter, prepare a statement of the facts in the nature of a case on any question of general application which has arisen under this Act, or on any question which has arisen upon an appeal of a person, partnership or corporation assessed on one or more properties to an amount aggregating $10,000 and may transmit the same to the Lieutenant-Governor in Council, who thereupon may state a case and immediately refer the same to a Judge of the Court of Appeal, for the opinion of a Judge thereupon; or

The object of this section is uniformity of decision with a minimum of delay and expense.

It is optional with the County Judge to state a case for the Court of Appeal.

Two classes of cases may be stated :

(1) On any question of general application which has arisen under this Act.

(2) On any question arising upon an appeal of a person, etc., assessed in the aggregate $10,000.

The case when stated is transmitted to the Lieutenant-Governor in Council. It is optional with the latter to "state a case" for the opinion of a Judge of the Court of Appeal. The case to be stated by the Lieutenant-Governor in Council is not necessarily confined to the limits of the case stated by the County Judge.

See *Re Canadian Oil Fields Limited*, 7 O.L.R. 101.

Re Leach and City of Toronto, 4 O.L.R. 614.

Lieutenant-Governor to Obtain Opinion.

2. The Lieutenant-Governor in Council may, without such statement, refer a case on any such question to a Judge of the Court of Appeal for a like opinion.

The government may, on its own initiative, refer a case to the same tribunal, on " any such question " as is mentioned in subsection 1.

Duty of Court.

3. Immediately upon the receipt of such case it shall be the duty of a Judge of such Court (to be named by the Court of Appeal or the Chief Justice thereof), to appoint a time and place for hearing arguments (if any be offered) upon the points and matter involved in the case, of which time and place written notice shall be given by the Registrar of the Court by posting up a copy of the notice in the central office of the High Court at Osgoode Hall, in Toronto, at least ten clear days before the time appointed as aforesaid.

Argument.

4. At the time and place fixed therefor, as aforesaid, or at any time to which he may adjourn the same, the Judge shall hear argument upon the case by such of the counsel present (if any) as he may deem reasonable, and shall thereupon consider the case and certify to the Lieutenant-Governor in Council his opinion thereon; and the opinion shall thereupon be forthwith published in *The Ontario Gazette*, and a copy thereof shall be sent to every Judge of a County Court.

Security for Costs.

5. The Lieutenant-Governor in Council may impose such conditions as may appear to be reasonable as to a deposit of money or the execution of a bond to His Majesty to cover costs of any party or otherwise, before or upon the transmission of such case to the Judge.

Statement of Cases not to Affect Rolls, etc., then being Prepared. Rev. Stat., c. 51.

6. The statement of any such case or the hearing or argument or other proceeding thereon under this Act shall not delay the final revision of the assessment roll or other proceedings thereon or the collection of taxes thereunder. The Judge may also direct and require notice of the proceeding to be served on any person, and that such person may be heard by counsel or personally, and he may make such order in the premises and as to costs and the payment thereof as will, in his opinion, do justice to all parties concerned; and any such order may be enforced in the same manner as an order of a Judge of the High Court under *The Judicature Act* or otherwise. But any such order, decision or judgment shall not alter, vary or invalidate any assessment or collector's roll made at or before the time when the decision, judgment or order is made.

Reference to Full Court of Appeal.

7. The judge may at any stage of the proceedings refer the case to the full Court for hearing and adjudication, and the said Court shall have the authority and perform the duties hereinbefore assigned to or conferred upon a Judge. R.S.O. 1897, c. 224, s. 85.

The Judge is empowered to make " such order in the premises and as to costs as will in his opinion do justice to all parties concerned.

The stated case is not prepared under sub-section 1 by the Judge until he has given his judgment, which is final. Under sub-section 6 the assessment roll is not to be altered. How can he make such order as will do justice, except perhaps by directing the collector's roll to be varied in accordance with his views of what it ought to be, if not yet completed. See sec. 97.

Assessment to be Opened Upon Appeal.

78. Upon an appeal upon any ground against an assessment the Judge of the County Court or the County Judges hearing an appeal under section 76 of this Act, or the Court of Appeal, as the

case may be, may re-open the whole question of the assessment, so that omissions from, or errors in, the assessment roll may be corrected, and the accurate amount for which the assessment should be made, and the person or persons who should be assessed therefor may be placed upon the roll by the Judge or Judges, or Court, and, if necessary, the roll of any particular ward or subdivision of the municipality, even if returned as finally revised, may be opened so as to make the same correct in accordance with the finding of such Judge or Judges, or Court. 3 Edw. VII., c. 21, s. 8, *part amended.*

See sub-section 21 of section 65. This section is intended to extend to the County Judge, the Board of County Judges and the Court of Appeal upon an appeal from a Board of County Judges, the power conferred on the Court of Revision by section 65, subsection 21.

This section does not apply to a stated case under the last section. The terms of sub-section 6 of that section would conflict with the power given by this section if the latter were applicable to proceedings under section 77. This applies to an appeal under section 76, sub-section 6.

For the mode of adjusting the collector's roll to conform to the changes made in the assessment roll under this section, see section 97.

Equalization—County Valuators.

The law contemplates the assessment of all land at its actual value but neither the letter nor the spirit of the law are, in this respect, so closely adhered to as they should be. Some municipalities assess more nearly at actual value than others. If all the real property, income and business assessments of a municipality were made at a uniform reduction of 25 per cent. from actual values and amounts, the taxes imposed on the ratepayers of the municipality would be borne in exactly the same proportion by, and would be the same in amount for, the several ratepayers, as if the assessment had been made at actual values and amounts. But if there is a variation of the ratio of actual value to assessed value, in the different municipalities, the revenue of the county, raised by a uniform rate on the dollar of the assessed value of each

municipality, would fall most heavily on those municipalities which were assessed most nearly at actual value, and the municipalities the assessment of which was relatively low would escape their fair share of taxation for county purposes. To secure fairness, a comparison of the assessments has to be made, and a proportionate increase in the aggregate assessment of each municipality not up to the standard and a proportionate reduction of those above it, have to be made, of such amounts as will bring all to an equitable valuation. This is called the equalization of the assessment for the county, and is ordinarily attended to at the June meeting of the county council.

To facilitate this task, county valuators may be appointed.

Copy of Roll to be Transmitted to County Clerk.

79.—(1) Subject to the provisions of sub-section 2 of this section, when after the appeal provided by this Act, the assessment roll has been finally revised and corrected, the clerk of the municipality shall, within 90 days, transmit to the county clerk a certified copy thereof.

(2) The Council of any county may pass a by-law permitting the clerks of municipalities instead of transmitting a copy of the roll as required by sub-section 1 to submit a summarized statement of the contents of the roll, showing the total population of the municipality and the total assessment of each of the various classes of property liable to assessment; but the clerk of every municicipality shall, nevertheless, transmit a copy of the roll to the Clerk of the county in every third year and whenever in other years he may be required to do so by the County Judge or by resolution of the County Council.

(3) The penalty for default in performance of the duties under this section, or under such by-law, upon the clerk of a municipality shall be not less than $10 and not more than $20. R.S.O. 1897, c. 224, s. 83; 62 V. (2) c. 27, s. 7, *amended.*

The directions of sections 80 and 81 can be properly carried out only by the means provided by this section.

County Councillors May Appoint Valuators, their Duties, etc.

80.—(1) The council of every county may appoint two or more valuators (1) for the purpose of valuing the real property within the county (2), and it shall be their duty to ascertain, in every fifth year at furthest, the value of the same in the manner directed by the county council (3); but the valuators shall not exceed the powers possessed by assessors. The valuation so made shall be made by the county council the basis (4) of equalization of the real property for a period not exceeding five years (5).

Equalizations have been, and are, frequently made by county councils without appointing valuators. But the result is a somewhat crude approximation. An examination of the assessment rolls in the council chamber by the members of the council, and a discussion of the relative values of properties assessed, based on the knowledge of the members of values in other parts of the county than their own, is not usually productive of great accuracy.

(1) There must be at least two valuators, there may be more. Three is a usual number.

(2) They are for the purpose of valuing the real property within the county.

(3) The county council may prescribe the mode of their procedure in so far as that is not laid down in this Act; they have by implication, for the purposes for which they are appointed, all the powers of assessors; but they are not to exceed the powers of assessors.

(4) " Basis," see the note on section 84. See also section 82, sub-section 8.

(5) The valuation which they make shall be made the basis of the equalization of real property for a period, but that period is not to exceed five years. The relative wealth, population, and prosperity of different municipalities may, in the course of a longer period, vary from a variety of causes, so that the basis adopted earlier may have become quite unfair. The county council must, therefore, at the end of the period which has been fixed, and which is limited to five years, consider the relative progress of the various parts of the county and decide whether the former basis continues to be fair.

Terms for Which Valuation to be in Force.

(2) The county council may (1), at or before the expiration of the said period (2), extend the time for a term not exceeding five years further (3) and thereupon the valuation shall continue to be made the basis of equalization of the real property by the county council for such extended period (4). R.S.O. 1897, c. 223, s. 310.

(1) The county council *may* extend the time, but it is optional with them to do so or not.

(2) They must do so " at or before " the expiration of the former period. It cannot be adopted again after it has, for some time, lapsed.

(3) The duration of the extension may be less than five years, but it cannot be more.

(4) Once the extension has been adopted the valuation so adopted must continue to be the basis of equalization until the expiration of the extension.

Method of Valuing by County Valuators.

(3) When valuators have been appointed under this section the said valuators may (1) ascertain the value of the said real property by inspecting and valuing from five to eight per cent. of the different parcels of land in different parts of each municipality in the county, and upon such inspection and valuation the said valuators shall compare their valuations with the valuations in the last revised assessment roll made by the assessors of the several municipalities within the county (2); and if upon such comparison it is found that the valuation of the county valuators nearly corresponds in the aggregate with the valuation upon the assessment roll of a municipality, the valuators and afterwards the county council shall accept the assessment roll as correct for the purposes of county valuation.

Where Valuation Differs from Total Assessment.

(4) Where it is found that the valuations of particular lots made by the county valuators differ materially from the valuations

of the same lots upon the assessment roll of a municipality, the county valuators shall add or deduct a corresponding percentage to or from the local assessment; and a similar method shall be followed with respect to the valuation of real property in towns and villages (3). 1 Edw. VII., c. 26, s. 13.

Attestation of Valuators' Report.

(5) The valuators shall attest their report on the value of the real property within the county by oath or affirmation in regard to the property actually inspected and valued by them in the same manner as assessors are required to verify assessment rolls. R.S.O. 1897, c. 224, s. 90; 1 Edw. VII., c. 26, s. 14.

(1) "May ascertain." The county council having power to direct the manner in which the valuators shall proceed, the mode of procedure here outlined is only permissive. In some instances the valuators, in addition to inspecting property and valuing it, make a search of actual sales of land in each municipality, in the registry office, and compare the prices got on actual sale with the assessed values.

(2) The "last revised assessment roll" is the one to be used. If the valuation is made late in the year after the rolls are revised, the assessment roll may be that of the current year. If not, it must be that of the preceding year.

(3) The report of the valuators should show what, by the method employed, is the correct aggregate assessment of each municipality.

(4) The value of the work done by these officials depends upon its being impartial. If three men, selected widely apart in the county, yet familiar with the county and with land values, make the examinations and valuations suggested in this section, and make oath to their valuations, the result should be sufficiently accurate for all practical purposes. The oath is only as to "the value of the real property actually inspected and valued by them." Each assessor swears in regard to his assessment roll that "I have justly and truly assessed each of the parcels of real property so set down at its actual value." See Schedule G.

Annual Examination of Assessment Rolls by County Councils for Purpose of Equalization.

81.—(1) The council of every county shall, yearly, and not later than the first day of July, examine the assessment rolls of the different townships, towns, and villages in the county, for the preceding financial year (1), for the purpose of ascertaining whether the valuations made by the assessors in each township, town or village bear a just relation one to another (2); and may, by by-law (3) for the purpose of county rates, increase or decrease in any township, town or village, the aggregate valuations, adding or deducting so much per cent. as may, in their opinion, be necessary to produce a just relation between them (4); but they shall not reduce the aggregate valuation for the whole county as made by the assessors (5). R.S.O. 1897, c. 224, s. 87, *amended* (6).

This examination of the assessment rolls must be made not later than the first day of July. All the assessment rolls of the county are to be examined.

(1) The rolls to be examined are those for the *preceding financial year.* " The rolls for the current financial year cannot be utilized, because they may not be finally completed until the 1st of August, and the township clerk has 90 days thereafter in which to send copies of them to the county clerk. Therefore as [this section] provides it is the revised rolls for the preceding financial year which are to be examined and equalized, and it is the amount of the property assessed and valued on these rolls as equalized which forms the basis on which the apportionment of the county's requirements among the various local municipalities is made." Per Osler, J.A. in: *Re Nottawasaga and Simcoe,* 4 O.L.R. at p. 13.

" The object aimed at by the equalization of the assessment rolls is to correct, as nearly as may be, the eccentricities and unreasonable differences in assessments as taken in the various local municipalities, so that the incidence of the county rates may be fairly distributed over the whole of the assessable property in the county. Unless some method is provided for producing a just relation between the valuations of real and personal estate in the county, some municipalities may escape payment of their just share of the county rates according to the real value of the assessable property therein." *Ib.* p. 12.

(2) The valuators are appointed " for the purpose of valuing the real property within the county." The county council compares the assessment rolls to see whether the valuations in the various municipalities " bear a just relation one to another."

(3) The equalization is by by-law. Section 325 of *The Consolidated Municipal Act* (1903), says: " The powers of the council shall be exercised by by-law, when not otherwise authorized or provided for."

(4) Equalization is solely for the purpose of determining the proportion in which the aggregate amount required for the purposes of the county, is to be divided amongst the municipalities. " County rates " is synonymous with " taxation for the expenses of the county." The sums at which the various assessment rolls are equalized determine the proportions in which the whole amount to be levied for the year in which the equalization is used, is to be divided amongst the municipalities composing the county. The county council by an arithmetical calculation determines what amount of money each municipality must contribute, on the basis of the equalization, to the treasury of the county. Then what equalized roll is to used in any year? Section 84 says it is " the assessment of property equalized in the *preceding year* " that is to be "the basis on which the apportionment is to be made." In *Re Revell and the County of Oxford*, 42 U.C.R. 337, a by-law to levy money for county purposes in 1877, not on the assessment rolls as equalized in 1876, but on the basis of the equalization made in 1877, was held illegal under section 74 of 32 Vict. cap. 36, which as amended is now section 84 of this Act. " Two things are indispensable to the working of this branch of the assessment law. The one is, that yearly there shall be an equalization for the purpose of producing a just relation between the assessments of all the local municipalities of the county. The other is that when this is yearly accomplished, it shall be ready for use whenever it may, under the statute, be *properly* used."

" There is nothing in section 71 [as amended, now section 81], which declares that the machinery thus provided shall in the year when provided, be used as ' the basis ' of county taxation for *that* year."

" The machinery, as a matter of fact, is never completed until the year is well advanced, and would not under any circumstances be available for county rates in the first half of the year. It could

not, therefore, in the first part of the year be made the basis for county taxation for that year. But if there be provided any other basis for that year, it will not be the less ready in the year following. Now, this is what we think the Legislature intended when, in section 74, enacting that the amount of property returned on the rolls as finally revised and equalized for the preceding year, shall be the basis of apportionment for the current year." *Ib.* per Chief Justice Harrison, at p. 345.

But in 1902 the Court of Appeal, in construing the Statute then in force, took the view that the equalization made in the current year, must be the basis of the apportionment of the county taxation in the current year amongst the different municipalities: *Re Nottawasaga and County of Simcoe*, 4 O.L.R. 1. Subsection 10 of section 88 of R.S.O. 1897, cap. 224, would not lend itself to any other construction. It provided that when, upon an appeal from the by-law of the county council equalizing the assessment, the county judge varies the proportions by increasing or diminishing the assessment of any municipality, he shall direct the county clerk to readjust the sums to be paid in that year by the different municipalities in accordance with his findings. That direction would be meaningless if the rate of the current year were based on the equalization of the preceding year. Mr. Justice Osler thought that the loose language of section 91 (now, as amended, section 84) " may well have caused the confusion which seems to have existed as to which equalized roll the county is to act upon." But section 91, now section 84, has been amended to make it more definite. Sub-section 10 of section 88 of the former Act is now omitted and the County Judge or Court " shall not defer judgment beyond the 1st day of January next." So that the construction of the present Act, it is submitted, must be in accordance with the earlier decision, that the equalization of the preceding year must be used in the current year.

The equalization made in 1905 on the basis of the assessment rolls of 1904, will be used in 1906 for the apportionment in 1906 of the county taxation amongst the municipalities of the county. The financial burdens of 1905 were, or ought to have been, apportioned amongst the municipalities on the basis of the equalization made in the preceding year 1904, on the rolls of 1903.

For a discussion of the effect of errors in equalizing assessments on a county by-law, see *Secord and the Corporation of Lincoln,*

24 U.C.R. 142. It was held a good defence, in an action by a county against a municipality in the county to enforce payment by the local municipality of its share of the county taxation for the year, that in capitalizing property under the Statute it was capitalized at ten per cent. instead of six per cent. as directed by the Statute: *County of Lincoln* v. *Town of Niagara*, 25 U.C.R. 578. In both of these cases it appeared that greater weight would be given to the objection as a defence to an action than on a motion to quash the by-law. See also: *Re Revell and The County of Oxford*, 42 U.C.R., at p. 343; *McCormick* v. *Oakley*, 17 U.C.R. 345; *Town of Simcoe* v. *County of Norfolk* 5 C.L.J. 181; *Re County of Simcoe*, 5 C.L.J. 294; *Re Gibson and Counties of Huron and Bruce*, 20 U.C.R. 111; *Tylee* v. *County of Waterloo*, 9 U.C.R. 572.

(5) The county council shall not reduce the aggregate valuation of the whole county as made by the assessors. The natural inference is that they may increase it. One municipality in a county may be assessed at its full value; the others may all be low. The natural way of equalizing would be to add a proper percentage to each of the low assessments to bring it up to the actual value. One would suppose that reductions would require to be made only in the rare instances in which a municipality is assessed at more than its actual value. There is a dictum of Osler, J.A., to the contrary. He says " The aggregate valuation of the various local municipalities appearing upon their assessment rolls as finally revised and corrected is not to be disturbed. What is taken or deducted from the valuation of one is to be placed upon, and distributed over, the valuations of another or others." *Re Nottawasaga and Simcoe*, 4 O.L.R. 1.

(6) It is to be noted that the words " before imposing any county rate," and " except as provided by sections 58 and 61," which were in section 87 of R.S.O. 1897, cap. 224, are now omitted. The adoption, in each year, of the equalization of the preceding year as the basis of apportionment, makes them no longer necessary.

Notice of Equalization to Municipalities Concerned.

(2) Within ten days after the equalization by-law has been passed by the county council, the county clerk shall transmit to the reeve and clerk of each municipality a copy thereof. *New.*

This sub-section is wholly new.

Appeal as to Equalization of Assessment.

82. If any municipality is dissatisfied with the action of any council in increasing or decreasing, or refusing to increase or decrease the valuation of any municipality, the proceedings shall be as follows:

Notice of Appeal.

(1) The municipality so dissatisfied may appeal (1) from the decision of the council at any time within twenty days (2) after the passing of such by-law, by giving to the clerk of the county council notice in writing, which notice shall state whether the municipality appealing is willing to have the final equalization of the assessment made by the County Judge (3). R.S.O. 1897, c. 224, s. 88, par. 1, *amended.*

(1) A by-law is not necessary to authorize the appeal. A resolution is sufficient: *Re Nottawasaga and Simcoe,* 3 O.L.R. 169; *Port Arthur H. S. Board* v. *Fort William,* 25 A.R. 522; *Township of Pembroke* v. *Canada Central Ry. Co.,* 3 O.R. 503.

(2) The time was formerly ten days, but the county clerk has now ten days in which to notify the reeve and clerk. This gives ten days in which to launch the appeal.

(3) The notice must be in writing; is given to the clerk of the county; and in addition to stating the fact of the appeal must indicate whether the appellants wish it to be heard by the County Judge or by the Court prescribed by sub-section 4.

County Council may Elect as to County Judge Acting.

(2) Every county council, at the same session in which the assessment has been equalized, shall determine whether the said council is willing to have the final equalization of the assessment, in case of appeal, made by the County Judge.

The county council has also the right to say whether it is willing to have the final equalization made by the County Judge.

Notice to Provincial Secretary.

(3) Upon receiving notice of appeal, in case any party to the appeal has objected to the final equalization of the assessment being made by the County Judge, the clerk of the county council shall forthwith notify in writing the Provincial Secretary of such objection, giving the name or names of the municipality of municipalities so objecting. R.S.O. 1897, c. 224, s. 88, pars. 2, 3.

Appointment of Court by Order-in-Council.

(4) The Lieutenant-Governor in council, upon receiving the notice in writing from the clerk of any county council, may (1) appoint two persons, one of whom shall be the sheriff or registrar of the county in which the appeal is made, and the other a Judge of another county, who together with the County Judge shall form a Court, and the said Court shall at such time and place as the Lieutenant-Governor in Council may appoint, proceed to hear and determine the appeal either with or without the evidence of witnesses, or with such evidence as they may decide upon hearing, and may examine witnesses under oath or otherwise, and may adjourn from time to time; but (2) the judgment of the said Court shall not be deferred beyond the 1st day of January next (3) after the notice of the appeal; and the Court shall equalize the whole assessment of the county and shall forthwith report the same to the county council. R.S.O. 1897, c. 424, s. 88, par. 4, *amended.*

(1) There is no provision made for the hearing of the appeal in case the Lieutenant-Governor in Council does not appoint the additional members of the Court. It may be assumed, however, that the appointments will uniformly be made.

(2) The words " except as provided in sections 58 and 61," were formerly inserted here, before the time limit. Sections 58 and 61 of the former Act correspond to sections 53 and 56 of this Act. The change made in the time when the equalization is to be used, has made the omitted words no longer necessary.

(3) The time limit was formerly the 1st day of August. The reason given in the last note also accounts for the extension of the

time within which judgment must be given. The equalization is no longer used to adjust the county taxation for the current year, it will be used in the next year.

This time limit is imperative. After some difference of judicial opinion, that was decided in *Re Nottawasaga and County of Simcoe*, 4 O.L.R. 1. See also: *Re Ronald and Brussels*, 9 P.R. 232.

Fees of Judge, Sheriff and Registrar.

(5) The Judge of the other county shall be entitled to a reasonable allowance for his services, the same not to exceed $10 a day, besides his travelling and other expenses, and the County Judge, sheriff or registrar, shall also receive a reasonable sum, not to exceed $10 per day, and to be paid by the county.

Quorum.

(6) Any two members of such Court shall constitute a quorum, and such Court may proceed and adjudicate upon such appeal notwithstanding the office of sheriff or registrar or County Judge is vacant. R.S.O 1897, c. 224, s. 88, pars. 5, 6.

Equalization by County Judge.

(7) Where all the parties to the appeal have agreed, as above provided, to have the final equalization of the assessment made by the County Judge, the clerk of the county council shall forthwith notify in writing the County Judge, and the County Judge shall appoint a day for hearing the appeal, not later than ten days from the receipt of such notice of the appeal, and may on such day proceed to hear and determine the appeal, either with or without the evidence of witnesses, or with such evidence as he may decide upon hearing, and may examine witnesses under oath or otherwise, and may adjourn, from time to time; but the judgment shall not be deferred beyond the 1st day of January next after such appeal; and the Judge shall equalize the whole assessment of the county, and shall forthwith report the same to the county council. R.S.O. 1897, c. 224, s. 88, par. 7, *amended*.

The language of sub-section 7 has also been varied. Formerly it might have been questionable whether the County Judge had power to hear the evidence of witnesses; while there was express power given to the Court by sub-section 4 to take evidence, there was nothing similar in sub-section 7. See *Re Nottawasaga and Simcoe*, 4 O.L.R., at p. 14. This sub-section also formerly contained the exception in reference to sections 58 and 61, noted under sub-section 4, and fixed the same limit for giving judgment. See sub-section 4 and the notes thereon.

Appeal in Cases of Equalization of Assessment.

(8) The right of appeal shall exist whether county valuators have been appointed or not, and upon any such appeal the report of the county valuators shall be open to review by the Court or Judge as herein provided.

This removes any uncertainty that might arise from the language used in the last sentence of sub-section 1 of section 80.

Costs.

(9) The costs incurred in the prosecution and opposing of such appeal respectively shall be borne and paid as directed by the County Judge or Court, as the case may be, and not otherwise, and shall be subject to taxation on the County Court scale by the clerk of the the County Court of the said county. R.S.O. 1897, c. 224, s. 88, pars. 8, 9.

The costs so taxable are those which would be payable for the same services in an action in the County Court, including counsel fees, which are limited in the County Court to $25 to one counsel on a side.

Effect of Clerk of Municipality Omitting to Send Copy of Roll.

83. If the clerk of the municipality has neglected to transmit a certified copy of the assessment roll, such neglect shall not prevent the county council from equalizing the valuations in the several municipalities according to the best information obtainable;

and any rate imposed, according to the equalized assessment, shall be as valid as if the assessment rolls had been transmitted. R.S.O. 1897, c. 224, s. 89.

See section 79 in reference to the duty of the clerk of each municipality to transmit to the county clerk a certified copy of the assessment roll within 90 days after its final revision. This section is intended to prevent the default of the clerk from obstructing or invalidating the equalization.

Apportionment of County Rates, How to be Based.

84. The council of a county, in apportioning a county rate among the different townships, towns and villages within the county, shall, in order that the same may be assessed equally on the whole rateable property of the county, make the assessment of property *equalized in the preceding year* the basis upon which the apportionment is made. R.S.O. 1897, c. 224, s. 91, *amended.*

The language of this section is clearer than that of section 91, of R.S.O. 1897, cap. 224, which was discussed in *Re Nottawasaga and Simcoe,* 4 O.L.R. 1, and which read:

" The council of a county in apportioning a county rate among the different townships, towns and villages within the county shall in order that the same may be assessed equally on the whole rateable property of the county, make [the amount of property returned on the assessment rolls of such townships, towns and villages, or reported by the valuator as finally revised and equalized for the preceding year] the basis upon which the apportionment is made." " The assessment of property equalized in the preceding year " is substituted now for the words in " [ ] ". See notes (4) and (6) on section 81, and notes (2) and (3) on sub-section 4 of section 82 for a full discussion of the change made by the present Act in the year in which each equalization is used.

Basis. The significance of the word " basis " is indicated in the following observations on its use in section 74 of 32 Vict. ch. 36:—

" The declaration is not that the amount returned as finally revised and equalized for the preceding year, together with something else, shall be a basis, but that the amount so returned, and so finally revised and equalized shall be *the* basis."

" The declaration is not, that subject to such revision or equalization as the county council think necessary, such amount shall be *a* basis, used in the sense of an approximation, but *the* basis upon which the apportionment is made."

" The word ' basis ' as used in this section, means, and can only mean, the foundation, the whole and only foundation, of the apportionment ": *Re Revell and the County of Oxford*, 42 U.C.R., at p. 344, per Harrison, C.J.

Where Boundaries of Municipalities are Changed.

85. Where boundaries of existing municipalities are changed or where a new municipality is erected within a county so that there are no assessment or valuator's rolls of the new municipality for the next preceding year, the county council shall by examining the rolls of the former municipality or municipalities of which the new municipality then formed part, ascertain, to the best of their judgment, what part of the assessment of the municipality or municipalities had relation to the new municipality, and what part should continue to be accounted as the assessment of the original municipality, and their several shares of the county tax shall be apportioned between them accordingly. R.S.O. 1897, c. 224, s. 92, *amended.*

(1) Under *The Consolidated Municipal Act*, (1903), section 16, additions may be made to villages of parts of adjacent localities; under section 17 there is power to detach farm lands from cities and towns separated from the county, and annex them to the adjoining municipality; under section 18 farm lands may be detached from a town or village; under section 18 (*b*) the area of a town or village in unorganized territory may be reduced; under section 19 a village may become unincorporated and annexed to the adjoining municipality; under section 22 additional territory may be added to a town or city where it is incorporated as such, and under section 24 as amended by 5 Edw. VII., chap. 22, section 1, its limits may afterwards be extended; under section 26 a village or town may be annexed to an adjacent town or city; sections 29 to 32 deal with new townships and with unions of townships; section 11 deals with the incorporation of new villages.

When boundaries are varied or new municipalities are organized, there may be no assessment roll or valuator's roll for the municipality for the preceding year. The county council then by examination of the rolls approximates, as best they may, the assessed value of such municipalities, and the deductions to be made from the municipalities which have lost territory, and their shares of the county taxes are apportioned accordingly.

County Councils to Apportion Sums Required for County Purposes.

86. Where a sum is to be levied for county purposes (1), or by the county for the purposes of a particular locality (2), the council of the county shall ascertain, and, by by-law, direct, what portions of such sum shall be levied in each township, town or village in such county or locality. R.S.O. 1897, c. 224, s. 93.

4 Edw. VII. cap. 24, section 4 is as follows:

4. Section 403 of *The Consolidated Municipal Act*, 1903, is repealed and the following substituted therefor:—

403. In every county and local municipality all rates shall be calculated at so much on the dollar upon the whole of the assessment of the municipality including real property, income, business and other assessments, as provided by *The Assessment Act*.

(1) Section 84 directs that county rates shall be apportioned amongst the municipalities composing the county, on the basis of the equalized assessment of the preceding year, so as to be levied equally on the whole rateable property of the county. It is only when there is some express authority for so doing, that a departure can be made from the rule so laid down. See sections 3 and 4, and the notes thereon.

" For any general purpose of the county all the rateable property in the county must be assessed rateably, whether in one township or another. If the council had a discretion to tax in this manner they might make a township contribute £5, and another £500, to the same county objects, even where there was no inequality in the population and wealth of the townships. It imposes no rate per pound nor directs an equal rate to be assessed." By-law quashed: *Tylee* v. *County of Waterloo*, 9 U.C.R. at p. 575. See also *County of Lincoln* v. *Town of Niagara*, 25 U.C.R. 578; *Re Gibson and the Counties of Huron and Bruce*, 20 U.C.R. 111.

To levy a rate unequally upon different portions of the county without express statutory authority would bring the county officials within the language of Chief Justice Draper:

If they set at naught " the directions of the assessment Act, the county council are incurring a very serious risk, and are exposing all those who may require to appeal to any of their by-laws affected by this objection for protection for some act done under it, to the danger of finding themselves exposed to damages and without protection or indemity." *Re Secord and the County of Lincoln,* 24 U.C.R. 142.

A by-law passed by a county council to grant specified sums to the various municipalities in the county " to aid and assist such municipalities in preserving, improving, and repairing roads and bridges thereon," was quashed on two grounds. (1) There was no statutory authority to make such grants as were contemplated by the by-law. (2) The sums were so apportioned as to nullify the changes in the apportionment of county rates, made by the alteration of the assessments by the County Judge on appeal to him. The municipalities, the assessment of which he reduced on the appeal, got no share of the special grants: *Re Strachan and the County of Frontenac,* 41 U.C.R 175.

(2) At one time under *The Municipal Act*, a group of municipalities in a county could grant a bonus in aid of a railway. The by-law was that of the county, but the rate to be levied for payment of the debentures issued thereunder and interest thereon was assessed and levied upon such portion only of the county as comprised the group of municipalities giving the bonus. See R.S.O. 1877, cap. 166, section 26, sub-section 4. This provision was abolished by 43 Vict. cap. 27, section 17. Special statutes of that character authorized the levy of sums of money by the county upon certain defined portions of it, and debentures issued under them must be repaid by the portions of the county that are responsible therefor. They are sums " to be levied by the county for the purposes of a particular locality."

Section 404 of *The Consolidated Municipal Act,* (1903), directs the council of every county and local municipality to make an estimate of all sums which may be required for the lawful purposes of such county or local municipality for the year, and in the estimate to make due allowance for the cost of collection, and for abatement and losses which may occur in collection and for non-

resident taxes which may not be collected. Each local municipality must make good out of its general funds any deficiency in its share of any county, school or local rates. See section 188 of this Act.

The amounts required to be levied under *The Public Schools Act* (1901), for the salaries and expenses of public school inspectors are included in the county rate, and the plain direction of sections 84 and 87 to the municipal clerks is to levy the amount by a uniform rate over the whole of the assessment of their respective municipalities. Formerly there was an adjustment of the amount levied on separate school supporters for such purposes.

Section 72 of *The Public Schools Act* (1901), directs the clerks of each municipality to make a return to the public school inspector of all sums levied on separate school supporters for public school purposes; and the inspector was required to repay such sums, as an increased grant to the separate schools, before apportioning the residue of the county grant to schools, among the schools of the municipality. But in practice this is not now an adjustment, as there is now no county grant to schools as an equivalent to the Legislative grant.

County Clerk to Certify Amounts to Clerks of Municipalities.

87. The county clerk shall forthwith after the county rates have been apportioned certify to the clerk of each municipality in the county, the total amount which has been so directed to be levied therein for the then current year, for county purposes, or for the purposes of any such locality; and the clerk of the municipality shall calculate and insert the same in the collector's roll for that year. R.S.O. 1897, c. 224, s. 94, *amended.*

The county clerk formerly had until the 15th of August to notify the clerks of the local municipalities. Appeals to the county Judge or Court had to be disposed of not later than the 1st of August, and the County Judge or Court gave directions to the county clerk to make the necessary alterations in the apportionment of the county rate to give effect to the changes made in the equalization of the county on the appeal. But as the apportionment is now made on the equalization of the preceding year, there is now no reason why the notice to the clerks of the local muni-

cipalities should be delayed. It must now be given forthwith. See sections 81 and 84, and the notes thereon.

It is the duty of the clerk of each municipality to calculate and insert the county rate in the collector's roll without instruction from the council or any other authority than the statutory direction here given: *Bogart* v. *Township of King*, 32 O.R. 135.

Act not to Affect Provisions for Rates to Raise Interest on County Debentures.

88. Nothing in this Act contained shall alter or invalidate any special provisions for the collection of a rate for interest on county debentures, whether such provisions are contained in any municipal Act now or formerly in force in this Province, or in any Act respecting The Consolidated Municipal Loan Fund of Ontario, or in any general or special Act authorizing the issue of debentures, or in any by-law of the county council providing for the issue of the same. R.S.O. 1897, c. 224, s. 95.

This Act is not intended to interfere with any special provisions for the collection of interest on county debentures whether such provisions are enacted by

(*a*) The Municipal Act now in force.

(*b*) Any Municipal Act formerly in force.

(*c*) Any Act respecting The Consolidated Municipal Loan Fund of Ontario.

(*d*) Any general or special Act authorizing the issue of debentures, or by

(*e*) Any by-law of the county council providing for the issue of the same.

It is not the intention of the Legislature that obligations validly incurred can afterwards be repudiated by municipal corporations.

Section 393 of *The Consolidated Municipal Act* (1903), provides that " no officer of the municipality shall neglect or refuse to carry into effect a by-law for paying a debt under colour of a by-law illegally attempting to repeal such first mentioned by-law, or to alter the same so as to diminish the amount to be levied under it.

Section 138 of *The Criminal Code* makes disobedience of such a statutory prohibition an indictable offence, punishable by a year's imprisonment.

Any by-law which attempts to repeal a by-law validly passed for incurring a financial obligation or for exempting property from taxation, will be quashed on a motion for that purpose. See *Alexander* v. *Village of Huntsville*, 24 O.R. 665.

Who is Liable for Taxes.

89. The taxes due upon any land with costs (1) may be recovered from the owner or tenant originally assessed therefor (2) and from any subsequent owner of the whole or any part thereof (3), saving his recourse against any other person, and shall be a special lien on the land, [enforceable by action] (4) in priority to every claim, privilege, lien, or encumbrance of every person except the Crown, [and the lien and its priority shall not be lost or impaired by any neglect, omission or error of the municipality (5), or of any agent or officer], or by want of registration (6). R.S.O. 1897, c. 224, s. 24 (2) *last part and* s. 149 *amended.*

(1) This section is compounded of section 24, sub-section 2, and section 149 of R.S.O., 1897, cap. 224, with the addition of the parts in brackets. It deals with the taxes due by reason of the assessment of *land.*

Taxes upon income and business assessment are a personal obligation only. They are not, in any event, chargeable upon land. See section 10, sub-section 8.

Taxes due upon land are the taxes which arise by reason of land having been assessed.

(2) The owner and the tenant are the parties who are primarily liable for the taxes on the land occupied by the tenant at the time of the assessment and for which they are assessed: Section 33, sub-section 3. As between themselves, the payment of taxes is a matter of contract. In the absence of agreement the presumption of law is that the landlord pays them; but as between them and the municipality they are both liable. If the owner himself occupies the land or it is unoccupied and he is assessed, he alone is liable. Formerly the goods of any subsequent occupant or tenant might be seized and sold for arrears of taxes which had been rated on an assessment made prior to his occupancy: R.S.O. 1897, cap. 224, section 24, sub-section 2. But now no distress

can be made on the goods and chattels of a tenant for any taxes not originally assessed against him as such: Section 103, sub-section 1, clause 4. "Tenant" includes occupant and person in possession other than the owner: Section 2, sub-section 6, of this Act.

(3) The only person now personally liable for taxes on land, without being himself actually assessed for it, is the subsequent owner of the whole or any part of such lands. He has recourse, notwithstanding his own liability, against his vendor for any taxes which were imposed and in arrear during the time the vendor owned the land, if the deed to him contains the usual covenants against encumbrances. *Harry* v. *Anderson*, 13 C.P. 476; *Silverthorn* v. *Lowe*, 40 U.C.R. 73. But see *Devanney* v. *Dorr*, 4 O.R. 206. *Re Kennedy, Wigle* v. *Kennedy*, 26 Gr. 33; *Haynes* v. *Smith*, 11 U. C.R. 57. And when the taxes have been imposed for local improvements completed before the sale, see *Re Graydon and Hammill*, 20 O.R. 199; *Armstrong* v. *Auger*, 21 O.R. 98. As to taxes which accrue subsequently to the purchase, for local improvements petitioned for before the sale, see *Cumberland* v. *Kearns*, 17 A.R. 281, and also *The Consolidated Municipal Act*, 1903, section 681. A solicitor employed to search a title is not obliged to search for taxes or tax sales: *Ross* v. *Strathy*, 16 U.C.R. 430. It is probable that the reasoning in that case has lost much of its force by changes both in the law relating to taxes, and in professional usage. The purchaser assumes the proportion of taxes for the unexpired portion of the year: *People's Loan Company* v. *Bacon*, 27 Gr. 294; *Re Alger and Sarnia Oil Co.*, 23 O.R., at p. 590; but a covenant against encumbrances is not broken by non-payment of taxes for the current year which are not actually imposed: *Corbett* v. *Taylor*, 23 U.C.R. 454. See also *Re Wilson and Houston*, 20 O.R. 532; *Banque Ville Marie* v. *Morrison*, 25 S.C.R. 289.

(4) The taxes are a special lien upon the land in priority to all claims, privileges, liens or encumbrances of every person, except the Crown. Taxes levied on an assessment made prior to a lease to the Crown are not thereby extinguished: *Secretary for War* v. *City of Toronto*, 22 U.C.R. 558. A tax sale extinguishes the right to dower: *Tomlinson* v. *Hill*, 5 Gr. 231. This lien is enforced by a sale of the land. But the persons taxed may now be sued and the taxes recovered as a debt. See section 90.

This lien is enforceable by action against (*a*) the owner who is assessed therefor, (*b*) the tenant who is assessed therefor, (*c*) subsequent owners of the whole or any part of the land. See the next section.

"Except the Crown." The interest of the Crown in land is not assessable or taxable, and cannot be extinguished by a sale for taxes. See section 5, sub-section 1 and the notes thereon. See also section 35 which deals with the assessment of the interest of others in land in which the Crown has also an interest, and the notes thereon. Sec. 151 deals with the tax deeds of Crown lands.

(5) "The lien and its priority shall not be lost or impaired by (*a*) neglect, (*b*) omission, or (*c*) error of the municipality, or of any agent or officer." This portion of the section is new.

This pre-supposes that there is a valid and binding assessment of the taxes against the land. If the tax is not legally imposed there is no lien, and a sale for taxes will be set aside. Compare the language of section 66, and see the notes thereon. See also sections 172 and 173 and the notes thereon, for the construction to be put upon words indicating finality. See also *Flanagan* v. *Elliott*, 12 S.C.R. 435; *Bain* v. *City of Montreal*, 8 S.C.R. 252.

(6) Want of Registration. Under "*The Registry Act*," R.S.O. 1897, cap. 136, sections 87 and 97, unregistered instruments are deemed fraudulent and void as against subsequent registered instruments for valuable consideration where the holder of the registered instrument has not actual notice of the prior claim, and priority of registration prevails. Notwithstanding these provisions of the Registry Act, taxes maintain their priority without registration.

Where taxes illegally imposed have been paid under a mistake of fact, they may be recovered back. So also when paid upon compulsion and under protest. If there has been a mistake of fact, it is not necessary to negative laches, if the party did not waive all inquiry. It being supposed that the assessment was confirmed by the Court of Revision, the taxes supposed to be based on the assessment so confirmed, were paid; on subsequently discovering that the Court of Revision had not even decided the appeal, and that the assessment had not been confirmed, the taxes were recovered back: *Law Society of Upper Canada*

v. *City of Toronto,* 25 U.C.R. 199; but where the owner paid the amount required to redeem his lands, under protest and after the expiration of a year, to the County Treasurer, the money was paid not to the use of the municipality but to the use of the purchaser, and could not be recovered back. "The owner of the land may prevent the sale by paying the sum charged against it to the treasurer. He may make this payment under protest, and contest the legality of the demand." After the sale the treasurer can only receive the money for the benefit of the purchaser: *Boulton* v. *Counties of York and Peel,* 25 U.C.R. 21. The Crown can not be prejudiced by the mistake or laches of its officers, and if taxes wrongly imposed on property of the Crown have been paid, they may be recovered: *Secretary of State for War* v. *London,* 23 U.C.R. 476; *Secretary of State for War* v. *Toronto,* 22 U.C.R. 551.

See also *Baldwin* v. *Johnston,* 2 U.C.R. 475; *Grantham* v. *City of Toronto,* 3 U.C.R. 212; *Trusts Corporation* v. *City of Toronto,* 30 O.R. 209, *Austin v. County of Simcoe,* 22 U.C.R. 73.

If taxes have been paid under pressure to avoid further expense and under protest, and the taxes are not legally imposed, the amount paid may be recovered by action: *Street* v. *Corporation of Simcoe,* 12 C.P. 284, 2 E. A. 211. But if no demand has been made, and no pressure or threat used to compel payment, even though paid under protest, the money can not be recovered. *Benjamin* v. *County of Elgin,* 26 U.C.R. 660. See also *McGill* v. *Municipal County of Peterborough and Victoria,* 12 U.C.R. 44. For a discussion of the distinction between a tax and a debt see the judgment of Ritchie, C.J., in *Lynch* v. *Canada N.W. Land Co.,* 19 S.C.R. 204.

[*As to the amount collectable from an owner in consequence of the tenant's default where the school rate and the separate school rate are not the same, see R.S.O.* 1897, *c.* 294, *section* 53.]

Section 53 of *The Separate School Act* above referred to is as follows:—

53. In any case where, under section 24 of *The Assessmnet Act,* land is assessed against both the owner and occupant, or owner and tenant, the then occupant or tenant shall be deemed and taken to be the person primarily liable for the payment of the school rates, and for determining whether such rates shall

be applied to public or separate school purposes, and no agreement between the owner or tenant as to the payment of taxes as between themselves shall be allowed to alter or to affect this provision otherwise; and in any case where, as between the owner and tenant or occupant, the owner is not to pay taxes, if by the default of the tenant or occupant to pay the same, the owner is compelled to pay such school rate, he may direct the same to be applied to either public or separate school purposes, and if the public school rate and the separate school rate are not the same he shall only be liable to pay the amount of the rate of the school to which in virtue of his right in that behalf he directed his money to be paid. R.S.O. 1887, c. 227, section 51; 55 V., c. 60, section 1.

Recovery of Taxes by Action.

90.—(1) The taxes payable by any person (1) may be recovered with interest and costs, as a debt due to the municipality (2); in which case the production of a copy of so much of the collector's roll as relates to the taxes payable by such person, purporting to be certified as a true copy by the clerk of the municipality, shall be *prima facie* evidence of the debt. R.S.O. 1897, c. 224, s. 142, *amended.*

(2) Where the amount claimed does not exceed $200, an action to recover the same may be brought in a Division Court. *New.*

"If the taxes payable by any person cannot be recovered *in any special manner provided by this Act,* they may be recovered with interest and costs as a debt," was the provision formerly governing actions to recoves taxes. See R.S.O. 1897, cap. 224, section 142. The action might then be defeated by failure to show that there was not sufficient distress. Now the taxes may be recovered by action without regard to the special remedies given by the Act.

(1) The taxes payable by any person. "Person" includes "partnership" and "corporation."

(2) The action should be brought in the name of the municipality. It is for "a debt due to the municipality."

(3) A copy of so much of the collector's roll as relates to the taxes payable by the person sued, and purporting to be certified by the clerk of the municipality as a true copy is *prima facie* evidence of the debt. It need not be under the seal of the municipality. See *Fitzgerald* v. *Wilson*, 8 O.R. 559.

The defences to the action may be that the assessment is illegal and invalid or that the tax itself is illegal and invalid. See sections 46 and 66 and the notes thereon.

A lessee of a house assessed as occupier though he no longer occupied it, neglected to appeal, and so was liable to pay the taxes: *McCarrall* v. *Watkins*, 19 U.C.R. 248.

See also *Sargent* v. *City of Toronto*, 12 C.P. 185; *McGregor* v. *White*, 1 U.C.R. 15. When the collector omitted to enter on the roll opposite each assessment, the reason of his inability to collect the taxes and to deliver to the clerk a duplicate of the list of taxes in arrear with the reasons of his failure to collect, and the clerk omitted to mail the notification to each person whose taxes were in arrear, no further proceedings to collect these taxes based on such a return can be sustained, and it would seem that they could not, as the law formerly stood, be collected by suit. *Caston* v. *City of Toronto*, 30 O.R. 16, 26 A.R. 459; *Carson* v. *Veitch*, 9 O.R. 706; *Town of Niagara* v. *Milloy*, 21 C.L.J. 394. It would seem, however, that under this section, as now framed, the person taxed would be liable in an action.

Formerly a non-resident in a township who had not given notice requiring his name to be entered upon the assessment roll could not be rated on the assessment roll *by name*, and could not be sued for the taxes in an action; it would be otherwise if he had requested his name to be inserted in the roll: *Municipality of Berlin* v. *Grange*, 5 C.P. 211, 1 E. & A. 279. But now the assessor, as far as is possible, is to assess all lands in the names of the owners and of the occupants, if any. See section 22, sub-section 1, clause *g*. But see also section 96.

The failure of the collector to demand the taxes as required by sections 99, 101, 102 is a good defence to an action under this section.

The failure of the assessor to forward the notice required by section 44, sub-section 3, was held to be a good defence to an action for taxes: *Township of London* v. *Great Western R.W. Co.* (1858), 16 U.C.R. 500. But see now section 66.

That the defendant's property is assessed higher than the average value of land in the vicinity, forms no defence to an action for the taxes. The only remedy is by an appeal to the Court of Revision: *Town of London* v. *Great Western Railway Co.*, 17 U.C.R. 262.

The right to prove a claim against an incorporated company in liquidation proceedings depends on the right to maintain an action therefor. Formerly the right of action only existed when the taxes could not be collected in any special manner provided by the Assessment Act, as for instance by distress or by sale of the lands, or by collecting the rent from the tenant. When, therefore, a claim was made in winding-up proceedings for arrears of taxes, and it was shown that before the date of the winding-up order the taxes might have been recovered by distress and were not, the claim for the taxes was disallowed. The only remedy of the corporation was to apply to the Court under the 16th section of the Winding-Up Act, R.S.C., cap. 129, for leave to distrain. If the distress had been made before the liquidation proceedings were begun, there being no right of proof for the taxes, the Court would have preserved the rights of the distraining claimants. "The principle is that where there is no right of action, and therefore no privity between the person entitled to distrain and the company in liquidation, the person entitled to distrain may pursue his only remedy, viz., that of distress, and reap the fruits of it as if there had been no liquidation. But where there is a right of action, even though there be also a right of distress, then the creditor is within the Winding-Up Act, and must prove as an ordinary creditor:" *Re Ottawa Porcelain & Carbon Co.*, 31 O.R. 679.

Paying Rent to Collector Until Taxes Paid.

91. Where taxes are due upon any land occupied by a tenant, the collector may give such tenant notice in writing requiring him to pay to such collector the rent of the premises as it becomes due from time to time to the amount of the taxes due and unpaid and costs; and the collector shall have the same authority as the landlord of the premises would have to collect such rent by distress or otherwise to the amount of such unpaid taxes and costs; but nothing in this section contained shall prevent or impair

any other remedy for the recovery of the taxes or any portion thereof from such tenant or from any other person liable therefor. R.S.O. 1897, c. 224, s. 143, *amended.*

"Tenant." See section 2, sub-section 6. Tenant includes also the occupant and person in possession as well as the owner. This section as it formerly stood contained the words "who is not liable to pay the same" immediately after "tenant" where it first occurs in the section. These words have been omitted, and the collector may apply the procedure herein set out even if the tenant was assessed as well as the owner.

The collector is put in the position of the landlord in regard to collecting rent by distress and sale of the tenant's goods. There can be no distress under this clause but for the amount of rent due and in arrear. Goods exempt from seizure and sale under execution can be seized in the case of a monthly tenancy only when there is more than two months' rent in arrear, and then only for the excess over the two months' rent.

If the tenant is also a party assessed the remedy by distress and sale of his goods for the taxes under section 103 is also available, as well as the remedy by action under section 90. The remedies against the owner may also be resorted to.

When Tenant May Deduct Taxes From Rent.

92. Any tenant may deduct from his rent any taxes paid by him which as between him and his landlord the latter ought to pay. R.S.O. 1897, c. 224, s. 26, *amended.*

A lease gave the lessee power at any time to extend any building over a lane described as being north of the premises demised, the extension to be at least nine feet from the ground. The lessee covenanted to pay all taxes "charged upon the demised premises, or upon the lessor on account thereof." If the lease was not renewed the lessor was to pay for the addition to the building.

Haggarty, C.J.O., and Burton, J.A., were of the opinion, affirming the judgment of Meredith, C.J., 26 O.R. 489, that the covenant to pay taxes did not apply to the portion of the buildings afterwards built over the lane. Osler and Maclennan, JJ.A.,

were of opinion that it did, and that the lessee was liable to pay the taxes assessed against the portion of the building over the lane.

The Court held that as the matter was one of assessment, the lessor having been assessed for the lane as vacant land, and the lessee for the portion of the building over it as so much brick and mortar, the lessor could not recover from the lessee any of the taxes paid by the lessor: *Janes* v. *O'Keefe*, 23 A.R. 129.

"I do not think any omission or neglect in the assessment proceedings can affect the action on the covenant." *Ib.* per Haggarty, C.J.O., but he thought the taxes in question were not within the covenant.

"I think the assessment is final." *Ib.* per Osler, J.A.

"I think the assessment was wrong. . . . As it is the defendants have paid what is assessed against the property, and I think their covenant requires them to do no more." *Ib.* per MacLennan, J.A.

Property belonging to a city and by it leased to tenants, is subject to taxation. "The incidence of such taxation plainly falls upon the tenant or lessee, and not upon the city. It is strictly a tenant's tax or tax payable by the tenant, and not in any event payable by the landlord as between him and the tenant." "There is no liabliity on this landlord to pay in respect of the occupation of this tenant, and if this position is correct section 26 (now 92) has no application, for that applies to taxes which can legally be recovered from the owner and from no other. There are payable by the tenant, and cannot be deducted from the rent or recovered from any other source by the tenant, who is alone liable." The fixing of the rent in a lease which was silent as to taxes, did not interfere with the right of the city to impose taxes on the tenant: *Re Canadian Pacific Ry. Co.* v. *City of Toronto*, 4 O.L.R. 134; *Scragg* v. *City of London*, 26 U.C.R. 263; *Moore* v. *Hynes*, 22 U.C.R. 107.

A tenant is not entitled to deduct taxes for which he himself was assessed for a certain year prior to the existing tenancy, though the tenant was improperly assessed therefor in the previous year. "It never can have been intended that a tenant should be at liberty to deduct from the rent and to compel his landlord to pay taxes for which he was himself primarily liable; and if not, the fact, if it be the fact that the defendant was improperly assessed

for the year 1897 is not material ": *Meehan* v. *Pears*, 30 O.R. 433. If the tenant is bound under his covenant in the lease to pay the taxes, he cannot obtain a valid title to the land by buying it when it is sold for the taxes which he should pay. Under the covenant in a lease the tenant was obliged to pay not only the taxes falling due during the term but also the taxes which at the date of the lease were charged on the land. This precluded him from obtaining a valid tax title as against the landlord at a sale for arrears of taxes outstanding when the lease was made: *Heyden* v. *Castle*, 15 O.R. 257. Compare the covenant to pay taxes in that case with the similar covenant in *MacNaughton* v. *Wigg*, 25 U.C.R. 111. A mortgagee may buy at a tax sale of the land mortgaged unless he uses his position as mortgagee to influence the sale: *Kelly* v. *Macklem*, 14 Gr. 29. A covenant to pay taxes in an ordinary lease covers a special rate created by a corporation by-law for local improvements: *Re Michie and The Corporation of Toronto*, 11 C.P. 379. A tenant who has voluntarily paid the taxes, pursuant to a verbal agreement made when a written agreement for a lease was signed, the writing being silent as to taxes, cannot recover them back after paying them for several years: *McAnany* v. *Tickell*, 23 U.C.R. 499. If the lease contains no provision as to payment of taxes by the tenant, the landlord must pay them: *Dove* v. *Dove*, 18 C.P. 424. See also *Boulton v. Blake*, 12 O.R. 532.

A tenant for life must keep down taxes: *Biscoe* v. *Van Bearle*, 6 Gr. 438; *Gray* v. *Hatch*, 18 Gr. 72; and that, too, on the unproductive as well as on the productive property: *Re Denison, Waldie v. Denison*, 24 O.R. 197; *Lawlor v. Day*, 29 S.C.R. 441; *Monro* v. *Rudd*, 30 Gr. 55.

Provincial Taxes.

93. All moneys assessed, levied, and collected under any Act by which the same are made payable to the Treasurer of this Province, or other public officer for the public uses of the Province, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected in the same manner as local rates, and shall be similarly calculated upon the assessments as finally revised, and shall be entered in the collectors' rolls in separate columns, in the heading whereof shall be designated the purpose of the rate. R.S.O. 1897, c. 224, s. 131, *first part*.

This section seems to have been introduced to enable the Province to utilize the machinery of the Assessment Act in the event of a direct tax being levied for Provincial purposes under the authority of any future Act. For an example of such a tax see *County of Essex v. Parke*, 11 C.P. 473; *Carroll* v. *Burgess*, 40 U.C.R. 381.

Collectors' Rolls.

Clerks of Municipalities to Make Out Collectors' Rolls, Their Form, Contents, etc.

94. The clerk of every municipality shall make a collector's roll or rolls as may be necessary (1), containing columns for all information, required by this Act to be entered by the collector therein (2); and in such roll or rolls he shall set down the name in full of every person assessed (3), and in the proper columns in that behalf the amount for which he is assessed in respect of his real property and income and otherwise under this Act as ascertained after the final revision of the assessment roll (4); and he shall calculate, and, opposite the assessed value, he shall set down in one column to be headed "*County Rates*," (5) the amount for which the person is chargeable for any sums ordered to be levied by the council of the county for county purposes, and in another column to be headed "*General Rate*," (6) the amount with which the person is chargeable in respect of sums ordered to be levied by the council of the municipality for the purposes thereof, and including any special rate for collecting the principal or interest for the payment of debentures issued, and in other columns any local improvement rate or school rate or other special rate, or sums for the commutation of statute labor, the proceeds of which are required by law, or by the by-law imposing it to be kept distinct and accounted for separately; and every such last mentioned rate shall be calculated separately, and the column therefor shall be headed "*Special Rate*," "*Local Improvement Rate*," "*Public School Rate*," "*Separate School Rate*," or "*Special Rate for School Debts*," or as the case may be (7). R.S.O. 1897, c. 224, s. 129, *amended.*

(1) This duty is imposed upon the clerk of the municipality, and he is made responisble for the proper preparation of the collector's roll. Section 403 of *The Consolidated Municipal Act*, as amended by 4 Edw. VII., cap. 24, section 4, enacts that "in every county and local municipality all rates chall be calculated at so much on the dollar upon the whole of the assessment of the municipality, including real property, income, business and other asessments, as provided by the *Assessment Act*." The council of the municipality fix the general rate necessary to raise the sums required for the various municipal purposes. The aggregate rate exclusive of school rates and local improvement rates must not exceed two cents in the dollar: *The Consolidated Municipal Act*, 1903, Sec. 402.

(2) The clerk in preparing the roll is to have columns for all the information which the collector is required to enter therein. For instance, under section 100, the date of each demand for taxes must be entered; under section 101, the date of giving notice to non-residents; under section 113, he must make up and deliver to the treasurer and clerk an account showing the reasons for not collecting any taxes that remain unpaid.

(3) The name in full of every person assessed is to be set down. See section 22, sub-section 1 (*a*) for the effect of failure to literally comply with this direction. See *Coleman* v. *Kerr*, 27 U.C.R. 5.

(4) The amounts of the assessments for real property income, business assessment, or other assessment, are to be separately entered. As only the tax based on the assessment of land gives a lien on the land, failure to keep these assessments separate may result in the setting aside of the tax sale.

(5) The amount to be raised by each municipality for "County Rates" is determined by the County Council. See Section 86. The county clerk having certified this amount to the clerk of the local municipality, the latter by calculation determines what rate on the dollar of the total assessment of the municipality for land, income, business and other assessment, must be taken to raise the requisite sum. He then proceeds to compute for each assessment the county rate chargeable against it, and he enters the result in the proper column of the collector's roll. Section 87 makes it his duty to calculate and enter these rates without further authority. See note 7 to this section.

(6) The "General Rate" is similarly calculated for the sums ordered to be levied by the council of the municipality for the

purposes thereof. Section 418, sub-section 4 of *The Consolidated Municipal Act* (1903), makes it the duty of the treasurer to prepare and lay before the council in each year previous to the striking of the annual rate, a statement showing what amount or amounts will be required to be raised towards a sinking fund under any by-law of the municipality.

(7) Special Rates, Local Improvement Rates, Public School Rates, High School Rates, Separate School Rates, Special Rate for School Debts, etc., are all to be separately calculated and entered.

It is the duty of the clerk under this section, without any special instruction, direction or authorization from the council, to calculate and insert in the collector's roll the amount with which each ratepayer is chargeable for the repayment of debentures of the municipality, and it is not necessary that the amount to be levied for that purpose should be mentioned or included in the annual by-law authorizing the levy of taxation for the general purposes of the municipality. The by-law under which debentures were issued authorized and directed the collection of the rates necessary for payment of the debentures, and the Municipal Act required the by-law to contain such a provision. Section 402 of the Municipal Act contains nothing inconsistent with that view: *Clarke* v. *Town of Palmerston* distinguished; *Bogart* v. *Township of King*, 32 O.R. 135.

This judgment was, however, reversed by the Court of Appeal on the ground that as the debentures had not been sold or delivered to or placed in the hands of any one as trustee for the corporation and the company, and no one but the corporation had acquired any right to deal with them; they had not been issued, and there was consequently no authority to levy a rate under the by-law. Until the debentures have been issued it cannot be said that any debt has been contracted to provide for which a rate is required to be levied. The solution of the question involved in the action depends on whether there was a debt from the township in respect of the debentures mentioned in the by-law. That depended on whether they had been issued, or been so dealt with as to be an obligation, enforceable against the township. *Ib*, 1 O.L.R. 496. See section 694 of the *Consolidated Municipal Act* as amended by section 39 of cap. 22, 5 Edw. VII., for the time when debentures for a railway bonus may now be issued. See also section 14 of

cap. 22, 4 Edw. VII., for the provision authorizing the hypothecation of debentures for advances to be applied to the same purposes as the debentures, in advance of their sale.

The provisions of this section in regard to entering all the separate rates on the collector's roll are imperative, and failure to enter all the rates or charges with which the land is charged renders the roll a nullity. Where the non-resident roll was transmitted to the county treasurer with the amount of each ratepayer's taxes entered as one sum, a tax sale founded thereon was held invalid. The principle of the decision in *Town of Trenton* v. *Dyer*, 21 A.R. 379, 24 S.C.R. 474, was applied; *Love* v. *Webster*, 26 O.R. 453. See also *McKinnon* v. *McTague*, 1 O.L.R. 233; *Coleman* v. *Kerr*, 27 U.C.R. 5; *Squire* v. *Mooney*, 30 U.C.R. 531; *Corbett* v. *Johnston*, 11 C.P. 317; *Cooke* v. *Jones*, 17 Gr. at p. 490; *Connor* v. *Douglas*, 15 Gr. 456; *Devanney* v. *Dorr*, 4 O.R. 206; *Re Ridsdale and Brush*, 22 U.C.R. 122. The taxes upon each separate lot must be entered separately in the roll, as in case of sale a portion of each lot must be separately sold to satisfy the taxes against it: *Munro* v. *Gray*, 12 U.C.R. 647; *Wildman* v. *Tait*, 32 O.R. 274; 2 O.L.R. 307; *McDonald* v. *Robillard*, 23 U.C.R. 105; *Laughtenborough* v. *McLean*, 14 C.P. 175; *Christie* v. *Johnston*, 12 Gr. 534; *Ridout* v. *Kitchen*, 5 C.P. 50. In *Waechter* v. *Pinkerton*, 6 O.L.R. 241, it was decided that the sums for commutation of statute labour must be charged against each lot separately according to its assessed value. The rating of a lump sum against the whole of 600 acres, instead of separate entries of the proportionate amount against each lot for statute labour, is so far invalid that no lawful distress could be made therefor on the goods of the owner of the land.

Form and Contents of Collectors' Rolls.

(2) Notwithstanding anything hereinbefore contained the council of any city or town may by by-law provide that the clerk shall make a collector's roll or rolls, as may be necessary, containing all the information required by this Act to be entered by the collector therein; and in such roll or rolls he shall set down the name in full of every person assessed and the assessed value of his real property and taxable income, as ascertained after the final revision of the assessment roll, and opposite the assessed value he

shall set down in a column the amount for which the person is chargeable, for all sums ordered to be levied by the council of the said municipality for the purpose thereof. R.S.O. 1897, c. 224, s. 130 (1).

The roll, if made under the by-law passed pursuant to this sub-section, must contain:

(*a*) " All the information required by this Act to be entered by the collector therein," that is, as in sub-section 1, it must contain columns for such information.

(b) The name in full of every person assessed.

(*c*) The assessed value of his real property and

(*d*) His taxable income as ascertained from the assessment roll as finally revised. Why not also business or other assessment?

It is not easy to see how, without inserting *all* assessments, the collector can give the proper notice to the ratepayer under section 99.

(*e*) The whole amount with which he is chargeable for all sums *ordered to be levied by the council of the municipality* for the *purposes thereof*. See *Bogart* v. *Township of King* in the note on the last sub-section. The amount ordered to be levied by the council for the purposes thereof does not necessarily included debenture debts or local improvements, and may not include county rates.

Information to be Given in Tables Appended to Roll.

(3) Appended to every roll made up under sub-section 2 of this section there shall also be a table setting forth the following information, viz.:—(*a*)the total amount of taxes to be collected under and by virtue of such roll or rolls; (*b*) the name and amount of each rate levied by the municipality which is required by law or by the by-law imposing it, to be kept distinct and accounted for separately and specifying the aggregate proceeds of each rate; and the clerk shall, before delivering the roll to the collector, furnish to the treasurer of the municipality a copy of such table. R.S.O. 1897, c. 224, s. 130 (2), *amended*.

The table appended to the collector's roll, when it is prepared under a by-law passed under sub-section 2 of this section, is intend-

ed to contain and to furnish to the collector and through him to the ratepayer, all the information required by sub-section 1 to be entered upon the roll itself.

The table must show:—

(*a*) The total amount of taxes to be collected.

(*b*) The name and amount of each rate which, by law or by by-law imposing it, is to be kept distinct and accounted for separately. This would include:

(1) County rates.

(2) General rates.

(3) Special rates for debentures.

(4) Local improvement rates, school rates and other special rates or sums for commutation of statute labour, each entered separately.

The intention is that the rate for each special tax shall be shown by itself. By rate is meant the rate on the dollar for the special purpose.

(*c*) The aggregate proceeds of each such rate must also be inserted in the table.

The treasurer of the municipality is also to be furnished with a copy of the table, before the roll is delivered to the collector.

Collector's Roll to be Certified by Clerk.

95. The clerk shall attach to a roll a certificate signed by him according to the following form:—

I do certify that the within (*or* annexed, *or* attached, *or as the case may be*) Roll is the Collector's Roll prepared according to the provisions of The Assessment Act for (*naming the Municipality*, *or* for Ward No.— of *as the case may be*) for the year 19 .

A. B.,
Clerk of———.

and shall deliver the roll so certified to the collector on or before the 1st day of October, or such other date as may be prescribed by by-law of the municipality. R.S.O. 1897, c. 224, s. 131, *last part, amended.*

The failure of the clerk to " deliver the roll certified under his hand to the collector," invalidates it, and its non-delivery is a sufficient answer to a suit against the collector for failure to collect

the taxes: *Town of Trenton* v. *Dyer*, 24 S.C.R. 474, affirming 21 A.R. 379. " The roll in effect operates as a warrant, and usage and convenience alike require that such a document should bear upon its face some authentication or certificate to show that it was regular, and that it emanated from the official who had power to issue it. I think, therefore, we must consider the provision as one introduced for the protection of the ratepayer and therefore obligatory." *Ib*, per Sir Henry Strong, C.J.

See also *Love* v. *Webster*, 26 O.R. 453. In *Township of Whitby* v. *Harrison*, 18 U.C.R. 603, which was an action against the collector's sureties, it was held that the signature of the clerk sufficiently verified the roll though it was not otherwise certified. See also *Town of Welland* v. *Brown*, 4 O.R. 217; *Whitby* v. *Flint*, 9 C.P. 453; *Vienna* v. *Marr*, 9 U.C.L.J. 301. Formerly the Assessment Act merely directed the clerk to deliver the roll " certified under his hand." No form of certificate was prescribed. See R.S.O. 1897, cap. 224, section 131. The directions in this section, in its present form, are imperative. The certificate must be signed by the clerk according to the form given therein.

A form of certificate having been prescribed, with imperative directions to the clerk to authenticate the roll in that way, something more is required than was implied in the words " certified under his hand," which were sufficiently complied with by the signature of the clerk. Under the former Act " the statute states nothing as to the contents of the supposed certificate, nor gives any form which is to be followed; all that is required is (16 Vict. cap. 182, section 39), that the clerk of each municipality shall deliver the collector the roll made up " certified under his hand." It seems that all that was intended or required was an authentication of the roll by the officer whose duty it was to prepare it, of its being what it purports to be, namely the collector's roll for the township, prepared by the clerk, and for the purpose I think, the signature of the clerk is enough": *Municipality of Whitby* v. *Flint*, 9 C.P. at p. 457, per Draper, C.J. This language is no longer applicable. There is now a prescribed form for the certificate.

" The intention of the Statute is that taxes are to be collected, and the mode of collection is through the collector and his roll. So the roll ought to be delivered by the time named, but whether delivered by that time or not, it is still to be delivered.

We have, therefore, in the same sentence, two directions of the Legislature, one of which it obligatory, and the other directory. The clerk must deliver a roll; but as to the time, that is not essential to the validity of the roll, or of the acts done under it": *Town of Trenton* v. *Dyer*, 21 A.R., at p. 389, per Maclennan, J.A. See also *Lewis* v. *Brady*, 17 O.R. 377, in which it was held that the time for delivery of the roll to the collector was directory, not imperative. But failure by the clerk to comply with the direction may leave him liable to the penalty imposed by section 197: *Todd* v. *Perry*, 20 U.C.R. 649.

Roll of Non-Residents in Township.

96. The clerk of every township shall also make out a roll in which he shall enter the lands of non-residents assessed as provided in clause (*g*) of sub-section 1 of section 22, together with the value of every lot, part of lot, or parcel, as ascertained after the revision of the roll; and he shall enter, opposite to each lot or parcel, all the rates or taxes with which the same is chargeable in the same manner as is provided for the entry of rates and taxes upon the collector's roll; and he shall, on or before the 1st day of November, transmit the roll so made out, certified under his hand, to the treasurer of the county. R.S.O. 1897, c. 224, s. 132, *amended*.

It is only in townships that unoccupied lands are denominated "lands of non-residents"and there only when the owner does not reside and has not a place of business in the municipality, and has not given the necessary notice of ownership and request to be assessed for the land. See section 33, sub-section 6, and section 22, subsection 1, clause (*g*).

In cities, towns and villages there is no "non-resident" assessment roll: Section 33, subsection 5. In townships the clerk must make out two rolls; one is the collector's roll; the other is the roll herein described. It is made up from the separate portion of the assessment roll in which the lands of non-residents are assessed: Section 22, sub-section 1, clause (*g*). As these lands are unoccupied and the owner does not live and has not a place of business in the municipality, the collector of taxes for the township has nothing to do with collecting the taxes thereon.

There is nothing in the township upon which he could levy. This roll is consequently sent to the county treasurer.

This roll must contain:—

(*a*) The lands of non-residents under some clear and intelligible description.

(*b*) The assessed value of each parcel.

(*c*) All the rates and taxes, with the same fulness and detail as in the case of resident lands under section 94.

Though the assessment roll must when practicable contain the name of the owner, there is nothing said here about inserting it in this roll.

These taxes may at any time afterwards be paid to the county treasurer. He only has the right to receive such taxes: Section 119, sub-section 2.

If they remain unpaid, wholly or in part, for three years, he makes a return of the lands to the clerk of the municipality, under section 121, as liable to be sold for taxes; the clerk gives the list to the assessor, who inspects each parcel and reports whether it is "occupied or built upon and parties notified," "not occupied" or "incorrectly described." If "occupied or built upon" the arrears furnished by the county treasurer to the clerk, under section 123, are put upon the collector's roll and he endeavours to collect the taxes. If he fails to get the whole amount, he makes the return prescribed by section 115. A return is made to the county treasurer again under section 116, and the lands are thereafter advertised and sold for taxes.

Land occupied when the collector received his roll in 1879 had been assessed in that year as non-resident, but with the name of the owner inserted in the assessment roll, and also in the collector's roll. The taxes were paid in that year to the collector, who notwithstanding, returned the lands as non-resident. The sale of the lands in 1882 for the taxes of 1879 was illegal, as the taxes were properly payable to the collector. *Donovan* v. *Hogan*, 15 A.R. 432.

If Corrections Made After Collector's Roll Prepared, Mode to Collect Taxes on Corrected Roll.

97. If corrections are made in the assessment roll, under sub-section 21 of section 65 or under section 78 of this Act,

after the collector's roll or rolls for the municipality for the year for which such assessment has been made have been prepared, the clerk of the municipality shall alter or amend the collector's roll or rolls to correspond with the changes made by the Court, Judge or Judges under the said sections, and by inserting the proper rates therefor, and the rates or taxes shall be collectable in accordance with such corrected rolls in the same manner and with the like remedies as if the same had been in the rolls when first prepared and certified by the clerk of the municipality. 3 Edw. VII., c. 21, s. 8, *last part amended.*

If the work of the Court of Revision under section 65, subsection 21 is not finished, or if the Judge or Judges under section 78, fail to complete their work, until after the collector's roll has been prepared by the clerk, effect is given to the changes made in the assessment by altering the collector's roll in accordance therewith. Any deficiency in the amount of any special tax, owing to reductions so made in any assessments after the rate is struck, will be adjusted as directed by section 188.

Collectors and their duties.

[*As to the appointment of collectors, see The Consolidated Municipal Act,* 1903, *s.* 295.]

Section 295 of *The Consolidated Municipal Act,* 1903, deals with the appointment of assessors and collectors. It is given in the note on the appointment of assessors preceding section 22 of this Act, except sub-section 5, which makes it the duty of collectors, in municipalities which have passed by-laws requiring taxes to be paid on or before the 14th day of December, and disqualifying any ratepayer from voting who has not so paid, to make a return on oath to the treasurer on the 15th day of December in each year of the names of all persons who have not paid their taxes on or before the 14th day of December. Section 296, subsection 2, enables councils to prescribe the duties of collectors. Sections 297 and 298 of the same Act deal with tax collectors of townships in a junior county of a union of counties,

and their duties in collecting under by-laws of the provisional council on a separation of the counties.

Section 312 of the said Act requires a declaration by assessors, collectors and others before entering on the duties of their respective offices. For this section and the form of the declaration see the note preceding section 22.

For the security to be given by collecors, see sections 195 and 196 of this Act.

Section 323 of *The Consolidated Municipal Act* gives permission to accept the bonds of incorporated guarantee companies as security.

The appointment of assessors and collectors should be by by-law.

The failure of the collector of taxes to make the declaration of office prescribed by *The Municipal Act* would not invalidate his proceedings to collect taxes or form a defence thereto; but it would expose him to the penalties imposed for neglect of duty. It has not the effect of making his acts void: *Lewis* v. *Brady*, 17 O.R 377; *Margate Pier Company* v. *Hannam*, 3 B. & Ald. 266; *Rex* v. *Justices of Herefordshire*, 1 Chitty 700. Compare *Re McRae and the Village of Brussels*, 8 O.L.R. 156, in which it was held that the failure of the members of the Court of Revision to take the oath prescribed by section 58, sub-section 3, did not render their acts void.

The Statute places the duty on the collector of taking the declaration, and imposes a penalty on him for failure to perform the duty. But the Statute imposes no duty on the corporation or council to see that the collector has obeyed the statutory direction. The omission to take it does not vacate the appointment, nor render him incompetent to discharge the other duties appertaining to it. *Municipality of Whitby* v. *Flint*, 9 C.P. 449.

The penalty imposed by section 319 of *The Consolidated Municipal Act*, 1903, on an assessor or collector who being appointed refuses to act, or omits to take the declaration of office, on summary conviction before two Justices of the Peace, is a a fine of not less than $8 nor more than $80 together with costs.

Duties of Collectors.

98. The collector, upon receiving his roll, shall proceed to collect the taxes therein mentioned. R.S.O. 1897, c. 224, s. 133.

The collector's authority for collecting taxes is the roll duly certified under the hand of the clerk of the municipality. If the taxes are not legally imposed, or if the roll is not properly certified, the collector enforces payment of taxes at his own risk, as well as at the risk of the municipality. While he is liable personally the maxim *respondent superior* is applicable: *McSorley* v. *City of St. John*, 6 S.C.R. 531. See also section 86 and the notes thereon. In an earlier case, *Spry* v. *MacKenzie*, 18 U.C.R. 161, there was a dictum that a person distraining for taxes on a warrant, legal on the face of it, was not liable as a wrong-doer for what he did in execution of it. But see *Coleman* v. *Kerr*, 27 U.C.R. 5, at p. 14; *Free* v. *McHugh*, 24 C.P. 13.

The collector is liable for anything he has authorized his bailiff to do. In putting power into the hands of a bailiff the collector is responsible for what the latter does. *Fraser* v. *Page*, 18 U.C.R. 336. An action in replevin "has frequently been resorted to in Upper Canada when it was intended to hold the collector had no right to seize property to satisfy taxes, and it has also been held that the collector in replevin was not entitled to notice of action. The collector, as well as the assessor, is appointed by the corporation; they are their officers, and though under some circumstances the collector might be entitled to notice of action, he is not, like a sheriff, bound to execute the writ issued by the Court, and for whose protection the writ is a sufficient warrant. If the proceeding is wholly void, and the rate cannot be collected, the corporation must protect their own officers. It is more reasonable that they should do so than that a party should be illegally deprived of his property without remedy": *Nicholls* v. *Cumming*, 1 S.C.R. 421.

The collector's duty is to receive the taxes in money. The right to distrain is not gone because the bailiff takes a note instead of money, and because that irregular proceeding was sanctioned by the school trustees. It would still be in their power, when the debt was due to the public and not to themselves, to carry out properly the directions of the law, as they ought to have done at first, and the plaintiff must seek his remedy against the bailiff if he should be prejudiced by the note he has given: *Spry* v. *MacKenzie*, 18 U.C.R. 161.

Notice of Taxes to Residents.

Demand or Notice of Taxes by Collector.

99.—(1) In cities, towns, villages and townships he shall call at least once on the person taxed, at his usual residence or place of business if within the municipality in and for which he has been appointed, and shall demand payment of the taxes; or he shall give to such person a written or printed notice specifying the amount of the taxes payable by him, by delivering the same, or causing the same to be delivered to him, or for him at his residence or place of business, or upon the premises in respect of which the taxes are payable. R.S.O. 1897, c. 224, s. 134 (1), (3), *first part amended.*

This section deals only with resident taxpayers. The mode of making the demand is now the same in townships and villages as in cities and towns. This sub-section combines the provisions of two sub-sections of the former Act. A demand for the taxes may be made on each ratepayer in either of two ways: (*a*) by personal demand at the usual residence or place of business of the taxpayer within the municipality, or (*b*) by a written or printed notice, specifying the amount of the taxes, delivered by or for the collector, to the ratepayer or for him at his residence or place of business or upon the assessed premises. Defects, errors or omissions in the form or substance of the demand do not now invalidate subsequent proceedings. See section 104, which is new.

The demand could not at one time be made until the time limited by by-law of the municipality for the payment of the taxes had elapsed. Distress might have been made within fourteen days after the demand for taxes was made. But that could not have been intended to give a right of distress for taxes before the expiration of the time within which the by-law said they might be paid: *Goldie* v. *Johns*, 16 A.R. 129. Judgment of Osler, J.A. Under a by-law of Toronto, taxes were not due until the 4th of June. The by-law purported to give the collector a discretionary power to distrain after demand before the date named. Demand was made on the plaintiff for his taxes on the 20th of May, and the taxes remaining unpaid, they were distrained for on the 12th of June. The taxes were not due until the 4th of

of June; the demand was premature and unlawful; the right of distress which the by-law purported to give the collector was unauthorized and the plaintiff was entitled to recover for the goods sold: *Chamberlain* v. *Turner,* 31 C.P. 460.

Without the demand for taxes required by this section, no distress could properly be made upon the occupant. The occupant could not suffer from distress as none could legally be made; and under a Statute which empowered the tenant to deduct from the rent taxes which he was compelled to pay, and which, as between him and the landlord, the latter ought to have paid, he had no right to set off the taxes against rent: *Carson* v. *Veitch,* 9 O.R. 706. But it would seem that the amendmeuts introduced by 51 Vict., cap. 29, section 5, and 52 Vict., cap. 39, enabled the demand to be made previous to the time fixed by the by-law for payment. See *Goldie* v. *Johns,* 16 A.R., at p. 137. Section 102 of this Act seems to contemplate the demand being given before the period of credit expires. See especially subsection 4 of section 102.

A demand on one devisee and executor is sufficient to bind the others: *Applegarth* v. *Graham,* 7 C.P. 171. See also *Lewis* v. *Brady,* 17 O.R. 377. Formerly the mere delivery, in a village or township, of the statement of taxes due was not a sufficient demand for payment of taxes under *The Assessment Act,* 1892, unless a by-law was passed under section 123 of that Act authorizing demand to be made in that way: *McDermott* v. *Trachsel,* 26 O.R. 218; *Chamberlain* v. *Turner,* 31 C.P. 460, per Wilson, C.J.; *Carson* v. *Veitch,* 9 O.R. 706. Compare R.S.O., cap. 224, section 134 with this section, which makes the law in that regard the same in townships and villages as in cities and towns. When the goods of a subsequent occupant of lands were distrainable for taxes, no fresh demand on him was necessary, the demand on the former occupant was sufficient. *Anglin* v. *Minis,* 18 C.P. 170; see also *Campbell* v. *Elma,* 13 C.P. 296.

How it May be Given in Cities, Towns and Villages.

(2) In cities, towns and villages the collector may, if so authorized by by-law of the municipality (which by-law the council of the municipality is hereby empowered to pass) mail the notice or cause the same to be mailed to the address of the residence or place of business of such person. *New.*

In cities, towns and villages notice may be given by mailing it to the ratepayer at the address of his residence or place of business, if the municipality has, by by-law, authorized it to be done in that way. This does not apply to townships. For the effect of failure to pass such a by-law see *McDermott* v. *Trachsel*, 26 O.R. 218.

Particulars to be Given in Tax Notice.

(3) The written or printed notice above mentioned shall have written or printed thereon, a schedule specifying the different rates and the amount on the dollar to be levied for each rate, making up the aggregate of the taxes referred to in such notice, and also containing the information required to be entered in the collector's roll under section 94. R.S.O. 1897, c. 224, s. 134 (2), *amended.*

"The notice . . . . was insufficient . . . in that there was not written or printed thereon for the information of the ratepayer a schedule specifying the different rates, etc., required by the Statute": *McKinnon* v. *McTague*, 1 O.L.R. 233. See *City of Toronto* v. *Caston*, 30 S.C.R. 390; *McDermott* v. *Trachsel*, 26 O.R. 218; *Lewis* v. *Brady*, 17 O.R. 377; *Carson* v. *Veitch*, 9 O.R., at p. 710.

But section 104, which is wholly new, now enacts that no defect, error or omission in form or in substance in the notice under sections 99, 100 or 102 shall invalidate any subsequent proceedings for the recovery of the taxes.

Entry of Date of Giving Notice.

100. The collector shall at the time of such demand or notice as the case may be, or immediately thereafter, enter or cause to be entered on his roll opposite the name of the person taxed, the date of such demand or of the delivery or mailing of such notice. Every person so entering any such date shall append his initials thereto, and the entry shall be *prima facie* evidence of such demand or notice. R.S.O. 1897, c. 224, s. 134 (1), (3) *last part, amended.*

The collector shall enter or *cause to be entered* the date of the demand or of the delivery or mailing of the notice. It is not

expected that the collector will personally mail or deliver every notice. He may have assistance. "He shall call at least once on the person taxed . . " or shall give to such person notice. "by delivering the same or *causing* the same to be delivered": Subsection 1 of section 99. He may mail the notice or *cause* the same to be mailed. Sub-section 2 of section 99. The person actually making the demand, or delivering or mailing the notice, must enter the date of so doing opposite the name of the person taxed, and shall append his initials thereto. As these entries are made *prima facie* evidence of the demand or notice and have to be verified by the affidavit of the person making them, it is important that the entry should be made and verified by the initials of the person making it, at the time of such demand or notice or immediately thereafter.

In replevin for goods sold for taxes the plaintiff succeeded, there being no evidence of any demand by the collector. A memorandum made by the collector opposite the receipt intended to be given for these taxes "Wrote January 21st, 1864," the collector being dead, but no evidence being given of when he died nor of when the entry was made, nor that it was in the course of business to make such an entry, was held insufficient: *Barton* v. *Corporation of Dundas*, 24 U.C.R. 273. On the return of the roll the collector himself must verify all his entries by a statement in writing under oath, and every other person making and initialling such entries must make a similar oath. See section 110.

Notice to Non-Residents.

Proceedings in Case of Non-Presidents.

101. If any person whose name appears on the roll is not resident within the municipality, the collector shall transmit to him by post, addressed in accordance with the notice given by such non-resident, if notice has been given, a statement and demand of the taxes charged against him in the roll, and shall at the time of such transmission enter or caused to be entered the date thereof in the roll, opposite the name of such person; and such entry shall be *prima facie* evidence of such transmission and of the time thereof; and the said statement and demand

shall contain, written or printed on some part thereof, the name and post-office address of such collector. R.S.O. 1897, c. 224, s. 136, *amended.*

The collector is not required to go out of the municipality to make a demand or deliver a notice of taxes. If the taxable person is not a resident of the municipality, the collector, even in a township, and in other municipalities notwithstanding that there may be no by-law under sub-secton 2 of section 99 authorizing service by mailing, must mail to him the statement and *demand* of the taxes charged against him.

He is to make the entry, or cause it to be made, to show the date of sending the notice and demand by post. Nothing is said in this section about initialling the entry, and it is apparently only required in the case of residents, but it would be a wise precaution to adopt in every case. A statement and demand of taxes were not, under 16 Vict., cap. 182, a condition precedent to the right to distrain for taxes of non-residents, though it was otherwise as to residents: *DeBlaquiere* v. *Becker*, 8 C.P. 167. See *Allan* v. *Fisher*, 13 C.P. 63.

By-laws as to mode of Payment of Taxes.

By-Laws Requiring Taxes to be Paid in Office of Treasurer or Collector.

102.—(1) In cities, towns, townships, or villages (1), the council may by by-law require the payment of taxes, including local improvement assessments, sewer rents and rates, and of other rents or rates payable as taxes (2), to be made into the office of the treasurer or collector by any day or days to be named therein, in bulk or by instalments, and may provide that on the punctual payment of any instalments, the time for payment of the remaining instalment or instalments shall be extended to a day or days to be named, or may provide that in default of payment of any instalment by the day named for payment thereof, the subsequent instalment or instalments shall forthwith become payable.

(1) This sub-section applies to every local municipality which passes the requisite by-law.

(2) Taxes, including local improvement assessments and sewer rents and rates, and other rents and rates payable as taxes, may be made payable at the office of the treasurer, thus dispensing with a collector, or at the office of the collector. Until 55 Vict. c. 42 s. 343, sewer rents were not an encumbrance on land, but a personal charge on the owner. Neither the arrears of such rent nor the amount for which future payments were commuted, could be recovered from the vendor by the purchaser under a covenant against acts to encumber: *Moore* v. *Hynes*, 22 U.C.R. 107. *Re Armstrong* 12 O.R. 457. See now Sec. 387 of *The Consolidated Municipal Act*, 1903. But it was otherwise with local improvement rates for the construction of sewers, sidewalks and similar purposes. See section 89 and the notes thereon.

(3) The by-law regulating payment of taxes may provide:

(*a*) For payment in bulk by, that is on or before, any date named in the by-law.

(*b*) For payment in instalments by any dates fixed therein for the payment of such instalments.

(*c*) That on the prompt payment of any instalment on or before the date fixed therefor, the time for payment of the remaining instalment or instalments may be extended, not indefinitely, but to a date or dates fixed by the by-law.

(*d*) Instead of making prompt payment the condition precedent to credit on the later instalments as in (*c*) the by-law may make default of payment of any instalment by the day named, a forfeiture of the time given by the by-law for payment of the later instalments. On default of any instalment when due, the whole of the taxes would be forthwith payable under such a by-law.

Discount on Punctual Payment of Taxes.

(2) The council may also by by-law allow a discount (1) for the payment of such taxes or any class of taxes or of any instalment thereof on or before a day or days therein named and may impose an additional percentage charge (2) for non-payment of such taxes or any class of taxes or of any instalment thereof by a day or days named in such by-law, provided that no greater percentage charge than five per cent. shall be imposed on any instalment of taxes or on the aggregate amount of taxes; and such

additional percentage charge shall be added to such unpaid tax, or assessment, rent, or rate, or instalment thereof, and shall be collected by the collector or otherwise, as if the same had been originally imposed and formed part of such unpaid tax, or assessment, rent or rate, or instalment thereof.

This sub-section enables the council, by discounts for promptness and an additional percentage as a penalty for tardiness, to encourage the speedy payment of taxes. It tends to minimize arrears, and greatly facilitates the work of the collector.

(1) A discount may be allowed:

(*a*) For the payment of the taxes.

(*b*) For the payment of any class of taxes, *e.g.*, business assessment or income tax.

(c) For the payment of any instalment of taxes or of any class of taxes.

(2) An additional percentage charge for failure to pay promptly by the day named for such payment in the by-law, may be imposed on:

(*a*) All the taxes in default.

(*b*) Any class of taxes in default.

(*c*) Any instalment of taxes generally, or of any class of taxes.

For a discussion of the constitutionality of such a percentage charge, of the difference between it and interest, and between taxes and debts, see *Lynch* v. *Canada N. W. Land Co.*, 19 S.C.R. 204. Compare section 133.

Discount on Charge May be on Sliding Scale,

(3) Such discount or additional charge may by the by-law be provided for on the basis of a sliding scale corresponding with the length of time default is made but so as not in the aggregate to exceed five per cent. as aforesaid.

The sliding scale for the discount or additional percentage charge is to correspond "with the length of time default is made." But the discount cannot vary with the default. It is allowed for payment in advance. It should have been on a sliding scale cor-

responding with the length of time between prepayment and the date fixed by the by-law for payment.

The maximum discount or additional percentage charge for the most prompt payment or the largest default is not to exceed five per cent.

See *Lynch* v. *Canada N. W. Land Co.*, cited under the last subsection.

Notice as to Time and Mode of Payment.

(4) In case a by-law is passed providing for payment by instalments or allowing any such discount or imposing any such additional percentage charge, a notice shall be given in accordance with section 99 of this Act on which shall be written or printed a concise statement of the time and manner of payment and of the discount allowed or the percentage charge imposed (1), if any, and at any time within fourteen days after such notice has first been given, in accordance with section 99 of this Act, any person may take advantage of the provisions of such by-law as to payment by instalments or with the discount allowed thereby, or without the additional percentage charge imposed thereby, as the case may be. (2). 62 V. (2) c. 27, s. 4.

(1) If a by-law is passed:

(*a*) Providing for payment by instalments,

(*b*) Allowing a discount for prepayment or

(*c*) Imposing an additional percentage charge.

The notice to be given in accordance with section 99 by the collector to each ratepayer must, in addition to all the information required under that section, give a concise written or printed statement of:

(*a*) The time of payment.

(*b*) The manner of payment, *e.g.* at the office of the treasurer within certain hours, or to the collector.

(*c*) The discount allowed for prompt payment, or

(*d*) The percentage charge imposed for default.

It is the intention that the tax notice shall give a person of ordinary intelligence an epitome of the provisions of the by-law such that he may know how it affects him.

(2) At any time within fourteen days after the notice the person receiving it is in time to take advantage of the provisions of the by-law in regard to:

(*a*) Payment by instalments.

(*b*) Allowance of discount.

(*c*) Escaping payment of the additional percentage charge.

It would be imposing a great and unnecessary amount of work on the municipal officers to require a demand for taxes under section 99, and a separate notice of the terms of the by-law under this sub-section. The intention is to give the information required by this sub-section on the notice provided for in section 99. The notice should be given at least fourteen days before the first instalment becomes due. If not given until later, it would result in an extension of time for payment beyond the time fixed by the by-law, for the ratepayers must have fourteen days after notice in which to take advantage of the discounts, etc. The conclusion seems to be that a demand for taxes may be made now in advance of the time fixed by the by-law for payment. Section 103 gives the right of distress on fourteen days default after demand or notice pursuant to sections 99, 101 or 102, the only demand or notice referred to in section 102 is the statement of the terms of the by-law regulating time and mode of payment, discounts, percentage charges, penalties for default, etc., written or printed on the notice given in accordance with section 99.

For the former state of the law, see section 99 and the cases there cited.

The notice of the terms of the by-law is to be given in accordance with section 99 of the Act. The notice of taxes is by that section required to be "delivered," in the absence of a by-law under sub-section 2 thereof. By section 101 notices demanding taxes are to be mailed to persons who do not reside in the municipality. In the absence of a by-law under sub-section 2 of section 99, it is assumed that the statement of the terms of the by-law, under section 102, would be sufficiently given to a person not resident in the municipality if *mailed* to him at the proper address.

By-Law to be in Force till Return of Collector's Roll.

(5) Where, in accordance with this section, a percentage is added to unpaid taxes, the by-law shall not be repealed before the return of the collector's roll. *New.*

See *Alexander* v. *Village of Huntsville*, 24 O.R. 665.

Distress for Recovery of Taxes.

Distress and Sale for Taxes Which are a Charge on Land.

103.—(1) Subject to the provisions of section 102 of this Act, (1) in case taxes which are a lien on land (2) remain unpaid for fourteen days after demand or notice made or given pursuant to sections 99, 101, or 102, the collector, or, where there is no collector, the treasurer may by himself or his agent, (subject to the exemptions and provisoes, hereafter in this section mentioned), (3) levy the same with costs by distress (4).

(1) The provisions of section 102 govern. Taxes cannot be distrained for until they are due. A by-law fixing the date or dates of payment having been passed under that section, the taxes are due and payable in instalments or otherwise on the dates fixed by the by-law. The right to distrain is subject to the period of credit given by by-law under the authority of the last section. See sections 99, 101 and 102 and the notes thereon.

It is to be noted that the right to distrain does not arise until fourteen days after demand or notice made or given pursuant to sections 99, 101, or 102. The only notice prescribed by section 102 is the notice given in accordance with section 99, on which the statement of the terms of payment under the by-law, specially required by section 102, is to be written or printed. This, it has been already remarked, must be given before the taxes are due; and if delayed, the period of credit is thereby extended.

(2) "Taxes which are a lien upon land," are the taxes rated on the assessment of land. Income tax, and business assessment form no lien on land. Section 89 makes the taxes due upon land with costs a special lien on the land. The tax on business assessment is a personal obligation. Income has no relation to land used or occupied, and the tax on it is also merely a personal

obligation. This sub-section deals only with taxes which are a lien upon lands. Its provisions are not applicable to business assessment or income. Sub-section 2 of this section deals with distress for such taxes.

(3) The right of distress is subject to the exemptions and provisoes hereinafter mentioned in this section. These are treated of in the order in which they occur in the section. It is a condition precedent to the right to distrain for taxes that there should be a proper demand made under sections 99, 101, or 102, as the case may be.

(4) Taxes may be levied by distress, with costs. In case "taxes *which are a lien upon land*" remain unpaid for fourteen days, etc., the collector, etc., may levy the *same* with costs by distress; that is he may levy the taxes which are *a lien upon land* by distress. A distress for taxes on business assessment or income is not authorized by this sub-section, but by sub-section 2.

A distress is one of the most ancient and effectual remedies for the recovery of rent. It is the taking, without legal process, cattle or goods as a pledge to compel the satisfaction of a demand, the performance of a duty or the redress of an injury. The act of taking, the thing taken, and the remedy generally, have been called a distress, an inaccuracy which the older text writers usually avoided. Woodfall's *Landlord and Tenant*. Subsequent statutes gave the right to sell the goods distrained.

What amounts to a distress? In *Fraser* v. *Page*, 18 U.C.R. 327 a statement by the bailiff that he seized a span of horses which were being hitched to a waggon and were then driven away by the person who was working them, was held to be a seizure, though the bailiff did not take hold of or touch the horses.

Seizure is the forcible taking of possession: *Johnston* v. *Hogg*, 10 Q.B.D. 432.

The levy of money includes both seizure and sale of goods: *Ross* v. *Grange*, 25 U.C.R. 396.

A seizure itself is not properly a levy; it does not become a levy until the goods seized have been turned into money: *Buchanan* v. *Frank*, 15 C.P. at p. 198; *Miles* v. *Harris*, 12 C.B. N.S. 558; *Drewe* v. *Lainson*, 11 A. & E. 529. The statute, therefore, directs the forcible taking possession of goods and chattels and the sale thereof

to make the amount of the taxes and the costs of seizure and sale. Goods exempt from seizure under execution are exempt from distraint for taxes only when they are not the goods of the person taxed. See sub-section 4 of this section.

While during the time the roll is in the collector's hands there are goods and chattels which the collector might distrain, but does not, sufficient in value to pay the taxes, these taxes cannot be added to the taxes of a subsequent year, and then levied upon the goods of the then owner or occupant. The importance to the taxpayer of a proper compliance with this direction of the statute, coupled with the imperative language, seems to me to be good ground for holding that it was intended to be and is imperative, and that when there has been a failure to observe it, the collection of the taxes is not, under the statute, capable of being placed back in the hands of a collector for a subsequent year, but such taxes must remain to be collected by the treasurer by such other means if any, as the statute leaves open to him: *Caston* v. *City of Toronto*, 26 A.R. at p. 466, per Moss, J.A., affirmed, 30 S.C.R. 390.

See also the same case 30 O.R. 16. A number of early cases to the contrary are over-ruled.

If a collector distrains for an amount, part of which is legally leviable and part is not, and the legal demands are separable from the illegal ones, replevin will not lie before satisfaction of the legal demands: *Corbett* v. *Johnston*, 11 C.P. 317.

See also *Stafford* v. *Williams*, 4 U.C.R. 488; *Foley* v. *Moodie*, 16 U.C.R. 254; *Fraser* v. *Mattice*, 19 U.C.R. 150; *Dobbie* v. *Tulley*, 10 C.P. 432; *Hamilton* v. *McDonald*, 22 U.C.R. 136; *Boland* v. *City of Toronto*, 32 O.R. 358.

An examination of the history of the successive changes in the statute is a considerable aid in understanding its meaning. As this section stood in *The Consolidated Assessment Act* (1892), section 124, " when taxes were due the collector might levy the same with costs by distress of the goods and chattels of the person who ought to pay the same or of any goods or chattels *in his possession*, wherever the same may be found within the county in which the local municipality lies, [or of any goods and chattels found on the premises the *property* or in the *possession* of any other *occupant* of the premises]." That has since been developed into

section 103, sub-sections 1 to 5 of the present Act. Under that section, in the absence of any goods of the owner, goods upon the premises in respect to which the taxes were payable, were not distrainable, if they were *not in the possession of the occupant* or his property. It was " the deliberate intention of the Act to confine the right to levy on goods which the occupant was possessed of." If a builder without the consent of the owner puts building materials for a temporary purpose on vacant land, he is a trespasser, but his materials could not be distrained as he is not an " occupant ": *Christie* v. *City of Toronto*, 25 O.R. 425; affirmed 25 O.R., 606. In 1895 what is now substantially sub-section 3 of this section was inserted, thereby narrowing the instances in which the goods of outsiders might be seized for taxes, because they chanced to be in the possession of a taxable person.

Before the amendment of 1895 now embodied in sub-section 3, premises in a city were occupied by a firm of auctioneers who, however, to use the term introduced by this section, were not " the persons taxed." Goods of the plaintiff were left with them for sale by auction in the course of their business. These goods were lawfully seized for the taxes on the premises assessed against a previous tenant: *Norris* v. *City of Toronto*, 24 O.R. 297.

In 1896, by 59 Vict. cap. 58, section 6, it was enacted that when the owner or person assessed is not *in possession*, the goods and chattels on the premises not belonging to the person assessed, shall not be liable to seizure. But this restriction was not to apply in any of the cases now included in substance in clauses 2, 3 and 4 of this present sub-section. And by section 7 of the same Act, the portion of section 124 of the Act of 1892 enclosed on p. 272 in brackets was struck out. Clause 3 of sub-section 1 was enacted at the same time so as to make the goods of the owner on the land liable to distress even if he were not the taxable person or one of them.

On Goods of Persons Taxed.

(1) Upon the goods and chattels (1), wherever found, within the county in which the municipality lies, belonging to, or in the possession of, the owner or tenant (2) of the land, whose name appears upon the collector's roll (who is hereinafter called the person taxed.");

On Interest of Person Taxed in Goods on the Land.

(2) Upon the interest of the person taxed in any goods on the land, including his interest in any goods to the possession of which he is entitled under a contract for purchase, or a contract by which he may or is to become the owner thereof upon performance of any condition.

(1) Distress may be made upon "goods and chattels." These words are synonymous. The words *bona et catalla*, jointly or separately, in our ancient statutes and law writers, denote personal property of every kind, as distinguished from real: *Bullock v. Dodds*, 2 B. & Ald. 27; *choses in action* have in the English Bankruptcy Acts been held to be included under "goods and chattels": *Colonial Bank* v. *Whinney*, 55 L.J. Chy. 590; but the expression goods and chattels as used in 13 Eliz. c. 5, was held not to include debts, because they could not be reached by an execution: *Dundas* v. *Dutens* (1790), 1 Vesey Jr. 196; *Sims* v. *Thomas* (1840), 12 A. & E, 536. And the expression "goods and chattels" as used in the Execution Act R.S.O. 1897, ch. 77, plainly does not include debts": *Rennie* v. *Quebec Bank*, 3 O.L.R., at p. 546, per Armour, C.J. "But although goods in specie of the partnership were so bound [by the execution], money, bank notes, cheques, bills of exchange, promissory notes, bonds, mortgages, specialties and other securities for money belonging to the partnership were not so bound." *Ib*, p. 547.

The Execution Act, however, gives the sheriff power to seize money, cheques, etc., though they are not goods and chattels.

Machinery standing by its own weight on the floor without fastening, though operated by belts and an engine, is a chattel: *Hope* v. *Cumming*, 10 C.P. 118. But machinery attached to the freehold as fixtures is not exigible under execution as goods: *Carson* v. *Simpson*, 25 O.R. 385; *Ex parte Moore*, 14 Ch. D. 379. But it is otherwise if it is severed for the purpose of removal: *Davy* v. *Lewis*, 18 U.C.R. 21.

"But growing crops such as these, sown by the person in possession, and intended to be reaped at maturity, being *fructus industriales*, are chattels seizable under execution, and the ownership of them is not an interest in land within the 4th section of the Statute of Frauds": *Cameron* v. *Gibson*, 17 O.R., at p. 238.

Growing crops are, therefore, to be treated as goods and chattels, and as such seizable in execution against goods: *McDougall* v. *Waddell*, 28 C.P. 191. " We think it is in like manner only personal chattels, not real chattels, which can be seized under process from our Division Courts, though in all these cases the command is to levy the money from the " goods and chattels," without restricting expressly the meaning of these words." A term of years could not, therefore, be legally seized and sold under Division Court process: *Duggan* v. *Kitson*, 20 U.C.R. 316. Beasts of the plow, implements of husbandry, and tools and implements of a man's trade are exempt from seizure, if there is other sufficient distress. Goods in the custody of the law are not distrainable for taxes, as for instance goods seized by a landlord for rent: *City of Kingston* v. *Rogers*, 31 O.R. 119; *Anderson* v. *Henry*, 29 O.R 719; but see *Langtry* v. *Clark*, 27 O.R. 280. See also *Gibson* v. *Lovell*, 19 Gr. 197; *Adshead* v. *Grant*, 4 P.R. 121.

A planing machine standing on the floor and kept there by its own weight is a chattel liable to seizure for taxes, though it is operated by a belt driven by an engine: *Hope* v. *Cumming*, 10 C.P. 118. So also an engine and boiler detached from the freehold by a fire are chattels: *Walton* v. *Jarvis*, 14 U.C.R. 640, and temporary floors, scantling, partitions, presses, shafting, cocks, etc. *Hughes* v. *Towers*, 16 C.P. 287. So also machinery detached from the freehold where it is not the intention to replace it: *Carscallen* v. *Moodie*, 15 U.C.R. 304. But otherwise if it is detached for a temporary purpose with the intention of refixing it: *Grant* v. *Wilson*, 17 U.C.R. 144; *Great Western Ry. Co.* v. *Bain*, 15 C.P. 207; *Pronguey* v. *Gurney*, 37 U.C.R. 347.

(2) The names of both *owner* and *tenant* of the land appear upon the assessment roll. The taxes are consequently charged in the collector's roll against both of them by name. Each of them is " a person taxed." Goods which belong to either the owner or the tenant are seizable for taxes wherever they may be found in the county in which the municipality lies. Goods which are " in the possession of " either of them, are also seizable, if within the county.

This must, however, be read in conjunction with sub-section 3 of this section, which exempts goods from distress for taxes, if the goods are in possession of the person taxed for the purpose of

storing or warehousing them, or of selling them upon commission, or as agent; and also in conjunction with the other clauses of this sub-section, and with the other sub-sections of this section. If the person taxed has the goods in his possession and is not within the exemptions of sub-section 3, the goods may be seized, even though they belong to a person who is not liable to pay the taxes in question, and are not upon the taxed premises. See note 4 on sub-section 1. Clauses 2, 3, and 4 of this sub-section seem to contemplate that the goods of others than the person taxed, though such goods are upon the lands taxed, are not thereby seizable, except as to the interest of the taxed person therein, or when the goods are those of the actual owner of the lands, or when title to the goods is derived, in the ways indicated, from the person taxed or the owner.

A bailiff, having a warrant to distrain for taxes due by A. on his lands, insisted on seizing a span of horses then in the stable, and which A. was then putting to a waggon to use. These horses belonged to A's son-in-law, who lived in the house but was just then absent; and they were kept in a part of the stable reserved for his exclusive use. It was held that the horses were in the possession of A. and were seizable for the taxes: *Fraser* v. *Page*, 18 U.C.R. 327. As the law stood when that case was decided, " the goods in possession of the party taxed, whether they are found on or off the land rated, are liable to be seized, provided they are within the local jurisdiction of the collector." *Ib.*

The goods of a tenant, not himself the person taxed, could not be seized on another lot than that on which the taxes accrued: *Warne* v. *Colter*, 25 U.C.R. 177, nor can they be seized now on the land on which the tax was imposed.

In construing these clauses, it is useful to keep in mind the former state of the law. and the course of legislation since. See *ante* p. 272.

Goods in the possession of the person taxed were distrainable for taxes regardless of ownership; and are so still except to the extent that such liability has been cut down by statute.

Goods of Owner.

(3) Upon the goods and chattels of the owner of the land found thereon, though his name does not appear upon the roll.

The goods and chattels of the owner are seizable upon the land, but not elsewhere, if he is not the person taxed: *Warne* v. *Colter*, 25 U.C.R. 177. Section 89 makes the taxes upon land a debt of any subsequent owner as well as of the person taxed.

A person who had agreed with the mortgagees of land of which they were in possession, to purchase it at a sum agreed upon, and to carry out the purchase as soon as they obtained a final order of foreclosure, and in the meantime to manage the property as their agent, is not an " owner," within this clause, and such taxes could not be levied upon his goods found on the said premises, he not being the person taxed: *Lloyd* v. *Walker*, 4 O.L.R. 112. " I think a mortgagee in possession would be an ' owner ' whose goods would be liable to seizure for taxes." *Ib.* p. 115, per Britton, J. So also would a person who goes into possession under an absolute agreement to purchase. *Ib.*

He is more than tenant or occupant, and if more than tenant he is to be classed as *owner* within the provisions of section 135 [now 103] of the Act ": *Sawers* v. *City of Toronto*, 2 O.L.R., at p. 720, per Boyd, C.; 4 O.L.R. 624.

Where a tenant has a lease perpetually renewable for terms of fifty years each, though there is an ulitmate reversion in the city, for all practical purposes and within the meaning of the Assessment Act, the lessee may be regarded as the owner, and as such is liable to pay taxes without recourse to the owner in fee: *Re The Canadian Pacific Ry. Co.* v. *City of Toronto*, 4 O.L.R. 134. See also *Horsman* v. *City of Toronto*, 31 O.R. 301; 27 A.R. 475 ; *York* v. *Township of Osgoode*, 24 O.R. 12, 21 A.R. 168, 24 S.C.R. 282; *McDougall* v. *McMillan*, 25 C.P., at p. 92; *Wright* v. *Ingle*, 16 Q.B.D. 379, in which trustees of a dissenting chapel were held to be " owners " and so liable to contribute to the paving of a street; *Willams* v. *Wadsworth Board of Works*, 13 Q.B.D. 211; *Pound* v. *Plumstead Board of Works*, L.R. 7, Q.B. 183; *Plumstead Board of Works* v. *British Land Co.*, L.R. 10, Q.B. 203; *Angell* v. *Vestry of Paddington* L.R. 3, Q.B. 714.

Certain Goods on the Land Claimed Adversely to Owner or the Person Taxed.

(4) Upon any goods and chattels on the land, where title to such goods and chattels is claimed in any of the ways following:

(*a*) By virtue of an execution against the person taxed, or against the owner, though his name does not appear on the roll; or

(*b*) By purchase, gift, transfer or assignment from the person taxed, or from such owner, whether absolute or in trust, or by way of mortgage, or otherwise; or

(*c*) By the wife, husband, daughter, son, daughter-in-law or son-in-law of the person taxed, or of such owner, or by any relative of his, in case such relative lives on the land as a member of the family; or

(*d*) By virtue of any assignment or transfer made for the purpose of defeating distress;

When goods and chattels are on the land taxed, and are claimed by title derived from the person taxed or the owner not taxed by:

(*a*) An execution.

(*b*) By purchase, gift, assignment or transfer (1) absolute, (2) in trust, (3) by way of mortgage or (4) otherwise, or

(*c*) By the wife, husband, daughter, son, daughter-in-law or son-in-law of such person, no matter where such person lives, or by any relative of his who lives on the land as a member of the family, or

(*d*) By virtue of any assignment or transfer made for the purpose of defeating distress.

They are liable to be seized and sold foı the taxes against the land.

Goods which are seized and sold by the chattel mortgagee are not claimed by the purchaser by " purchase, gift, transfer or assigment from the owner or person assessed," within the meaning of section 135 of *The Assessment Act*, R.S.O. (1897), cap. 224, and are not therefore seizable for taxes due from the mortgagor, and assessed on the premises and on personal property, the purchaser having gone into possession of such premises upon his purchase of the chattels: *Horsman* v. *City of Toronto*, 31 O.R. 301, 27 A.R. 475.

A testamentary gift to a person's relatives or relations means to his next of kin according to the Statutes of Distribution: *Cruwys* v. *Colman*, 9 Ves. 234.

Not on Goods of Third Person where Persons taxed or Owner not in Possession. Evidence of Ownership.

Provided that where the person taxed or such owner is not in possession, goods and chattels on the land not belonging to the person taxed or to such owner, shall not be subject to seizure; and the possession by the tenant of the said goods and chattels on the premises shall be sufficient *prima facie* evidence that they belong to him. R.S.O. 1897, c. 224, s. 135 (1), *amended.*

This proviso was introduced in 1896 by 59 Vict. cap. 58, section 6. As the law previously stood any goods or chattels found on the premises the property of or in possession of any other occupant of the premises than the person taxed, might be levied on for taxes. A tenant who had just moved into a house might find his goods seized to pay the taxes of the last or some former owner or occupant. Since the amendment that could not occur. The goods of an occupant who took possession of premises after the assessment, and was in possession before the return of the collector's roll, were formerly distrainable for taxes assessed on such premises against the former occupant, and no demand on the present occupant was necessary, demand having been made on the previous occupant: *Anglin* v. *Minis*, 18 C.P. 170.

But note that it is only when the person taxed, or an owner, though not taxed, is *not in possession* that the goods and chattels on the land not belonging to him escape liability to seizure.

Difficult questions sometimes arise in regard to the possession of goods when possession by the person taxed gives the right to seize them for taxes. If goods are given by a husband to his wife in good faith, and such goods are in the house in which they both live, the possession of the goods is that of the wife, and they are not seizable for his taxes, except when *on the land taxed.*

The situation of the goods being consistent with their being in the possession of either the husband or the wife, the law attributes the possession to the wife, because she has the legal title. When the possession is doubtful, it is attached by law to the title: *Ramsay*

v. *Margrett* (1904), 2 Q.B. 18; *Shuttleworth* v. *McGillivray*, 5 O.L.R. 536. When the wife's goods are on the land of the husband, who is the person taxed therefor, her goods are liable for such taxes under sub-clause (*c*) of clause 4 of sub-section 1, of this section.

Provided also, that no distress shall be made upon the goods and chattels of a tenant for any taxes not originally assessed against him as such tenant. *New.*

This proviso, which is wholly new, extends the law still further than the last one. The goods and chattels of a tenant are now liable to seizure only for the taxes originally assessed against him. See *Meehan* v. *Pears* (1899), 30 O.R. 433; *Heyden* v. *Castle* (1888), 15 O.R. 257; *McNaughten* v. *Wigg* (1874), 35 U.C.R. 111; *Michie* v. *City of Toronto*, 11 C.P. 379; *McAnany* v. *Tickell*, 23 U.C.R. 499.

Taxes on Vacant Lands in Cities and Towns.

Provided also, that in cities and towns no distress for taxes in respect of vacant land shall be made upon goods or chattels of the owner except upon the land. 62 V. (2), c. 27, s. 10 (1), *amended.*

This proviso was introduced by 62 Vict. (2), cap. 27, section 10. It was perhaps intended to relieve the owners of vacant land from the burden of paying taxes upon property which was unproductive, and often of doubtful value, and to leave the taxes to be made by sale of the land. If no distress could be made elsewhere than on the vacant land, and suit could not be brought against the party assessed, as there was a special manner in which the taxes could be made, namely by sale of the land, the only means for collecting the taxes was by sale of the land. But now section 90, sub-section 1, enables suit to be brought for " the taxes payable by any person," whether recoverable in any special manner provided by this Act or not. The exemption from distress for taxes is no boon, when they may be recovered by suit.

In the Case of Taxes not a Charge on Land.

(2) Subject to the provisions of section 102 of this Act, in case of taxes which are not a lien on land remaining unpaid for fourteen days after demand or notice made or given pursuant

to sections 99, 101 or 102, the collector,. or where there is no collector, the treasurer, may by himself or his agent (subject to the exemptions provided for in subsection 4 of this section) levy the same with costs by distress:

1. Upon the goods and chattels of the person taxed wherever found within the county in which the municipality lies for judicial purposes;

(2) Upon the interest of the person taxed in any goods to the possession of which he is entitled under a contract for purchase, or a contract by which he may or is to become the owner thereof upon performance of any condition;

(3) Upon any goods and chattels in the possession of he person taxed where title to the same is claimed in any of the ways defined by sub-clauses *a*, *b*, *c* and *d*, in sub-section 1 of this section, and in applying the said sub-clauses they shall be read with the words "or against the owner though his name does not appear on the roll," and the words "or such owner," and the words "on the land" omitted therefrom. 62 V. (2), c. 27, s. 11 (1), *amended.*

See the notes on sub-section 1 of this section in reference to the effect of section 102 on the time when the right to distrain arises. See also the references there to the notice or demand under sections 99, 101 or 102.

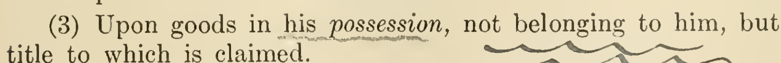
Subsection (2) was first enacted by 62 Vict. (2), cap. 27, section 11; it then appeared substantially in its present form. It then related to personal estate and personal property. It now covers business assessment and income, neither of which is a lien on land. See section 89.

Taxes upon business assessment and income are to be levied:

(1) Upon the goods of the person taxed.

(2) Upon his interest in goods of which he has the right to possession, but the property in which does not pass until payment or the performance of same condition.

(3) Upon goods in his *possession*, not belonging to him, but title to which is claimed.



(*a*) By virtue of an execution against the person taxed.

(*b*) By purchase, gift, transfer or assignment from the person taxed whether absolute or in trust, or by way of mortgage, or otherwise.

(*c*) By the wife, husband, daughter, son, daughter-in-law or son-in-law of the person taxed, wherever living, or by any relative of his, in case such relative lives as a member of the family.

Goods which are not in the possession of the person taxed cannot be seized for taxes, under clause (3) of this sub-section. His possession is essential. Goods which had been mortgaged by the person taxed, were seized by the bailiff of the mortgagees, and were in his possession when distrained for the taxes of the mortgagor. The distress for taxes was therefore illegal, and the bailiff might bring action for illegal distress: *Donohue* v. *Campbell*, 2 O.L.R. 124.

Case of goods in possession of Warehouseman, Assignee or Liquidator.

(3) Notwithstanding anything in the preceding sub-sections, no goods which are in the possession of the person liable to pay such taxes for the purpose only of storing or warehousing the same or of selling the same upon commission or as agent shall be levied upon or sold for such taxes; and provided further that goods in the hands of an assignee for the benefit of creditors or in the hands of a liquidator under a winding-up order shall be liable only for the taxes of the assignor or of the company which is being wound up, and for the taxes upon the premises in which the said goods were at the time of the assignment or winding-up order, and thereafter while the assignee or liquidator occupies the premises or while the goods remain thereon. R.S.O. 1897, c. 224, s. 135 (1). *Proviso.*

This proviso was introduced in 1895 by 58 Vict., cap. 47, section 7. It was intended to remedy the harshness of the law as applied in *Norris* v. *City of Toronto* (1894), 24 O.R. 297, in which the seizure of goods left with a firm of auctioneers to sell in the course of their business, for taxes assessed against the

tenant who had occupied the premises prior to the tenancy of the auctioneers, was held to be legal.

Goods exempt under execution when exempt from Distress for Taxes.

(4) The goods and chattels exempt by law from seizure under execution shall not be liable to seizure by distress unless they are the property of the person taxed, or of the owner, though his name does not appear on the roll. R.S.O. 1897, c. 224, s. 135 (2), *amended.*

The goods and chattels exempt by law from seizure under execution are set in out *The Execution Act,* R.S.O. 1897, cap. 77, sections 2, 3 and 4 as amended by 62 Vict. (2), cap. 7, section 1, as follows:

Exemption.

2 The following chattels shall be exempt from seizure under any writ, in respect of which this province has legislative authority, issued out of any Court whatever in this province namely:

(1) The bed, bedding and bedsteads (including a cradle), in ordinary use by the debtor and his family;

(2) The necessary and ordinary wearing apparel of the debtor and his family;

(3) One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one coal scuttle, one lamp, one table, six chairs, one wash-stand with furnishings, six towels, one looking glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve tea cups, twelve saucers, one sugar basin, one milk jug, one tea pot, twelve spoons, two pails, one wash tub, one scrubbing brush, one blacking brush, one wash board, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use, the articles in this sub-division enumerated, not exceeding the value of $150;

(4) All necessary fuel, meat, fish, flour and vegetables, actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of $40;

(5) One cow, six sheep, four hogs, and twelve hens, in all not exceeding the value of $75, food therefor for thirty days, and one dog;

(6) Tools and implements of or chattels ordinarily used in the debtor's occupation, to the value of $100;

Clause 6 of section 2 of *The Execution Act* is hereby amended by adding thereto the following words: "but if a specific article claimed as exempt be of a value greater than $100 and there are not other goods sufficient to satisfy the execution such article may be sold by the sheriff who shall pay $100 to the debtor out of the net proceeds, but no sale of such article shall take place unless the amount bid therefor shall exceed the said sum of $100 and the cost of sale in addition thereto. 62 Vict. (2) cap. 7, section 1.

(7) Bees reared and kept in hives to the extent of fifteen hives. R.S.O. 1887, cap. 64, section 2.

3 The debtor may in lieu of tools and implements of or chattels ordinarily used in his occupation referred to in clause 6 of section 2 of this Act, elect to receive the proceeds of the sale thereof up to $100, in which case the officer executing the writ shall pay the net proceeds of such sale if same do not exceed $100, or, if the same exceed $100, shall pay that sum to the debtor in satisfaction of the debtor's right to exemption under said sub-division 6, and the sum to which a debtor shall be entitled hereunder shall be exempt from attachment or seizure at the instance of a creditor. R.S.O. 1887, cap. 64, section 3.

4 The chattels so exempt from seizure as against a debtor shall, after his death, be exempt from the claims of creditors of the deceased, and the widow shall be entitled to retain the exempted goods for the benefit of herself and the family of the debtor, or, if there is no widow, the family of the debtor shall be entitled to the exempted goods. R.S.O. 1887, cap. 64, section 4, part.

When the exempted goods of the husband are claimed by his widow she has a statutory title to them; and, except as to funeral

and testamentary expenses, they are not assets in the hands of the executors for the payment of debts, the effect of section 4 being to give his widow a parliamentary title to them. *Re Tatham*, 2 O.L.R. 343.

Exemption to be Claimed.

(5) The person claiming such exemption shall select and point out the goods and chattels as to which he claims exemption. R.S.O. 1897, c. 224, s. 135 (3).

Levy of Taxes under Warrant.

(6) If at any time after demand has been made or notice given pursuant to sections 99, 101 or 102, and before the expiry of the time for payment of the taxes, the collector, or, where there is no collector, the treasurer has good reason to believe that any person in whose hands goods and chattels are subject to distress under the preceding provisions, is about to remove such goods and chattels out of the municipality before such time has expired, and makes affidavit to that effect before the mayor or reeve of the municipality, or before any Justice of the Peace, the mayor, reeve or Justice shall issue a warrant to the collector or treasurer, authorizing him to levy for the taxes and costs, in the manner provided by this Act, although the time for payment thereof may not have expired, and the collector or treasurer may levy accordingly. R.S.O. 1897, cap. 224, section 135 (4), *amended.*

There must actually be ''good reason to believe'' that the person in whose hands the goods are liable to distress, is about to remove them out of the municipality. The burden of proof is on the collector or treasurer and he must satisfy the Court that there was good reason to believe that the removal of the goods from the municipality was about to take place. If he fails to do so, he is liable to pay damages for an illegal distress: *McKinnon* v. *McTague*, 1 O.L.R. 233.

(7) A city shall for the purposes of this section be deemed to be within the county of which it forms judicially a part.

Goods and chattels way be distrained wherever found within the county in which the municipality lies. Section 103 (1) and sub-section 2 (1). For the purposes of this section a city, though not connected municipally with the county, is to be deemed within the county of which it forms a part for judicial purposes. A Toronto tax collector might seize the goods of a person taxed, wherever he found them in the county of York.

Rev. Stat. c. 60.

(8) The costs chargeable in respect of any such distress and levy shall be those payable to bailiffs under *The Division Courts Act.*

(9) No person shall make any charge for anything in connection with any such distress or levy unless such thing has been actually done.

Rev. Stat. c. 75.

(10) In case any person offends against the provisions of sub-section 9 of this section or levies any greater sum for costs than is authorized by sub-section 8 of this section, the like proceedings may be taken against him by the person aggrieved, as may be taken by the party aggrieved in the cases provided for by sections 4 to 5 inclusive of *The Act respecting the Costs of Distress or Seizure of Chattels,* and all the provisions of the said sections shall apply as fully as if enacted *mutatis mutandis* in this Act. R.S.O. 1897, cap. 224, section 135 (5-8).

The bailiff's fees for corresponding services in Division Court with the item of the Division Court Tariff of Bailiff's fees applicable are as follows:—

(6) Enforcing every writ of execution:

Where the claim does not exceed $20	$ .50
Where the claim exceeds $20 and does not exceed $60	.75
Where the claim exceeds $60	1.00

(7) Every mile necessarily travelled in going to seize on a writ of execution where money paid on demand or made on execution or case settled after seizure	.12

Mileage must be reckoned by the nearest travelled road to the place where the seizure is made: *Martin* v. *County of Haldimand,* 19 U.C.R. 178.

(10) Every schedule of property seized not exceeding $20 .30
Exceeding $20 and not exceeding $60 .... .50
Exceeding $60.. .... .75

(12) Every notice of sale, not exceeding three, under execution, each..... .... .15

(13) Reasonable allowances and disbursements necessarily incurred in the care and removal of the property.

(*a*) If a bailiff removes property seized, he is entitled to the necessary disbursements in addition to the fees for seizure and mileage.

(*b*) If he takes a bond he is entitled then to 50 cents instead of disbursements for the removal of the property.

(*c*) If assistance is necessary in the seizure or removal or retaining of the property, the bailiff is entitled to the disbursements for such assistance.

(14) If execution be satisfied in whole or in part after seizure and before sale, the bailiff is entitled to charge and receive three per cent. on the amount directed to be levied or on the amount of the value of the property seized, whichever shall be the lesser amount.

(15) Pondage on executions, 5 per cent., exclusive of mileage for going to seize and sell, upon the amount realized from property necessarily sold.

A warrant to two bailiffs is unobjectionable. A second distress may lawfully be made where the first is abandoned through the fraud of the occupant: *Sawers* v. *City of Toronto,* 2 O.L.R. 717.

Informalities not to Invalidate subsequent proceedings.

104. No defect, error or omission in the form or substance of the notice required by sections 99, 101 and 102 shall invalidate any subsequent proceedings for the recovery of the taxes. *New.*

To charge two offences in one information is a "defect in substance," because forbidden by Statute: *Rodgers* v. *Richards* (1892), 1 Q.B. 555.

The officer who neglects his duty and through carelessness or negligence gives a defective or misleading notice, is not by this section released from the consequences of his neglect. But the defect, error or omission in the notice, whether merely formal or substantial, does not release the person taxed from payment of his taxes, and does render void subsequent proceedings. See the notes to section 46, 99, 121 and 122 for cases showing the effects of failure to substantially comply with the clear requirements of the statute in some other particular, there being no saving clause such as in this section.

The language used does not include the failure to give any notice under sections 99, 101 or 102. Subsequent proceedings would certainly be invalidated by failure to give any notice whatever.

Public Notice of Sale to be given, and in what manner.

105. The collector shall, by advertisement posted up in at least three public places in the township, village or ward wherein the sale of goods and chattels distrained is to be made, give at least six days' public notice of the time and place of sale, and of the name of the person whose property is to be sold; and, at the time named in the notice, the collector or his agents shall sell at public auction the goods and chattels distrained, or so much thereof as may be necessary. R.S.O. 1897, c. 224, s. 138.

The advertisement must be posted up in at least three places in the township or village in which the goods are to be sold, if in a township or village. If in a city or town divided into wards, the three public places are to be in the ward wherein the sale of the goods is to be made. The notice must be given for at least six days, which means six days exclusive of both the day of posting up the advertisement and the day of sale.

The notice must contain,

(*a*) The time and place of sale.

(*b*) The name of the person whose property is to be sold.

But it is apprehended that, though it is not so expressly stated, the advertisement must also contain a list of the goods to be sold.

The sale is to be at public auction, and the goods and chattels, or so much as may be necessary to pay the taxes, are then and there to be sold by the collector or his agents.

There is here express statutory authority for the sale of the distrained goods by auction by the collector or his agent. No auctioneer's license would be necessary to carry on such a sale.

Any irregularity in the advertisement of sale, or even the absence of advertisement, would not invalidate the title of the purchaser, but it would subject the collector to an action: *Lee* v. *Howes*, 30 U.C.R. 292; *Paterson* v. *Todd*, 24 U.C.R. 296; *Hazlitt* v. *Hall*, 24 U.C.R. 484; *Gibson* v. *Lovell*, 19 Gr. 197; *Connor* v. *Douglas*, 15 Gr. 456; *Campbell* v. *Coulthard*, 25 U.C.R. 621; *Shultz* v. *Reddick*, 43 U.C.R. 155.

It would seem that the collector may sue the purchaser of goods at a tax sale for the purchase money: *Jarvis* v. *Cayley*, 11 U.C.R. 282. But such a sale comes within the 17th section of the Statute of Frauds, and, if the amount is over $40, it requires a memorandum in writing signed by the purchaser, a delivery and acceptance of a part of the goods or part payment, to make an enforceable contract: *Mingaye* v. *Corbett*, 14 C.P. 557.

Surplus, if Unclaimed, to be paid to Party in whose Possession the Goods were.

106. If the property distrained has been sold for more than the amount of the taxes and costs, and if no claim to the surplus is made by any other person, on the ground that the property sold belonged to him, or that he was entitled by lien or other right to the surplus, such surplus shall be returned to the person in whose possession the property was when the distress was made. R.S.O. 1897, c. 224, s. 139.

If the seizure and sale were illegal, the receipt of the surplus by the person wronged is no bar to an action by him; such payment to him is neither made nor accepted in satisfaction or compromise of the injury suffered: *Robinson* v. *Shields*, 15 C.P. 386. The goods of others than the persons taxed may, in some circumstances, be sold for taxes. See section 103, clause 1. If there is

no claim made to the surplus by some other person on the ground that the property sold was his, or that he had a lien on it, or if no other claim to the surplus, the surplus is to be paid to the person who had possession of the goods distrained.

Or to Admitted Claimant.

107. If such claim is made by the person for whose taxes the property was distrained and the claim is admitted, the surplus shall be paid to the claimant. R.S.O. 1897, c. 224, s. 140.

If the person in whose possession the goods were when seized admits the claim of the person intervening, as set out in the last section, the collector is to pay such surplus to the claimant.

When the Right to such Surplus Contested.

108. If the claim is contested, such surplus shall be paid by the collector to the treasurer of the municipality, who shall retain the same until the respective rights of the parties have been determined by action or otherwise. R.S.O. 1897, c. 224, s. 141.

When there are several claimants for the surplus it must be paid by the collector to the treasurer of the municipality. He is compelled to receive and retain it until the rights of the parties have been determined by action or settlement. The collector acting under sections 106, 107 and 108 and complying with their provisions would not, it is submitted, be liable to damages for any injury thereby occasioned. If the goods were lawfully distrained for taxes, the owner or other interested person would be left to his remedy against the person in whose possession the goods were, the person who was taxed, or the person who had received the surplus, as the case might be. The collector and treasurer in following the directions of the Act are performing statutory duties which they dare not neglect to discharge; and the Statute is a sufficient answer for their so doing.

Collector to Return his Roll and pay over Proceeds by the day appointed by Council.

109.—(1) Subject to the provisions of sub-sections 2 and 3 of this section every collector shall return his roll to the treasurer

on or before the 14th day of December in each year, or on such day in the next year not later than the 1st day of February, as the council of the municipality may appoint. R.S.O. 1897, c. 224, s. 144 (1) *first part, amended.*

If the provisions of sub-sections 2 and 3 of this section do not apply, the collector shall return his roll on or before the 14th day of December; but the council may extend the time. They cannot extend it beyond the first day of the following February. This section must be read in conjunction with section 111, which enables the council by resolution to authorize the collector or some other person in his stead to proceed with the collection of the taxes, with full powers therefor, after the time herein limited. It is not the intention that taxes shall be lost by the failure of the collector to collect them within the time prescribed by this section.

It is immaterial whether the collector is acting as collector under this section or as a person authorized by resolution under section 111 to collect the taxes, if such resolution has been passed by the council, in either view he may lawfully distrain and make the amount: *Lewis* v. *Brady*, 17 O.R. 377.

"I cannot think it reasonable to hold the legislature to have intended by these enactments that so long as the collector has not returned his roll he is not at liberty to go on and levy when he finds a distress, although the 14th of December may have passed, or any other day which has been given him for making up his return": *Newbury* v. *Stephens*, 16 U.C.R. 65, per Robinson, C.J.

A collector of school taxes might in 1861 collect by distress the taxes for 1859 and 1860, he not having made a return of such taxes as in arrear and being still collector: *Re the Chief Superintendent of Schools (Appellant), McLean* v. *Farrell*, 21 U.C.R. 441; *Coleman* v. *Kerr*, 27 U.C.R. 5; *Charlesworth* v. *Ward*, 31 U.C.R. at p. 101.

The failure of the collector to return his roll until the 8th of April, though it should have been returned on or before the 14th of December, does not affect the validity of a sale of land for taxes. The delay is wholly a matter between the collector and the muni-

cipality; even though the warrant to sell the lands was delayed, that could not prejudice the owners of taxed lands: *McDonnell* v. *McDonald*, 24 U.C.R. 74.

If a collector of taxes after his appointment collects taxes without having received a roll, his surety is liable for his payment of them to the treasurer, and an extension of time without the the surety's consent does not discharge him: *Corporation of Whitby* v. *Harrison*, 18 U.C.R. 606. See also *McBride* v. *Gardham*, 8 C.P. 296; *Smith* v. *Shaw*, 8 U.C.L.J. 297.

(2) In towns and villages to which any by-law passed pursuant to sections 53 to 56 inclusive of this Act applies every collector shall return his roll to the treasurer on or before the 30th day of April in the second year following the completion of the assessment roll, or such earlier date in that year as the council may appoint. *New*. See s. 138.

Under section 53, in cities, towns and villages, the assessment is taken between the 1st of July and the 30th of September; the Court of Revision closes on or before the 15th of November; appeals to the County Judge are disposed of on or before the 15th of December.

Section 54 relates to *cities* only.

Section 55 deals with additions to cities and towns.

Under section 56 in towns, townships and villages the time for completing the assessment by the assessor may be as late as the first of July; the Court of Revision closes six weeks later, and the time for the final return of the roll after appeals from the Court of Revision is twelve weeks later. These three sections are brought into operation by by-laws for that purpose.

It is only in *towns* and *villages* to which sections 53 or 56 have been made applicable by by-law, that sub-section 2 of section 109 is in force.

(3) The council of every city may by by-law fix the times for the return of the collector's rolls, and may make any enlargements of the times so fixed. R.S.O. 1897, c. 224, s. 146, *amended*.

The council of a city has special powers in regard to the time for taking assessments under section 54 in addition to those given to urban municipalities by section 53. This section gives the council of a city ample power to fix times for the return of the collector's rolls, and to make any enlargements from time to time of the times so fixed.

The time for the return of the rolls must be fixed by by-law The enlargements may be made by resolution. See section 111.

Collectors of Towns and Villages to Pay Treasurer Weekly.

(4) The collector of every city, town and village shall pay over to the treasurer of such city, town or village once every week until the final return of the roll, the total amount collected during the preceding week.

Collector of Township to pay Treasurer every Two Weeks.

(5) The collector of every township shall pay over to the treasurer of such township once in every two weeks until the final return of the roll, the total amount collected during the preceding two weeks. R.S.O. 1897, c. 224, s. 144 (2), (3).

It is not either necessary or desirable that the collector should allow taxes to accumulate in his hands. Section 202 makes it the duty of the treasurer to enforce prompt payment by the collector to him, and provides the machinery by which that is to be done. He may issue a warrant at any time within twenty days after default. See *Charlesworth* v. *Ward*, 31 U.C.R. 94.

Oath of Collector on Returning Roll.

110.—(1) At or before the return of his roll every collector shall make oath in writing that the date of every demand of payment or notice of taxes required by sections 99 or 102, and every transmission of statement and demand of taxes required by section 101 entered by him in the roll, has been truly stated therein.

(2) Every other person who has delivered or mailed a notice pursuant to sections 99, 101 or 102 shall in like manner at or

before the return of the roll make oath that the date of the delivery or mailing of every such notice by him, has been truly stated in the roll.

(3) Every such oath may be according to the form given in Schedule H to this Act and shall be written on or attached to the roll and may be taken before the treasurer, or before any of the persons mentioned in section 222 of this Act. R.S.O. 1897, c. 224, s. 144 (1), *last part, amended.*

The failure of the collector to make the declaration of office required by *The Consolidated Municipal Act,* would expose him to penalties for breach of duty, but would not interfere with the legality of his acts as collector: *Lewis* v. *Brady,* 17 O.R. 377. The failure of the collector to make the oath herein directed would, it is apprehended, be punishable in like manner.

As these entries are *prima facie* evidence of the demand of payment or notice given by the collector, and of the delivery or mailing of notices by other persons, they must be verified by the oath of the collector as to what he has personally done, and of every other person as to the notices which he himself has delivered or mailed.

The treasurer is authorized by sub-section 3 of this section to administer the oath to the collector and his assistants.

Other Persons may be Employed to Collect Taxes which Collector does not Collect by a Certain Day.

111.—(1) In case the collector fails or omits to collect the taxes or any portion thereof by the day appointed or to be appointed as in section 109 mentioned, the council may, by resolution, authorize the collector, or some other person in his stead, to continue the levy and collection of the unpaid taxes, in the manner and with the powers provided by law for the general levy and collection of taxes.

So long as the roll remains in the collector's hands unreturned he has power to collect the taxes on the roll. In *Newberry* v. *Stephens,* 16 U.C.R. 65, Burns J. seems to have been of the opinion

that the collector became *functus officio* when the new collector was appointed on the third Monday in January of the following year. This view, however, is not in accord with the present state of the law as laid down in *Lewis* v. *Brady*, 17 O.R. at p. 391. There may be more than one collector of taxes at the same time. And in that case one collector was, in 1888, collecting the taxes of 1886, and another collector those of 1887.

The taxes of 1855 were lawfully levied by distress and sale in January, 1858, by the collector for 1857, having been charged on the roll for that year, it not appearing that the roll for 1855 had been finally returned. A resolution passed on the 7th of December, 1857, authorizing the collection of the taxes after the usual time was upheld as good, though passed before the 14th of December: *McBride* v. *Gardham*, 8 C.P. 296.

The power conferred by this section on the council by resolution to authorize the collector or some other person to continue the collection of taxes does not subsist when the roll has been returned by the collector. After the return of the roll the collection of the taxes devolves on the treasurer of the municipality or of the county, as the case may be, under section 119: *Holcomb* v. *Shaw*, 22 U.C.R. 92. "I am of opinion that after the formal return of the roll by the collector, it is not in the power of the council to appoint any person to collect the unpaid rates by distress and sale. Another course is pointed out by the Statutes to enforce payment by sale of the land, etc.": *Ib.* per Hagarty, J., at p. 106. In the notice of action given to a collector in regard to something done about the collection of taxes, reasonable certainty only is necessary so as to identify the acts complained of, and prevent the defendant from being misled. The collector having returned the roll, and no resolution of the council having been passed authorizing him to continue to collect, a distress by him for taxes is illegal: *Langford* v. *Kirkpatrick*, 2 A.R. 513. See the remarks of Moss, C.J., on *Holcomb* v. *Shaw*, *supra*, which he apparently regarded as well decided: *Ib.* p. 521.

(2) No such resolution or authority shall alter or affect the duty of the collector to return his roll, nor shall, in any manner whatsoever, invalidate or otherwise affect the liability of the collector or his sureties. R.S.O. 1897, c. 224, s. 145.

See section 109 and the notes thereon.

As against the sureties of the collector it was not formerly necessary that the roll be certified, if it was signed by the clerk. But see now section 95 for the form of certificate required. The entries made by the collector in his roll are evidence against the sureties: *Town of Welland* v. *Brown*, 4 O.R. 217. Neither the failure of the clerk to deliver the roll to the collector on or before the 1st of October, nor the extension of time given him by the council in which to return the roll, affected the liability of the sureties. The action was held to be maintainable by the treasurer against the collector's sureties on their bond, which was given to the treasurer instead of to the municipality as directed by the Statute: *Todd* v. *Perry*, 20 U.C.R. 649. See also *Corporation of Whitby* v. *Harrison*, 18 U.C.R. 603. But if the roll is not certified by the clerk, so as to enable the collector to enforce payment of taxes, the collector and his sureties are not liable for the uncollected taxes: *Town of Trenton* v. *Dyer*, 21 A.R. 379, 24 S.C.R. 474. It would seem, however, that such liability exists if the roll is a proper one.

Remission or Reduction of Taxes by the Council.

112.—(1) The Court of Revision shall, at any time during the year for which the assessment has been made or before the 1st day of July in the following year and with or without notice, receive and decide upon the petition from any person assessed for a tenement which has remained vacant during more than three months in the year for which the assessment has been made, or from any person who declares himself, from sickness or extreme poverty unable to pay the taxes, or who, by reason of any gross and manifest error in the roll, has been over-charged, or whose land has been assessed under section 51; and the Court of Revision may (subject to the provisions of any by-law in this behalf) remit or reduce the taxes due by any such person, or reject the petition; and the council may from time to time make such by-laws, and repeal or amend the same. R.S.O. 1897, c. 224, s. 74 (1), *amended*.

(2) An appeal may be had by such person or by the municipality from any decision of the Court of Revision under sub-section 1 of this section. R.S.O. 1897, c. 224, s. 74 (3); 3 Edw. VII., c. 21, s. 9, *amended.*

The power given to the Court of Revision may be exercised either at any time during the year for which the assessment has has been made, or before the 1st of July in the following year. It may be exercised with or without notice. They *shall* within the time limited receive and decide upon the petition from any person.

(1) Who is assessed for a tenement which has remained vacant for more than three months in the year for which the assessment was made.

(2) Who from sickness or extreme poverty claims that he is not able to pay his taxes.

(3) Who by reason of gross and manifest error in the roll has been overcharged.

(4) Whose land has been assessed under section 51.

The Court of Revision may remit or reduce the taxes, or reject the petition. But their action is subject to the terms of any by-law passed by the council dealing with the matters treated of in this section. The council has power to pass such by-laws and repeal or amend them.

The Court of Revision is obliged to hear the petition, though no by-law has been passed by the municipality.

Upon a demand made to the Court of Revision to hear the petition and their refusal, a mandamus will issue to compel them to hear it: *Re Norris,* 28 O.R. 636. In the case of overcharge, the excess had under the former Act to be more than 25 per cent. of the value of the land. R.S.O. 1897, cap. 224, section 74. It must now be so great as to indicate "gross and manifest error."

Either the petitioner or the municipality may appeal from the *decision* of the Court of Revision. No appeal is given from their neglect, omission or refusal to hear the petition. Compare the language of section 68, sub-section 1, with that of this sub-section. If an appeal from the Court of Revision could be taken, then a mandamus to compel them to hear the petition

would not be granted: *Re Marter and the Town of Gravenhurst*, 18 O.R. 243. The omission of the Court of Revision to decide is not a decision: *Law Society of Upper Canada* v. *City of Toronto*, 25 U.C.R. 199.

Proceedings when Taxes are Unpaid and Cannot be Collected.

113.—(1) If any of the taxes mentioned in the collector's roll remain unpaid, and the collector is not able to collect the same, he shall deliver to the treasurer of his municipality an account of all the taxes on the roll remaining unpaid; and, in such account, the collector shall shew, opposite to each assessment, the reason why he could not collect the same by inserting in each case the words "*Non-resident*" or "*Not sufficient property to distrain*," or "*Instructed by Council not to collect*," or "*Instructed by Council to return not collected*," or as the case may be.

Taxes that remain unpaid can be so returned by the collector only when he is not able to collect the same. If he is able to collect the taxes, he and his sureties are liable in an action by the municipality against them for the taxes uncollected: *Town of Trenton* v. *Dyer*, 21 A.R. 379.

He is to deliver to the treasurer of his municipality an account of all the taxes on the roll remaining unpaid. This account must show, opposite to each assessment, the *reason* of his failure to collect *that* assessment.

The oath required by section 115 must also be made. It is not in substitution for the information prescribed in this section, but is in addition to it. The directions of this sub-section are imperative. The duties therein prescribed are "enacted as the basis and foundation of all the subsequent proceedings which are authorized to be taken for the recovery of taxes not paid while the roll remains in the collector's hands unreturned:" *City of Toronto* v. *Caston*, 30 S.C.R. 390. See the same case, 26 A.R. 459 and 30 O.R. 16. The proper return by the collector to the treasurer and also to the clerk, with the reason opposite each assessment for the failure to collect, is indispensable. Without strict compliance with this sub-section neither the clerk nor the treasurer can

perform the duties imposed on him in regard to the arrears of taxes, and the ratepayer is deprived of the notice which he ought to have. A statute provided that the city collector should submit to the mayor a statement in duplicate of lands liable to be sold for arrears of taxes, which statements the mayor was to sign and to seal with the corporate seal: one of these statements was to be filed with the city clerk, and the other was to be delivered to the collector with a warrant attached thereto. The majority of the court held that it was necessary to show that the statements had been signed and sealed in duplicate and filed as directed by the Act, and that production and proof of one of such statements was not sufficient: *O'Brien* v. *Cogswell,* 17 S.C.R. 420. See also *Whelan* v. *Ryan,* 20 S.C.R. 65; *McKay* v. *Crysler,* 3 S.C.R. 436; *Flanagan* v. *Elliott,* 12 S.C.R. 435; *Coleman* v. *Kerr,* 27 U.C.R. 5.

If this account, though made and verified by affidavit by the collector, is in fact untrue, and he returns occupied lands as non-resident, the subsequent sale of the land based thereon is invalid. It is not validated by a clause which enacts that such account "shall be sufficient authority to the county treasurer to proceed to sell the lands on which such taxes remain unpaid," that means only that the treasurer shall be justified if he acts on the return made to him; the collector's return shall be deemed to be *prima facie* correct : *Street* v. *Fogul,* 32 U.C.R. 119.

For the definition of "non-resident" see section 33, sub-section 6 and the notes thereon.

The remedy for the failure of the collector to make the proper return is not by mandamus, but by (1) an action against him and his sureties upon his bond, (2) by prosecution under section 197 for refusing or neglecting to perform his duties under the Act, or (3) if he fails either to pay the money collected "or duly to account for the same as uncollected," summary proceedings may be begun by the treasurer under section 202: *Re Quin and The Treasurer of the Town of Dundas,* 23 U.C.R. 308.

(2) Subject to the next following sub-section, the collector shall at the same time furnish the clerk of the municipality with a duplicate of such account, and the clerk shall, upon receiving the same, mail a notice to each person appearing on the roll with respect to whose land any taxes appear to be in arrear for that year.

It is deemed essential to the validity of a tax sale that the ratepayers should have notice that the taxes upon their lands are in default. "However much it may be considered that the statement of reasons why the collector could not collect and his making oath before the treasurer are matters merely between the collector and the municipality, it is not possible to say the same thing with regard to the direction as to furnishing the clerk of the municipality with a duplicate of the account. That direction does especially affect the taxpayer and is for his protection, for upon receiving such account, it is the duty of the clerk to mail a notice to each person appearing on the roll with respect to whose land any taxes appear to be in arrear. The Act says he shall do so. The taxpayer is thus put upon his guard: *Caston* v. *City of Toronto*, 26 A.R., at p. 465, per Moss, J.A. See section 103.

Nothing is said about the contents of the notice to be given to the ratepayers under this sub-section. But having in mind the purpose for which the notice is to be given, it should give with reasonable fulness the information contained, in regard to that ratepayer, in the account furnished by the collector.

(3) In cities the treasurer shall give the notice hereinbefore directed to be given by the clerk. R.S.O. 1897, c. 224, s. 147; 61 V. c. 25, s. 2, *amended.*

When there is not Sufficient Distress on such Lands.

114. If there is not sufficient distress upon any of the occupied lands or lands built upon in section 122 mentioned to satisfy the total amount of taxes charged against the same, as well for arrears as for the taxes of the current year, the collector shall so return it in his roll to the treasurer of the municipality, shewing the amount collected, if any, and the amount remaining unpaid, and stating the reason why payment has not been made. R.S.O. 1897, c. 224, s. 156; 62 V. (2), c. 27, s. 11 (4).

Arrears for former years cannot be again put upon the collector's roll, or collected by distress in a subsequent year, if there was sufficient distress available in the year in which they should have been collected: *City of Toronto* v. *Caston*, 30 S.C.R. 390.

Lands having been placed on the list furnished by the county treasurer, or treasurer of the local municipality as the case may be, to the clerk of the municipality, of the lands liable to be sold for arrears of taxes, the clerk gives a copy of the list to the assessor. The latter examines and reports upon each parcel of land in the list. If any of them are occupied or built upon, he returns these accordingly and notifies the parties. The clerk furnishes a copy of the assessor's return to the proper treasurer, *i.e.*, the one having the conduct of tax sales for the municipality. The treasurer makes a return to the clerk of the amount of taxes in arrear on each parcel of land returned by the assessor as "occupied or built upon." It is only the arrears of taxes against lands returned in the current year as "occupied or built upon," that the clerk has any authority to enter upon the collector's roll. All this procedure having been gone through with, section 114 directs how the collector's returns are to be made for such lands, if he finds no distress, or insufficient distress to satisfy the total amount of taxes against them.

He must in his return to the treasurer show (*a*) the amount collected, if any, (*b*) the amount remaining unpaid and (*c*) the reason why payment has not been made.

Section 113 has application to such arrears, as well as to taxes for the current year.

When thus not Collected, Collectors to be Credited with Amount.

115.—(1) Upon making oath before the treasurer that the sums mentioned in such account remain unpaid, and that he has not, upon diligent inquiry, been able to discover sufficient goods or chattels subject to distress under section 103, whereon he could levy the same, or any part thereof, the collector shall be credited with the amount not realized. R.S.O. 1897, c. 224, s. 148, *amended.*

The direction here is to make oath before the treasurer. There is an implied authorization of the administration of the oath by the treasurer.

"Such account" refers to the account required by section 113. That account would include the arrears mentioned in section 114. which are not collected in the current year, as well as unpaid taxes of the current year.

The affidavit of the collector must show

(*a*) That the sums mentioned in the account are unpaid.

(*b*) That he has not, upon diligent inquiry, been able to discover sufficient goods and chattels subject to distress under section 103, whereon he could levy them, or any part thereof.

For a qualification of the oath see the next sub-section.

Though the collector makes oath that he could not collect taxes on a parcel of land because it was non-resident, yet if in fact it was occupied, a sale based on such a return is illegal. *Street* v. *Fogul*, 32 U.C.R. 119; *City of Toronto* v. *Caston*, 30 S.C.R. 390.

The underlying intention seems to be that *prima facie* the collector is liable to the municipality for all the taxes on the roll. As each payment is made to the treasurer, he is credited with the amount; and when he delivers the proper account to the treasurer, with the reason for failure to collect duly entered against each assessment which he cannot collect, and verifies his account by oath, he is to be credited with the amount of the uncollected taxes. For the summary process of enforcing payment by him or the making of the proper return, see section 202.

See also the notes on section 113.

(2) In cities and towns and any other municipalities having power to sell lands for non-payment of taxes the collector of taxes may qualify the oath, by sub-section 1 directed to be made by him by shewing that in respect of vacant land, he has not attempted to distrain upon the goods and chattels of the owner except upon such vacant land. 62 V. (2), c. 27, s. 10 (2).

The last proviso in sub-section 1 of section 113 reads: "Provided also, that in *cities and towns* no distress for taxes in respect of vacant land shall be made upon goods or chattels of the owner except upon the land." But the language here used is wider: "In cities and towns and any *other municipalities*

having power to sell land for taxes the collector of taxes may qualify the oath'' to meet the clause which prohibits distress ''except upon the land.'' Section 187 of the Act puts certain townships therein named in the same position in regard to the powers conferred on cities and towns by section 186 and the sections in section 186 referred to, as cities and towns. And all duties imposed by the said sections on the officers of cities and towns are by section 187 imposed on the officers of the said townships. But section 186 refers to sections 116 to 185 only. There seems to be no extension of the restriction regarding distress on vacant lands in the last proviso of section 113, to make it applicable to the townships mentioned in section 187, unless it was intended that it should be inferred from the language used in this subsection. Exemptions from taxation are construed strictly. See the notes on section 5, p. 27.

Arrears of Taxes Accrued on Land.

[*As to cities and towns see section* 186.]

In cities or towns the treasurer of the city or town conducts the tax sale, and discharges all the duties which in regard to townships and villages are discharged by the county treasurer.

No returns are made to the county treasurer by the officials of cities and towns, nor by him to them. The collection of arrears of taxes and the sale of land for taxes in cities and towns belong solely to the officials of the town.

Statement of Arrears to be Prepared by Treasurer.

116.—(1) The treasurer of every township and village shall, within fourteen days after the time appointed for the return and final settlement of the collector's roll, and before the 8th day of April in every year, furnish the county treasurer with a statement of all unpaid taxes and school rates directed in the said collector's roll or by school trustees to be collected.

This section deals only with taxes accrued on land. For the effect of the heading on the construction of the sections under it, see the notes on section 58.

The language of sub-section 1, taken without its context and without reference to other portions of the Act, is wide enough to cover taxes on business assessment and income. But taxes on land only are intended to be dealt with.

For the time appointed for the return of the collector's roll see section 109. If that time is enlarged under section 111, the return must, nevertheless, be in the hands of the county treasurer before the 8th day of April in each year.

For school rates directed in the collector's roll or by school trustees to be collected, see *The Public Schools Act*, 1 Edw. VII., cap. 39, sections 70 and 71.

(2) Such statement shall contain a description of the lots or parcels of land, a statement of unpaid arrears of taxes, if any, and of arrears of taxes paid, on lands of non-residents which have become occupied, as required by section 122 of this Act; and the county treasurer shall not be bound to receive any such statement after the 8th day of April in each year.

The statement of unpaid taxes shall contain:

(*a*) A description of the lots or parcels of land with the amount of taxes against each. That the description be correct is of grave importance. Lands in arrear must be described in the sale procedings, and the description furnished by the local treasurer is the basis of such description. If the description is not sufficiently definite, or if there is any other information lacking, sub-section 3 of this section imposes on the officers of the local municipality the duty of supplying the omission.

(*b*) A statement of unpaid arrears of taxes, if any, upon lands of non-residents which have been returned by the assessor, under section 122, as "occupied" and which the collector has returned, under section 114, as in arrear.

(*c*) A statement of arrears of taxes paid on lands of *non-residents* which have become occupied.

The county treasurer may receive the statement later, if he sees fit, but he is not bound to do so.

The punishment for neglect on the part of any of the officers of the municipality in carrying out these duties, is provided for in section 197.

(3) The treasurer in such statement and both he and all other officers of the municipality shall from time to time furnish to the county treasurer such other information as the county treasurer may require and demand, in order to enable him to ascertain the just tax chargeable upon any land in the municipality for that year. R.S.O. 1897, c. 224, s. 157, *amended.*

Any information which the county treasurer may require and demand, in reference to the matters treated of, must be obtained and furnished to him by the officials of the township or village. He is entitled to have from them whatever may be necessary to enable him to keep a just and accurate record of all arrears he has to deal with. He must be able to ascertain the just tax chargeable upon any land in the municipality for that year.

See section 134, sub-section 2, as to the percentage which is to be added by the county treasurer when a percentage has been already added by virtue of a by-law passed under section 102

Among the various matters upon which the treasurer of the county may require information from the officials of the local municipality, is the apportionment of taxes amongst the lots of a block which has been sub-divided. The Court of Revision or the Council of the municipality may make the apportionment, pursuant to sec. 127. Under sec. 162 of R.S.O., 1897, cap. 224, the county treasurer had power to make such apportionment himself ; but the section conferring that power on him was not included in the present Act.

Sec. 148, subs. 3, provides that after the purchase of land by the municipality at a tax sale, the orignial owner can redeem only on paying the taxes, including local improvement rates, which would have been assessed against the property if it had not belonged to the municipality, as well as the arrears for which it was sold, and interest. No provision is made in that section for any return being made to the county treasurer, of such subsequent taxes, and the county treasurer can only ascertain their amount by inquiry under the provisions of this section. Without such details he would be unable to determine what sum was required to redeem the land.

Municipalities United and Afterwards Disunited, etc.

117. If two or more municipalities, having been united for municipal purposes, are afterwards disunited, or if a municipality or part of a municipality is afterwards added to or detached from any county, or to or from any other municipality, the county or other treasurer shall make corresponding alterations in his books, so that arrears due on account of any parcel or lot of land, at the date of the alteration, shall be placed to the credit of the municipality within which the land after such alteration is situate. R.S.O. 1897, c. 224, s. 165, *amended.*

See section 85 and the notes thereon for a reference to *The Consolidated Municipal Act* 1903, governing the changes in municipal affiliations here referred to.

118. The county or other treasurer shall not be required to keep a separate account of the several distinct rates which may be charged on lands, but all arrears, from whatever rates arising, shall be taken together and form one charge on the land. R.S.O. 1897, c. 224, s. 246, *amended.*

''Other treasurer'' means the treasurer of a city or town, or of the township of York, Scarborough or Etobicoke. See sections 186 and 187. The treasurers of such municipalities have, for their respective municipalities, all the powers and duties of the county treasurer for other municipalities under sections 116 to 185.

The treasurer is not obliged to separate ''county rates,'' ''general rate,'' ''public school rate,'' etc., in his records of the arrears charged against lands. He enters one sum for all arrears against each parcel.

After Return of Roll who to Receive Taxes.

119.—(1) After the collector's roll has been returned to the treasurer of a township or village, and before such treasurer has furnished to the county treasurer the statement mentioned in section 116, arrears of taxes may be paid to such local treas-

urer; but after the said statement has been returned to the county treasurer no more money on account of the arrears then due shall be received by any officer of the municipality to which the roll relates.

Two events are here spoken of as taking place :

(1) The return of the collector's roll in a township or village, sections 109 and 111.

(2) The furnishing by the treasurer of the township or village to the county treasurer of a return of all unpaid taxes for the year, within 14 days after the time appointed for the return of the collector's roll, section 116.

In the interval between the one event and the other, and in that interval only, the treasurer of the township or village may receive taxes which were on the collector's roll. But not taxes on non-resident lands. See sub-section 2 of this section.

Every officer of the local municipality is expressly prohibited from receiving any arrears of taxes after the statement mentioned in section 116 has been returned to the county treasurer: *Holcomb* v. *Shaw*, 22 U.C.R. 92; *Smith* v. *Shaw*, 8 U.C.L.J. 297. Payment to an officer of the local municipality, in such circumstances, would not avail to prevent the land from being sold for taxes.

Collection of Arrears to belong to County Treasurer only.

(2) The collection of arrears shall thenceforth belong to the treasurer of the county alone, and he shall receive payment of such arrears, and of all taxes on lands of non-residents, and he shall give a receipt therefor, specifying the amount paid, for what period, the description of the lot or parcel of land, and the date of payment, in accordance with the provisions of section 131 of this Act. R.S.O. 1897, c. 224, s. 160.

The collection of arrears, after they have been returned to the county treasurer, belongs to him alone.

Upon tender of all the taxes in arrear upon a parcel of land he *must* receive them; but he *may*, until the land has been adver-

tised for sale, but not afterwards, receive part payment. The county treasurer alone can receive taxes on lands of non-residents. See section 96.

The receipt given by the county treasurer shall specify

(*a*) The amount paid.

(*b*) The period for which it was paid. See *McBride* v. *Gardham*, 8 C.P., at p. 299.

(*c*) The description of the land on which it was paid.

(*d*) The date of payment.

This receipt is in triplicate. One copy is given to the person paying; the second is delivered to the county clerk for the purpose of audit; the third is retained by the treasurer. See section 131.

Under section 186 the treasurer of a city or town has similar powers and duties.

Section 127 directs how taxes imposed on a block which has been sub-divided later, are to be apportioned. Payment of the amount apportioned to any lot releases that lot from the tax. So far as that lot is concerned it is payment in full.

Under sec. 162, of R.S.O. 1897 c. 224 the treasurer had power to apportion the taxes among the various lots of the block which was sub-divided. But that provision is omitted from this Act. Sec. 127 furnishes the only means of now apportioning them.

Receiving Payments on account of Arrears.

120. The county treasurer and the treasurer of any municipality whose officers have power to sell lands for arrears of taxes may from time to time receive part payment of taxes returned to him as in arrears upon any land; but no such payment shall be received after the land has been advertised for sale for arrears of taxes. See 62 V. (2), c. 27, s. 13 (1), *amended.*

May is permissive. See notes on last section. Also *Caston* v. *City of Toronto,* 30 O.R. 16. For the apportionment of taxes when the land is subdivided, see section 127.

Duties of Treasurers, Clerks and Assessors in relation thereto.

Lists of Lands three years in Arrears for Taxes to be Furnished the Clerks.

121. The treasurer of every county shall furnish to the clerk of each municipality in the county except those whose officers have power to sell lands for arrears of taxes, and the treasurer of every such last-mentioned municipality shall furnish to the clerk of the municipality (or in cities having an assessment commissioner the treasurer of the city shall furnish to the assessment commissioner) a list of all the lands in the municipality in respect of which any taxes have been in arrear for the three years next preceding the 1st day of January in any year; and the said list shall be so furnished on or before the 1st day of February in every year, or fifteen days before such other date as may be fixed by any by-law passed under sections 53 to 56 inclusive for the assessor to begin to make his assessment roll and shall be headed in the words following: ''*List of lands liable to be sold for arrears of taxes in the year* 19 ;'' and, for the purpose of the computation of such three years the taxes for each year shall be deemed to have been due and payable on and from the first day of January in such year. R.S.O. 1897, c. 224, s. 152, *amended.*

The language of section 121 is somewhat less certain than that of the corresponding section of the former Act. Section 152 of R.S.O. 1897, cap. 224, which corresponded with this section, concluded as follows: ''And for the purposes of this Act, the taxes for the first year of the three which have expired under the provisions of this Act, on any land to be sold for taxes, shall be deemed to have been due for three years, although the same may not have been placed upon a collector's roll until some month in the year later than the month of January.'' Section 173, which corresponded with section 136 of the present Act, was quite explicit. ''Where a portion of the tax on any land has been *due for* and *in* the *third year,* or for more than three years preceding the current year, the treasurer of the county shall'' proceed to sell. Section 136 now gives authority to proceed to sell ''where a part of the tax on any land is in *arrear* for three

yeaJs as provided in section 121.'' It is probable that it was not the intention of the Legislature to make a material charge in the law in respect of the time for which there must be arrears, but the language of the section is not free from doubt. If taxes are due on the first day of January, they are not in arrear until the second. If the taxes of 1902 are in arrear on the 2nd of January, 1902, they are not, previous to the 1st day of January, 1905, in arrear for three years. The time during which they have been in arrear previous to the 1st day of January. 1905, is a day short of three years. The intention is, perhaps, that all lands in respect of which any taxes for the three years next preceding the first day of January in any year are in arrear shall be entered in the list. The taxes are, perhaps, not those which have been in arrear for three years before the date named; but the arrears of taxes for *the* three years *next* preceding the 1st day of January. In the case supposed taxes have been in arrear for the three years *next* preceding the 1st of January, 1905, viz., the taxes for 1902, 1903 and 1904.

The words in Consol. Stat. U.C., cap. 55, section 124, were: ''Whenever a portion of the taxes on any land has been *due* for five years, or for such longer period,'' etc., the land may be sold.

The word there was *due*, not *in arrear*. If the present section had read ''in respect of which any taxes have been *due* for the three years, etc.,'' or if the concluding portion had read, "the taxes for each year shall be deemed to be in *arrear* on and from the first day of January in such year," the difficulty in construing it would have disappeared. There would then have been nothing to suggest that the taxes, or some portion thereof, must have been in arrear for three full years, so that taxes of 1902 could not be put upon the list until 1906.

In *Bell* v. *McLean*, 18 C.P. 416, Wilson, J., said ''I incline to think very strongly that the taxes of the preceding year, for the purposes of sale for arrears, are not to be considered as in arrear till after the expiry of the year in which they are imposed. It is only after that time that the county treasurer has anything to do with them. The fiscal year is clearly correspondent with the calendar year in this respect and the *preceding year's* taxes are those unpaid at the end of the year. By fixing this definite period the computation of time is made easy for all parties, and there is nothing inconsistent in holding that taxes may be due to

enable a distress or suit to be maintained for them at one period, and that they may be considered as due at another period for the purposes of a sale of the land itself. The treasurer's books will certainly not show five years' arrears if any warrant of sale be issued by him, unless the time be computed from the first of the year after the preceding year's taxes have been imposed". In that case the collector got his roll on the 26th of August, 1852, and the treasurer's warrant was issued on the 11th of August, 1857. Under the Act then in force taxes were not due until a month after the collector got his roll, and the sale was set aside.

In *Ford* v. *Proudfoot*, 9 Grant 478, which was decided under a provision similar to that in C.S.U.C., cap. 124, section 55, Spragge, C., said: "It is clear from the sections to which I have referred that no taxes for a year or a part of a year are made payable until the collector's roll is placed in his hands, because until then there is no hand to receive them. This may be as late as the 1st day of October. It is also clear that the year's taxes cannot be due in any sense until after the time for appealing from the assessment roll is expired, and the municipality has fixed the rate which shall be imposed. This must be done under the Statute before the first of August. It may be done before. It is quite impossible that it should be done so early in the year as the 23rd of February, the date of this warrant, and taking the periods given for the different proceedings the latter part of July would be the more probable time. But it is said that a *portion* of the year's taxes as due after the 1st of January and that *other* portions grow due from day to day until the whole is due, and that all the Statute requires is that a portion shall be due for *five* years. I cannot accede to this view. . . . To apply my construction of the Act to this case, the taxes for 1853—the earliest year of the arrear—were due and payable, say, some time between the 1st of August and the 1st of October in that year. The treasurer's warrant was issued a little more than *four years and a half* after the earliest of these dates (25th February, 1858) and the sale took place within five years (15th July, 1858); consequently the sale was premature." See also *Kelly* v. *Macklem*, 14 Grant 29.

In *Connor* v. *McPhearson*, 18 Grant 607, by-laws imposing taxes for 1852 were dated respectively the 9th and 27th of July, 1852; the collector's roll was not delivered to the collector until after August of that year; the warrant for the sale of the lands

for taxes was dated the 10th of July, 1857. It was contended by the defendant that the taxes were due at the beginning of the year 1852, though the by-laws imposing them had not been then passed, or that they became due the moment the by-laws were passed. The Statute declared that "the taxes levied or assessed for any year shall in all cases be considered and taken to have been imposed for the then current year commencing with the first day of January and ending with the 31st day of December, unless otherwise expressly provided for by the enactment or by-law under which the same are imposed or authorized or directed to be levied.". It was held, following *Ford* v. *Proudfoot* and *Bell* v. *McLean*, supra, that the contention could not be maintained, and that the sale was invalid.

In consequence of these decisions and to obviate the difficulty which they created, the Statute was amended in 1866 by adding a proviso that "the taxes for the first of the three years which have expired under the provisions of this Act, on any land to be sold for taxes, shall be deemed to have been due for three years, although the same may not have been placed upon a collector's roll until some month in the year later than the month of January."

In *Corbett* v. *Taylor*, 23 U.C.R. 454, Draper, C.J., said: "We take arrears to mean something which is behind in payment, or which remains unpaid; as for instance arrears of rent, meaning rent not paid at the time agreed upon by the tenant; it implies a duty and a default." See also *Kennedy* v. *Thomas* (1894), 2 Q.B. 40.

In *Kennan* v. *Turner*, 5 O.L.R. 560, under the former statute, R.S.O., cap. 224, section 152, the taxes of 1895, 1896 and 1897 being unpaid when the tax sale was made on the 7th of October, 1898, Osler, J.A., said: "Taxes for the whole period of three years next preceding the 1st day of January, 1898, being due and in arrear and unpaid, and those for the year 1895 having been in arrear for three years next preceding that day (section 152, last clause) the lot in question was liable to be sold for the whole of such arrears during the year 1898 (section 152)." But it may be open to enquiry to what extent that opinion was influenced by the language of section 173 quoted on p. 309, but which is not retained in section 136. He further says: "In the case before me, the taxes for the three years, 1895, 1896 and 1897 had been regularly and validly imposed and assessed. They were all due and in

arrear before the sale in October, 1898, and the tax for the year 1895 had been due for the third year, or for the three years preceding the sale.'' *Ib.* p. 564.

In *Wapels* v. *Ball*, 29 C.P. 403, the court considered the validity of a sale for the taxes of 1870, 1871 and 1872 under a warrant issued on the 18th of July, 1873, the sale taking place thereunder on the 18th of December following. Wilson, C.J., in his judgment gives a review of the legislation affecting the point in question; he says: ''By the 32 Vict. cap. 36, section 18, O., under which the sale was made, and which clause is a transcript of section 18 of the 29 & 30 Vict., cap. 53, the taxes or rates imposed or levied for any year shall be considered to have been imposed, and to be due on and from the first of January of the then current year, and end with the 31st of December of that year, unless otherwise provided by the by-law. That clause by the Consol. Stat. U.C., cap. 55, section 16, read thus: 'The taxes or rates levied or imposed for any year shall be considered to have been imposed for the then current year,' etc., And the law in that respect continued so until the 29 & 30 Vict. cap. 53, when by section 18, it was made as it was afterwards re-enacted as above stated by the Act of 1869; and that has continued to be the law since then: R.S.O. 1877, cap. 74, section 347. Under the section as it stood before the year 1866, it was decided that there must be five complete years of some portion of the taxes being in arrear before the warrant could be lawfully issued to sell the lands in arrear: *Ford* v. *Proudfoot*, 9 Grant 478; *Kelly* v. *Macklem*, 14 Grant 29; *Bell* v. *McLean*, 18 C.P. 416. There was nothing said in the earlier Statutes under which these cases were decided that the tax 'shall be considered to have been imposed and to be due on and from the 1st day of January of the then current year.' That was first provided by the Act of 1866. Before that Act, also, land could not be sold for arrears of taxes unless some part of the taxes was 'in arrear for five years.' Non-resident land was rather different: 27 Vict. cap. 19, sections 1-4. By the Act of 1866, section 129, it was enacted that, whenever a portion of the tax on any land has been due for and in the *fifth* year or for more than *five* years preceding the current year, the treasurer shall make a list of lands liable to be sold. And by section 131 it was enacted that ''If any tax in respect to any lands sold by the treasurer after the passing of this Act, in pursuance of and

under the authority thereof, shall have been due for the fifth year or more years preceding the sale thereof' and the same shall not be redeemed in one year after the sale, the sale and deed to the purchaser, if the sale has been openly and fairly conducted, shall be final and binding. These sections were re-enacted by the 32 Vict. cap. 36, sections 128 and 130 O., but reducing the period to *three* years, and they are contained in the R.S.O. [1877] cap. 180, sections 127 and 155. It is plain therefore that the taxes imposed for any year, say 1870, shall be considered 'to have been imposed and to be due on and from the first day of January of the current year.' The tax for that year, say for 1870, is therefore a tax 'which has been due for and in the first year.' If that be so then 1871 must be the second year and 1872 the third year. So that when the Statute enacted that 'whenever a portion of tax on any land has been due for and in the third year, or for more than three years preceding the current year,' the treasurer shall submit a list of the lands liable to be sold for taxes, it would authorize the treasurer in 1873 to make a list of lands liable to be sold for taxes imposed in the year 1870, if remaining unpaid, because 1873 would be the current year, and the taxes for 1870 would in 1873 have been due for and in the third year preceding 1873. The effect of these provisions is to make the time when the tax is due count from the first of January of the year when it was imposed, in place of from the time the collector got his roll in the fall of that year, or from the time he made his demand for payment of the taxes, or from the end of that year, according to the decisions before referred to. The like expression in section 131, 'shall have been due for the third year,' shows the Legislature quite undertsood the effect of the decisions of the Courts and meant to avoid such effect, and to make the whole year in which the tax was imposed count as the first year, or as one of the years from the first of January of that year.''

In the same case Galt, J., after quoting sections 18 and 128 above referred to in the judgment of Wilson, J., and speaking of the latter part of section 128, says: ''The intention of the Legislature is not very plain as respects the latter part of the above provision, but it appears to me that the section must be read in connection with the 18th, and if so, then the taxes on this land were due at any rate on 31st December, 1870, and in arrear on 1st January 1871, 1872 and 1873, and consequently overdue

for and in the third year when the warrant issued in July, 1873, and therefore that they were liable to be sold.''

Upon the other hand, if the year in which the taxes are imposed is not to be counted as one of the years in which the taxes are in arrear, there seems to be no object in retaining the provision that the taxes shall be due and payable from the 1st day of January in each year. If that year is not to be counted, why have the taxes due on the first day of the year? They might just as well be due on the 1st day of October, or on any other day before the 31st of December, so that they would be in arrear on the last day of the year. That clause has, however, been retained and amended.

It is quite possible that the intention of the enactment is to make no change in the time which must elapse before land can be sold for taxes. But the language used is sufficiently suggestive of a different meaning to give rise to grave doubt.

The treasurer of each county shall make a certain return to the clerk of each township and village. The treasurer of each city and town shall make a similar return to the clerk of the city or town. In *cities* having an assessment commissioner the return is to be made to him instead of to the clerk. See section 296 of *The Consolidated Municipal Act*, 1903. This return is to be made on or before the 1st day of February in each year. If a by-law has been passed under sections 53 to 56, changing the time for beginning the assessment, then the treasurer makes the return 15 days before the date fixed by such by-law for beginning to make the assessment roll. Section 135 forbids the sale of any lands not included in the list furnished by the treasurer to the clerk in the *month of January* preceding the sale. At one time the corresponding section forbade the sale of any lands not included in the lists furnished to the clerk in the month of *February* preceding the sale. In that state of the law, the court held that its being furnished any time during February would be sufficient: *Stewart* v. *Taggart*, 22 C.P. 284. But the directions of the present sections are imperative regarding time. Compare *Re Nottawasaga and the County of Simcoe*, 4 O.L.R. 1.

The list is to contain all the lands in the municipality in respect of which any taxes have been in arrear for the three years next preceding the 1st day of January in any year. There is, as is

pointed out in *Stewart* v. *Taggart, supra,* no direction in terms that the amount of taxes in arrear shall be stated in the list. That amount is to be included in a later return, under section 123, sub-section 1, from the treasurer to the clerk, if the land is returned by the assessor under section 122 as ''occupied or built upon.'' The omission of the amount of the arrears from the list does not invalidate it. *Stewart* v. *Taggart, supra,* at p. 290.

Taxes in each year, for the purpose of computing the three years, are deemed to have been due and payable on and from the 1st day of January in each year. *Goldie* v. *Johns,* 16 A.R., at pp. 134, 135. The taxes must have been in arrear for *three years preceding* the 1st of January in the year in which this return is made. To justify a return under this section in 1905 some taxes for 1902 must be in arrear. This was formerly not sufficient, as the taxes were not due until imposed by by-law. *Connor* v. *McPhearson,* 18 Grant 607; *Ford* v. *Proudfoot,* 9 Grant 478; *Bell* v. *McLean,* 18 C.P. 413; *Kempt* v. *Parkyn,* 28 C.P. 123; *Kelly* v. *Macklem,* 14 Gr. 29. Since taxes for each year are due on and from the first of January in that year, the unpaid taxes for the year 1870 are three years in arrear in 1873 and the land may be sold therefor: *Wapels* v. *Ball,* 29 C.P. 403.

Taxes for the whole period of three years next preceding the 1st day of January, 1898, being due and in arrear and unpaid, and those for 1895 having been in arrear for three years next preceding that day, the lot in question was liable to be sold for the whole of such arrears during the year 1898: *Kennan* v. *Turner,* 5 O.L.R., at p. 562.

There can be no legal or valid sale of lands unless taxes have been in arrear for the time prescribed by the statute, now three years, formerly five years. *McKay,* v. *Crysler* 3 S.C.R. 436; *Edinburgh Life Insurance Co.* v. *Ferguson,* 32 U.C.R. 253; *Kempt* v. *Parkyn,* 28 C.P. 123; *Hamilton* v. *Eggleton,* 22 C.P. 536; *Connor* v. *McPherson,* 18 Gr. 607; *Bell* v. *McLean,* 18 C.P. 416; *Ford* v. *Proudfoot,* 9 Gr. 478; *Yokham* v. *Hall,* 15 Gr. 335; *Wapels* v. *Ball,* 29 C.P. 403; *Kelly* v. *Macklem,* 14 Gr. 29; *Myers* v. *Brown,* 17 C.P. 307; *Allan* v. *Fisher,* 13 C.P. 63; *McAdie* v. *Corby,* 30 U.C.R. 349.

Land may be sold for the taxes of one year only, if long enough in arrear.

If this list is not furnished by the treasurer to the clerk, the steps directed by sections 122 and 123 to be taken by the clerk and assessor, and by 114 to be taken by the collector, cannot be taken, and the sale of lands not so dealt with is expressly prohibited by section 135. Failure to carry out the directions of section 121 is fatal to the validity of any tax sale made in that year: *Ruttan* v. *Burke*, 7 O.L.R. 56; *Deverill* v. *Coe*, 11 O.R. 222; *McKay* v. *Ferguson*, 26 Gr. 236; *Donovan* v. *Hogan*, 15 A.R. 432.

The omission is not cured by the lapse of time under sections 172 and 173: *Fenton* v. *McWain*, 41 U.C.R. 239; see also *Whelan* v. *Ryan*, 20 S.C.R. 65; *O'Brien* v. *Cogswell*, 17 S.C.R. 420.

Clerks to Keep the Lists in Their Offices open to Inspection, Gives Copies to Assessors, Notify Occupants, etc.

122.—(1) The clerk of the municipality or assessment commissioner is hereby required to keep the said list, so furnished by the treasurer, on file in his office, subject to the inspection of any person requiring to see the same, and he shall also deliver a copy of such list to the assessor of the municipality, in each year as soon as he is appointed; and it shall be the duty of the assessor to ascertain if any of the lots or parcels of land contained in such list are occupied or built upon or are incorrectly described, and to notify such occupants and also the owners thereof, if known, whether resident within the municipality or not, upon their respective assessment notices, or otherwise, that the land is liable to be sold for arrears of taxes, and to enter in a column (to be reserved for the purpose) the words "*Occupied or Built upon and Parties Notified,*" or "*Not occupied,*" or "*Incorrectly described,*" or as the case may be; and all such lists shall be signed by the assessor, verified as provided in sub-section 2 of this section, and returned to the clerk with the assessment roll, together with a memorandum of any error discovered therein; and the clerk shall compare the entries in the assessor's return with the assessment roll and report any differences to the assessor for verification and the clerk shall file such lists and any such

memorandum in his office for public use, and shall furnish forthwith to the treasurer of the municipality, if the municipality is one whose officers have power to sell lands for arrears of taxes, or in other cases to the county treasurer, a true copy of the same certified to by him, under the seal of the corporation; and, every such list or copy thereof, shall be received in any Court as evidence, in any case arising concerning the assessment of such lands. R.S.O. 1897, c. 224, s. 153, s. 155 (1); 62 V. (2), c. 27, s. 12 (1), *amended.*

The list of lands within the municipality liable to be sold for taxes during the current year is to be kept on file in the office of the clerk of the municipality; or, in cities, in the office of the assessment commissioner. This list is subject to the inspection of any person requiring to see the same.

It is the duty of the clerk, or assessment commissioner when he is the custodian of the list, to prepare a copy of this list and to deliver such copy to the assessor. An interval of 14 days is allowed between the furnishing of the list to the clerk, and the commencement of the assessor's duties; but the list should be delivered to the assessor in each year as soon as he is appointed.

The duties of the assessor are clearly defined and are of the utmost importance. If he fails to perform them, a subsequent sale of the land is illegal.

He is

(1) To examine all the lands in the list furnished by the treasurer to find if the land is:

(*a*) Occupied or
(*b*) Built upon or
(*c*) Incorrectly described, and

(2) To notify the *occupants* and also the *owner* thereof, if known, whether resident in the municipality or not, either upon their assessment notices or otherwise, that the land is liable to be sold for arrears of taxes and

(3) To enter in the assessment roll in the proper column, regarding each parcel, the words,

(*a*) "Occupied or built upon and parties notified."
(*b*) "Not occupied,"

(*c*) "Incorrectly described,"

(*d*) Or as the facts actually are.

(4) To make a memorandum of any errors he may have discovered.

(5) To sign the list and verify it by affidavit as prescribed by sub-section 2 of this section.

(6) To return the list certified, signed and sworn to, to the clerk, with a memorandum of any error discovered therein, and with the names of all occupants thereon, as well as the names of the owners thereof, when known. The list is returned with the assessment roll

The clerk has further duties to perform when the assessor returns the list to him along with the assessment roll.

(1) He must compare the assessor's return, *i.e.*, the list given to and returned by the assessor, together with the memorandum of any error discovered in the list, with the assessment roll.

(2) If any differences appear between the assessment roll and the return, he must report these to the assessor for verification.

(3) He must file the list and any accompanying memorandum in his office for public use.

(4) He must furnish, *forthwith*, to the county treasurer, city or town treasurer, as the case may be, a true copy of such list and memorandum, certified by him under the seal of the corporation.

Every such list and copy is evidence in any case arising concerning the assessment of such lands.

A comparison of this section with section 126 indicates that, when the assessment commissioner is the custodian of the list, he is to discharge all the duties required by this section to be discharged by the clerk. See also *The Consolidated Municipal Act*, 1903, section 296, subs. 4.

The giving of the notice by the assessor to the occupant and owner is essential to the validity of a tax sale: *Donovan* v. *Hogan*, 15 A.R. 432. "The failure of the assessor to give this notice is more than an irregularity—it is a defect of really vital importance." And a sale of occupied land for taxes was set aside. Sections 172 and 173 do not cure the defect: *Deverill* v. *Coe*, 11 O.R. 222.

The failure of the assessor to return land as occupied, and to notify the owner and occupant of the liability of the land to be sold, invalidates a tax sale, and the defect is not cured by sections 172 and 173: *Dalziel* v. *Mallory*, 17 O.R. 80. "I do not think an omission of this notice is cured by the healing clause of the R.S.O., cap. 180, section 155. If it were the statute should receive a new title, being an Act to deprive men of their property without compensation, or more shortly 'The Robbery Act:'" *Haisley* v. *Somers*, 13 O.R. 600, per Proudfoot, J., at p. 606. *Allan* v. *Fisher*, 13 C.P. 63; *Claxton* v. *Shibley*, 9 O.R. 451. See also *Re McRae and the Village of Brussels*, 8 O.L.R. 156; *O'Brien* v. *Cogswell*, 17 S.C.R. 420.

When no taxes have been in arrear for the three years next preceding the 1st of January in the year of the sale, the sale is invalid, and the defect is not cured by time: *McKay* v. *Crysler*, 3 S.C.R. 436.

When all the other statutory conditions have been fulfilled; the lands duly assessed and the owner notified; the taxes legally imposed and three years in arrear; the treasurer's list duly given to the assessor, and the lands returned by him as unoccupied; the collector's returns each year of the reason of his failure to collect duly given, and the plaintiff and others duly notified, but the clerk omitted to give the treasurer a copy of the assessor's return, it was held that the defect was cured by lapse of time, and that an action begun more than three years from the sale, and more than two years after the deed, must be dismissed. But it must be noted that the clerk had given the treasurer a list of all the lots in the treasurer's list which had become occupied or were insufficiently described, and the treasurer by a comparison of his own duplicate list with this "occupied return" got substantially all the information he could have got from a copy of his own list with the assessor's notes or remarks thereon, and it was assumed that lands embraced in the treasurer's list, but not found in the "occupied return" would be sold. There was in that case a formal failure to comply with the requirements regarding the clerk's return to the treasurer, but the clerk had given all the information requisite. But *quære* whether the defect would not have invalidated the sale, if attacked within the statutory time: *Kennan* v. *Turner*, 5 O.L.R. 560. But in *Love* v. *Webster*, 26 O.R. 453, no true copy of the lists returned by the assessor to the clerk having been furnished to the county treasurer, certified

to by the clerk under the seal of the corporation, as required by section 141, and no certificate having been attached thereto as required by section 142,'' Armour, C.J,. said: ''It seems to me that it is also a fatal objection to the validity of the sale, for I do not think that the treasurer could until after due compliance with the provisions of these sections sell or proceed to sell the said land.'' On this ground and for the failure to distinguish the different rates in the collector's roll as required by section 94, the sale was declared illegal and void. McMahon, J., in *Wildman* v. *Tait*, 32 O.R. 274, apparently takes the same view. The defects in that case were not cured by the lapse of the statutory time under sections 172 and 173. See S.C., 2 O.L.R. 307.

[*See section* 126 *for penalty for non-performance of these duties.*]

Assessor's Certificate.

(2) The assessor shall attach to each such list a certificate signed by him, and verified by oath or affirmation, in the form following:

I do certify that I have examined all the lots in this list named; and that I have entered the names of all occupants thereon, as well as the names of the owners thereof, when known; and that all the entries relative to each lot are true and correct, to the best of my knowledge and belief.

R.S.O. 1897, c. 224, s. 154.

The assessor must

(*a*) Sign the list. Sub-section

(*b*) Attach a certificate in the form prescribed by this sub-section.

(*c*) Sign the certificate.

(*d*) Verify the certificate by oath or affirmation.

Return of Taxes due to be Made by Treasurer to Clerk.

123.—(1) In cities of over 50,000 inhabitants on or before the first day of August, and in other cities and municipalities on or before the 15th day of September and, in the cases provided for by sections 53 to 56 inclusive, one month before the date fixed for the completion of the collector's roll, the county treasurer or the treasurer of the municipality as the case may

require shall return to the clerk of the proper municipality an account of all arrears of taxes due in respect of such occupied lands, or lands built upon, including the percentage chargeable under section 134 of this Act.

Three classes of municipalities are here dealt with, and the time in which the county treasurer, or treasurer of the municipality if it has power to sell lands for taxes, is to make the return required by this section is different in each.

(1) In cities of over 50,000 inhabitants the city treasurer must make the required return on or before the 1st day of August.

(2) In cities of only 50,000 or less and in other municipalities in which a by-law under one of the sections 53 to 56 is not in force, the city, town or county treasurer, as the case may be, must make the return on or before the 15th day of September.

(3) In municipalities in which a by-law has been passed under one of the sections 53 to 56, the treasurer's return must be made a month before the date fixed for the completion of the collector's roll. See section 95.

The population of cities is by section 4 of *The Consolidated Municipal Act* (1903), directed to be determined, by the last census taken under any Act of the Dominion Parliament or under a by-law of the city. Section 531, sub-section 1, of the same Act, authorizes any municipality to pass a by-law for taking a census of the inhabitants or of the resident male freeholders and tenants.

The treasurer in this return gives an account of all arrears of taxes on all the lands which have been returned to him under section 122 as "occupied or built upon." This return must come from the treasurer. He alone, after the return of the collector's roll in cities and towns, and after the return required to be made under section 116 in townships and villages, has power to receive arrears of taxes. Unless he gave an account of the taxes still in arrear, taxes actually paid to him might be put on the collector's roll and distrained for. This account includes the percentage added on the 1st day of May in each year to all the taxes in arrear on that date. Section 134.

Clerk to Insert Amount in Collector's Roll.

(2) The clerk of each municipality shall, in making out the collector's roll of the year, add such arrears of taxes to the taxes

assessed against such occupied lands, or lands built upon, for the current year; and, subject to the proviso contained in sub-section (1) of section 103, relating to tenants, such arrears shall be collected in the same manner and subject to the same conditions as all other taxes entered upon the collector's roll. R.S.O. 1897, c. 224, s. 155 (3); 62 V. (2), c. 27, s. 11 (2), (3), *amended.*

The clerk of the municipality requires no direction from the council by by-law or resolution to include such arrears in the collector's roll. See section 94, and *Bogart* v. *Township of King*, 32 O.R. 135.

The arrears are to be collected by the collector in the same manner as other taxes on his roll. Attention is called, in this sub-section, to the prohibition of distress upon the goods of a tenant for taxes not originally assessed against him as such tenant. Section 103, sub-section 1. The probability of a change in occupancy is greater in the case of arrears of taxes for three years than in the current year.

Proceedings Where any Land is Found not to Have been Assessed.

124. If on an examination of the non-resident collector's roll or the return required under sections 122 and 123 of lands liable to be sold for taxes, or otherwise, it appears to the treasurer that any land liable to assessment has not been assessed for the current year, he shall report the same to the clerk of the municipality; thereupon, or if the same comes to the knowledge of the clerk in any other manner, the clerk shall proceed as provided in section 51 of this Act. *See* R.S.O. 1897, c. 224, s. 166.

All real property in the province, subject to certain statutory exceptions, is liable to taxation. Section 5, sub-section 1. If the treasurer, on examining the non-resident collector's roll or the returns sent to him by the clerk, or in any other way, finds that any land which should be assessed, has, by some error or omission, escaped assessment in the current year, it becomes his duty, under this section, to notify the clerk of the municipality. The clerk, if so notified, or if he discovers the omission in any other way, then enters the land on the assessor's roll at the average

assessed value of the land for the last three years, if assessed, and also on the collector's roll as directed by section 51.

Liability of Lands to Sale if Arrears are not Paid, and When.

125. In case it is found by the statement directed by section 116 to be made, (or by the return made by the collector under section 113 or section 114 that the arrears of taxes upon occupied land, or land built upon, directed by section 123 of this Act to be placed on the collector's roll, or any part thereof, remain in arrear, such land shall be liable to be sold for such arrears, and shall be included in the next ensuing list prepared pursuant to section 136 of lands liable to be sold under the provisions of section 148 of this Act, notwithstanding the same may be occupied in the year when such sale takes place; and such arrears need not again be placed upon the collector's roll for collection. R.S.O. 1897, c. 224, c. 158; 62 V. (2), c. 27, s. 11 (5), *amended*.

The intention is that the county treasurer, or the city or town treasurer, as the case may be, shall send the list of arrears to the clerk; that the clerk shall give a copy of it to the assessor; that the assessor shall examine the land to find if it is occupied or built upon, etc., and notify the occupant and owner that it is liable to be sold; that the assessor shall return this list, the memorandum he makes, and the assessment roll, all with the proper entries and duly verified, to the clerk; that the clerk shall return a copy of the list to the treasurer with the assessor's entries and memorandum; that the treasurer shall return to the clerk an account of all arrears against the lands returned by the assessor as occupied or built upon; that these arrears shall be put by the clerk on the collector's roll; that the collector shall, if unable to collect them, return the roll with the reason of his failure; that the treasurer of the local municipality, if a township or village, shall include these arrears in his statement to the county treasurer under section 116; and that the proper treasurer in that behalf shall then proceed to sell the land for the arrears. Substantial compliance with all these requirements is necessary to make a valid tax sale: *Fitzgerald* v. *Wilson*, 8 O.R. 559; *Deverill* v. *Coe*, 11 O.R. 222. See sections 121 and 122 and the notes thereon.

In cities and towns the treasurer of the municipality discharges the duties assigned to the county treasurer, but from the nature of the case there can be no return under section 116.

The intention is that having complied with these provisions of the statute, it shall not be necessary to the validity of a tax sale to again enter the arrears on the collector's roll; and it makes no difference in this respect that the land may be occupied in the year when such sale takes place.

By the Act of 1850 it was only unoccupied or non-resident land which could be sold for taxes, and the fact that land was occupied during the last year the collector returned it as non-resident, and up to a time subsequent to the sale, made the sale void: *Street* v. *Fogul,* 32 U.C.R. 119. But now land, occupied or unoccupied, may be sold for taxes if there is no sufficient distress to make the amount.

Penalty on Clerks and Assessors Neglecting Duties under Preceding Sections.

126. If the clerk or assessment commissioner, as the case may be, of any municipality neglects to preserve the said list of lands in arrears for taxes, furnished to him by the treasurer, in pursuance of section 121, or to furnish copies of such lists, as required, to the assessor, or neglects to return to the treasurer a correct list of the lands which have become occupied, or built upon, as required by section 122 of this Act; or if any assessor neglects to examine the lands entered on his list, and to make returns in manner hereinbefore directed, every clerk, assessment commissioner or assessor making such default shall, on summary conviction thereof before any two Justices of the Peace having jurisdiction in the county in which the municipality is situated, be liable to the penalties imposed by sections 197, 198 and 199 of this Act; all fines so imposed shall be recoverable by distress and sale of any goods and chattels of the person making default. R.S.O. 1897, c. 224, s. 159, *amended.*

Neglect of duty is here dealt with and the punishment provided.

The clerk may be punished if he neglects:

(1) To preserve the lists of lands in arrear furnished to him by the treasurer. Section 121.

(2) To furnish copies of such lists to the assessor. Section 122.

(3) To return to the treasurer a copy of the assessor's list of lands liable to be sold, with the entries, etc., thereon, and his memorandum, as required by section 122.

The assessment commissioner in a city is liable to punishment for similar neglect.

The assessor may be punished if he neglects:

(1) To examine the lands on the list furnished to him by the clerk.

(2) To make returns in manner hereinbefore, in section 122, directed.

Every clerk, assessment commissioner or assessor guilty of any of the offences above enumerated is liable, on summary conviction before two Justices of the Peace, to the fines imposed under sections 197, 198 and 199. The fines are recoverable by distress and sale of the delinquent's goods.

Collection of Arrears After Subdivision of Land Changed.

127.—(1) Whenever it is shown to the Court of Revision or to the council of a municipality (1) that taxes are or have become due upon land assessed in one block, which has subsequently been sub-divided (2), the court or council, upon the application by the treasurer of the municipality or by or on behalf of any person claiming to be the owner of one or more parcels of such land (3), may, after notice of the application to all owners (4), direct the apportionment of such taxes in arrear upon the said parcels in proportion to their relative value at the time of the assessment, regard being had to all special circumstances (5), and the council may direct how any part payment made under section 120 is to be applied (6); and upon payment of the apportionment assigned to any parcel the same shall be a satisfaction of the taxes thereon (7), or the court, or the council, as the case may be, may make such other direction as the case may require (8). The provision herein contained shall be retroactive in its

operation (9), but shall not apply to any lands which have been advertised for sale for taxes (10). R.S.O. 1897, c. 224, s. 74 (2); s. 162; 61 V. c. 25, s. 1, *amended.*

(1) The power of apportioning the taxes on land which has been sub-divided, is given to two different bodies, (*a*) the Court of Revision and (*b*) the council of the municipality. Either of them may act.

(2) The taxes which may be apportioned are those imposed upon land assessed in one block, which has been sub-divided after the assessment.

(3) The proceedings of the Court or council to apportion may be taken on the application (*a*) by the treasurer, or (*b*) by or on behalf of a person claiming to be the owner of one or more lots or other parcels of such sub-division. See section 103, sub-section 1, clause 3 and notes thereon on "owner."

(4) Notice of the application must be given to all owners interested to enable them to appear on the hearing of the application and protect their interests.

(5) The apportionment of the taxes is to be made on the basis of the relative value of the several parcels of land, not at the time of the hearing of the application, but at the time of the assessment; regard must be had to any special circumstances in making the apportionment.

(6) If part payment of taxes has been made under section 120, the person making it is entitled to the benefit, and the Court or council may direct what parcel it shall be credited on, so as to do justice.

(7) Thereafter, on payment of the amount apportioned to each parcel, it is free from the taxes levied on the block.

(8) The Court or council may make such other order as will do justice to all parties.

(9) This provision applies to arrears of taxes imposed before it was passed, as well as to taxes imposed subsequently.

(10) When a block of land has been advertised for sale for taxes, it is then too late to apply to have the taxes in arrear apportioned amongst the lots.

A lot having been sold for taxes, C. paid the redemption money on the east half, and P. on the west half. But it afterwards

appeared that P's. payment was made by mistake, and the council directed the treasurer to refund, which he did. Under C.S.U.C., cap. 55, section 113, there was power to redeem the east half on paying the proper proportion against it, and that power existed after sale as well as before it: *Payne* v. *Goodyear*, 26 U.C.R. 448. See also *Stewart* v. *Taggart*, 22 C.P. 284; *Re Secker* v. *Paxton*, 22 U.C.R. 118; *Brooke* v. *Campbell*, 12 Gr. 526.

An appeal is given by section 129 to the Judge of the County Court from any decision of the Court of Revision, but nothing is said of an appeal from a decision of the council of the municipality.

(2) Forthwith after an apportionment has been made the clerk shall transmit a copy of the minute or resolution to the treasurer; who, upon receipt thereof, shall enter the same in his books, and thereafter each lot or other sub-division of the land affected shall be liable only for the amount of taxes apportioned thereto, and shall only be liable for sale for non-payment of the tax so apportioned or charged against it. R.S.O. 1897, c. 224, s. 74 (3), (4), *amended.*

The clerk of the municipality is also the clerk of the Court of Revision. He is therefore the custodian of the original record of what is done by the Court or council pursuant to the last sub-section.

The treasurer here referred to is the treasurer who would have the right under sections 119 and 120 to receive taxes in arrear and to take sale proceedings under section 135 and the following sections. Without such an apportionment as is herein provided for, the treasurer would be obliged to sell the whole block for the unpaid taxes against it

Sec. 162, of The Assessment Act, 1897, gave the treasurer power, if satisfactory proof was adduced to him that any parcel on which taxes was due had been sub-divided, to receive the proportionate amount of taxes chargeable upon any of the sub-divisions and to have the other sub-divisions chargeable with the remainder. It also empowered him, in his books, to divide any parcel of land which was returned to him as in arrear, into as many parts as the necessities of the case required. The provisions contained in Sec. 127 of the present Act have been substituted

for the former enactment. Sec. 162 is not continued in the present consolidation and revision of the former Act.

Where under a local improvement by-laws, lands charged with a specified amount of the cost, at a given rate per foot frontage, are afterwards sub-divided, the whole rate cannot legally be charged against a portion of the lands so sub-divided. The clerk should, on the collector's roll, bracket the names of the different owners and the sub-divisions with the amount charged against the original parcel : *Capon* v. *City of Toronto*, 26 O.R. 179.

128. In cities having an assessment commissioner, where taxes are or have become due upon land assessed in one block which has subsequently been divided, the assessment commissioner, upon application by or on behalf of any person claiming to be an owner of one or more parcels of such land, may, after notice of the application to all the owners, make the apportionment in sub-section 1 of section 127 mentioned; and thereafter the treasurer shall accept taxes apportioned to any sub-division in satisfaction of the taxes thereon, and each sub-division shall only be liable to sale for non-payment of the taxes so apportioned to or charged against it. *New.*

In cities having an assessment commissioner, he exercises all the powers conferred by section 127 on the Court of Revision or the council of the municipality. The application to him is made, however, by or on behalf of any person claiming to be an owner of one or more parcels of land. The treasurer of the municipality could make an application under section 127, but he has not the power to do so under this section. Notice must be given to all owners interested.

The next section provides for an appeal from him to the Court of Revision.

129. An appeal may be had by any owner or owners to the Court of Revision from any apportionment made by any assessment commissioner, under section 128, and may be had by the municipality or by any owner or owners to the Judge of the County Court from any decision or apportionment of

the Court of Revision given or made on appeal from the Assessment Commissioner under this section or given or made by the Court of Revision under section 127. *New.* See Edw. VII., c. 21 s. 9.

Compare the language of this section with that of section 68. In section 68 an appeal is given not only against a decision of the Court of Revision on an assessment appeal, but also against the omission, neglect or refusal of the said Court to hear or decide an appeal.

The owners aggrieved by an apportionment made by the assessment commissioner may appeal to the Court of Revision.

The owners aggrieved or the municipality may appeal from the decision of the Court of Revision under this section or under section 127.

There is no appeal given from the omission, neglect or refusal of the Court of Revision to hear or decide an appeal. See section 65, sub-section 1 and the notes thereon.

If Demanded Treasurer to Give a Written Statement of Arrears.

130.—(1) The treasurer shall on demand, give a written certified statement of the arrears due on any land, and he may charge twenty-five cents for the search and certified statement on each separate parcel, not exceeding four, and for every additional parcel, a further fee of ten cents; but he shall not make any charge to any person who forthwith pays the taxes. R.S.O. 1897, c. 224, s. 163, *amended.*

(2) The certified statement aforesaid may be in the form given in Schedule K. to this Act. *New.*

The treasurer may charge twenty-five cents for each separate lot or parcel embraced in the one certificate up to four, and for each additional parcel of land in the same certificate he may charge ten cents.

But when the taxes are forthwith paid by the person obtaining the certificate, the treasurer is not entitled to any fee.

On demand and tender of the proper fee, the treasurer is obliged to give the certificate of arrears.

It is necessary for the certificate to show that the land has not been sold for taxes within eighteen months. If it has been sold for taxes, no arrears will appear against it. It was, however, held that land sold in February, 1867, for the taxes of 1859 and 1860 was again validly sold in December, 1867 for the taxes of 1862, and the four following years: *Thompson* v. *Colcock*, 23 C.P. 505. See also *Hamilton* v. *McDonald*, 22 U.C.R. 136.

But a sale could not be made say for arrears of 1859 and 1860, and afterwards for arrears of 1857 and 1858: *Mills* v. *McKay*, 15 Gr. 192. The period covered by the certificate is 18 months, because, under section 168, the deed must be registered within 18 months after the sale, in order to preserve its priority over a subsequent registered conveyance for valuable consideration and made in good faith.

County Treasurers, etc., to Keep Triplicate Blank Receipt Books.

131. The treasurer of every county shall keep a triplicate blank receipt book, and on receipt of any sum of money for taxes on land, shall deliver to the person making payment one of such receipts, and shall deliver to the county clerk the second of the set, with the corresponding number, retaining the third of the set in the book, the delivery of such receipts to be made to the clerk at least every three months; and the county clerk shall file such receipts, and, in a book to be kept for that purpose, shall enter the name of the person making payment; the lot on which payment is made; the amount paid; the date of payment; and the number of the receipt; and the auditors shall examine and audit such books and accounts at least once in every twelve months; and in cities, towns and other municipalities having power to sell lands for non-payment of taxes the treasurer thereof shall keep a duplicate blank receipt book, and on receipt of any sum of money for taxes on land shall deliver to the person making the payment one of such receipts, retaining the second of the set in the book; and the auditors shall examine and audit the said book and accounts at least once in every year. R.S.O. 1897, c. 224, s. 225; 62 V. (2), c. 27, s. 14.

The treasurer of the county keeps a triplicate blank receipt book, *i.e.*, a book so arranged that it contains three copies of each receipt, the three copies all bearing the same number. One of these three is given to the person paying arrears of taxes; the second is delivered by the treasurer to the county clerk; the third remains in the receipt book. The delivery to the county clerk of the second copy of each set issued must be made at least every three months. The object in giving a duplicate of each receipt to the county clerk is to furnish the auditors with a check on the receipts of the county treasurer for arrears of taxes. The county clerk must file the receipts and enter the particulars of them in a book, which is to be audited at least once a year.

In cities and towns the treasurer keeps a duplicate receipt book.

As to Pretended Receipt, etc.

132. If any person produces to the treasurer as evidence of payment of any tax, any paper purporting to be a receipt of a collector, school trustee or other municipal officer, he shall not be bound to accept the same until he has received a report from the clerk of the municipality interested, certifying the correctness thereof, or until he is otherwise satisfied that such tax has been paid. R.S.O. 1897, c. 224, s. 168.

The treasurer is protected from an action for not immediately accepting and acting on what purports to be a receipt for taxes from a collector or other official. He is entitled to time for investigation. He is not bound to accept the same until he receives a certificate from the clerk of the municipality that the receipt is correct, or until by other information he is satisfied that the tax has been paid.

Lands on which Taxes Unpaid to be Entered in Certain Books by the Treasurer.

133. The treasurer of every county shall keep a separate book for each township and village, in which he shall enter all the lands in the municipality on which it appears from the returns made to him by the clerk and from the collector's roll returned

to him, that there are any taxes unpaid, and the amounts so due; and he shall, on the 1st day of May in every year, complete and balance his books by entering against every parcel of land, the arrears, if any, due at the last settlement, and the taxes of the preceding year which remain unpaid, and he shall ascertain and enter therein the total amount of arrears, if any, chargeable upon the land at that date. R.S.O. 1897, c. 224, s. 164.

A provincial legislature has power to authorize municipalities to impose an addition of ten per cent. on taxes unpaid after a certain date. Such ten per cent. is only an additional rate or tax imposed as a penalty for non-payment. It is not "interest" within the meaning of section 91 of *The British North America Act*, which gives the Dominion Parliament exclusive jurisdiction over interest. It is wholly a matter of approximately equalizing the rate between defaulters and those paying promptly. It is incidental to the power to levy taxation: *Lynch* v. *Canada N.W. Land Co.*, 19 S.C.R. 204.

The ten per cent. charged upon arrears of taxes upon land is to be added to the whole amount due upon the lot or parcel, and not upon the amount of each year's taxes separately. It is a compound computation. The ten per cent. is charged on the gross amount of arrears appearing due at each annual settlement, and not on the arrears of taxes only, excluding former additions: *Gillespie* v. *City of Hamilton*, 12 C.P. 426. The entries in the treasurer's official books brought into court and proved by him, are evidence that taxes are in arrear: *Hall* v. *Hill*, 22 U.C.R. 578; *Fraser* v. *West*, 21 C.P. 161; *Hutchinson* v. *Collier*, 27 C.P. 249; *Re Morton*, 7 O.R. 59; *Kempt* v. *Parkyn*, 28 C.P. 123.

The production of the treasurer's warrant is sufficient evidence of taxes being in arrear for the periods therein mentioned: *Clark* v. *Buchanan*, 25 Gr. 559.

See section 134, subs. 2, for the amount to be added to the arrears in municipalities which add a percentage to taxes in arrear under sec. 102.

Percentage to be Added to Arrears of Taxes.

134.—(1) In cities having a population of 100,000 or more, at the balance to be made on the first day of May in every

year or as soon thereafter as the balance is ascertained the treasurer shall add to the whole amount of taxes due in respect of any parcel of land the legal rate of interest, but where, by the by-laws of the municipality, taxes are payable by instalments and a percentage has been added for default in payment of any instalment, the treasurer shall only add to the amount of taxes remaining unpaid upon the 1st day of May the legal rate of interest less what has already been added for such default. R.S.O. 1897, c. 224, s. 170; 3 Edw. VII., c. 21, s. 10, *amended.*

For a discussion of the distinction between interest and the penalty of 10 per cent. added under the last section, and of the difference between ''taxes'' and ''debts'' see *Lynch* v. *Canada N.W. Land Co.*, 19 S.C.R. 204.

The legal rate of interest is now five per cent. See 63-64 Vict. (Dom.) cap. 29.

Ten per cent. to be Added to Arrears Yearly.

(2) In other municipalities at the balance to be made on the 1st day of May in every year, the treasurer, or the county treasurer, as the case may require, shall add ten per cent. to the arrears then due in respect of any parcel of land; but in the case of a municipality by the by-laws of which taxes are payable in bulk or by instalments with a percentage added for default the treasurer shall only add a further percentage, so that the whole addition shall amount to ten per cent. of the arrears. R.S.O. 1897, c. 224, s. 169, *amended*

There is no provision for furnishing the county treasurer with a copy of the by-laws of townships and villages, under section 102, authorizing the addition of a percentage for default of payment. But under section 116, sub-section 3, he may obtain the required information.

Sale of Lands for Taxes.

What Lands only to be Sold.

135. The treasurer shall not sell any lands for taxes which have not been included in the list furnished by him pursuant

to section 121 to the clerks of the municipalities in the month of January preceding the sale nor any of the lands which have been returned to him under the provisions of section 122 of this Act as being occupied or built upon except land the arrears for which have been placed upon the collector's roll of the preceding year, and have been again returned unpaid and are still in arrear in consequence of insufficient distress being found on the land. R.S.O. 1897, c. 224, s. 176, *amended.*

Section 148 directs the treasurer to sell certain lands for arrears of taxes. This section positively and emphatically prohibits the sale of any lands unless the following conditions have been complied with.

(1) The lands sold must have been included in the list furnished by the treasurer to the clerk of the municipality in the month of January preceding the sale. See the notes on section 121 and the cases there cited.

(2) If the lands have been returned to him by the clerk on the assessor's list as occupied or built upon, then before they can be sold (*a*) the arrears must have been placed on the collector's roll of the *preceding* year; (*b*) the arrears must have been again returned unpaid and still in arrear in consequence of insufficient distress being found on the land. This provision applies to lands which being occupied ought to have been so returned and were not : *Dalziel* v. *Mallory*, 17 O.R. 80. See sections 122 and 123 and the notes thereon.

A sale which ignores the prohibition contained in this section is wholly invalid. It is not a sale in pursuance of the Act, but in defiance of it: *Ruttan* v. *Burk*, (1904) 7 O.L.R. 56; *City of Toronto* v. *Caston* (1900), 30 S.C.R. 390; *McKay* v. *Ferguson* (1879), 26 Gr. 236; *Whelan* v. *Ryan*, 20 S.C.R. 65; *Haisley* v. *Somers*, 13 O.R. 600; *Dalziel* v. *Mallory*, 17 O.R. 80; *Donovan* v. *Hogan*, 15 A.R. 432. See *Stewart* v. *Taggart*, 22 C.P. 284.

When Lands to be Sold for Taxes.

136. (1) Where a part of the tax on any land is in arrear for three years as provided by section 121 and subject to the provisions of section 135, the treasurer shall, unless otherwise

directed by by-law of the council, submit to the warden of the county a list in duplicate of all the lands liable under the provisions of this Act to be sold for taxes, with the amount of arrears against each lot set opposite to the same, and the name and address of the owner if known, and the warden shall authenticate each of such lists by affixing thereto the seal of the corporation and his signature; and one of such lists shall be deposited with the clerk of the county, and the other shall be returned to the treasurer with a warrant thereto annexed, under the hand of the warden and the seal of the county, commanding the treasurer to levy upon the land for the arrears due thereon, with his costs. R.S.O. 1897, c. 224, s. 173, *amended.*

The words used in section 173 of R.S.O. 1897, cap. 224, were: "Where a portion of the tax on any land has been *due* [not in *arrear*, but *due*] *for* and *in* the *third* year, or for more than three years preceding the current year." This section requires a part of the tax to be *in arrear* for three years. See the notes on section 121 for a discussion of the probable construction of these two sections.

Section 186 directs that in cities and towns the treasurer and mayor shall discharge the duties which the county treasurer and warden are directed by secs. 116 to 185 to perform in regard to the taxes of townships and villages. Certain duties are by this sub-section imposed on these officers, but there are certain pre-requisites without which they have no right to act, and the absence of which would render all further proceedings illegal.

(1) Some part of the tax must be in arrear for three years next preceding the 1st of January in the year in which the treasurer has furnished the clerk with the "List of lands liable to be sold for arrears of taxes in the year 19—." *Edinburgh Life Asse. Co.* v. *Ferguson*, 32 U.C.R. 253; *Kempt* v. *Parkyn*, 28 C.P. 123; *Connor* v. *McPhearson*, 18 Gr. 607; *Bell* v. *McLean*, 18 C.P. 416; *Doe d. Edwards* v. *Upper*, 5 U.C.R. 594; *Hamilton* v. *Eggleton*, 22 C.P. 536; *Cotter* v. *Sutherland* (1868), 18 C.P. 357, in which all the cases theretofore decided affecting the validity of tax sales are collected and classified; *McKay* v. *Crysler* (1879), 3 S.C.R. 436: see the judgment in that case of Gwynne, J., for a

discussion of the principles governing the validity of tax sales where no taxes are in arrear for the statutory period, and for a review of the cases decided up to that time. The burden of proof is on the person who claims under the tax deed, to show the arrears for the prescribed time. *Ib.* See also the same case, 2 A.R. 569; *Peck* v. *Munro*, 4 C.P. 363; *Charlton* v. *Watson*, 4 O.R 489. Taxes of one or more years are sufficient if three years in arrear: *Silverthorne* v. *Campbell*, 24 Gr. 17.

When the statute required eight years' arrears before sale "It was not necessary that there should be a full period of eight years actually in arrear; it was sufficient if any portion of the amount was eight years in arrear to justify a proceeding to collect by sale:" *Hamilton* v. *McDonald*, 22 U.C.R. 136, per McLean, C.J., 148.

Land was sold in 1880 for the taxes for 1877 and 1878, but the patent from the Crown did not issue until 1878, and there was no evidence that the patentee had any interest in the land prior to the patent, or that any return had been made prior to the patent by the Commissioner of Crown Lands showing the land to be free grant, sold or agreed to be sold. The plaintiff at the trial produced his patent; the defendant put in his tax deed. The patent made a *prima facie* case for the plaintiff, and the defendant was thereupon bound to prove the sale and that some portion of the taxes was in arrear for three years. The onus of proof was on the defendant: *Stevenson* v. *Traynor*, 12 O.R. 804.

In *McAdie* v. *Corby*, 30 U.C.R. 349, it was held to be no objection to a tax sale that it was for the arrears of more than twenty years.

(2) There must have been compliance with the requirements of section 135. In addition to all that is stipulated for in (1), the lands, if they were returned to the treasurer under section 122 as being occupied or built upon, must have been again placed on the collector's roll for the *year preceding* the sale, and must have been again returned as in arrear in consequence of insufficient distress. If *any part* of the three years taxes returned by the treasurer are again returned by the collector as in arrear under section 114, that is sufficient. Section 125.

These essential preliminaries having been observed, and there being no by-law of the council under section 138 to extend the

time for the issue of the warrant, or to fix a minimum amount of arrears for less than which there shall be no sale, it is the duty of the treasurer to submit a list to the warden, or in cities and towns to the mayor. This list must fulfill the following requirements:

(1) It must be a list of all lands liable to sale under the provisions of this Act. It must contain a concise and accurate description of the land sufficient to identify it. The description, in the treasurer's warrant and in the advertisement, of a parcel of land as " pt. of S. pt. 111, 1st con. Tay, 40 acres, $12.95" is not sufficient to make a valid sale. No one can tell from such a description what part of the lot is intended : *Grant* v. *Gilmour*, 21 C.P. 18. So also a description of lands as "Race lands, Paris Hydraulic Company," is insufficient and the sale void ; *Greenstreet* v. *Paris*, 21 Gr. 229.

"I think in these two respects the advertisement is defective, for it is not possible to ascertain where the lands lie, and, second, if the locality were ascertained, it is impossible to say what premises are comprised in the advertisement. . . . In order to the validity of the sale there must be a reasonable certainty as to the property being sold; that is wanting in this case, and therefore no sale of the property in question has taken place: *Ib.* per Blake, V.C.

A warrant for the sale of two village lots, both numbered four south of Catharine street, was the basis of the sale of both, but only one was conveyed to a purchaser. The warrant did not sufficiently define the lot to be sold, and the sale was invalid: *Townsend* v. *Elliot*, 12 C.P. 217.

A description in the assessment roll, treasurer's warrant and advertisements as "the south part of the west half of lot 17, in the 9th concession of Rawdon, 75 acres," which was described in the sheriff's deed for taxes by metes and bounds, was insufficient. The south 75 acres of the west half of the lot would have been sufficient : *Booth* v. *Girdwood*, 32 U.C.R. 23.

The following descriptions were also held to be bad: "Twenty-five acres of Lot 31 in the 12th Concession of the Township of King" : *Cayley* v. *Foster*, 25 U.C.R. 405; "89 acres of the south part of the east half of Lot number 25 in the second concession of the Township of Charlottenburgh" : *McDonnell* v. *McDonald*, 24 U.C.R. 74; "the west part of Lot No. 31 in the second concession of the Township of Enniskillen, that is to say 185 acres

thereof'' : *Knaggs* v. *Ledyard,* 12 Gr. 320, affirmed in appeal 25 August, 1868, but not reported in appeal.

In *Hill* v. *Macaulay,* 6 O.R. 251, land was described at different times in the treasurer's books as ''north part Lot 13, one-tenth of an acre;'' ''part lot 13, 24 feet;'' ''north part and building 36 feet, Lot 13, one-tenth of an acre;'' ''centre part Lot 13, twenty-four feet.'' In the result, the description was indefinite, and comprised two separate parcels of land belonging to different owners, so that one could not pay the taxes on his portion without paying on both, and a tax sale made in 1880 was set aside in 1884. In *Beckett* v. *Johnston,* 32 C.P. 301, land was sold for arrears of 1871 and 1872. In the assessment of 1871 the land was described as ''S. pt. 12, 53 acres,'' and in 1872 as ''S.E. pt. 12, 53 acres.'' Either descriptions included portions of the lot owned by two other separate owners who had each paid their taxes, and also certain village lots. The sale was set aside, the defect not being healed by section 172 or 173.

The plaintiff owned Island D., which the assessor erroneously supposed to be Flora Island and assessed under that name. An unoccupied island belonging to another person was assessed as Island D. The taxes were paid on the plaintiff's island, which was improved and occupied in the summer. A sale of Island D. for taxes, in consequence of the assessor's error, did not affect the title of the plaintiff thereto : *Hall* v. *Farquharson,* 15 A.R. 457. In *Ley* v. *Wright,* 27 C.P. 522, the description was the north part of a certain lot containing 30 acres; this included the most northerly 30 acres only; and as part of that was a highway, part belonged to the Crown and part was vested in other owners, the assessment, sale and deed were void.

In *Fleming* v. *McNab,* 8 A.R. 656, it was held that the assessment and sale of four whole lots against the owner, when to the knowledge of the assessor portions of them had been sold to, and were occupied by a railway company, were void. ''How was it possible for the plaintiff to pay the taxes properly payable by him or to redeem the land when sold without paying the tax assessed in respect of the portion owned by others?''

In *Lount* v. *Walkington,* 15 Gr. 332, two lots of the same number were on opposite sides of the street, but neither the assessment nor the tax deed showed which side of the street the lot sold for

taxes was on, and the sale was void for uncertainty in the description.

In *Davidson* v. *Kiely*, 18 Gr. 494, "about 150 acres more or less, being the whole of a block or piece of land adjacent to the Grand Trunk Railway, being a part of Lot number 27, in the 1st Concession of South-east Hope, now in the town of Stratford," was held to be an insufficient description, and the deed void for uncertainty.

In *Pearson* v. *Mulholland*, 17 O.R. 502, "forty-five acres of the south half of Lot number 17, in the 4th Concession of the Township of King" was held to be an insufficient description and the tax deed void for uncertainty

An assessment of land as "the north-east part" of a lot is an ambiguous description and *quære* as to its effect upon a drainage by-law: *Re Jenkins and the Township of Enniskillen*, 25 O.R. 399.

"Five acres of land to be taken from the south-west corner of the south-west quarter of Lot 3 in the 11th Concession of the Township of East Zorra," in a tax certificate, is too vague and indefinite to identify any land. A deed made by the successor of the sheriff who sold for taxes, six years after the sale, was set aside, as he, not having made the sale, had no power to determine what land was sold : *Burgess* v. *Bank of Montreal*, 3 A.R. 66.

An assessment of lots as "water lots 436 x 600" is invalid as not identifying them. So also is the assessment of lots *en bloc* after sub-division of the land by a registered plan, and without showing the known owner, and it is not cured by section 172 or 173: *Wildman* v. *Tait*, 32 O.R. 274, 2 O.L.R. 307.

In *Yokham* v. *Hall*, 15 Gr. 335, a sale of two half lots separately assessed, but both sold for one sum said to be in arrear, was set aside. See also *Edinburgh Life Assurance Co.* v. *Ferguson*, 32 U. C. R. 253; *Fraser* v. *Mattice*, 19 U.C.R. 150; *Crysler* v. *McKay*, 2 A.R. 569; *Ley* v. *Wright*, 27 C.P. 522. "The treasurer's warrant is the foundation of the subsequent proceedings, irregularities in which, where they have occurred in acts merely municipal or executive, the courts have gone a long way to excuse; but we cannot throw aside every provision of the statutes and permit men's properties to be sold after any fashion which the officers charged with the duties of enforcing payment of taxes may choose to devise. I look upon the act of the treasurer in determining what lands are in arrear for taxes and liable to sale

as a *quasi* judicial act, and one which must be performed in accordance with the provisions of the statutes. His warrant declares what lands are liable to sale, and this it must do in the way which the statute prescribes '': *Hall* v. *Hill*, 2 E. & A. 569, per VanKoughnet, C., at p. 572.

All of the lots on a registered plan were numbered thereon consecutively. The number sufficiently identifies the lot, and the assessment of the lots by number in one year as on Thomas Street, and in another year as on Sideroad, did not affect the validity of the sale : *Aston* v. *Innis*, 26 Gr. 42.

In *Fraser* v. *West*, 21 C.P. 161, ''75 acres of the front part of the w. half of Lot No. 5 in the 1st concession of the Township of Winchester'' was held to be a good description, as designating the south 75 acres of the west half of the lot. See also *Austin* v. *Armstrong*, 28 C.P. 47.

(2) The amount of arrears against each lot or parcel must be shown separately.

Two lots cannot be assessed together and the arrears charged against both. Each lot must be rated for its own taxes. Each lot must have been separately assessed and rated, and it can be sold only for its own arrears: *Munro* v. *Grey*, 12 U.C.R. 647; *Thompson* v. *Colcock*, 23 C.P. 505; *McDonald* v. *Robillard*, 23 U.C.R. 105; *Fleming* v. *McNab*, 8 A.R. 656; *Black* v. *Harrington*, 12 Gr. 175; *Christie* v. *Johnston*, 12 Gr. 534; *Yokham* v. *Hall*, 15 Gr. 335; *Wildman* v. *Tait*, 32 O.R. 274, 2 O.L.R. 307.

A sale of a portion of the east half of a lot for arrears of taxes, a part of which had accrued on the west half, and was not chargeable on the east half, there being no means of apportionment, was void: *Ridout* v. *Ketchum*, 5 C.P. 50.

The north and south halves of a lot were separately assessed and different amounts charged against each half. These amounts were added together and charged against the whole lot, a portion of which was sold for this sum. The sale was held to be illegal: *Laughtenborough* v. *McLean*, 14 C.P. 175; *Morgan* v. *Quesnal*, 26 U.C.R. 539, at p. 544.

A warrant contained two different entries of the same lot for taxes due for two different years. The sheriff sold the lot for the first year's taxes and then at an adjourned sale sold it again to a different buyer. Both sales were void. The first, because it was not made for all the arrears appearing on the warrant; the

second, because the land could be sold only once on the same warrant: *Schæfer* v. *Lundy*, 20 C.P. 487.

In a number of cases a tax sale for more than was actually due was set aside, but that point does not seem to have been expressly decided since the healing provisions now embodied in sections 172 and 173 were enacted. "It has not been decided I believe since that statute (36 Vict. ch. 36) or the two statutes on the subject preceding it that when there have been some taxes in arrear, but the sale has been for more taxes than are in arrear, the defect is cured. But in several of the cases decided since these statutes the import of the language of the judges has been that they apply only to matter of procedure. Individually I should incline to think that when taxes are shown to have been in arrear for a sufficient time to warrant a sale, a sale would not be invalidated by reason of its being for a larger arrear of taxes than was really due": *Nelles* v. *White*, 29 Gr. at p. 345, per Spragge, C. It would seem from the reasoning in *Hall* v. *Farquharson*, 15 A.R. 457, that, where section 172 does not apply by reason of the sale not having been openly and fairly conducted, a sale under section 148, sub-section 1, for more taxes than are due, cannot be supported. See also *Allan* v. *Fisher*, 13 C.P. 63; *Cotter* v. *Sutherland*, 18 C.P. 357; *Doe d. Mill* v. *Langton*, 9 U.C.R. 91; *Street* v. *Fogul*, 32 U.C.R. 119.

The whole of the arrears should be shown, but lands may be sold a second time for later taxes which were in arrear when the first sale was made. A lot was sold in February, 1867, for the taxes of 1859 and 1860, and again in December of the same year for the arrears for the years 1862 to 1866, and the second sale was held to be valid: *Thompson* v. *Colcock*, 23 C.P. 505; but it could not be sold a second time for taxes of an earlier date than those for which it was first sold : *Mills* v. *McKay*, 15 Gr. 192. See also *Schæfer* v. *Lundy*, 20 C.P. 487.

The list is not binding,and the taxes must be actually in arrear: *McAdie* v. *Corby*, 30 U.C.R. 349; *Hall* v. *Farquharson*, 15 A.R. 457. A mistake in the date up to which the taxes were in arrear could not invalidate the warrant, the requisite number of years taxes being actually in arrear: *Doe d. Stata* v. *Smith*, 9 U.C.R. 658.

(3) The name and address of the owner, if known, must be inserted. Public advertisement of the name of the owner greatly

increases the probability of his being made aware of the impending sale of his land, and of the danger of his forfeiting it.

(4) The warden must authenticate each of such lists by affixing thereto the seal of the county and his own signature. The failure of the warden to sign, seal and return the list was held to be cured by section 173, but the failure of the treasurer to furnish the clerk with the list of lands under section 121 made the sale invalid: *Fenton* v. *McWain*, 41 U.C.R. 239. But in *Morgan* v. *Quesnel*, 26 U.C.R. 539, it was held that a warrant issued unsealed conferred no power to sell the land. Compare the direction in section 95 to the clerk to sign the collector's roll, and the effect of his omission to do so: *Town of Trenton* v. *Dyer*, 24 S.C.R. 474. "The roll in effect operates as a warrant, and usage and convenience alike require that such a document should bear upon its face some authentication or certificate to show that it was regular, and that it emanated from the official who had authority to issue it. I think therefore we must consider the provision as one introduced for the protection of the ratepayers and therefore obligatory." *Ib.* p. 477, per Strong, C.J. In *O'Brien* v. *Cogswell*, 17 S.C.R. 420, a similar question arose. The Halifax Assessment Act, 1888, required the city collector to submit to the mayor a list in duplicate of lands liable to be sold for non-payment of taxes, to which the mayor was to affix his signature and the seal of the corporation. In any case such lists were conclusive evidence of the legality of the assessment and that the tax is due and unpaid. By an earlier section of the Act notice had to be given by the assessor to the person assessed, a notice had to be given, by the collector, of the taxes rated, and a further notice by the Board of Assessors that the land was liable to be sold for arrears. All these notices had been omitted. The majority of the Court held that to make the provision in regard to the duplicate lists operative to cure the defects, it must be affirmatively proved that the statements had been signed and sealed in duplicate and duly filed, and that the production and proof of one of such statements was not sufficient. The Act also provided that the tax deed should be conclusive evidence that all the provisions with reference to the sale had been complied with. The majority of the Court also held that this provision could only operate to cure defects in connection with the sale, and did not cover the failure to give notice of the assessment. "Sections to which is attributed

a construction so unjust and arbitrary as that insisted upon by the defendants, the effect of which is to work a forfeiture of the title of persons seized of real estate as for default in the payment of taxes which may never have been imposed at all according to the provisions of law in that behalf, or of the imposition of which, if attempted to be imposed, they may never have had any of the notices required by law to be given, should be criticised with the utmost possible acumen, so as to prevent such a construction being given to them and to find a construction more conformable to justice.'' Per Gwynne, J., at p. 454.

In *Church* v. *Fenton,* 5 S.C.R. 239, the warrants for the sale of the lands were signed by the warden, had the seal of the county affixed, and authorized the treasurer to levy upon the various parcels of land *hereinafter mentioned* for the arrears of taxes due thereon and set opposite each parcel of land. Attached to the warrants were lists of lands to be sold, but the lists themselves were neither sealed nor signed. The majority of the Court regarded the list and warrant as one document, and, as the substantial requirements of the statute had been complied with, the healing sections of the Act cured the defect.

Fournier and Henry, JJ. regarded the sale as a nullity, owing to the omission of the seal and warden's signature from the lists; and the curative sections as therefore inapplicable. In the same case, in the Court of Appeal, 4 A.R. 159, Burton, J.A., regarded the list as a part of the warrant. He said: ''When we find that there is evidence that the lists were prepared in accordance with the Act and sent to the warden, and that they were attached to a warrant bearing the corporate seal and the warden's signature, at the time the treasurer received them from the warden, I think that it may be regarded as one instrument, and thereby give effect to the words 'hereinafter mentioned' which would otherwise be futile and inoperative. On the whole I think the warrant may in this way be upheld.'' Blake, V.C., put his judgment on the ground of substantial compliance with the Act, and Morrison, J.A., concurred.

See also *McDougall* v. *McMillan,* 25 C.P. 75.

The warrant is to be delivered to the treasurer, commanding him to levy upon the lands.

Treasurer to have Power to add Arrears Accruing After Return.

(2) In municipalities whose officers have power to sell lands for arrears of taxes (1) the treasurer may add to the taxes shewn in the list of lands liable to be sold for taxes, any taxes which have fallen due since those shown in the lists furnished by the treasurer to the clerk under section 121 of this Act, and have been returned by the collector to him as provided in section 113 of this Act, and the said lands may be sold as if such last mentioned taxes had been included in the statement furnished to him by the clerk, under section 121 of this Act. 62 Vict. (2), c. 27, s. 13 (2), (2).

(1) The municipalities here referred to are cities, towns and the townships mentioned in section 187.

(2) Express authority is given here to add to the taxes given in the list furnished under section 121, any subsequent taxes returned to the treasurer as unpaid, before the list and warrant are made out; and to include such taxes in the list. This subsection does not apply to sales made by the county treasurer.

Expenses Added to Arrears.

137. The treasurer shall, in each case, add to the arrears his commission or other lawful charges, and the costs of publication. R.S.O. 1897, c. 224, s. 181.

The commission or other lawful charges of the treasurer are fixed by section 160. He is prohibited by section 163 from receiving any other fees or emoluments for his services in the collection of arrears of taxes on lands.

By-law Extending Period of Three Years, etc.

138. The council of a county or municipality whose officers have power to sell lands for arrears of taxes may, by by-law passed for that purpose, from time to time, direct that no warrant shall issue for the sale of lands for taxes until after the expiration of a longer period than that provided by section 136, and may also direct that such lands only be included in the warrant as

are chargeable with arrears exceeding a certain sum to be named in the by-law. *See* R.S.O. 1897, c. 224, s. 174; 61 V. c. 25, s. 3, *amended.*

The councils of counties, cities, towns and other municipalities having power to sell lands for taxes may pass by-laws from time to time (1) to extend the time for the issue of a warrant under section 136, (2) to direct that no lands, the taxes on which do not exceed a minimum amount, shall be sold.

See *Thompson* v. *Colcock,* 23 C.P. 505.

Distinguishing Lands in list Annexed to Warrant.

139. In the list annexed to every warrant the lands mentioned therein shall be distinguished as patented, unpatented, or under lease or license of occupation from the Crown or municipality and the interest therein, if any, of the Crown or of the municipality shall be specially mentioned. *New.*

The list annexed to the warrant shall specify whether each parcel of land is

(*a*) Patented.

(*b*) Unpatented.

(*c*) Under lease or license of occupation from the Crown.

(*c*) Or of the municipality.

(*d*) The interest of the Crown if any in the land must be specially mentioned.

(*e*) The interest of the municipality, if any, must also be specially mentioned.

By section 151 it is enacted that only the interest of persons other than the Crown shall be sold for arrears of taxes, and the tax deed must distinctly show that such interest only is sold. See also section 35. By section 155, if the fee is in the city, town or other municipality, only the interest of the lessee or tenant can be sold, and the tax deed must distinctly show that it is for such interest only.

The failure to indicate whether lands were patented or unpatented or held under lease or license from the Crown invalidated the sale: *McAdie* v. *Corby,* 30 U.C.R. 349; *Hall,* v. *Hill,* 2 E. & A. 569; *Connor* v. *Douglas,* 15 Gr. 456.

See also *O'Grady* v. *McCaffray,* 2 O.R. 309; *Doe d. Bell* v. *Orr,* 5 O.S. 433; *Doe d. McGillis* v. *McDonald,* 1 U.C.R. 432;

County of Simcoe v. *Street*, 2 E. & A. 211; *Perry* v. *Powell*, 8 U.C.R. 251; *Cotter* v. *Sutherland*, 18 C.P. 357.

But see now section 167.

It would seem that the language of section 167 is not broad enough to wholly abrogate the law as laid down in *McAdie* v. *Corby* and *Hall* v. *Hill*, supra. That would seem to be the view of some at least of the judges in *Scott* v. *Stuart*, 18 O.R. 211, The advertisement must be a copy of the list annexed to the warrant. If patented lands are described as unpatented and so sold, nothing would pass but the interest of the locatee, and that could not affect the title in fee simple. The deed would be a nullity, because there was nothing to which it could attach. In *Haisley* v. *Summers*, 13 O.R. 600, it was held that the omission to say whether the land was patented or unpatented was fatal to the validity of the sale. If unpatented lands are sold as patented, the fee could not be conveyed to the purchaser. The interest of the Crown in the lands cannot be sold for taxes. The remedial legislation embodied in sections 172 and 173 does not make valid a defective sale as against the Crown : *Moffatt* v. *Scratch*, 12 A.R. 157.

Correction of Errors by Treasurer.

140. The county treasurer may, from time to time, correct any clerical error which he himself discovers or which may be certified to him by the clerk of any municipality. R.S.O. 1897, c. 224, s. 167.

The correction of clerical errors is here dealt with.

A clerical error is an unintentional error or omission made in the transcription of a deed or other written instrument—an ordinary or unintentional slip or error in a written composition : Stormonth's Dictionary.

A clerical error, as its designation imports, is an error of a clerk or subordinate officer in transcribing or entering an official proceeding ordered by another : *Marsh* v. *Nichols*, 128 U.S. 615.

Formerly, under section 162 of *The Assessment Act*, R.S.O. 1897, the treasurer had power to apportion the taxes amongst the different lots of a parcel which had been assessed as a whole. That section has not been continued in the present Act. The Court of Revision and the Assessment Commissioner are now charged with that duty. Section 127.

Where Distress on Premises Treasurer may Distrain.

141. If there are to the knowledge of the treasurer goods and chattels liable to distress upon any land in arrear for taxes, he shall levy the arrears of taxes and the costs by distress and shall have the same authority to collect by distress as a collector has under the provisions of this Act; and the provisions of section 103 of this Act shall apply thereto; but no sale of the land shall be invalid by reason of the treasurer not having distrained, though there were on the land goods and chattels liable to distress before or at the time of sale. *New.*

This section makes it the duty of the treasurer to levy the arrears of taxes and costs by distress. But that duty arises only when there are goods and chattels liable to distress upon the land, and he has knowledge of that fact. Under 16 Vict., ch. 182, the sheriff might sell lands for taxes, unless he had good reason to believe that there was sufficient distress. A declaration which charged him with neglect of duty in selling land for taxes when there were goods to distrain, was held bad on demurrer, because it did not aver that the sheriff had good reason to believe that there were goods on the land : *Foley* v. *Moodie*, 16 U.C.R. 254. If, however, it comes to the knowledge of the treasurer that there are goods liable to distress upon the land, the direction to distrain for the arrears is imperative. To enable the treasurer to carry out the command herein laid upon him, he is given the same power as the collector would have if the arrears were taxes on his roll. Section 103 shows what is liable to distress for such arrears.

If, however, there is distress upon the land, and the treasurer, knowing of it, does not distrain, the sale of the land is not thereby made void. It was otherwise when the collector omitted to distrain : *Caston* v. *City of Toronto*, 30 S.C.R. 390. But see now, as to the lien on the land, section 89, last part.

The Act in force in 1858 made it the duty of the county treasurer, whenever he is satisfied that there is distress on any land of non-residents in arrears for taxes, to issue a warrant to the sheriff to levy the amount. If, at any time after receiving the warrant, the sheriff shall have good reason to believe that there is distress on the land, he *shall* levy the arrears and costs. But

it provided that no subsequent sale of the land should be invalid by reason of there having been goods thereon, and of the sheriff's neglect to levy the taxes by distress and sale thereof. In this state of the law "the sheriff's neglect to levy the tax by selling goods actually on the land, and which he had good reason to believe were there, does not invalidate the sale of the land:" *Allan* v. *Fisher*, 13 C.P. 63.

See *Snider* v. *County of Frontenac*, 30 U.C.R. 275.

Treasurer's duty on Receiving Warrant to Sell.

142. A treasurer shall not be bound to make inquiry before effecting a sale of land for taxes, to ascertain whether or not there is any distress upon the land; nor shall he be bound to inquire into or form any opinion of the value of the land. R.S.O. 1897, c. 224, s. 175, *amended*.

It is only when the treasurer has knowledge that there is distress upon the land, that he is bound to seize and sell; and his failure to do so does not invalidate the subsequent sale of the land for taxes. Section 141. This section makes it clear that it is no part of the duty of the treasurer to make inquiry to find whether there is distress.

The treasurer is not bound to inquire into or form any opinion of the value of the land, and is thereby protected against any charge of neglect in selling property below its value. But, if land is sold for a trifle in comparison with its value, it may be that the sale has not been fairly conducted within the meaning of section 172.

"I do not pretend to say, nor do I think, that there was any unfairness on the part of the treasurer in the ordinary sense of that term, but it may be argued that the mere fact of selling land of so much value for so low a price was an unfair proceeding, however honestly the officer was acting. It was unfair to the owner of the land in that sense. No agent, trustee, auctioneer or sheriff could sell in such a manner; and the purchaser must have known that he was getting an unfair bargain. The treasurer under section 137 (now 148, sub-section 1) is to exercise some consideration for the owner; for, if he sell a part of the land, he is to sell in preference such part as he may consider best for the owner to sell first, and why should he not consider also the owner's interest

as to whether he should or should not sell his whole land for a most inadequate price?'' *Deverill* v. *Coe*, 11 O.R. 222, per Wilson, C.J., at p. 235. In that case the land had been sold at the one hundredth part of its value. In *Hall* v. *Farquharson*, 15 A.R. 457, at p. 462, Hagarty, C.J.O., says: ''I fully concur in the remarks of Sir A. Wilson in *Deverill* v. *Coe*, 11 O.R. at p. 239, and share his doubts as to whether the sale of a property at a monstrous and startling undervaluation can be said to be a sale honestly and fairly conducted. He so spoke in reference to a tax sale for $4.04 of land worth $300 or $400. We have before us a sale of property worth at least $2,000 for $1.''

This section, moreover, relates to the duty of the treasurer *before* the sale. The section was passed in consequence of the decision of the Court of Chancery in *Henry* v. *Burness*, 8 Gr. 345, that it was the duty of the sheriff, before proceeding to sell lands for taxes, to acquaint himself with the value of them, in order that he might inform intending bidders of their value, and might prevent the lands being sacrificed.

But the duty of the treasurer at the sale is to sell in preference such part as he may consider most advantageous for the owner to sell first. He does not sell any particular part of the lot. The particular part sold is not determined until he gives his certificate. It is his duty between the sale and the certificate to obtain the necessary information to enable him to form a sound judgment : *Haisley* v. *Summers*, 15 O.R. 275.

The sheriff, not having made himself acquainted with the land before sale, could not correct an erroneous impression amongst the bidders as to the value of a lot, and the property was in consequence sold for only a small fraction of its value. This did not invalidate the sale to an innocent purchaser : *Logie* v. *Stayner*, 10 Gr. 222.

Treasurer to Prepare List of Lands to be Sold and Advertised.

143.—(1) The treasurer shall prepare a copy of the list of lands annexed to the warrant, and shall add thereto, in a separate column, a statement of the proportion of costs chargeable on each lot for advertising, and for his commission or other lawful charges, distinguishing the lands as patented, unpatented, or under lease

or license of occupation from the Crown, and shall cause such list to be published once a week for four weeks in *The Ontario Gazette*, and in some newspaper published within the county once a week, for thirteen weeks, and, in the case of a union of counties, in each county of the union, if there be a newspaper published in each county, and if not, in the county or counties of the union in which a newspaper is published, or if none be so published, in some newspaper published in some adjoining county. And in case there is a newspaper published in any municipality in which lands are situate, which are included in such list, or if none be so published, then in case there is a newspaper published in an adjoining municipality in said county the treasurer shall further cause a list of the lands so situate to be published in such newspaper once a week for four weeks immediately prior to the sale. R.S.O. 1897, c. 224, s. 177 (1), *amended.*

The basis of the advertisement is the list of lands annexed to the warrant, which gives the amount of arrears against each lot. To this must be added the costs of advertising, commission and other lawful charges. The distinction, in the list, of lands as patented, unpatented, or under lease or license of occupation from the Crown, prescribed by section 139, must be preserved in the advertisement. Nothing is said in this section about stating that land is under lease or license of occupation from the municipality. All that could be sold in such a case is the interest of the tenant: *Re Canadian Pacific Railway Co. and City of Toronto*, 4 O.L.R. 134. A sale could hardly be said to be fairly and openly conducted, within the meaning of section 172, which omitted from the advertisement the fact that the land was leasehold, the municipality being the landlord. No doubt it is intended that, the list being copied as the basis of the advertisement, this information, which must be in the list, should also appear in the advertisement.

The advertisement is to be published once a week for four weeks in *The Ontario Gazette*; once a week for thirteen weeks in some newspaper published in the county; and a partial list comprising the lands situate in each municipality, is also to be published once a week, for four weeks immediately prior to the sale, in some newspaper published in that municipality. Directions are also given for advertising in each county included in a union of

counties, and provision is made for cases where no newspaper is published in the county, or in any particular municipality of the county.

For the consequence of omitting to advertise the lands as patented, unpatented, etc., see sections 139 and 167, and the notes thereon.

In *Haisley* v. *Summers*, 13 O.R. 600, Proudfoot, J., at p. 604, speaking of describing the land as patented, unpatented, etc., says: "This is not an idle formality. Purchasers at such sales would be at liberty to assume that they were not bidding for a freehold, but for a lessee's interest, and regulate their bidding accordingly. If it had been stated that the lot in this instance was patented, as it was admitted to be, the purchaser might have taken less than one-tenth of an acre for the $40. The 150th (now 167th) section says that no deed for the land sold shall be invalid for any error or miscalculation in the amount of taxes in arrear,or any error in describing the land as patented or unpatented, or held under a license of occupation. This I suppose refers to the description of the land in the advertisement, for it does not seem that any statement in this respect is required in the form of the deed in Schedule K. But it recognizes the necessity for a description of some kind, and does not contemplate the case where there is an entire omission of such description. . . . I have therefore come to the conclusion, with some hesitation, that the omission in the advertisement is not cured."

In *Scott* v. *Stuart*, 18 O.R. 211, the lands, which actually were patented, were described as unpatented, and the sale was of the interest of the lessee, locatee, licensee or purchaser from the Crown. The sale was invalid, as there was no interest on which the deed could operate. The word purchaser in the connection in which it was used, indicated an interest in the land prior to the patent, and did not embrace in it an interest or estate in fee.

A notice of a by-law was first published on Thursday, the 12th of January. It appointed a poll for Tuesday, the 7th of February. The statute required the notice to be published for four consecutive weeks in some newspaper published weekly or oftener, with a notice that, on some day within the week next after such four weeks,a poll would be taken. Four weeks from the first publication ended on the 8th of February, and the poll was, therefore, held too soon, and the by-law was invalid: *Re Coe and the Township of Pickering*, 24 U.C.R. 439.

The direction in regard to publication in the local municipalities, is somewhat different from that in regard to the Gazette and the county newspapers. It must be "once a week for four weeks immediately prior to the sale." That would require the first publication to be four weeks or more before the day of the sale; and as the four weeks are to be immediately prior to the sale, no interval of more than six days could elapse without publication, between the last publication and the day of the sale. This may require five weekly insertions of the advertisement. In the last case cited, publication on the 12th, 19th and 26th of January and the 2nd of February, would fulfill all the conditions for a sale on the 9th of February. But if the sale were on the 10th of February, the advertisement would have to appear for the fifth time on the ninth.

Failure to advertise in the local newspaper renders the sale invalid : *Hall* v. *Hill*, 22 U.C.R. 578, distinguishing *Jarvis* v. *Brooke*, 11 U.C.R. 299; *Williams* v. *Taylor*, 13 C.P. 219. In that case it was said: "The omission of either of these advertisements interposes an insuperable obstacle to the application of the remedial portion of the Act in favor of purchasers at such sales." The contrary view was held in *Cotter* v. *Sutherland*, 18 C.P. 357. See *Scott* v. *Stuart*, 18 O.R. 211.

Thirteen insertions of the advertisement in *The Gazette*, though not covering three months as then required by the statute, is an irregularity which does not invalidate the sale : *Kempt* v. *Parkyn*, 28 C.P. 123, following *Connor* v. *Douglas*, 15 Gr. 456, and *McLauchlin* v. *Pyper*, 29 U.C.R. 526.

"I think it has generally been considered by the profession and accepted as law that such an error or omission as that relied on here was a mere irregularity on the part of the sheriff, subjecting him to an action, if the owner of the land sustained any damage by reason of it, but not invalidating the sale itself. It is of course difficult to say that if thirteen insertions will suffice, six or ten will not, though a very gross neglect of the statute in this respect might be treated differently:" *Connor* v. *Douglas*, 15 Gr. 456, per VanKoughnet, C.

In *Doe* v. *Reaumore*, 3 O.S. 247, the rule governing the construction of statutes relating to tax sales was discussed, and the principles there laid down have frequently been cited since with approval. "The operation of this statute is to work a for-

feiture; an accumulated penalty is imposed for an alleged default, and to satisfy the assessments charged, together with this penalty, the land of a proprietor may be sold, though he may be in a distant part of the world, and unconscious of the proceeding. To support a sale made under such circumstances, it must, in my opinion, be shown that those facts existed which are alleged to have created the forfeiture, and which are necessary to warrant the sale; for a clerical error, or the wilful or negligent omission of a ministerial officer, shall not deprive a man of his estate.''

Adjoining municipalities are those which have for some part of their limits, a common boundary. There must, at some part, be no intervening territory between them. Adjacent is a word of wider and looser signification: *Mayor of Wellington* v. *Mayor of Lower Hutt* (1904), A.C. 773.

After the lapse of two years from the issue of the deed it is not necessary to prove the advertisement. ''It is true no evidence of any advertisement was given; but it appears to me that such an objection cannot now be taken. The statute was passed for the express purpose of preventing objections of this description being given : *Wapels* v. *Ball*, 29 C.P. 403, per Galt, J., at p. 405.

Notice to be Given in such Advertisement.

(2) The advertisement shall contain a notification, that unless the arrears and costs are sooner paid, the treasurer will proceed to sell the lands for the taxes, on a day and at a place named in the advertisement. R.S.O. 1897, c. 224, s. 178.

The advertisement is intended to give notice of the impending sale; of its time and place; and of the fact that the lands may be redeemed at any time prior to the actual sale thereof.

The arrears may be paid at any time before sale, and also at any time within the statutory period after sale, with the addition of ten per cent. But after the lands are advertised, the treasurer cannot accept payment of a part of the arrears on any parcel of land. Section 120.

The treasurer, and not the municipality, is liable to pay the expenses of advertising. See section 160 and notes thereon.

Publication of Notice of Tax Sale.

(3) Instead of advertising as in this section is provided, the treasurer may have the advertisement published in *The Ontario Gazette* as hereinbefore provided (1), and then publish in at least two newspapers, published as in sub-section 1, provided a notice announcing that the list of lands for sale for arrears of taxes has been prepared, and that copies thereof may be had in his office, and that the list is being published in *The Ontario Gazette* (inserting the dates of such publication), and that in default of payment of the taxes, the lands will be sold for taxes. 61 V. c. 25, s. 4.

(1) That is, as in sub-sections 1 and 2 of this section provided.

For the purpose of saving expense, an alternative plan of advertising is here authorized. Publication in the *Ontario Gazette* is the same in each plan. But instead of publishing the complete list once a week for thirteen weeks in a newspaper published within the county, and a partial list, showing only the lands for sale in that municipality, in a newspaper published in each municipality, this sub-section directs a notice to be inserted in at least two newspapers published in the county, or if none are published in the county, then in an adjoining county. This notice must be inserted once a week for thirteen weeks. It must announce:

(*a*) That the list of lands for sale for arrears of taxes has been prepared.

(*b*) That copies of the list may be had at the treasurer's office.

(*c*) That the list is being published in *The Ontario Gazette* on the dates named in the notice.

(*d*) That in default of payment of the taxes, the lands will be sold for taxes.

This notice is not in express terms required to give the time and place of the sale, but these should be inserted.

Time of Sale.

144. The day of the sale shall be more than ninety-one days after the first publication of the list in *The Ontario Gazette*. R.S.O. 1897, c. 224, s. 179, *amended*.

See *Kempt* v. *Parkyn*; *Connor* v. *Douglas*; *McLaughlin* v. *Pyper*, in the note on section 143, sub-section 1, supra, p. 353.

Notice to be Posted Up.

145. The treasurer shall also post a printed copy of the advertisement published in the *Ontario Gazette* in some convenient and public place at the court house of the county or district, at least three weeks before the time of sale. R.S.O. 1897, c. 224. s. 180, *amended.*

Tax Sale Districts.

146.—(1) For the purpose of tax sales the Lieutenant-Governor in Council may by order in council, divide a territorial district, and the council of any county may by by-law divide the county into tax sale districts, each of which may contain one or more municipalities.

(2) The order in council or by-law may provide that thereafter the sales of land situate therein for arrears of taxes shall be held by the treasurer at such place in the tax sale district as may be named in the order in council or by-law.

(3) Where any such order in council or by-law is passed, provision shall be made therein, or by further order in council or by-law, respecting the payment to the treasurer of his travelling and other expenses connected with his attending tax sales.

Every advertisement or notice of a tax sale shall state the name or number of the tax sale district and the place therein at which the sale will be held. R.S.O. 1897, c. 224, s. 182, *amended.*

Adjourning Sale, if no Bidders.

147. If at any time appointed for the sale of the lands, no bidders appear, the treasurer may adjourn the sale from time to time. R.S.O. 1897, c. 224, s. 183.

In *Henry* v. *Burness*, 8 Gr. 345, the Court held that when the officer selling land for taxes discovers or has reason to believe that any combination has been entered into to prevent fair competition thereat, his duty is to adjourn the sale.

In *Davis* v. *Clark*, 8 Gr. 358, the sheriff who was selling for taxes,

and was made a party to the action to set aside the sale, because of a combination amongst some of those present at the sale to keep down prices, was refused his costs upon a decree setting aside the sale, though the purchaser was not a party to the combination. In *Massingberd* v. *Montague*, 9 Gr. 92, the same rule as to costs was followed. See also *Logie* v. *Young*, 10 Gr. 217; *Templeton* v. *Lovell*, 10 Gr. 214; *Logie* v. *Stayner*, 10 Gr. 222.

In *Scholfield* v. *Dickenson*, 10 Gr. 226, it was questioned whether the sheriff would, in selling land for taxes, in any case be justified in allowing the whole lot or piece of land charged with the taxes, to go for a very small part of the value in the first instance without an effort, by reserving the lot or adjourning the sale, to protect the interest of the owner; or in allowing a sale to proceed in the face of a determination manifested by the audience to act in a manner inconsistent with a proper sale. But it was not deemed necessary in that case to decide the point.

Mode in Which the Lands Shall be sold by the Treasurer.

148.—(1) If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed for the sale, the treasurer shall sell by public auction so much of the land as is sufficient to discharge the taxes, and all lawful charges incurred in and about the sale and the collection of the taxes, selling in preference such part as he may consider best for the owner to sell first; and, in offering or selling such lands, it shall not be necessary to describe particularly the portion of the lot which is to be sold, but it shall be sufficient to say that he will sell so much of the lot as may be necessary to secure the payment of the taxes due; and the amount of taxes stated in the advertisement of sale shall, in all cases, be held to be the correct amount due. R.S.O. 1897, c. 224, s. 184 (1).

The taxes may be paid at any time before the sale, or some person may appear at the sale and pay them. If that is not done, the sale must proceed. The lands must be sold by public auction. The bids are to be expressed in land, not in money. The bidder who offers to take the smallest amount of land for the taxes and costs, is the purchaser. The sale must be openly and fairly conducted. A combination amongst the buyers not to bid against

each other, or any other unfair conduct which tends to stifle competition, will avoid the sale. Such conduct would justify the treasurer in adjourning the sale. The sheriff could not sell to his own officers : *Massingberd* v. *Montague*, 9 Gr. 92. Arrangements amongst buyers not to compete with one another, will void the sale : *Templeton* v. *Lovell*, 10 Gr. 214; *Massingberd* v. *Montague*, 9 Gr. 92; *Henry* v. *Burness*, 8 Gr. 345; *Logie* v. *Young*, 10 Gr. 217; *Scholfield* v. *Dickenson*, 10 Gr. 226. It is the duty of the officer conducting the sale, when he sees that by the improper practices of those present, competition is stifled, and that an understanding has been arrived at that each shall buy in turn, or that otherwise fair and free competition is being thwarted, to announce to those guilty of such misconduct that he will not continue the sale, but that he will postpone it in order to obtain a fair sale : *Logie* v. *Young*, 10 Gr. 217; *Henry* v. *Burness*, 8 Gr. 345. It will not, however, be assumed that an adjourned sale in November was affected by improper practices of those present at the October sale, with a view to prevent competition : *Logie* v. *Stayner*, 10 Gr. 222. When the purchaser consents to representations which he knows to be untrue, and which prevent competition, and thereby purchases for less than the value of the land, the sale is void : *Foy* v. *Merrick*, 8 Gr. 323. See also *Raynes* v. *Crowder*, 14 C.P. 111; *Todd* v. *Werry*, 15 U.C.R. 614.

An agreement between two persons, made in order to avoid competition between them at a tax sale, that one of them shall buy certain parcels of the lands to be sold for taxes, for the benefit of both, is not illegal : *Keefer* v. *Roaf*, 8 O.R. 69.

A lessee or other person whose duty it is to pay the taxes, cannot, by purchasing the land at a sale for taxes, acquire title against the landlord, mortgagee or other person to whom he owes it as a duty to pay the taxes. The tenant who should pay the taxes, under the terms of his lease, cannot get a valid tax title as against his landlord. "In the absence of any duty on the part of the defendant to have paid the taxes for which the land was sold, I can see no principle on which his title acquired under the tax sale should be taken from him:" *Hayden* v. *Castle*, 15 O.R. 257, per Street, J., at p. 262.

The relationship of mortgagor and mortgagee does not disentitle the mortgagee to purchase, unless he uses his position as mortgagee to stifle competition : *Kelly* v. *Macklem*, 14 Gr. 29.

A purchase of land at a tax sale was made in the name of the buyer, but it was made at the instance of, and under the instructions of the treasurer's wife, and with his money. The sale was set aside after the lapse of six years: *Mooney* v. *Smith*, 17 O.R. 644.

The county treasurer cannot be a purchaser : *Re Cameron*, 14 Gr. 612.

The mayor of a town or city cannot purchase lands at a tax sale: *Greenstreet* v. *Paris*, 21 Gr. 229. The person assessed may become the purchaser at the tax sale : *Stewart* v. *Taggart*, 22 C.P. 284.

The purchase of lands by the clerk of the township in which they are situate, is a voidable transaction : *Beckett* v. *Johnston*, 32 C.P. 201. But the reeve of the township in which the lands are situate is not disqualified from purchasing : *Totten* v. *Truax*, 16 O.R. 490.

The treasurer must sell the part of the lot which he considers it most advantageous for the owner to sell first. Section 142 describes his duty *before* the sale. At the sale he does not sell any particular part of the lot, but he sells a definite quantity of it: *Haisley* v. *Summers*, 15 O.R. 275; *Stewart* v. *Taggart*, 22 C.P. 284. The particular part of the lot from which the area sold is to be taken, must be determined between the sale and the issue of the certificate of sale under section 157. The treasurer is not liable under section 142 for not having formed any opinion of the value of the land before the sale. But he must make such inquiries, before issuing the certificate, as are necessary to enable him to determine what is the most advantageous portion to sell, from the point of view of the owner of the land. "I am of opinion that the duty cast upon the treasurer by section 137 [now 148] of selling in preference such part as he may consider best for the owner to sell first, is a duty from which he is not at all relieved by the provisions of section 129 [now 142] and is an independent duty, and one that cannot be ignored, but one that must be performed by him, and that for that purpose he must obtain the necessary information to enable him to arrive at a sound judgment thereon. See *Massingberd* v. *Montague*, 9 Gr. 92; *Templeton* v. *Lovell*, 10 Gr. 214; *Henry* v. *Burness*, 8 Gr. 345; *Deverell* v. *Coe*, 11 O.R., per Wilson, C.J., at p. 239. The evidence shows that the treasurer before he granted his certificate in this case knew that there was a house upon the lot, and although the lot

was within a few minutes walk of his office he did not take the trouble to ascertain on what part of the lot the house was situated, but gave his certificate describing the part sold so as to include the greater part of the house. I do not think under these circumstances the sale to the defendant can be said to have been fairly conducted. The judgment of the learned Judge must be upheld on this ground:" *Haisley* v. *Summers*, 15 O.R. 275, per Armour, C.J., at p. 279.

The statement in this section "that the amount of taxes stated in the advertisement of sale shall in all cases be held to be the correct amount due." does not support a sale for more taxes than are due. The words must be construed in connection with what precedes. They do not affect the liability of the land to be sold, but only the mode of conducting the sale. The language is intended to protect the treasurer for selling more land than enough owing to credit not having been given for taxes paid or some similar cause. But it would not save a sale for more taxes than are really in arrear : *Hall* v. *Farquharson*, 15 A.R. 457. See also *Claxton* v. *Shibley*, 10 O.R. 295; 9 O.R. 451.

When Land does not Sell for Full Amount of Taxes.

(2) If the treasurer fails at such sale to sell any land for the full amount of arrears of taxes due, including the full amount of commission and other lawful charges and costs added under section 137, he shall at such sale adjourn the same until a day then to be publicly named by him, not earlier than one week, nor later than three months thereafter, of which adjourned sale he shall give notice by public advertisement in the local newspaper, or in one of the local papers in which the original sale was advertised, and on such day he shall sell such lands unless otherwise directed by the council of the municipality in which they are situate, for any sum he can realize, and shall accept such sum as full payment of such arrears of taxes; but the owner of any land so sold for less than the full amount chargeable against the same as aforesaid shall not be at liberty to redeem the same, except upon payment of the full amount of taxes due, together with the expenses of sale and the ten per cent. provided for in section 164 of this Act. R.S.O. 1897, c. 224, s. 184 (2), *amended.*

If any land cannot be sold for the full amount against it, inclusive of commission and other lawful charges and costs, it is not at the sale held under sub-section (1), to be sold for any less sum. The treasurer *shall* adjourn the sale. The date of the adjourned sale must be publicly announced at the time of the adjournment. It must not be sooner than a week after the adjournment, nor later than three months from the date of the adjournment. The treasurer must give notice of the adjourned sale in one of the county newspapers in which the original sale was advertised.

The council of any local municipality may give directions not to sell any or all of the lands in that municipality for what they will bring. The municipality, if previous notice has been given to that effect in the advertisement, may take any such land for the taxes and charges against it, if no person offers to do so.

If no such notice has been given to the treasurer, he must sell all the lands for any sum he can obtain for them. Such sum, no matter how small, wipes out all arrears of taxes. But the owner, if he wishes to pay off the purchaser, and redeem the lands, must pay all the arrears, the expenses and ten per cent. additional as provided by section 164. It is surmised that the person assessed could not buy at the adjourned sale at a less price than the whole amount against the land. See *Stewart* v. *Taggart*, 22 C.P. 284.

Purchase by Municipalities of Land sold for Taxes.

(3) If the price offered for any land at the adjourned sale is less than the amount due for arrears of taxes, charges and costs, it shall be lawful for the municipality to purchase the same for the amount due, provided that previous notice by public advertisement in the local newspaper or in one of the local newspapers in which the original sale was advertised, of intention so to do has been given by the treasurer; but the owner of any land so purchased by the municipality shall not be at liberty to redeem the same except upon payment of the full amount of the taxes due, together with the expenses of sale, and also the taxes, including the local improvement rates and interest thereon which would have accrued against the property if it had remained the property of the former owner, and been liable for ordinary taxation;

and if the value thereof is not shown upon the assessment roll, such taxes shall be computed at the rate fixed by by-law for each year for which such taxes are payable upon the value placed thereon upon the assessment roll for the last preceding year in which it was assessed; and the local improvement rates shall be computed at the rate fixed in the by-law by which the same were rated or imposed, and upon the frontage as shown upon the list of properties and the frontages thereof as settled by the Court of Revision for such local improvement. R.S.O. 1897, c. 224, s. 184 (3); 61 V. c. 25, s. 5; 3 Edw. VII., c. 21, s. 11, *amended.*

The treasurer, before he can advertise that any land in a municipality will be taken by the municipality at the amount against it, if no person offers to pay the arrears, costs and charges against it, must have been notified by the municipality that it is the intention of the municipality to take the land for the arrears, if not sold for the full amount.

There is no direction in this sub-section, or in the preceding one, as to the number of insertions of the advertisement. It should be reasonably sufficient for the purpose.

If the owner seeks to redeem land which has been acquired for taxes by the municipality, he must pay:

(*a*) The full amount of the taxes due.

(*b*) The expenses of sale, that is, the proportionate share of the costs of advertising, and the treasurer's fees.

(*c*) The taxes, including local improvement rates and interest thereon, which would have accrued if it had remained the property of the former owner, and been liable for ordinary taxation, the land being exempt from taxation while owned by the municipality.

It is to be noted that nothing is said in this sub-section about adding ten per cent. to the arrears and expenses for which the land is sold. The municipality seems to be put in a somewhat different position from the ordinary purchaser in that respect. *Interest* is, however, charged on taxes which would be payable under (*c*) above. The rate is not specified, and it would therefore be the legal rate, five per cent. The ten per cent. added under section 164 is not spoken of as interest. See the notes on sec-

tion 134 and the cases there cited, as to the difference between the penalty for non-payment of taxes and interest.

The mode of arriving at the amount of the taxes included in (*c*) is pointed out in the latter part of the section.

The municipality having paid the arrears and expenses, the land is clear on the books of the county treasurer. No provision has been made for supplying him with the information which he must have in hand before he can determine what sum is necessary to redeem the land bought by the municipality. Doubtless he can ascertain that by correspondence with the officials of the local municipality, who are required by section 116 to give him all the information necessary to show on his books the arrears against each parcel.

Section 184 of R.S.O. 1897, cap. 224, made it the duty of the council of the local municipality which acquired lands for arrears of taxes, to sell them within three years after they were acquired. In 1898 the time was extended to seven years. The limitation is wholly omitted from the present Act.

Mode of Selling for Taxes in York, Scarborough and Etobicoke.

149.—(1) The treasurers of the Townships of York, Scarborough and Etobicoke (1) shall not be obliged to sell for taxes only a portion of any vacant lot originally laid out according to any registered plan, the frontage of which lot liable to be sold for taxes does not exceed fifty feet, but may in all such cases sell the whole of such lot or the whole of such part thereof (as the case may be) in respect of which taxes are in arrear, for the best price that may be offered by the bidders at the sale; (2) and any money obtained by the treasurer as the price of any such lot shall be applied firstly in paying the arrears of taxes and interest and lawful expenses due in respect of such lot, and the balance, if any, shall be paid by such treasurer to the owner of such lot or to such other person as may be authorized by law to receive the same less ten per cent. of the sale price and less such charges and expenses as the treasurer may pay or incur in satisfying himself of the right of such owner or other person to receive the

same. And it shall be the duty of the person claiming such balance to produce to the treasurer proof of his or her right to recover the same; (3) provided, however, that in the event of redemption the person redeeming shall pay ten per cent. upon the whole amount realized in respect thereof notwithstanding section 164 of this Act. 2 Edw. VII., c. 31, s. 2.

(2) Sub-section 1 shall not in any way alter or affect the Act passed in the 58th year of the reign of Her late Majesty Queen Victoria, intituled *An Act respecting the Township of York*, or the by-laws confirmed by the said Act. R.S.O. 1897, c. 224, s. 184 (4)-(6).

(1) The officers of the townships herein named have power to sell lands for taxes, under section 187. They are in the same position in that regard as the officers of cities and towns.

(2) The intention is to avoid the further sub-division of small lots, the frontage of which does not exceed fifty feet. Such lots may be sold at a tax sale for the highest price obtainable. The taxes, costs and lawful expenses are to be deducted from the proceeds. The treasurer must ascertain who the owner is, and pay him the balance, less the costs and expenses of the treasurer in satisfying himself who is entitled to the money, and less ten per cent. of the sale price.

(3) It is the duty of the person claiming the surplus to establish his right thereto by proof. His right to the surplus would not arise, as against the treasurer, until such proofs had been submitted to that officer.

It is in the discretion of the councils of the townships named to sell a part of each lot, or to sell the whole lot. They "are not obliged" to sell a part. They "may" sell the whole lot.

When Purchaser Fails to pay Purchase Money.

150. If a purchaser fails to pay his purchase money immediately, the treasurer shall forthwith again put up the property for sale. R.S.O. 1897, c. 224, s. 191.

Disregard of the duty hereby imposed on the treasurer does not invalidate the sale. In *Haisley* v. *Somers*, 13 O.R. 600, "it seems that the purchase money was not paid for a week or two

after the sale, and it is said that the sale must be for cash. I think it was a cash sale, and if the treasurer was satisfied to let the payment stand over for a short time it did not make it the less a cash sale.'' But the direction to immediately re-sell is imperative, and the treasurer, if he fails to put up the property again on default in immediate payment, is liable to the penalty for neglect of duty.

In *Jarvis* v. *Cayley*, 11 U.C.R. 282, it was decided that the sheriff, who then conducted tax sales, as well as the treasurer, might sue for and recover the price of land sold for taxes. In such an action it should be expressly averred that the defendant promised to pay for the land and accept a certificate of sale within a reasonable time. As regards the purchaser, it is assumed that the sale was authorized and regular, and if there is anything which invalidates it, he must show it. ''It would be unjust and unreasonable that the person bidding off the lands should be suffered at his pleasure to abandon the purchase, and no remedy for this appears more convenient or so convenient as to allow the sheriff to sustain an action. The language of the courts, too, in the cases of *Williams* v. *Millington*, 1 H. Bl. 81, and *Wilbraham* v. *Snow*, 1 Ventr. 52, seems to support this on principle.''

In *Austin* v. *County of Simcoe*, 22 U.C.R. 73, lands which were not assessable, no patent or license of occupation having issued for them, were sold for taxes. The purchaser brought an action against the county to recover back the money which he had paid. It does not appear in the report of the case whether the deed had issued or not. It was decided that the plaintiff could not recover. "There was no contract between the plaintiff and the defendants. The defendants had nothing to do with the sale, and could not control it in any respect. . . . The treasurer can know nothing of the taxes due or the means of collecting them except from the vouchers which he receives, and he is bound to issue his warrant to the sheriff to collect the amount which appears to be in arrear. The sheriff then advertises the lands, distinguishing the lands which have been patented from those not patented or leased, and at the time appointed his duty is to offer the lands for sale to any persons who choose to purchase, but he makes no promises, and give no assurance that the titles of any of the lands are good. If he chose to do so he might perhaps be held personally responsible, but he could have no authority to bind anyone else. The plaintiff attended the sale

and became the purchaser of the lands in the Township of Flos, for which no title whatever had ever been issued. In purchasing these lands, the plaintiff was acting on his own judgment and at his own risk. He did not think proper before purchasing to enquire into the state of the title, and if he has failed in making a secure investment of his means, he has no one to blame but himself. His purchase was voluntary, his payment of money was voluntary, and the defendants cannot be held liable for money voluntarily paid to the sheriff, and by him paid over to the treasurer of the county for the benefit of the Township of Flos. The sale of lands for taxes by a public officer, on whom the duty is thrown by law, stands on a footing entirely different from a sale between individuals on a contract. Where an individual offers land for sale, the presumption is that he has a right to do so, and that the purchaser will receive a title for his purchase, but even in such a case, unless there has been fraud or a total failure of consideration, the money cannot be recovered from the vendor.'' See *Thomas* v. *Crooks*, 11 U.C.R. 579.

Land in which the Crown has an Interest.

151.—(1) Where the Crown, whether as represented by the Government of Canada or the Government of the Province of Ontario, has an interest in any land in respect of which taxes are in arrear, the interest only of persons other than the Crown therein shall be liable to be sold for arrears of taxes.

Section 35 directs the interest of any owner or tenant of land in which the Crown has also an interest, to be assessed. The interest of the Crown is not assessable. Section 5, sub-section 1. The lien given by section 89 upon land for the taxes thereon, attaches only to the interest of the lessee, locatee, licensee or purchaser from the Crown. Section 139 directs the nature of that interest to be set out in the list which forms the basis of the advertisement under section 143.

(2) Where the treasurer so sells the interest of any person, it shall be distinctly expressed, in the tax deed to be made under this Act to the purchaser, that the sale is only of the interest of such person in the land, and (whether so expressed or not) the tax deed shall in no wise affect the interest or rights of the Crown

in the land sold, and shall give the purchaser the same interest and rights only in respect of the land, as the person had whose interest is being sold.

The tax deed must show that it is only a deed of the interest of the lessee, licensee, locatee or purchaser of the land from the Crown. If the land is patented, such interest is non-existent, and the deed conveys nothing : *Scott* v. *Stuart*, 18 O.R. 211. If the sale purports to be a sale of land in fee simple, nothing more will pass to the purchaser, as against the Crown, than the interest therein of persons other than the Crown. The omission to point out that the Crown has an interest in the land, and that such interest is not being sold or conveyed, does not enlarge the rights of the purchaser. But the sale of such interest for taxes disposes of every claim, privilege, lien or encumbrance of every person except the Crown. Section 89.

(3) Where the interest so sold of any person is that of a lessee, licensee or locatee, the tax deed shall be valid without requiring the consent of the Commissioner of Crown Lands. *New. See* R.S.O. 1897, c. 224, ss. 172, 188, 189. (*See also Section* 35.)

The transfer of the interest of a lessee, locatee or licensee of Crown Lands is subject to the approval of the Commissioner of Crown Lands, now the Minister of Lands and Mines. But his assent is not necessary to the validity of a tax deed.

Land Purchased at Tax Sale, not to Exceed Limit fixed by Rev. Stat. c. 29.

152. No person shall be entitled to purchase at a sale for taxes, under section 148 or from a municipality which has purchased land thereunder, more unpatented land in the free grant districts than a locatee is entitled to obtain or hold under *The Free Grants and Homesteads Act.* R.S.O. 1897, c. 224, s. 185.

The intention is to prevent the accumulation of large quantities of free grant lands in the hands of speculators. The condition of free grants is actual settlement. Section 6 of *The Free Grants and Homesteads Act,* R.S.O. 1897, cap. 29, forbids the location of any person for a greater quantity of land than two hundred

acres. The patent does not issue for five years after the grant is located, nor until the settlement duties have been performed. What is dealt with in this section is the interest of the locatee before the issue of the patent. The quantity of unpatented land which any person can purchase, either at a tax sale or from a municipality which has acquired the land for taxes pursuant to section 148, sub-section 3, must not exceed the quantity which a locatee is entitled to obtain or hold. After the issue of the patent these restrictions are no longer in force.

Sales not to be made Where Taxes less than $10 or no Improvements Made.

153. No sale for taxes shall be made of unpatented land in the free grant districts where the taxes due thereon are less than $10, if the lands have not been before the 27th day of May, 1893, advertised for sale, nor where no *bona fide* improvements have been made by or on behalf of the locatee. This section shall not apply to lands purchased by municipalities prior to the 27th day of May, 1893, under the enactments consolidated in said section 148. R.S.O. 1897, c. 224, s. 186.

No sale of unpatented lands shall be made for any less amount of arrears of taxes than $10. Only the interest of the locatee, licensee or purchaser is assessable. The interest of the Crown in the land is exempt. Section 22, sub-section 1. And is paramount to the lien on the land for taxes in respect thereof. Section 89.

Where no *bona fide* improvements have been made upon the land by or on behalf of the locatee, there is nothing to sell. The interest of the Crown therein comprises the entire estate.

Lands Purchased to be Subject to Conditions of Rev. Stat. c. 29.

154. All lands in the free grant districts purchased under sale for taxes shall be subject to all the terms and conditions as to settlement or otherwise required by *The Free Grants and Homesteads Act,* unless under special circumstances the Commissioner

of Crown Lands sees fit to dispense therewith in whole or in part. R.S.O. 1897, c. 224, s. 187.

Under section 19 of *The Free Grants and Homesteads Act* "neither the locatee nor any one claiming under him, shall have power to alienate, otherwise than by devise, or to mortgage or pledge any land located as aforesaid, or any right or interest therein before the issue of the patent." This does not prevent a valid contract of sale being made before the issue of the patent, to be carried into effect after the patent is issued. If the locatee has discharged all his obligations in regard to residence and improvments to entitle him to the patent, and the patent has issued, he and his wife are bound by such a contract of sale entered into by them, notwithstanding that section 19 prohibits alienation. The word alienate is a technical word, and any transfer of real estate short of a conveyance of the title, is not an alienation of the estate: *Meek* v. *Parsons*, 31 O.R. 529.

The locatee cannot, by allowing his interest in the land to be sold for taxes, give the purchaser at the tax sale any better title than he himself had. The interest of the Crown in the land, and the obligation to fulfil all the conditions imposed by law before the patent will issue, remain unchanged. The Minister of Lands and Mines may, however, in special circumstances, dispense, in whole or in part, with the terms and conditions as to settlement or otherwise imposed by statute, for the relief of a purchaser for taxes.

Sale of Interest of Lessee or Tenant of Municipal Property.

155. If the treasurer sells any interest in land of which the fee is in the city, town or other municipality in respect of which the taxes accrue he shall only sell the interest therein of the lessee or tenant; and it shall be so distinctly expressed in the tax deed. R.S.O. 1897, c. 224, s. 190, *amended.*

Under a lease from a city or other municipality to a tenant, the burden of taxation, apart from express agreement, falls on the tenant. The effect of section 5, sub-section 6, and section 92, is to impose the liability for taxes on the lessee of lands belonging to a municipality, without any recourse to the municipal corporation. When an agreement has been made for such a lease, between a municipality and its tenant, nothing being said about

the payment of taxes, the corporation are entitled to have a covenant by the tenant to pay taxes inserted in the lease as a reasonable protection against the property, which is the security, for the rent, being taken in execution for non-payment of taxes. The corporation have a duty towards those for whose benefit they hold their land, and they would be guilty of something like negligence if they did not insist on the insertion of the covenant in question in their leases : *Canadian Pacific Railway Co.* v. *City of Toronto*, 1905, A.C. 33.

Such land would be assessed at its actual value as directed by section 36.

It is not the interest of the tenant in the land that is assessable, but the land itself. There is no exemption of the interest of the municipality in the land, as there is of the interest of the Crown under section 35. The land is assessed as that of any other owner whose land is occupied by a tenant. But, from the nature of the case, there is here no recourse by the tenant against the owner for the taxes. The incidence of such taxation plainly falls upon the tenant or lessee, and not upon the city. It is strictly a tenant's tax, or tax payable by the tenant, and not in any event payable by the landlord, as between him and the tenant : *Re Canadian Pacific Railway Co.* and *City of Toronto*, 4 O.L.R. 134.

Section 139 makes it incumbent on the treasurer to specify in the list annexed to the warrant that land is under lease from the municipality, if that be the fact. Section 143 makes this list the basis of the advertisement for the sale of the lands for taxes. Section 155 makes it plain that the treasurer shall sell only the interest of the tenant in the land, and shall specify in the deed in distinct terms that it conveys only the tenant's interest.

Sale of Lands for Taxes not to Affect Collection of Other Rates.

156. No sale of lands for taxes or for rates under a drainage or local improvement by-law shall invalidate or in any way affect the collection of a rate which has been assessed against or imposed or charged upon such lands prior to the date of the sale, but which accrues or becomes due and payable after the rates or taxes in respect of which the sale is had became due and payable or after the sale. R.S.O. 1897, c. 224, s. 192, *amended.*

Rates for drainage and for local improvements are imposed by the by-law for the construction of the drain or the local improvement, for a definite term of years. If during the currency of that term, land charged with a series of such payments is sold for arrears of taxes, the sale does not affect the future instalments charged by way of taxation against that parcel of land. The sale wipes out the arrears; but under the by-law the clerk will in each future year charge against the land in the collector's roll the amount imposed on it for that year by the by-law. Any taxes which have become due and payable after the arrears for which the land is sold, even if they have become due prior to the sale, are a lien on the land and are to be collected.

Certificate of Sale—Tax Deed.

Treasurer Selling to Give Purchaser a Certificate of Land Sold.

157. The treasurer after selling any land for taxes shall give a certificate under his hand to the purchaser, stating distinctly what part of the land, and what interest therein, have been so sold, or stating that the whole lot or estate has been so sold, and describing the same, and also stating the quantity of land, the sum for which it has been sold, and the expenses of sale, and further stating that a deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold, with reference to sections 148 and 151 of this Act, will be executed by the treasurer and warden on demand, at any time after the expiration of the period hereinafter provided for redemption. R.S.O. 1897, c. 224, s. 193.

The certificate of sale given to the purchaser by the treasurer after selling any land for taxes must:

(*a*) State distinctly what part of the land has been sold.

(*b*) State what interest therein has been sold, *e.g.*, the interest of the lessee of the municipality. See sections 139, 151 and 155. The certificate should contain all the information required to be inserted in the deed.

(*c*) If the whole lot has been sold, the certificate should so state ,and describe the lot by number or otherwise.

(*d*) If the land is patented and the whole estate therein is sold, the certificate should so state and describe the estate.

(*e*) State the quantity of land, and

(*f*) The sum for which it was sold and the expenses of sale, and

(*g*) State that a deed conveying the land to the purchaser or his assigns, according to the nature of the estate or interest sold, with reference to sections 148 and 151 of this Act, will be executed by the treasurer and warden on demand, after the lapse of the time for redemption.

At the time of the sale of land for taxes it is "not necessary to describe particularly the portion of the lot which is to be sold." Section 148, sub-section 1. The treasurer sells a definite quantity of land out of the parcel of land on which the arrears have accrued. The duty of ascertaining what part of the lot or parcel it would be best for the owner to sell first, is one which the treasurer must discharge, after due inquiry, between the sale and the giving of the certificate of sale. He is not bound *before* the sale to make any inquiries *about* the land, or to form any opinion as to value. But, before he makes out the certificate of sale, he must form some opinion regarding the property. "The duty cast upon the treasurer [by section 148, sub-section 1], of selling such part as he may consider best for the owner to sell first, is a duty from which he is not at all relieved by the provisions of section [142] and is an independent duty, and one that cannot be ignored, but one that must be performed by him, and for that purpose he must obtain the necessary information to enable him to arrive at a sound judgment thereon." "The evidence shows that the treasurer before he granted his certificate in this case knew that there was a house upon the lot, and although the lot was within a few minutes walk of his office, he did not take the trouble to ascertain on what part of the lot the house was situated, but gave his certificate describing the part sold so as to include the greater part of the house. I do not think that under these circumstances the sale to the defendant can be said to have been fairly conducted:" *Haisley* v. *Somers*, 15 O.R. 275, per Armour C.J., at p. 279.

"It is difficult to understand how, under the Consol. Stat. U.C., cap. 55, section 137, the sheriff could, in the great majority of cases, at the time of the sale give a description of the particular parcel of land intended to be sold, and it must therefore, I should assume, have been intended to give a discretion to the

sheriff to select and describe the particular part intended to be sold, and insert that in the certificate to be afterwards given:'' *Burgess* v. *Bank of Montreal*, 3 A.R. 66, per Burton, J.A., at p. 67.

"Nor do I think he was obliged immediately after the sale to describe by metes and bounds the particular part he had sold, as that was impossible. He could not describe accurately what particular parcel he should convey under his sale as most for the benefit of the owner. Nor could he, at the time of sale, set out by metes and bounds the portion of every lot he had sold; that must of necessity have been left to some future day; and it would, I think, have been sufficient to do all that when he gave his certificate :'' *Burgess* v. *Bank of Montreal*, 42 U.C.R. 212, per Wilson, J.

The certificate must state distinctly what part of the land has been sold. For a discussion of defects in the description of the lands, as set out in the treasurer's list of lands annexed to the warrant and in the advertisement, see section 135 and the notes thereon. See also section 22, sub-section 1, clause (*c*) and the notes thereon, for defective descriptions in the assessment.

In *Burgess* v. *Bank of Montreal*, 3 A.R. 66, the certificate given by the sheriff of the land sold by him for taxes in 1860 described it as ''five acres of land to be taken from the south-west corner of the south-west qurater of lot 3 in the 11th concession of the Township of East Zorra.'' Six years after, a new sheriff gave a deed describing the land by metes and bounds. The sale was invalid. The description in the tax certificate was too vague and indefinite to identify any land, and, whatever the officer who sold the land might have done, his successor could not assume to give a definite description. The land which he selected might or might not be the portion intended by the officer who made the sale.

Considerable discussion has taken place in some of the cases about the necessity of a certificate, and the effect of failure to give one. In the case last cited Wilson, J., in delivering the judgment of the Court below, reported in 42 U.C.R. 212, thought the certificate was not essential. He says: ''If I am right in my opinion that the sheriff was not, under the statute, bound to state at the sale distinctly what part of the lot he had sold, or proposed to sell, and to describe the same, and if I am right in saying that the sheriff's certificate was not an essential part of the transaction, except for the purpose mentioned in section 141

(now 158) of constituting the purchaser the temporary and qualified owner of the land he had bought, for the year allowed for redemption, and until he should get his deed, and that the sheriff's power was not exhausted until he had made the deed to the purchaser then, is the sheriff bound by the description of the land contained in the certificate which he gave to the purchaser in this case? The sheriff must, I think, be bound by the description he has given in the certificate. . . . Although therefore of opinion that a certificate was not necessary to be given, and that the first full description of the land sold might have been given in the deed, I yet think that, when the certificate was given, the land described in it must be taken to be the land which was sold or intended to be sold; and if it is not properly described, that, although a deed is given of it, the 32 Vict. cap. 36, section 155,* is not a protection to the *purchaser.* That statute only applies when the *same* land which was sold was that which was conveyed."

The judgment was affirmed on appeal but without expressly deciding the correctness of the views expressed by Mr. Justice Wilson. Mr. Justice Patterson thought there might be a complete sale without the certificate. Whatever sale is made must at all events have been made when the certificate is given. If it cannot be then *distinctly stated,* it must be because no specific part has been sold. In *McDonnell* v. *McDonald,* 24 U.C.R. 74, it was held that "The giving a certificate by the sheriff to the purchaser at the sale is not a condition precedent to the sheriff's giving a deed. The 58th section (13 and 14 Vict. cap. 67) explains the object and effect of such certificate, and it contains nothing to support the objection of want of proof of such certificate." In *Williams* v. *McColl,* 23 C.P. 189, the certificate of sale stated the portion of the lot sold for taxes to be "the one twenty-seventh part" without further describing it, or stating what quantity of land it contained. The deed given later described it by metes and bounds. The deed was void because of the defective description in the certificate. It says merely a twenty-seventh part of the lot, and specifies no quantity of land whatever. It appears to us impossible to hold that such a certificate is in any respect in accordance with the law. *Ib.* p. 193.

In *Knaggs* v. *Ledyard,* (1866), 12 Gr. 320, the certificate described the lands as the west part of the lot, that is to say 185 acres thereof. The description in the deed seems, however, to have been definite and unambiguous. The Court held the description

in the certificate insufficient to designate the land, and set aside the sale. The statute then in force is practically identical with the present section. Now merely stating that the parcel sold is the west part is certainly very far from "stating distinctly what part of the land was sold," or from "describing the same," within the meaning of this clause. Notwithstanding the correct description in the deed, the defective description in the certificate was fatal. In *Nelles* v. *White*, 29 Gr. 338, Spragge, C., took a different view. He said: "If therefore the certificate formed part of the purchaser's title, his title would be defective; but I do not find any case in which it has been adjudged that it does." He regarded the certificate as being only for the purpose of giving the purchaser the rights conferred by section 158.

The effect of the decisions seems to be that a misdescription in the certificate or a vague and uncertain description therein, cannot be corrected in the deed; but that the omission by the treasurer to give a certificate of sale does not invalidate the sale, and that he may, notwithstanding the omission, give a deed in due course.

Purchaser of Lands sold for taxes to be Deemed Owner Thereof, for Certain Purposes, on Receipt of Sheriff s Certificate.

158.—(1) The purchaser shall, on receipt of the treasurer's certificate of sale, become the owner of the land, so far as to have all necessary rights of action and powers for protecting the same from spoliation or waste, until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing upon the land, or otherwise injure the land, nor shall he do so himself, but he may use the land without deteriorating its value.

The tax certificate gives the purchaser at a sale for taxes a qualified ownership of the land he bought. His position is,

(*a*) He is so far owner that he can bring actions and exercise other powers for protecting the property from spoliation or waste.

(*b*) He must not knowingly permit any person to cut timber on it or otherwise injure it.

(*c*) He must not cut timber on, or otherwise injure the land himself.

(*d*) He may make such use of the land as he can without deteriorating its value.

The rights of the purchaser after he obtains the certificate of sale, have been discussed in several cases. The view was expressed in a number of them that the only object of the certificate was to give the purchaser authority to take possession of the property, to occupy it and to protect it against others. In *Cotter* v. *Sutherland, Stevens* v. *Jacques*, 18 C.P. 357, Wilson, J., at p. 414, says: "There is nothing in the statute requiring the purchaser to take possession within the period allowed for redemption. He may take possession forthwith, and the owner is never to resume possession unless and until he complete his right to it by redemption. If the purchaser may by the certificate forthwith take possession, he must have the power to turn the owner or other occupant out of possession; and if he may do this within the time of redemption, there is no reason why he may not do so after that time has gone by, so long as the certificate continues in force. There is no period fixed for the determination of the certificate, though it must be avoided when a valid conveyance has been made; but the conveyance need not be made by the sheriff [now the warden and treasurer] until a demand has been made by the purchaser, his heirs or assigns for that purpose; and until made the certificate must be a protection to the purchaser for the land he has bought. I do not see therefore why the certificate should not be a good title, to maintain or to recover the possession, for the purchaser, his heirs or assigns, by the very words of the statute and according to the case of *Doe d. Bell* v. *Orr*, 5 O.S. 433." In *Nelles* v. *White*, 29 Grant, at p. 344, Spragge, C., says: "But the purpose of the certificate being given and its office and legal effect are to give the purchaser certain rights in order to the protection of the property in the meantime, until it is redeemed or becomes his absolutely and I incline to think that the absence of the certificate does not invalidate the deed."

In *McLauchlin* v. *Pyper*, 29 U.C.R. 526, it was held that such a certificate entitled the purchaser to enter upon the land and oust the owner without being liable in trespass.

The purchaser "may use the land without deteriorating its value" during the period allowed for redemption. After the time for redemption has gone by, the certificate still continues in force, and the owner has lost his power to redeem. Between that time and the giving of the deed to the purchaser, the purchaser

could take possession of the land or eject the former owner by authority of the certificate, or defend his possession against an action by the former owner. His rights are as great during the period for redemption as after it has expired. The owner, while he still had the right to redeem, could not eject the purchaser without redeeming. The purchaser has the right under the certificate to the profitable enjoyment of the land.

Proviso.

2. The purchaser shall not be liable for damage done without his knowledge to the property during the time the certificate is in force. R.S.O. 1897, c. 224, s. 194.

The purchaser being forbidden to knowingly suffer any person to cut timber on, or otherwise injure the land, and the law having given him possession and control of the property, he is accountable to the owner, upon being redeemed, for any injury to the property, by reason of the cutting of timber or otherwise, which he has knowingly permitted. This sub-section relieves him from liability for injuries to the land done without his knowledge, between the issue of the certificate and the time the land is redeemed.

Effect of Tender of Arrears, etc.

159. From the time of a tender to the treasurer of the full amount of the redemption money required by this Act, the purchaser shall cease to have any further right in or to the land in question. R.S.O. 1897, c. 224, s. 195.

The tender must be made to the treasurer. It would have no effect, if made to any other officer

From the time specified in section 119 the treasurer is the only person who can receive arrears of taxes, and after the land is advertised for sale, he can receive only the full amount due. If the taxes are paid before the sale, the sale is invalid: *Howe* v. *Thompson*, M.T. 6 Vict.; *Doe d. Sherwood* v. *Matheson*, 9 U.C.R. 321. In the case last cited payment was made to the sheriff while he held the warrant to sell; and the receipt for the payment was produced at the trial. But by some mistake the land was sold for the same taxes in a later year. The sale was set aside.

Payment to the acting collector, when he may receive taxes, is sufficient. It is not necessary to strictly prove his appointment. It is sufficient to show that he acted as such, and was recognized in that capacity by the municipality, without producing the by-law appointing him : *Smith* v. *Redford,* 12 Grant 316.

Payment is effectual to make invalid a tax sale, even though the treasurer to whom the money is paid erroneously applies it on the wrong land, and his books show arrears in consequence against the land sold : *Peck* v. *Munro,* 4 C.P. 363.

Under the Consol. Stat. U.C. cap. 55, section 113, the owner of a part of a whole lot sold for taxes might redeem such part by paying the proportionate amount chargeable against it, and that after sale as well as before it.

In similar terms section 162 of R.S.O. 1897, cap. 224, authorized the treasurer, on satisfactory proof being adduced to him that any parcel of land on which taxes are due had been subdivided, to receive the proportionate amount of taxes chargeable on any sub-division, and leave the other sub-divisions chargeable with the remainder; and to sub-divide the land in his books. But that authority has not been continued in the present Act. See section 127 and the notes thereon.

In *Allan* v. *Hamilton,* 23 U.C.R. 109, the land was sold in October, 1860, for the taxes of 1855, 1856, 1857 and 1859. The sale was under a warrant dated the 11th of June, 1860, the amount paid by the purchaser being $31.51. In January, 1861, the plaintiff applied to the treasurer to find what taxes were in arrear, and on being given a statement paid the amount asked for, $37.48. This amount did not, however, include the costs of sale or the ten per cent. to be paid to the purchaser. The treasurer, in March, 1861, went to the sheriff's office and caused an entry to be made in the book of sales opposite the lot, that the taxes had been paid, that he would pay the purchaser the redemption money, and that no deed was to be given. The sheriff and the treasurer both saw the purchaser, and told him what was done; but in some way not accounted for the sheriff afterwards executed a deed to the purchaser. At the time the treasurer gave the owner the erroneous statement, the sheriff had not made a return of the sale to the treasurer, as required by the statute then in force, and in that way the treasurer made the mistake in the amount. The amount paid to the treasurer for the taxes of 1860 was more than enough to cover the costs of sale and the ten per cent. to be added. The

treasurer was treated as having received the redemption money, and the deed was set aside.

In *Boulton* v. *Ruttan*, 2 O.S. 362, the payment of the redemption money by a stranger was sufficient to divest the purchaser of any rights in the land.

In *Cameron* v. *Barnhart*, 14 Gr. 661, it was held that payment by the owner, to the purchaser at the tax sale, of the amount necessary for redemption, and acceptance by the purchaser of the payment, is effectual in equity as a redemption of the land, though payment was not made to the proper officer. If the purchaser verbally agrees to accept payment personally at a distance from the county town, and the owner acts on this agreement, the purchaser cannot, just before the time for redemption expires, repudiate the agreement when it is too late to pay the money to the treasurer, and insist on holding the land as forfeited.

Actual payment to the treasurer and acceptance of the money by him are not necessary. If the money is tendered to him and he refuses it, the tender is effectual to save the land to the owner: *Cunningham* v. *Markland*, 5 O.S. 645.

Treasurer's Commission.

160. Every treasurer shall be entitled to two and one-half per centum commission upon the sums collected by him, as aforesaid, except that where the taxes against any parcel of land are less than $10, the treasurer shall be entitled to charge, in lieu of his commission, 25 cents; but when the treasurer is paid a salary for his services such commission may, by arrangement with the council, be paid into the funds of the municipality like any other revenue of the municipality. R.S.O. 1897, c. 224, s. 196, *amended.*

This section fixes the scale of the treasurer's remuneration for arrears collected by him after lands are advertised for sale. These charges and the expenses of advertising are to be entered in the list annexed to the warrant to sell under section 136, and are to be included in the advertisement under section 143, also in the certificate of sale under section 157. The miniumum charge on any parcel of land is twenty-five cents.

The council may make the salary of the treasurer, by an arrangement with him, his only remuneration for the services he performs

in connection with the sale of lands for taxes. In that event he collects the per centage for commission, and pays it into the funds of the municipality. In that case, no doubt, the council would agree to become responsible to the treasurer for the costs of advertising.

The treasurer of a town has no authority to bind the municipality to pay the cost of advertising the lands which are for sale for taxes. He is a person appointed for the discharge of certain statutory duties, in regard to which he has no power to bind the corporation. The treasurer should himself give the order for the advertising, and he is the person to pay for it out of the sums received from tax sales for that purpose : *Bank of Commerce* v. *Town of Toronto Junction*, 3 O.L.R. 309.

A county municipality is not liable for the cost of advertising the county treasurer's list of lands for sale for arrears of taxes, although sent to the plaintiff by the county treasurer. The county treasurer does not act as an officer of the corporation in relation to tax sales, and the duties connected therewith are not within the scope of his authority as county treasurer. He is merely *persona designata* on behalf of the local municipality, and a creditor must look to him personally : *Warwick* v. *County of Simcoe*, 36 C.L.J. 461. This decision was quoted and approved in *Bank of Commerce* v. *Town of Toronto Junction*, supra.

Fees, etc., on Sales of Land.

161. Where land is sold by a treasurer according to the provisions of section 143, and following sections of this Act, he may add the commission and other charges which he is authorized by this Act to charge for the services above mentioned, to the amount of arrears on those lands in respect of which such services have been severally performed, and in every case he shall give a statement in detail with each certificate of sale, of the arrears and costs incurred. R.S.O. 1897, c. 224, s. 197.

The directions contained in this section are to some extent a repetiton of what has been already dealt with.

Section 143 (1) directs the treasurer to insert in the copy of the list of lands annexed to the warrant, which forms the advertisement for the sale, in a separate column, a statement of the propor-

tion of costs chargeable on each lot for advertising and for his commission or other lawful charges.

Section 157 directs that the certificate of sale shall show the sum for which the land has been sold, and the expenses of sale. The statement in detail may, however, distinguish commission and the proportionate share of the expense of advertising.

There charges form a lien on the land in the same way as the arrears of taxes, and the land may be sold for them.

Expenses of Search in Registry Office for Description, etc.

162. The treasurer shall, in all certificates and deeds given for lands sold at such sale, give a description of the part sold with sufficient certainty, and if less than a whole lot is sold, then he shall give such a general description as may enable a surveyor to lay off the piece sold on the ground; and he may make search, if necessary, in the registry office, to ascertain the description and boundaries of the whole parcel, and he may also obtain a surveyor's description of such lots, to be taken from the registry office or the government maps, where a full description cannot otherwise be obtained, such surveyor's fee not to exceed $1; and the charges so incurred shall be included in the account and paid by the purchaser of the land sold, or the person redeeming the same. R.S.O. 1897, c. 224, s. 198.

The directions herein as to description apply both to certificates and deeds. For a discussion of defective and insufficient descriptions see the notes on section 22, sub-section 1, clause (*c*), section 136 (1) and section 157. The description must identify the part sold with sufficient certainty, and, if less than a whole lot is sold, the description must be such that a surveyor could go upon the ground and from the description stake out the land sold. The treasurer may go to the registry office and search there for the description and boundaries of the whole parcel. If he is unable otherwise to obtain a full and accurate description, he may obtain the assistance of a surveyor and pay him a fee not to exceed $1.00.

The fees of the registrar for the search in his office, and the fees of the surveyor for making the description, are chargeable against the purchaser as part of the expense he must pay before receiving

a deed, and they are included in the amount required to redeem the lands. It is improper for the treasurer to charge the fee of $1 unless that sum has actually been paid to a surveyor for making the description: *Haisley* v. *Somers*, 15 O.R. at p. 280.

Treasurer Entitled to no Other Fees.

163. Except as hereinbefore provided, the treasurer shall not be entitled to any other fees or emoluments whatever for any services rendered by him relating to the collection of arrears of taxes on lands. R.S.O. 1897, c. 224, s. 199.

"Except as hereinbefore provided" refers to the provisions of section 160. The fees in that section mentioned are the only sums which the treasurer is entitled to charge for his services in collecting arrears of taxes. He is entitled to make additional charges under section 165, sub-sections 2 and 6, for the notice to encumbrancers and for the deed.

"It is a maxim of law that for services rendered in the administration of justice no fee can be demanded, except such as can be shown to have a clear legal origin, either as being specially allowed in some Act of Parliament, or as being sanctioned by some court or officer that has been permitted to award a fee for the service. . . . We are of opinion that the fees which have been illegally exacted can be recovered back in an action for money had and received": *Hooker* v. *Gurnett*, 16 U.C.R. 180.

Owners May, within One Year, Redeem Estate Sold by Paying Purchase Money and 10 per cent. thereon.

164. Subject to the provisions of sub-sections 2 and 3 of section 148, the owner of any land sold for taxes, or his heirs, executors, administrators or assigns, or any other person, may, at any time within one year from the day of sale, exclusive of that day, redeem the estate sold by paying or tendering to the county treasurer for the use and benefit of the purchaser or his legal representatives, the sum paid by him, together with ten per cent. thereon; and the treasurer shall give to the person paying such redemption money, a receipt stating the sum paid and the object of payment; and such receipt shall be evidence of the redemption. R.S.O. 1897, c. 224, s. 200.

The provisions of sub-sections 2 and 3 of section 148 are intended to secure to the municipality the whole amount of the arrears, expenses and interest, in case land which was sold for less than the arrears and charges against it, is redeemed. If it is sold to some person for a part only of the taxes in arrear and other charges, the person seeking to redeem it must pay the full amount of the taxes, together with the expenses of sale and the ten per cent. added thereto. Section 148, sub-section 2. If the land has been bought by the municipality, then the arrears, the expenses of sale, all taxes falling due in the interval between sale and redemption, and the interest thereon must be paid. Section 148, sub-section 3.

The persons who may redeem are,

(*a*) The owner.

(*b*) His heirs.

(*c*) His executors or administrators.

(*d*) His assigns, including encumbrancers.

(*e*) Any other person.

The term, "any other person," is wide enough to include a stranger who has no interest in the property. He may redeem the land: *Cunningham* v. *Markland*, 5 O.S. 645.

The assignee of property acquiring an interest therein subsequent to the sale for taxes, may redeem: *Gilchrist* v. *Tobin*, 7 C.P. 141. But after the tax deed has issued, the position of such a person would now be governed by section 175. See *Ruttan* v. *Burke*, 7 O.L.R. 56.

Under 13 and 14 Vict. c. 67, the only person entitled to redeem was the owner. Under that statute it was not necessary to show a good paper title as owner; when a man was in possession of land, living on it, and claiming it as his own, he had a right to redeem it: *McDougall* v. *McMillan*, 25 C.P. 75.

"Within one year of the day of sale," is on the ordinary principles of construction, exclusive of that day. Land was sold for taxes under a statute which gave the right to redeem within twelve calendar months. "The sale being on the 7th of October, 1840, that day must according to the authorities be excluded from the computation of the twelve calendar months *within* which the land might be redeemed. The right of redemption included the whole of the 7th of October, of the following year; but unless there can be two eighth days of October within twelve consecutive calendar months, it could not extend beyond the 7th October, 1841. The

defendant, or those under whom he claims, had that day on which to redeem—it was within twelve calendar months from the time of sale. At the expiration of the twelve calendar months, *i.e.*, at the end of the 7th October, 1841, the right to redeem was gone:'' *Proudfoot* v. *Bush*, 12 C.P. 52; *Boulton* v. *Ruttan*, 2 O.S. 362.

It is only when the purchaser has paid the whole of the arrears and the expenses, as the purchase price of the land, that the person redeeming it is entitled to redeem for the sum paid by the purchaser and ten per cent. added.

The person paying the redemption money is entitled as of right to a receipt. The treasurer is obliged to give it. The receipt must show the sum paid and the object of payment. Such receipt is made evidence of the redemption. The receipt to be available as evidence must conform to the requirements of this section. To be so used it must give the particulars therein mentioned. In *Re Morton*, 7 O.R. 59, the certificate of the treasurer that land had not been redeemed was sufficient evidence without an affidavit of the treasurer to that effect.

The money when paid belongs to the purchaser at the tax sale, and not to the municipality, subject to the exceptions in subsections 2 and 3 of section 148. The payment is ''for the use and benefit of the purchaser or his legal representatives.'' The owner of the land may prevent the sale by paying the sum charged against it to the treasurer. He may make this payment under protest, and contest the legality of the demand; but after the sale of the land the treasurer cannot receive it as a payment to the municipality. Thenceforth he can only receive under authority of this section for the use and benefit of the purchaser, and this limitation establishes that the receipt of redemption money by the treasurer is not a receipt by the municipality, whose claim for taxes must be presumed to have been satisfied by the sale of the land: *Boulton* v. *The Corporation of York and Peel*, 25 U.C.R. 21.

But it must be observed that this applies only to *the sum paid by him* together with ten per cent. thereon. If the purchaser has bought for less than the full amount against the land, he receives back only his purchase money with ten per cent. added. The remainder of the redemption money belongs to the municipality.

See section 159 and the notes thereon for the effect of a tender to the treasurer and for the effect of payment to, and acceptance

by, the purchaser at the tax sale of the redemption money from the owner of the land.

The land may be redeemed within thirty days after the treasurer has sent out the notices mentioned in the next section, but the addition to the arrears, etc., is then fifteen per cent.

Deed of Sale, if not Redeemed.

165.—(1) If the land is not redeemed within the period allowed for redemption, being one year from the day of sale exclusive of the day of sale as aforesaid, then the treasurer before the execution of the tax deed shall make or cause to be made search in the Registry Office and in the Sheriff's Office and ascertain whether or not there are mortgages or other incumbrances affecting the lands sold and who is the registered owner of the land.

Notice to Incumbrancers.

(2) The treasurer shall forthwith send to each incumbrancer (if any) and to the registered owner by registered letter mailed to the address of such incumbrancer or owner if known to the treasurer and if such address is not known to the treasurer then to any address of such incumbrancer or owner appearing in the incumbrance or deed a notice stating that the incumbrancer or owner is at liberty within thirty days from the date of the notice to redeem the estate sold by paying to the treasurer the amount of the purchase money together with 15 per cent. thereon added thereto and the amount of the charges for the searches aforesaid and postage and $1 for the notice, the amount aforesaid to be specified in the notice.

Receipt if Arrears Paid.

(3) If within the time aforesaid payment of the said amount is made by any such incumbrancer or by the owner of the land the treasurer shall give to the person making the payment a receipt stating the sum paid and the object of the payment, and the same shall be evidence of the redemption, and any incumbrancer making the payment may add the amount to his debt.

Who to be Entitled to Receipt.

(4) In case of payment by the owner the receipt aforesaid shall be given to him and in case of payment by one or more incumbrancers and not by the owner, the receipt shall be given to that incumbrancer who is first in priority. The amount paid by other persons shall be repaid to them.

The year having gone by without the land being redeemed, the treasurer is required to send a notice to every person who seems to have an interest in the land.

To ascertain who these are, he searches in the Registry Office for the name and address of the registered owner of the land, and of every mortgagee or other incumbrancer; and also in the Sheriff's Office for the name and address of every person who has a lien on the land by reason of having an execution in the sheriff's hands.

Having found who these are, he sends to each a notice. If he knows the address of each person, or by inquiry ascertains it, he sends the notice to that address. If he does not know it, he sends it to such address as the instruments in the Registry Office disclose.

The notice is to state that the incumbrancer or owner may, within thirty days from the date of the notice, redeem the estate sold on paying the *amount of the purchase money* with 15 per cent. added, the amount of the charge for the searches, postage and $1 for the notice. The amount must be specified in the notice. The treasurer is not obliged to himself make the searches. He may *cause* them to be made. It would seem that, if he found it necessary to employ a solicitor to make the searches, the solicitor's fees would be ''charges for the searches aforesaid.'' The fees of the Sheriff and the Registrar are to be included in the amount.

Sub-sections (3) and (4) show how payments are to be accepted, and how they are to be disposed of, if more than one person pays the same arrears. See the notes on section 164.

It may be noted that section 164 is subject to the provisions of section 148, sub-sections 2 and 3. If the land is redeemed within the year, these sub-sections govern. This section is not expressed to be ''subject to'' the provisions of any other section. An attempt must therefore be made to reconcile this section and section 148 ,sub-sections 2 and 3. It would seem that the draftsman had not section 148 in mind when this section was added to

the Act. Some of its terms are applicable only to the regular sale for taxes, at which the purchaser has paid the whole of the arrears and charges.

If the sale has been made for a part of the taxes, under section 148, sub-section 2, the owner is not entitled to redeem on paying the *purchase money* and charges and fifteen per cent. additional. He must pay the whole of the arrears and charges and ten per cent. additional *within the year;* and it was not the intention, we may perhaps assume, to allow him to redeem within a month later at a less amount; though the phrase, "the amount of the purchase money" suggests that view. The purchase money at an adjourned sale is often only a small fraction of the arrears of taxes.

If the sale has been made to the municipality under section 148, sub-section 3, there is quite as great a difficulty. Then the the whole of the arrears and charges have been paid by the purchaser. But the owner cannot, under sub-section 3 of section 148, redeem without paying in addition, all taxes, including local improvement rates, and interest thereon, of a later date. That sub-section is silent as to any addition of ten per cent. upon the arrears for the redemption *within* the year. Fifteen per cent. could easily be added to the amount of the purchase money in this case, but the later taxes would also have to be included in the payment to redeem, and the prescribed notice is silent, and therefore misleading, in regard to them.

Payment of Redemption Money to Tax Purchaser.

(5) The redemption money after deducting the charges aforesaid for searches, postage and notice shall be paid by the treasurer to the tax purchaser or his assigns or other legal representatives.

This sub-section is meant to apply only to the instances in which the purchaser has paid the whole amount of the arrears, costs and expenses. If he has bought under section 148, subsection 2, at the adjourned sale for perhaps a small portion of the arrears, and the owner has paid the full amount of the arrears and expenses, including commission with fifteen per cent. added, and the subsequent charges, is it the intention that the whole of this sum, except the charge for search notices, etc., shall be paid over to the purchaser? If the land had been redeemed under section 164 *within the year* he would have received, not the redemption money, but the *sum paid by him* and ten per cent thereon.

The whole of the preceding part of section 165 requires to be recast. It was evidently drawn without keeping sales under sub-sections 2 and 3 of section 148, in mind. The result is that the section is inconsistent with section 148, and consequently difficult of application. It may, perhaps, be assumed that section 148 governs.

If land is sold at the adjourned sale for a portion only of the arrears and charges, the excess of the redemption money over "the sum paid by the purchaser together with ten per cent. thereon," belongs to the municipality. R.S.O. 1897, cap. 224, section 184, made this very plain. Its concluding words were, "the treasurer shall account to the local municipality for the full amount of taxes paid." This Act contains no similar provision, but the inference from sub-sections 2 and 3 of section 148 is irresistible that the municipality is to be paid the full amount of the arrears.

Execution and Delivery of Deed.

(6) If the redemption money is not paid within the time aforesaid the treasurer upon payment of the said charges for searches, postage and notice and $1 for the deed, shall with the warden execute and deliver to the purchaser or his assigns or other legal representatives a tax deed in duplicate of the land sold.

Deed may Include Several Lots.

(7) Such deed if requested may include any number of lots which are to be conveyed to the same person. *New.*

"The time aforesaid" is within thirty days of the date of the notice given by the treasurer under sub-section 2 of this section. The notice is dated the day on which it is mailed by registered letter. The thirty days would be exclusive of the day of mailing the notice.

The purchaser must pay the charges for searches, postage, $1 for the notice and $1 for the deed. The treasurer is entitled as of right to have these payments made to him before he executes the deed.

The deed must be in duplicate. It is to be given to the purchaser, his assigns, or his legal representatives.

Upon tender by the purchaser, his assigns or other legal representatives, of the proper amount therefor, and demand of a deed and a refusal, an action for damages will be against the treasurer. See *Spafford* v. *Sherwood,* 3 O.S. 441; *Boulton* v. *Ruttan,* 2 O.S. 362; *Doe d. Bell* v. *Orr,* 5 O.S. 433.

If the person entitled to the deed requests it, any number of lots to which he is entitled at the same sale, may be included in one deed, for which there is only a single fee of $1. If he does not make the request to have all his lots so included, a separate deed may be made for each lot, and charged for.

Meaning of "Treasurer" and "Warden."

166. The words "treasurer" and "warden" in the preceding section shall mean the person who at the time of the execution of the deed in such section mentioned holds the said office. R.S.O. 1897, c. 224, s. 202.

The necessity for an enactment to enable the persons holding the offices of treasurer and warden when the deed is to issue, to complete the work of their predecessors in office, is illustrated by *McMillan* v. *McDonald,* 26 U.C.R. 454. In that case the warrant was issued in 1837 to a sheriff who ceased to hold office in 1838. The warrant was returnable in 1838, the sale was made in 1840. The deed was executed by him in 1841, more than two years after he left office. The sale was invalid. See also *Jones* v. *Cowden,* 34 U.C.R. 345; *Bryant* v. *Hill,* 23 U.C.R. 96; *McDougall* v. *McMillan,* 25 C.P. 75; *McDonald* v. *McDonnell,* 24 U.C.R. 424. In *Ferguson* v. *Freeman,* 27 Gr. 211, it was held that the proper officers, under section 150 of 29 & 30 Vict., cap. 53, similar to sub-section 6 of section 165 of the present Act, to execute the tax deed, are the persons holding the offices of treasurer and warden when the deed is demanded, not the persons who held those offices at the time of the sale. See also *Bell* v. *McLean,* 18 C.P. 416.

Contents of Deed and Effect thereof.

167. The tax deed shall be in the form, or to the same effect as in Schedule L to this Act, and shall state the date and cause of the sale, and the price, and shall describe the land according to

the provisions of section 162 of this Act, and shall have the effect of vesting the land in the purchaser, his heirs, assigns or legal representatives, in fee simple or otherwise, according to the nature of the estate or interest sold; and no such deed shall be invalid for any error or miscalculation in the amount of taxes or interest thereon in arrear, or any error in describing the land as "patented" or "unpatented" or "held under a license of occupation" or "held under lease" or otherwise. R.S.O. 1897, c. 224, s. 203, *amended.*

The following provisions are applicable to the tax deed, which by sub-section 6 of section 165 is to be in duplicate:

(*a*) It must be in the form or to the effect in Schedule L to this Act.

(*b*) It must give the date of the sale and

(*c*) The cause of the sale.

(*d*) It must describe the land as directed by section 162.

(*e*) If the fee is in the municipality, it must be distinctly expressed in the deed that it conveys only the interest of the lessee or tenant. Section 155.

(*f*) If the Crown has an interest in the land, it must be distinctly expressed in the deed that it conveys only the interest of persons other than the Crown in the land. Section 151, sub-section 2.

The deed has the effect of vesting the lands in the purchaser, his heirs, assigns or legal representatives, in fee simple or otherwise, according to the nature of the estate or interest sold. The interest of the Crown or of a municipality cannot be sold for taxes, and even if the deed purports to be in fee simple, it cannot affect those interests. See section 151, sub-section 2. See also sections 35 and 139.

An error or miscalculation in the amount of the taxes does not make the deed invalid. In *Claxton* v. *Shibley* (1885), 10 O.R. 295, there was no illegal excess of taxes originally imposed on the land; but in transcribing the amount it would seem that $2.50 was written instead of $2.30, the three being mistaken for five. It was decided, reversing the judgment in the same case reported 9 O.R. 451, that this was an error or miscalculation, within the meaning of this section, and the tax deed could not be set aside for it. In *Hall* v. *Farquharson* (1888), 15 A.R. 457, Patterson, J. A., says: "This selling for more than was due, if supportable at all, could only be so by

aid of section 155 or 156 [now 172 and 173]. Those sections being out of the question, the doctrine which was acted on by Van Koughnet, C., in *Yokham* v. *Hall*, 15 Gr. 335, and followed in *Edinburgh Life Co.* v. *Ferguson*, 32 U.C.R. 253, and other cases, is fatal to the defence. It has sometimes been urged in argument, though, I think, never assented to by any of the courts, that that doctrine is now at variance with section 137 of R.S.O. 1877, cap. 180 [now section 148], which (as section 138 of 32 Vict. cap. 36) became law a few months after *Yokham* v. *Hall* was decided, and which concludes with the words: 'And the amount of taxes stated in the treasurer's advertisement shall in all cases be held to be the correct amount due.' The argument has plausibility only when the words are separated from their context. . . . But when section 155 (now 172,) does not apply, the reading of section 137 (now 148 (1), that would save a sale for more taxes than were really in arrear, would have equal force, if there were no taxes in arrear or none in arrear for those years. This would certainly not be in accord with opinions which have prevailed since the Act of 1869, as well as before it. See *Hamilton* v. *Eggleton*, 22 C.P. 536; *McKay* v. *Crysler*, per Gwynne, J., 3 S.C.R. 436, 472; *Charlton* v. *Watson*, 4 O.R. 489.''

The sale of patented lands as unpatented is not helped by this section. The deed could only, under such a description, pass the interest of the locatee, lessee or licensee from the Crown. As there is no such interest, there is nothing upon which the deed could operate. It would seem, too, that the curative provision in this section only applies to an error in the *deed* in describing the lands as patented, unpatented or held under license or leave of occupation. It does not cure such a defect in the *advertisement*. It only cures an error in the description not an *omission* to say whether the land is patented, etc.: *Scott* v. *Stuart*, 18 O.R. 211. See also *Hall* v. *Hill*, 2 E. & A. 569 and *McAdie* v. *Corby*, 30 U.C.R. 349; *Kempt* v. *Parkyn*, 28 C.P. 123. A deed of unpatented lands as patented would also be ineffectual to pass more than the interest of others than the Crown. To misdescribe the estate sold, at any rate in the advertisement, may invalidate the sale, as not being openly and fairly conducted: *Scott* v. *Stuart*, supra.

Deed to be Registered within Eighteen Months to Obtain Priority.

168.—(1) The deed shall be registered in the registry office of the registry division in which the lands are situate, within eighteen months after the sale, otherwise the persons claiming under the sale shall not be deemed to have preserved their priority as against a purchaser in good faith and for valuable consideration who has registered his deed prior to the registration of the tax deed. *See also R.S.O., Cap.* 136, *Sec.* 90.

If the purchaser at the tax sale fails to procure and register his tax deed within eighteen months after the sale, he runs great risk of losing his purchase. A purchaser of the estate or interest of the registered owner may acquire priority over the purchaser at the tax sale. To do so he must

(*a*) Have bought in good faith,

(*b*) For valuable consideration,

(*c*) Have registered his deed prior to the registration of the tax deed.

The Registry Act, R.S.O., cap. 136, section 90, contains a similar provision. The general policy of that Act is to give priority to a subsequent registered instrument over a prior unregistered one, if the subsequent purchaser or mortgagee is without *actual notice* of the prior instrument and is a purchaser or mortgagee for valuable consideration. This section gives no such effect to actual notice, but it requires good faith on the part of the subsequent purchaser. Similar language as regards bills of sale and chattel mortgages has in a number of cases been construed by the courts. In *Moffatt* v. *Coulson*, 19 U.C.R. 341, notice of the prior unregistered mortgage was not inconsistent with good faith on the part of a subsequent purchaser. Robinson, C.J., said: "The only question, then, is whether this defendant should be held to be a subsequent purchaser in good faith, within the meaning of the second section, in which case only he would be entitled to hold against the mortgage, in consequence of the defective description of the horses. I think he should be so held, for there seems to be no reason to doubt upon the evidence that he bought in good faith, in this sense, that he paid a fair consideration for the horse which is in question, and did not buy him collusively, in order to assist the mortgagee in placing him out of the plaintiffs'

reach." The other members of the court concurred in this view. In *Marthinson* v. *Patterson*, 19 A.R. 188, Burton and MacLennan, JJ.A., approved of *Moffatt* v. *Coulson*, supra. The other members of the court expressed no opinion. See also *Tidey* v. *Craib*, 4 O.R. 696; *Winn* v. *Snider*, 26 A.R. 384.

In *Edwards* v. *Edwards*, L.R. 2 Ch. D. 291, the Court of Appeal took the view that a subsequent purchaser is not prevented from being a buyer in good faith by his having notice of a prior unregistered bill of sale. See also *Smith* v. *McLandress*, 26 Gr. 17, in which Spragge, C., says: "There is no room to question that the purchase by the defendant from Helliwell was in good faith, if made without actual notice of the purchase by the plaintiff at the tax sale." See also *Acton* v. *Innis*, 26 Gr. 42; *Jones* v. *Cowden*, 34 U.C.R. 345.

Registration of Deeds.

(2) The registrar or deputy registrar upon production of the duplicate deed, shall enter the same in the registry book, and give a certificate of such entry and registration in accordance with the *The Registry Act*. R.S.O. 1897, c. 224, s. 204, *amended*.

The seal of the corporation and the signature of the treasurer and warden do not require to be verified by affidavit. The mere production of the deed in duplicate is sufficient, on payment of the Registrar's fee. Section 51 of *The Registry Act*, R.S.O. 1897, cap. 136, section 47, makes the seal of a court of record or of a corporation, with the signature of the proper officer, sufficient authentication of the instrument for the purpose of registration.

On what Certificate Registrars to Register Sheriff's Deeds of Lands Sold for Taxes before 1851.

169. As respects land sold for taxes before the 1st day of January, 1851, on the receipt by the registrar of the proper county or place of a certificate of the sale to the purchaser under the hand and seal of office of the sheriff, stating the name of the purchaser, the sum paid, the number of acres and the estate or interest sold, the lot or tract of which the same forms part, and the date of the sheriff's conveyance to the purchaser, his heirs, executors, administrators or assigns, and on production of the

conveyance from the sheriff to the purchaser, his heirs, executors, administrators or assigns, such registrar shall register any sheriff's deed of land sold for taxes before the 1st day of January, 1851; and the mode of such registry shall be the entering on record a transcript of such deed or conveyance. R.S.O. 1897, c. 224, s. 205.

See *Jones* v. *Cowden*, 34 U.C.R. 345; 36 U.C.R. 495; *Doe d. Brennan* v. *O'Neil*, 4 U.C.R. 8.

Sheriff to give Certificate of Execution of Conveyances after January 1st, 1851, and before 1st January, 1866, for Registration.

170. As respects land sold for taxes after the 1st day of January, 1851, and prior to the 1st of January, 1866, the sheriff shall also give the purchaser or his assigns, or other legal representatives, a certificate under his hand and seal of office of the execution of the deed, containing the particulars in the last section mentioned; and such certificate, for the purpose of registration in the registry office of the proper registry division of any deed of lands so sold for taxes, shall be deemed a memorial thereof; and the deed shall be registered, and a certificate of the registry thereof shall be granted by the registrar, on production to him of the deed and certificate, without further proof; and the registrar shall, for the registry and certificate thereof, be entitled to seventy cents and no more. R.S.O. 1897, c. 224, s. 206.

See *Carroll* v. *Burgess*, 40 U.C.R. 381.

Treasurer to Enter in a Book Descriptions of Lands Conveyed to Purchasers.

171. The treasurer shall enter in a book, which the county council or council of the city or town as the case may be shall furnish, a full description of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto, and such book, after such entries have been made therein, shall, together

with all other documents relating to lands sold for taxes be by him kept among the records of his office. R.S.O. 1897, c. 224, s. 207, *amended.*

The treasurer shall enter in a book a full description of every parcel of land conveyed by him to purchasers for arrears of taxes. He is to prepare and keep an index to the book. He must be in a position at any time to give a certificate regarding arrears of taxes, and the certificate should show that the land has not been sold within eighteen months. See section 130 and Schedule K., in which the form of the treasurer's certificate is given.

See the last note on section 172 as to the treasurer's books as evidence.

Deed to be Binding if Land not Redeemed in One Year.

172. If any part of the taxes for which any land has been sold, in pursuance of any Act heretofore in force in this Province or of this Act, had at the time of sale been in arrear for three years as mentioned in section 121 and the land is not redeemed in one year after the sale, such sale, and the official deed to the purchaser (provided the sale was openly and fairly conducted) shall notwithstanding any neglect, omission or error of the municipality or of any agent or officer thereof in respect of imposing or levying the said taxes or in any proceedings subsequent thereto be final and binding upon the former owner of the land and upon all persons claiming by, through or under him, it being intended by this Act that the owner of land shall be required to pay the taxes thereon within three years after the same are in arrear or redeem the land within one year after the sale thereof; and in default of the taxes being paid or the land being redeemed as aforesaid, the right to bring an action to set aside the said deed or to recover the said land shall be barred.

No other sections of the Assessment Acts from time to time in force in Ontario have given rise to so much controversy or have been so frequently the subjects of judicial construction as this section and section 173.

As originally passed in 1866 this section was part of section 131 of 29 & 30 Vict., cap. 53; and was combined with what is now section 142. It then read as follows:

"It shall not be the duty of the treasurer of any county to make inquiry before effecting a sale of lands for taxes, to ascertain whether or not there is any distress upon the land, nor shall he be bound to inquire into or form any opinion of the value of the land; and if any tax in respect to any lands sold by the treasurer after the passing of this Act, in pursuance of and under the authority thereof, shall have been due for the fifth year or more years preceding the sale thereof, and the same shall not be redeemed in one year after the said sale, such sale and the official deed to the purchaser of any such lands (provided the sale shall be openly and fairly conducted) shall be final and binding upon the former owners of the said lands, and upon all persons claiming by, through or under them, it being intended by this Act that all owners of land shall be required to pay the arrears of taxes due thereon within the period of five years, or redeem the same within one year after the treasurer's sale thereof."

In 1869 by 32 Vict., cap. 36, section 130, the period for which arrears had to accumulate in order to bring the land to sale, was shortened from five years to three, but in every other respect the section was unchanged. In the Revised Statutes of 1877, cap. 180, section 155, it appeared as follows:

"If any tax in respect of any land sold by the treasurer, in pursuance of and under the authority of 'The Assessment Act of 1869' or of this Act, has been due for the third year or more years preceding the sale thereof, and the same is not redeemed in one year after the said sale, such sale and the official deed to the purchaser of any lands (provided the sale be openly and fairly conducted) shall be final and binding upon the former owners of the said lands, and upon all persons claiming by, through or under them—it being intended by this Act that all owners of land shall be required to pay the arrears of taxes due thereon within the period of three years, or redeem the same within one year after the treasurer's sale thereof." 32 Vict., cap. section 130. See sections 140, 147, 148.

It continued in substantially that form, with the exception of some references to intervening Acts under which sales had taken place, until the enactment of the section under consideration. The changes which have been made in the recent consolidation

and revision are: (*a*) the omission of the words "and under the authority of" immediately after "in pursuance of" in the second line of the section; (*b*) the substitution of "had at the time of the sale been in arrear for three years as mentioned in section 121," for "has been due for the third year or more than three years preceding the sale thereof;" (*c*) the insertion of the words "notwithstanding any neglect, omission or error of the municipality, or of any agent or officer thereof in respect of imposing or levying the said taxes or in any proceedings subsequent thereto;" and (*d*) the addition of the words "and in default of the taxes being paid or the land being redeemed as aforesaid, the right to bring an action to set aside the said deed or to recover the said land shall be barred."

Before proceeding to consider the effect of the amendments, it will be well, perhaps, to consider the conditions upon which alone this section is applicable to a tax sale. Four things must concur in order to bring the section into operation. (1) There must have been some part of the taxes in arrear for three years prior to the sale, within the meaning of section 121. (2) The sale must have been in pursuance of some Act heretofore in force or of this Act. (3) The sale must have been openly and fairly conducted. (4) The land must not have been redeemed within the time allowed by law, which is in this section put at a year, but which under section 165 is at least thirteen months.

(1) *There must have been taxes in arrear for three years.* It may be safely concluded that no sale of land for taxes is valid and binding, if no taxes were in arrear for the statutory period. Neither this section nor section 173 will cure such an essential absence of jurisdiction to sell the land at all: *Donovan* v. *Hogan*, 15 A.R. 432; *Hamilton* v. *Eggleton*, 22 C.P. 536; *McKay* v. *Crysler*, 3 S.C.R. 436. In *O'Brien* v. *Cogswell*, 17 S.C.R. at p, 431 Strong, J., thus summarizes the law on this point: "If the legislature has in unequivocal words said that a man's property may be sold for taxes and his title divested, although the tax for which it was sold was illegally imposed, and although the owner never had any notice of its imposition, the courts are bound to give effect to what the law-giver has so enacted, and the gross hardship and flagrant injustice of such a law is no answer to an action invoking its judicial enforcement and application. These considerations do, however, constitute grounds for very carefully and strictly construing an enactment relied upon as warranting such a harsh and unreason-

able conclusion and for so restricting its operation as to avoid injustice, if the language will possibly admit of such a construction. . . . We are bound by well settled principles governing the construction of statutes already adverted to, to construe these words, if possible, in such a way as not to give them the violent and unjust operation contended for, according to which land which may have been illegally assessed for taxes might be sold and conveyed behind the back of the owner without the slightest notice having been given to him.'' If no taxes are in arrear, neither of the curative sections makes the sale valid: *Hall* v. *Farquharson*, 15 A.R. 457.

The onus of proof that there were taxes in arrear to justify a sale rests upon the person who seeks to uphold the sale. An Act confirming all sales of vacant land prior to 1899 in Toronto Junction, though general in its terms, cannot, having regard to the strong view of the Supreme Court of Canada upon the subject, be held to give title whether or not there were any taxes in arrear when the sale took place. ''Sales . . . for taxes'' must be held to mean sales for taxes for which the lands might rightly be sold: *Hislop* v. *Joss*, 3 O.L.R. 281. In *Jeffrey* v. *Hewis*, 9 O.R. 364, the whole of the taxes had been paid, but owing to an error in the assessment, they were credited on only half of the lot. The sale was set aside after the lapse of two years, and the decision in *Bank of Toronto* v. *Fanning*, 18 Gr. 391 and *Smith* v. *Midland Ry. Co.*, 4 O.R. 494, were questioned.

(2) *The sale must be in pursuance of some Act heretofore in force or of this Act.* ''A thing is to be considered as done in pursuance of the Act when the person who does it is acting honestly and bona fide, either under the powers which the Act gives or in the discharge of the duties which it imposes:'' *Smith* v. *Shaw*, 10 B. & C. 284; *Armstrong* v. *Bowdidge*, 16 C.B. 358. "It is impossible to conceive that the legislature intended, where such irregularities have occurred, to entitle the defendant to a verdict on simply proving that what he did *without the authority of the Act* he did *in pursuance of it*, i.e. in the belief that under the Statute he was justified in doing it:" *Thomas* v. *Stephenson*, 2 El. & Bl. 108. The import of the words ''in pursuance of'' has often been considered in connection with statutes for the protection of public officers. The general trend of the cases is that if any person entrusted with the duty of putting the law in motion, honestly and not unreasonably, though it may be erroneously,

believes in the existence of facts which, if existent, would justify his acting, his conduct will be in pursuance of, or under or by virtue of, the statute under which he believes he is acting. *Herman* v. *Seneschal,* 13 C.B.N.S. 392; *Roberts* v. *Orchard,* 2 H. & C. 769; *Judge* v. *Selmes,* L.R. 6 Q.B. 724; *Chamberlain* v. *King,* L.R. 6 C.P. 474; *Booth* v. *Cline,* 10 C.B. 827; *Midland Ry.* v. *Withington,* 11 Q.B.D. 788; *Lea* v. *Facey,* 19 Q.B.D. 352.

In strictness anything not authorized by a statute cannot be "in pursuance" or "under or by virtue" of it: Stroud's Judicial Dictionary.

It cannot be successfully contended that a sale is in "pursuance of an Act," if the prohibitions of that Act in the most essential matters have been disregarded, or if the most important and imperative directions contained in it have not been complied with. The following defects have been held to invalidate a sale. Where they subsist, the sale is not in pursuance of the Act.

(*a*) An assessment of lots en bloc after they are sub-divided, without regard to the sub-division as required by section 22, sub-section 3: *Wildman* v. *Tait,* 32 O.R. 274, affirmed 2 O.L.R. 307. This requirement is essential. *Ib.* See section 22, sub-section 3; section 94, and section 136. So also the sale of several lots for a lump sum, though portions of each lot had been sold and belonged to a railway company. It was impossible in that case to pay the taxes against the plaintiff's land without paying the taxes against other land: *Fleming* v. *McNab,* 8 A.R. 656; *Ley* v. *Wright,* 27 C.P. 522.

(*b*) An indefinite description: *Wildman* v. *Tait,* 32 O.R. 274, affirmed 2 O.L.R. 307. For the effect of an indefinite description in a tax certificate see *Burgess* v. *Bank of Montreal,* 3 A.R. 66, 42 U.C.R. 212. See section 22, subsection 3. See also the cases relating to indefinite descriptions collected under sections 136 and 94.

(*c*) The failure of the treasurer to furnish the clerk with the list of lands liable to be sold, required by section 121: *Ruttan* v. *Burk,* 7 O.L.R. 56. The failure of the treasurer to furnish to the clerk the list of lands liable to be sold for taxes was in that case not cured by a special Act which provided that "All assessment rolls of the said town heretofore finally passed and all sales of land in the said town for arrears of taxes had before the 14th day of January, 1899, are hereby confirmed and validated." The court followed *Deverill* v. *Coe,* 11 O.R. 222, in which it was held, under a

similar Act, that the defect was fatal. The reason given by the late Chief Justice Armour at p. 241 was that unless the provisions of sections 121, 122 were substantially complied with, the taxes for which the land was sold could not be said to be due and in arrear, and the land could not be said, in the absence of the performance of these conditions, to be land sold for taxes due or for arrears of taxes, within the meaning of *The Assessment Act* so as to render the sale valid and binding after the intervals fixed by the Act. See *Fenton* v. *McWain*, 41 U.C.R. 239. See also section 135 and the cases thereon.

(*d*) The failure of the clerk to furnish to the assessor a copy of the treasurer's list of the lands liable to be sold for taxes: *Wildman* v. *Tait*, 32 O.R. 274; *Boland* v. *City of Toronto*, 32 O.R. 358; *Dalziel* v. *Mallory*, 17 O.R. 80.

(*e*) No return by the assessor to the clerk and no notice to the owner as required by section 122: *Boland* v. *City of Toronto*, 32 O.R. 358. In *Hall* v. *Farquharson*, 15 A.R. 457, Patterson, J.A., expressed the opinion that it would be difficult to uphold a sale where the assessor had not notified the owner that his land was liable to sale. In *Dalziel* v. *Mallory*, 17 O.R. 80, the same view was expressed by Proudfoot, J., and also in *Haisley* v. *Somers*, 13 O.R. 600.

(*f*) No return of unpaid taxes made by the collector as required by sections 113 and 114. "The duties prescribed in section 135 [now 113] are enacted as the basis and foundation of all subsequent proceedings which are authorized to be taken for the recovery of taxes not paid while the roll remains in the collector's hands unreturned; and that therefore, the requirements prescribed by the section are imperative": *City of Toronto* v. *Caston*, 30 S.C.R., per Gwynne, J., at p. 395; *Wildman* v. *Tait*, 32 O.R. 274; *Boland* v. *City of Toronto*, 32 O.R. 358.

(*g*) No return by the clerk to the treasurer of the lists of lands liable to be sold with the assessor's entries thereon as required by section 122: *Wildman* v. *Tait*, 32 O.R. 274; *Love* v. *Webster*, 26 O.R. 453; *Boland* v. *City of Toronto*, 32 O.R. 358; *Dalziel* v. *Mallory*, 17 O.R. 80. In *Kennan* v. *Turner*, 5 O.L.R. 560, the absence of the return required by the statute was held to be cured by this section in its former form; but there had been a substantial compliance with the requirements of the Act in this respect, and the sale was fairly conducted. The owner had every notice and

every opportunity to which he was entitled. He could not have been prejudiced by the irregularity. See sections 122 and 135.

(*h*) An illegal imposition of rates. Where they are required to be imposed by by-law and no by-law is passed: *Whelan* v. *Ryan*, 20 S.C.R. 65. "What was done appears to have been done in open and wilful disregard of the law relating to the assessment of and levying a tax upon land in the province; and I am of opinion further that the statutes of the Province of Manitoba relied upon as making valid deeds executed to give effect to sales of land for taxes have no application to deeds executed by the heads of municipalities purporting to convey lands as sold for arrears of taxes in cases where in point of law the land so purported to be sold was not liable to be assessed and taxed by the municipality; nor to cases where, although liable to be assessed, no assessment was in point of fact made as required by law, but on the contrary, as in the present case, the essential steps required by law to be taken to effect a valid assessment and a valid imposition of a rate never were taken, and the law in that respect was utterly disregarded and as it were set at defiance." *Ib.* per Gwynne, J., at p. 73.

(*i*) Failure of the collector to distrain, there being sufficient goods on the premises for that purpose: *City of Toronto* v. *Caston*, 30 S.C.R. 390; *Boland* v. *City of Toronto*, 32 O.R. 358. But see now sec. 89, note 5.

(*j*) No valid assessment of the land: *McKay* v. *Crysler* (1879), 3 S.C.R. 436. When a part of the land assessed is not assessable, and the owner can not pay the taxes which he should pay without paying the taxes of others, the sale is invalid: *Ley* v. *Wright*, 27 C.P. 522; *Fleming* v. *McNabb*, 8 A.R. 656.

(*k*) The sale of lands which have been returned by the assessor under section 122 as occupied, without a further return from the treasurer showing the taxes still in arrear under section 123. Such a sale is expressly prohibited by section 135: *Dalziel* v. *Mallory*, 17 O.R. 80. Land which was occupied should have been returned as occupied, and considered as so returned. See section 135 and the cases cited thereunder.

(*l*) No warrant under seal: *Church* v. *Fenton*, 5 S.C.R. 239. See section 136 and the notes thereon.

(*m*) Land of the Crown. Section 151 expressly prohibits its sale, and invalidates the deed thereof. See sections 35 and 151 and the notes thereon.

(*n*) Land of the municipality. No taxes can be in arrear as against the municipality. See section 155 and the cases there cited.

(*o*) A sale by an officer who has no authority to sell. In *Canada Permanent Building Society* v. *Agnew*, 23 C.P. 200, the sale was made by the treasurer of a senior county, after the separation of the junior county of lands in the junior county which had not been advertised for sale before the separation. Under 29 & 30 Vict. cap. 53, section 133, such sale could only be made by the treasurer of the junior county. The sale was without legal authority and invalid. The curative sections do not apply to a sale made by an officer who has no jurisdiction.

(3) *The sale must be openly and fairly conducted.* In *Donovan* v. *Hogan*, 15 A.R. 432, Patterson, J.A., discusses this feature of the section as follows: "It may be difficult and it would not be wise to attempt to define the full force of this expression, 'openly and fairly conducted.' The facts of each case must necessarily be dealt with by themselves. I have a strong feeling that something more must be required than easy-going, uninquiring honesty on the part of the official who sells. I dare say it is the case in many, perhaps in most, of these sales that the person who sells knows nothing of the land he is selling beyond what is printed in the advertisement; and I can suppose it possible that purchasers may bid on mere speculation without having informed themselves of the nature or value of the land they are bidding for. I do not think that is a state of things intended or contemplated by the Act. Section [148] proves the contrary when it requires the treasurer to sell in preference such part of the land as he may consider best for the owner to sell first, and where the mode of sale it prescribes is a bid for the smallest quantity of the land for which the purchaser will pay the taxes mentioned in the advertisement. Some knowledge of the land on the part of both vendor and vendee is obviously counted on. . . . But where irregularities are to be condoned, and the sale when followed by a deed made unimpeachable, provided the sale has been openly and fairly conducted, that condition cannot reasonably be narrowed to the absence of evil motives or to actual misconduct on the part of the official. . . . What is aimed at is that these sales shall be conducted as ordinary business transactions are where property is sold by auction with a view to obtain its fair market value." In *Hall* v.

Farquharson, 15 A.R.457, Hagarty, C.J.O., approves of the remarks of Sir Adam Wilson in *Deverill* v. *Coe,* 11 O.R. at p. 239, and shares his doubts as to whether the sale of a property at a monstrous and startling undervalue can be said to be a sale fairly and honestly conducted. He could not believe that such a proceeding could be sanctioned. Patteron and Osler, JJ.A., concurred in this view. In *Donovan* v. *Hogan,* 15 A.R. 432, Patterson, J.A., was of opinion that the fact that the sale was openly and fairly conducted is to be affirmatively established by the person who appeals to the section in support of his title, and ought to be affirmatively alleged in his pleading.

In *Haisley* v. *Somers,* 13 O.R. 600, 15 O.R. 275, it was held that where the treasurer ignored the plain direction of the statute to sell in preference such part of the real estate as he might consider it most for the advantage of the owner to sell first, and conveyed the greater part of the house thereon, the sale was not fairly conducted.

In *Deverill* v. *Coe,* 11 O.R. at p. 239, Wilson, C.J. expresses his views in these words: "I do not pretend to say, nor do I think, there was any unfairness on the part of the treasurer in the ordinary sense of that term, but it may be argued that the mere fact of selling land of so much value for so low a price was an unfair proceeding, however honestly the officer was acting. It was unfair to the owner of the land in that sense. No agent, trustee, auctioneer or sheriff could sell in such a manner; and the purchaser must have known that he was getting an unfair bargain. The treasurer under section 137 [now 148 (1)] is to exercise some consideration for the owner; for if he sell a part of the land, he is to sell 'in preference such part as he may consider best for the owner to sell first,' and why should he not consider also the owner's interest as to whether he should or should not sell his whole land for a most inadequate price?"

In *Scott* v. *Stuart,* 18 O.R. 211, Proudfoot, J., was of opinion that the error of the treasurer in advertising patented lands as unpatented, the effect of which was to damp the sale, left the sale open to question as not being fairly conducted.

In regard to stifling competition, and other unfair practices amongst prospective buyers at a sale for taxes, see sections 147 and 148, and the cases there cited.

For the effect of a tender of the taxes to the treasurer before sale, see section 159 and the notes thereon.

Errors or omissions in advertising, of such a nature that they do not seriously affect the sale, are cured: *Connor* v. *Douglas*, 15 Gr. 456; *McLauchlin* v. *Pyper*, 29 U.C.R. 256.

It would seem that, at least when it is not openly and fairly conducted, a sale for more taxes than are due will not be upheld: *Hall* v. *Farquharson*, 15 A.R. 457; *Yokham* v. *Hall*, 15 Gr. 335; *Edinburgh Life Inse. Co.* v. *Ferguson*, 32 U.C.R. 253; *McGill* v. *Langton*, 9 U.C.R. 91; *Williams* v. *Taylor*, 13 C.P. 219. A substantial compliance with the directions in section 136 in regard to the signing and sealing of the warrant will be upheld after the lapse of a year. The irregularities are cured: *Church* v. *Fenton*, 5 S.C.R. 239; 4 A.R. 159; 28 C.P. 384.

The burden of proving an actual sale and some taxes in arrear is on the purchaser: *Proudfoot* v. *Austin*, 21 Gr. 566; *Jones* v. *Cowden*, 36 U.C.R. 495; 34 U.C.R. 345. In the last-named case the effect of these sections in curing defects was considered.

"The general principles applicable to the construction of statutes imposing and regulating the enforcement of taxes for general and municipal purposes are well settled. Enactments of this class are to be construed strictly, and in all cases of ambiguity which may arise that construction is to be adopted which is most favorable to the subject. Further, all steps prescribed by the statutes to be taken in the process either of imposing or levying the tax are to be considered essential and indispensable, unless the statute expressly provides that their omission shall not be fatal to the legal validity of the proceedings; in other words the provision requiring notices to be given and other formalities to be observed are to be construed as imperative, and not merely as directory, unless the contrary is explicitly declared." *O'Brien* v. *Cogswell*, 17 S.C.R., per Strong, J., at p. 424.

The strong tendency of the cases has been to hold that where there has not been substantial compliance with those provisions of the Act which were designed for the protection of the owner, and intended to give him ample notice of the impending sale, as well as to secure payment, if possible, after the lapse of three years by a renewed attempt to collect the taxes by distress, the sale has not been fairly conducted. If the error or omission could not prejudice the owner, the tendency has been to say that the defect is cured. Seeing then that taxes must still be in arrear for three years, that the sale must be in pursuance of the Act, that a sale

which disregards the express prohibitions of the Act is not in pursuance of it, but in defiance of it, and keeping in mind the strong views expressed by the courts as to what sales are not openly and fairly conducted, and that these are conditions precedent to the applicability of this section, it may be questioned whether it has done much, if anything, to render tax titles less uncertain, or the tenure of those who hold under them less precarious. The neglect, omission or error of the municipality or of its officers or agents must not be such as to render the sale an unfair one; or to prevent taxes from being in arrear, within the meaning of the Act, for the purposes of sale; or to so change the character of the sale that it is not in pursuance of the Act. It is submitted that nearly, if not quite, all of the tax deeds which have been set aside in recent years have come within one or other of those classes.

It is only when there are taxes in arrear for the three years before sale, and the sale is in pursuance of the Act, and openly and fairly conducted, and the land is not redeemed, that the right of action is barred. If all these conditions had co-existed in respect to a tax sale under the former Act, it is safe to say an action to set the deed aside would have failed too.

It is worthy of comment that this section purports to validate the sale, if the land is not redeemed within *a year*. The provisions of section 165, which requires notice to be given to the owner and the encumbrancers, and which extends the time for redemption for thirty days after the date of the notice, are wholly ignored. There seems little ground for doubting that the requirements of section 165 would govern, in the conflict between the two sections.

The burden of proving that taxes were in arrear for the requisite time is on the person seeking to uphold the tax sale: *Hyslop* v. *Joss*, 3 O.L.R. 281; *Stevenson* v. *Traynor*, 12 O.R. 804; *Munro* v. *Grey*, 12 U.C.R. 647; *McKay* v. *Crysler*, 3 S.C.R. 436. In *Hall* v. *Hill*, 22 U.C.R. 578, the evidence of the treasurer, who produced his official books and showed that the lands were charged with the taxes when the warrant issued, was held to be sufficient proof of their being in arrear. It would seem that the warrant alone might suffice. See also *Kempt* v. *Parkyn*, 28 C.P. 123. In *Hutchinson* v. *Collier*, 27 C.P. 249, the treasurer's books were considered *prima facie* evidence of the arrears. The recital in the tax deed and the advertisement in *The Gazette* proved the amount of taxes due; but did not prove a warrant to sell. The warrant must be proved by the person claiming under the tax sale. See also

Fraser v. *West*, 21 C.P. 161. The production of the tax deed is not sufficient: *Jones* v. *Bank of Upper Canada*, 13 Gr. 74. The original collector's rolls, the warrant to sell and the advertisement in *The Ontario Gazette* were held to be sufficient evidence of the arrears in *Fitzgerald* v. *Wilson*, 8 O.R. 559. So also is the warrant directing the sale: *Clark* v. *Buchanan*, 25 Gr. 559. See *Street* v. *Fogul*, 32 U.C.R. 119; *Re Morton*, 7 O.R. 59. An actual sale and some taxes in arrear must be shown: *Proudfoot* v. *Austin*, 21 Gr. 566.

A municipal officer charged with irregularities in the performance of his duty, but not guilty of fraud or any intentional wrong, is not a proper party to an action to set aside a sale for taxes. *Mills* v. *McKay*, 14 Gr. 602.

Deed Valid if not Questioned within a Certain Time.

173. Wherever land is sold for taxes and a tax deed thereof has been executed, the sale and the tax deeds shall be valid and binding, to all intents and purposes, except as against the Crown, unless questioned before some court of competent jurisdiction within two years from the time of sale. R.S.O. 1897, c. 224, s. 209, *amended.*

Section 209 of R.S.O. 1897, cap. 224, was as follows: Wherever lands are sold for arrears of taxes, and the treasurer has given a deed for the same, such deed shall be to all intents and purposes valid and binding, except as against the Crown, if the same has not been questioned before some court of competent jurisdiction by some person interested in the land so sold within two years from the time of sale.

The language of the section had been unchanged since its appearance in that form in 1869 as section 155 of 32 Vict, cap. 36, until the present Act came into force.

It was in its original form, section 156 of 29 & 30 Vict. cap. 53, and it was first enacted in 1866 as follows: Whenever lands shall have been or may be hereafter sold for arrears of taxes, and the sheriff or treasurer as the case may be shall have given a deed for the same, such deed shall be to all intents and purposes valid and binding, except as against the Crown if the same has not been questioned before some court of competent jurisdiction by some person interested in the land so sold, within four years after the passing of

this Act, when the land was sold and a deed given by the sheriff before the passing of this Act, or within four years from the giving of such deed when such sale shall take place or deed be given after the passing of this Act. 29 & 30 Vict. cap. 53, section 156.

In the form in which this provision has stood for many years, it has repeatedly been judicially considered. Notwithstanding its apparently sweeping language, the natural reluctance of the courts to work a forfeiture of lands and to unjustly deprive the owner of them, has led to the consideration of it with the utmost acumen, especially in the later cases. In *Cotter* v. *Sutherland*, 18 C. P. 390, Wilson, C.J., said: "We should require strict proof that the tax has been lawfully made; but in promoting its collection we should not surround the procedure with too unnecessary or unreasonable rigour. We should see that the law is honestly and fairly carried out, and that no injustice is done to the owner or the public, and that the claims of purchasers are properly maintained. A substantial rather than a literal compliance with the provisions of the statute will more equally, and quite fairly, protect all parties.'' This was approved by Richards, C.J., in *Connor* v. *Douglas*, 15 Gr. 456. In *Payne* v. *Goodyear*, 26 U.C.R. 448, Draper, C.J., said: ''The statutes were not passed to take away lands from their legal owners, but to compel those owners who neglected to pay their taxes, and from whom payment could not be enforced by the other methods authorized, to pay by a sale of a sufficient portion of their lands.'' But since the decision of the Supreme Court in *McKay* v. *Crysler*, 3 S.C.R. 436, the tendency has been to consider whether the essential elements for a tax sale were present. If they were lacking, or if there had been open disregard of imperative provisions in regard to steps which are conditions precedent to the right to sell at all, the sale has been treated as made without jurisdiction and a nullity. If the provisions of sections 121 and 122, for example, have not been complied with substantially, it cannot be considered that the taxes for which the land has been sold are in arrear so as to justify or support a sale: *Ruttan* v. *Burke*, 7 O.L.R. 56; *Deverill* v. *Coe*, 11 O.R. 222; *McKay* v. *Ferguson*, 26 Gr. 236; *Whelan* v. *Ryan*, 20 S.C.R. 65; *O'Brien* v. *Cogswell*, 17 S.C.R. 420; *City of Toronto* v. *Caston*, 1900, 30 S.C.R. 390; *Haisley* v. *Somers*, 13 O.R. 600; *Dalziel* v. *Mallory*, 17 O.R. 80; *Donovan* v. *Hogan*, 15 A.R. 432.

In *Wildman* v. *Tait*, 32 O.R. 274, the lands were assessed *en bloc*, though known to have been sub-divided, and the clerk failed

to give the assessor the list of lands liable to be sold as required by section 122. The sale was not cured by this section. As to the improper assessment, the Court followed *Beckett* v. *Johnston*, 32 C.P. 301 and *Hill* v. *Macauley*, 6 O.R. 251. As to the failure of the clerk to give the list to the assessor, which prevented compliance with any of the further directions of the Act in regard to the arrears, the trial Judge, McMahon, J., followed *Love* v. *Webster*, 26 O.R. 453, and referred especially to the remarks of Sir Henry Strong, C.J., in *Whelan* v. *Ryan*, 20 S.C.R. at p. 72, where he deals with the curative clause of a Manitoba statute. This judgment was affirmed on appeal in 2 O.L.R. 307.

The section was again considered in *Boland* v. *City of Toronto*, 32 O.R. 358. The defects in that case were numerous. The collector had failed to distrain, though there were sufficient goods on the premises. There was no delivery by the clerk to the assessor of the list of lands in arrear, and all the steps dependent thereon were consequently ommitted. The sale was invalid, and deed was set aside.

In *Doe d. Bell* v. *Reaumore*, 3 O.S. 247, Robinson, C.J., said: "The operation of the statute is to work a forfeiture: an accumulated penalty is imposed for an alleged default, and to satisfy the assessment charged, together with this penalty, the land of a proprietor may be sold, though he may be in a distant part of the world, and unconscious of the proceeding. To support a sale made under such circumstances, *it must be shown that those facts existed which are alleged to have created the forfeiture and which are necessary to warrant the sale.*" In *Hall* v. *Hill*, 22 U.C.R. 578, Draper, C.J., cited this language with approval. And in *McKay* v. *Crysler*, 3 S.C.R. 436, Gwynne, J., also quotes with approval the language of both these learned judges, in a review of all the cases relating to the section in question up to that time,

This section and the preceding one have frequently been considered together, and the notes on section 172 are to a large extent applicable to section 173 as well.

Where no taxes were actually in arrear for the statutory period, no sale can be supported. There is then no jurisdiction to sell at all. See section 172, note 1, and section 136 and the notes on it. *Hamilton* v. *Eggleton*, 22 C.P. 536; *Kempt* v. *Parkyn*, 28 C.P. 123; *Fenton* v. *McWain*, 41 U.C.R. 239; *McKay* v. *Crysler*, 3 S.C.R. 436; *Hall* v. *Farquharson*, 15 A.R. 457; *Donovan* v. *Hogan*, 15 A. R. 432.

"Sales for taxes" must be held to mean sales for taxes for which

the lands might rightly be sold: *Hislop* v. *Joss*, 3 O.L.R. 281.

Perhaps the most extensive change now made in the section is the insertion of the words "the sale and" before the words "the tax deeds."

There was a great conflict of opinion under the language of the former enactments as to the time from which the two years counted. In *Smith* v. *Midland Ry.*, 4 O.R. 498; *Lyttle* v. *Broddy*, 10 O.R. 530; *Claxton* v. *Shibley*, 10 O.R. 295; and *Deverill* v. *Coe*, 11 O.R. 222, the view was taken that the two years were counted from the time of the sale by the treasurer to the purchaser at auction. In *Hutchinson* v. *Collier*, 27 C.P. 249, the Court of Common Pleas regarded the two years as commencing at the time of the execution of the deed. Hagarty, C.J., reviewed the history of the section from its origin, and pointed out that what it dealt with was the validity of the *deed*. The difficulty was created in the last clause, "within two years from the time of sale." But, looking at the legislation in its entirety, the Court came to the conclusion that the Legislature intended the time limit to count from the execution of the deed.

In *Church* v. *Fenton*, 28 C.P. 384, the same conclusion was arrived at, on the ground that "what the section deals with is the validity of a deed made in pursuance of a sale."

In *Donovan* v. *Hogan*, 15 A.R. 432, the Court of Appeal approved the view expressed in the two cases last cited, and overruled the cases in which the opposite construction was adopted. There was no room for uncertainty in the provision as it was expressed in the Act of 1866, 29 & 30 Vict. ch. 53, section 156, where it first appeared. The word "sale" at the end of the section as it was originally enacted, was construed as meaning the conveyance.

It may be, however, that the change made now, extending the section to both "sale" and "deed," materially weakens the force of the argument in that judgment, and opens the question whether in its present form the section does not refer to a limit of two years from the sale by the treasurer, not from the time when he gives a deed, more than a year later.

Certain Treasurer's Deeds not to be Invalid, if the Sale is Valid.

174. In all cases where land has been sold validly for taxes, the conveyance by the officer who made the sale, or by his succes-

sors in office, shall not be invalid by reason of the statute under the authority whereof the sale was made having been repealed at and before the time of such conveyance, or by reason of the officer who made the sale having gone out of office. R.S.O. 1897, c. 224, s. 210.

This enactment was rendered necessary by some of the decisions under earlier statutes. Compare section 166.

See *Bryant* v. *Hill*, 23 U.C.R. 96; *McDonald* v. *McDonnell*, 24 U.C.R. 424; *McMillain* v. *McDonald*, 26 U.C.R. 454; *Jones* v. *Cowden*, 34. U.C.R. 345, 36 U.C.R. 495; *McDougall* v. *McMillain*, 25 C.P. 75.

For the meaning attached to "tax purchaser" and "original owner" in sections 174 to 184 inclusive, see section 185.

Rights of Entry Adverse to Tax Purchaser.

175. In all cases where land is sold for arrears of taxes whether such sale is or is not valid, then so far as regards rights of entry adverse to any *bona fide* claim or right, whether valid or invalid, derived mediately or immediately under such sale, section 8 of *The Act respecting the Law and Transfer of Property* shall not apply, to the end and intent that in such cases the right or title of person claiming adversely to any such sale shall not be conveyed where any person is in occupation adversely to such right or title, and that in such cases the Common Law and sections 2, 4 and 6 of the statute passed in the 32nd year of the reign of King Henry VIII., and chaptered 9, be revived, and the same are and shall continue to be revived. R.S.O. 1897, c. 224, s. 211.

The Act respecting the Law and Transfer of Property, R.S.O. 1897, c. 119, section 8, provides that a contingent, an executory and a future interest, and a possibility coupled with an interest in land, also a right of entry whether immediate or future, vested or contingent, into or upon land, may be disposed of by deed. Section 211 of cap. 224 of R.S.O. 1897, made an exception to this provision in the case of tax deeds, and continued 32 Henry VIII., c. 9, sections 2, 4 and 6 in force as applicable to them. The last mentioned enactment was directed against the sale of pretend-

ed titles by persons out of possession, and made such sale invalid as against an adverse claimant in possession. Both section 211 of cap. 224, and 32 Henry VIII., c. 9, were repealed by 2 Edw. VII., ch. 1, section 2, which came into force on the 13th of March, 1902. The effect of the present section is to re-enact both. This section was construed in *Ruttan* v. *Burk*, 7 O.L.R. 56 and in *Hyatt* v. *Mills*, 19 A.R. 329. The result is that an action to eject a *bona fide* purchaser at an invalid tax sale must be brought by the owner at the time of the sale, who thereafter has a mere right of entry, and not by a subsequent purchaser from such owner. During the interval between the passing of 2 Edw. VII., c. 1, s. 2, and the 1st of Januray, 1905, when this Act came into effect, such purchaser from the owner might have maintained the action.

In *Ruttan* v. *Burk*, 7 O.L.R. 56, Street J., expressed the opinion that the re-enactment of this Act of Henry VIII. was probably aimed at just such actions as that one, "when persons having a claim to land of which another is in adverse possession, and not desiring to bring an action in their own name, attempt to transfer the right to bring it to another person for their benefit, so as to avoid, perhaps, the liability to pay costs in the event of failure."

This section and the next eight sections, where the owner is in occupation of the land at the time of the sale, and it continues in his occupation or that of those claiming under him, do not affect the right or title of such owner, or of those claiming through or under him. See section 184.

Adjustment of Damages when Sale held to be Invalid.

176.—(1) In all cases (not being within any of the exceptions and provisions of sub-section 3 of this section), where land having been legally liable to be assessed for taxes, is sold for arrears of taxes, then in case an action is brought for the recovery of the land and the sale is held to be invalid, damages shall be assessed for the defendant for the amount of the purchase money at the sale and interest thereon, and of all taxes paid by the defendant in respect of the lands since the sale and interest thereon, and of the value of any improvements made by the defendants before the commencement of the action, or by any person through or under whom he claims, less all just allowances for the timber sold

off the lands, and all other just allowances to the plaintiff, and the value of the land to be recovered shall also be assessed less the value of any such improvements. *Amended.*

If four conditions are present, then certain results must follow in an action to set aside an invalid tax deed, The four conditions which must co-exist to make this sub-section applicable are:

(*a*) The sale must not be within any of the exceptions and provisions of sub-section 3 of this section.

(*b*) The land must have been legally liable to be assessed for taxes. The taxes must have been lawfully imposed: *Wildman* v. *Tait*, 2 O.L.R. 307.

(*c*) It must have been sold for arrears of taxes. The section has no application, if there were no taxes in arrear: *Wildman* v. *Tait*, 2 O.L.R. 307.

(*d*) In an action for the recovery of the land, the sale must have been held to be invalid.

If all these conditions concurrently exist, the defendant is entitled to damages. The defendant is credited with:

(1) The purchase money at the tax sale and interest thereon.

(2) All taxes paid by the defendant since the sale, and interest thereon.

(3) The value of all improvements made by the defendant or those under whom he claims title.

From these sums so allowed to the person who claims under the tax title, must be deducted:

(1) All just allowances for the timber sold off the land.

(2) All other just allowances to the plaintiff. Rents and profits made from the land may be allowed: *Churcher* v. *Bates*, 42 U.C.R. 466.

The Court or jury also assesses the value of the land, less the value of the improvements for which the defendant is entitled to compensation.

"The section has no application to cases where the taxes have not been lawfully imposed, or where the taxes for which the land was sold were not in arrear, else in the latter case one who has paid his taxes would find his lands burdened with a charge for the amount which the municipality had wrongly claimed to be due,

and the costs of the advertisement and sale to the extent of the purchase money paid by the tax purchaser, and that because the municipality had unlawfully assumed to sell his land for taxes claimed to be in arrear, when in fact none were in arrear. The defendant McGann is therefore not entitled to the lien which he sets up in respect of the sums claimed to be due for taxes for the years 1890 and 1891, for there was in these years no valid assessment, and therefore nothing in arrear as to them; but the case as to the years 1892 and 1893 stands on a different footing, for the assessment for these years was a valid one, and was not affected by the error in the statement as to the depth of the lot, which may be rejected as *falsa demonstratio*, and the taxes for 1892 and 1893 were therefore validly imposed and in arrear at the time of the sale:'' *Wildman* v. *Tait*, 2 O.L.R. 307.

In *Hyslop* v. *Joss*, 3 O.L.R. 281, the defendant claimed title under a tax sale, and also under a deed from the mortgagor. The plaintiff brought the action to foreclose his mortgage, which was in arrear. Meredith, J., said: ''The defendant has therefore not shown any title under the tax deed; and, if he had, it could afford at most a defence as to forty feet of one of the part lots only; for the owner of the equity of redemption cannot destroy his mortgagee's rights by neglecting to pay taxes and taking a tax deed under a sale for such taxes: See *Leigh* v. *Burnett*, (1885,) 29 Ch. D. 231. Nor can there be any valid claim for improvements, as if made under a mistake of title. There was no such mistake; the defendant knew he was the owner, *subject to the mortgage*. He had so purchased, and so expressly taken his conveyance.''

Under the former statute it was only when the sale was void by reason of uncertain or insufficient description of the lands sold, that the corresponding section applied. See R.S.O. 1897, c. 224, s. 212. It applied when ''such sale or the conveyance consequent thereon is invalid by reason of uncertain and insufficient designation or description of the lands assessed, sold or conveyed.'' If the sale was set aside for any other cause, the owner was not bound to pay the value of improvements: *Edinburgh Life Assce. Co.* v. *Ferguson*, 32 U.C.R. 253. Certain lands were assessed, advertised for sale, described in the warrant, sold at a tax sale and conveyed by the treasurer as part of lot 8, though the lands intended were a part of lot 5. Taxes were due upon the lands. The sale was invalid by reason of insufficient description,

the purchaser was therefore entitled to his purchase money and interest and the value of his improvements: *Churcher* v. *Bates*, 42 U.C.R. 466. In *Haisley* v. *Somers*, 13 O.R. 600, the cause of the sale being declared void was not that the description was indefinite or insufficient, consequently it was held that no lien for improvements arose under the Assessment Act. Nor was there, in the circumstances of that case, any lien under R.S.O. 1897, c. 119, s. 30, which gives a lien for improvements made under a *bona fide* mistake as to title. See also *Hislop* v. *Joss*,3 O.L.R. 281, in reference to the application of the latter section.

The Plaintiff to Pay Damages into Court Before Writ of Possession issues, or Tax Purchaser may Elect to Retain the Land on Paying its Value.

(2) If a judgment is pronounced for the plaintiff, no writ of possession shall issue until the expiration of one month thereafter nor until the plaintiff has paid into Court for the defendant the amount of such damages; or, if the defendant desires to retain the land, he may retain it, on paying into Court within the said period of one month, or on or before any subsequent day to be appointed by the Court, the value of the land as assessed at the trial; after which payment, no writ of possession shall issue, but the plaintiff on filing in Court for the defendant a sufficient release and conveyance to the defendant, of his right and title to the land in question, shall be entitled to the money so paid in by the defendant.

A writ of possession when it issues authorizes the sheriff to eject the defendant, and put the plaintiff into actual possession of the land. After the plaintiff obtains judgment declaring him entitled to the land, he must await the course of events for a month. If others than the defendant are interested in the land, he must wait ninety days, under section 178. He must also pay into Court the amount to which the defendant is entitled by the computation made under section 1.

The defendant may either elect to retain the land, or to give it up, and take the amount of money coming to him. If he decides to keep the property, he must pay into Court the sum at which the

value of the land has been fixed by the Court, less the improvements. Such payment into Court must be made within a month from judgment, or within such further time as the Court may allow.

If the defendant pays into Court the price to which the plaintiff is entitled, the latter can only get his money out of Court on filing in Court a sufficient conveyance of his interest in the land, to the defendant.

When Section not to Apply.

(3) This section shall not apply in the following cases:

(*a*) If the taxes for non-payment whereof the land was sold have been fully paid before the sale;

(*b*) If, within the period limited by law for redemption the amount paid by the purchaser, with all interest payable thereon, has been paid or tendered to the person entitled to receive such payment, with a view to the redemption of the lands;

(*c*) Where on the ground of fraud or evil practice by the purchaser at such sale, a Court would grant equitable relief. R.S.O, 1897, c. 224, s. 212, *amended.*

(*a*) If there are no taxes in arrear, there can be no valid sale, and the section does not apply. See sections 136, 172, and 173 and the notes thereon, in reference to the necessity for arrears. If there are in fact no arrears there can be no lien: *Charlton* v. *Watson,* 4 O.R. 489.

(*b*) See section 159 and the cases there cited.

(*c*) See sections 147 and 148 and the cases there cited in reference to the conduct of sales. See also section 172 and the notes thereon in reference to sales not being ''openly and fairly conducted.''

In *Austin* v. *Simcoe,* 22 U.C.R. 73, where a sale of lands was invalid, it was held that the purchaser could not recover back his money from the county. See also *Boulton* v. *County of York,* 25 U.C.R. 21; *Robertson* v. *County of Wellington,* 27 U.C.R. 336.

Where the Plaintiff is not Tenant in fee, or in tail the value of the Land to be paid into High Court.

177.—(1) In any of the cases named in the preceding section wherein the plaintiff is not tenant in fee simple, or fee tail, the payment into Court to be made as aforesaid, of the value of the land,

by the defendant desiring to retain the land, shall be into the High Court; and the plaintiff and all parties entitled to and interested in the said lands, as against the purchaser at such sale for taxes, on filing in the High Court, a sufficient release and conveyance to the defendant of their respective rights and interests in the land, shall be entitled to the money so paid in such proportions and shares as to the High Court, regarding the interests of the various parties, seems proper.

(2) In any of such cases wherein the defendant is not tenant in fee simple or fee tail, the payment of damages into Court to be made as aforesaid by the plaintiff shall be into the High Court. R.S.O. 1897, c. 224, s. 213.

If the plaintiff is not the absolute owner of the land or the owner in fee tail, the defendant must pay the money directed by section 176, to be paid, into the High Court. Before it can be paid out, a release and conveyance to the defendant from all those who have an estate or interest in the land, of their respective rights and interests, must be filed in Court. The High Court will then, upon an application, direct in what way the money shall be apportioned amongst those interested in the land, so as to do justice amongst them, according to the nature and value of their respective interests.

Any other Person interested may pay in Value Assessed if Defendant does not.

178.—(1) If the defendant does not pay into Court the value of the land assessed as aforesaid, within the period of one month, or on or before any subsequent day appointed by the Court, as mentioned in sub-section 2 of section 176, any other person interested in the land under the sale or conveyance for taxes may, within ninety days after the date of the pronouncing of the judgment in sub-section 2 of section 176 mentioned, or before any subsequent day appointed by the Court as in said sub-section mentioned, for payment by the defendant, pay into Court the said value of the land; and till the expiration of the time within

which such payment may be made, and after such payment, no writ of possession shall issue.

The statute gives the defendant a month in which to elect to keep the land and pay off the plaintiff's claim. The Court may extend the time, and appoint some day later than a month from the judgment, on or before which the defendant must pay into Court the sum at which the Court has fixed the value of the plaintiff's interest in the land.

Any mortgagee or other person who is interested in preventing the loss of the land to the defendant, may, if he fails to pay the money into Court, do so in his stead. For this purpose others interested in the land have ninety days from the pronouncing of the judgment. If the time given to the defendant by the Court is later than the end of the ninety days, the money must be paid into Court by other persons interested in the land, before that subsequent date. It is not until the time given to interested persons, other than the defendant, to pay the money into Court, has expired that the plaintiff can issue his writ of possession and recover actual possession of the land.

This section and section 177 are applicable only to tax sales which come within the terms of section 176. See the notes on that section for the cases to which it is applicable.

The Payer to have a Lien for such Proportion as Exceeds his Interest.

(2) The defendant or other person so paying in shall be entitled as against all others interested in the land under the sale or conveyance for taxes, to a lien on the land for such amount as exceeds the proportionate value of his interest enforceable in such manner and in such shares and proportions as to the High Court, regarding the interests of the various parties, and on hearing the parties, seems fit. R.S.O. 1897, c. 224, s. 214; *and see Sec.* 176 (2).

The defendant or other person so paying in has an interest in the land. So also may a number of other people, who contribute nothing to the payment so made to secure the land. It would be unfair that the interested person who advanced the money and paid it into Court, should have only his old interest in the land, and that the full share therein of the others who contribute nothing should be thereby secured to them.

If the person who pays in has only a half interest in the land under the tax deed, he would be entitled to a lien on the interest of his co-owners under the tax deed for one-half the amount he paid in. This sub-section empowers the High Court to enforce such liens, in such ways and in such proportions, from the other parties interested, as the Court may deem just, after hearing all parties.

How the Owner Can Obtain the Value of the Land Paid in.

179. In case the defendant or any other person interested pays into Court in manner aforesaid, the plaintiff shall be entitled to the amount so paid in, on filing in Court a sufficient release and conveyance to the person so paying in, of all his right and title to the lands, in which release and conveyance it shall be expressed that the same is in trust for such person, to secure his lien as aforesaid. R.S.O. 1897, c. 224, s. 215.

When the defendant or other person who pays the money into Court, is not solely interested in the tax title adversely to the plaintiff's claim as owner, the plaintiff files a sufficient release and conveyance to the person paying in, of all the plaintiff's right and title to the lands. This release must be expressed to be in trust, to secure the lien given by section 178, sub-section 2.

How the Value of Improvements, Etc., paid in can be Obtained.

180. If the value of the land is not paid into Court as above provided, the damages paid into the High Court shall be paid out to the various persons, who, if the sale for taxes were valid would be entitled to the land, in such shares and proportions as to the High Court, regarding the interests of the various parties, seems fit. R.S.O. 1897, c. 224, s. 216.

The defendant and the other people who are interested in the land with him under the tax deed, have the right to decide whether they will, or will not, keep the land on the terms fixed by law.

If none of them buy out the interest of the plaintiff by paying the requisite sum into Court, the plaintiff must then pay into Court

the damages awarded to the defendant under section 176. The payment into Court having been made, the plaintiff gets possession of the land by placing a writ of possession in the hands of the sheriff, who under the writ ejects the defendant.

The damages are paid out of Court to those entitled to them, in such proportions as the Court may determine.

Provisions as to Costs in Cases where Value of the Land and Improvements, Etc., only in Question.

181.—(1) In all actions for the recovery of land in which both the plaintiff, (if his title were good) would be entitled in fee simple or fee tail, and the defendant (if his title were good) would be also so entitled, if the defendant, at the time of appearing gave notice in writing to the plaintiff in such action or to his solicitor named in the writ, of the amount claimed, and that on payment of such amount, the defendant or person in possession will surrender the possession to the plaintiff; or that he desired to retain the land, and was ready and willing to pay into Court a sum mentioned in the said notice as the value of the land, and that the defendant did not intend at the trial to contest the title of the plaintiff; and if the Jury or the Judge, if there be no jury, before whom the action is tried, assess damages for the defendant as provided in the next preceding five sections and it satisfactorily appears that the defendant does not contest the action for any other purpose than to retain the land on paying the value thereof, or to obtain damages, the Judge before whom the action is tried, shall certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the plaintiff had been nonsuited on the trial, or a verdict had been rendered for the defendant.

(2) If on the trial it is found that such notice was not given as aforesaid, or if the Judge or jury assess for the defendant a less amount than that claimed in the notice, or find that the defendant had refused to surrender possession of the land after tender made of the amount claimed, or, (where the defendant has given notice of his intention to retain the land), that the

value of the land is greater than the amount mentioned in the notice, or that he has omitted to pay into Court the amount mentioned in the notice for thirty days after the plaintiff had given to the defendant a written notice that he did not intend to contest the value of the land, the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the plaintiff; and upon the trial of any action after such notice, no evidence shall be required in proof of the title of the plaintiff. R.S.O. 1897, c. 224, s. 217.

This section deals with the question of costs in the simple case where the plaintiff, but for the tax deed, is the owner, and the defendant is the only person claiming an interest in the land under the tax deed.

The basis of the provisions of the section is that the defendant is not contesting the plaintiff's title to the land.

The defendant may elect either to give up the land or to retain it. He must so elect before his appearance is entered.

If he gives notice that he will relinquish possession, he states what his claim for purchase money, taxes, improvements, etc., is.

If he gives notice that he wishes to retain the land, he states in his notice what sum he will pay the plaintiff as the value of the land.

The plaintiff may accept the offer of the defendant. If he fails to do so, and at the trial it is established that the defendant fought only for his damages, or to retain the land at its value, the plaintiff must pay the costs of the defendant.

If the defendant, on the acceptance of his offer by the plaintiff, fails to carry it out, or if he asks too high damages, or offers too low a value for the land, as the case may be, he will have to pay the costs of the suit.

If the defendant has given such notice, it is an admission of the title of the plaintiff.

This section is applicable only to cases which come within section 176.

Tax Purchaser Without Other Remedy Whose Title is Invalid to Have a Lien on the Land for Purchase Money, Etc.

182. In any case in which the title of the tax purchaser is not valid, or in which no remedy is otherwise provided by this

Act, the tax purchaser shall have a lien on the lands for the purchase money paid at the sale, and interest thereon at the rate of ten per cent. per annum, and for the taxes paid by him since the sale and interest thereon at the rate aforesaid, to be enforced against the land in such proportions as regards the various owners and in such manner as the High Court thinks proper. R.S.O. 1897, c. 224, s. 218.

There can be no lien where there has been no valid assessment. There is no lien where there are no taxes in arrear. This section does not apply to taxes which have not been lawfully imposed: *Wildman* v. *Tait*, 2 O.L.R. 307. A lien can exist only where the tax purchaser is entitled to be repaid something. Section 176 deals with the conditions under which he is entitled to be so paid, and with the amount which he should receive. This section gives him a lien for so much of it as is purchase money, taxes and interest at ten per cent. The two sections should be read together. See *Haisley* v. *Somers*, 13 O.R. 600; *Charlton* v. *Watson*, 4 O.R. 489. If, as in *Scott* v. *Stuart*, 18 O.R. 211, the estate or interest sought to be sold had no existence, there is nothing to which a lien could attach.

Contracts Between Tax Purchaser and Original Owner Continued.

183. No valid contract entered into between any tax purchaser and original owner, in regard to any land sold or assumed to have been sold for taxes, as to purchase, lease or otherwise, shall be annulled or interfered with by this Act, but such contract and all consequences thereof, as to admission of title or otherwise shall remain in force as if this Act had not been passed. R.S.O. 1897, c. 224, s. 219.

See *Cameron* v. *Barnhart*, 14 Gr. 661, cited under section 159.

Section 175 to 183, not to Apply Where the Owner has Occupied since Sale.

184. Nothing in the next preceding nine sections of this Act shall affect the right or title of the owner of any land sold for taxes, or of any person claiming through or under him, where

such owner at the time of the sale was in occupation of the land, and the same has since the sale been in the occupation of such owner or of those claiming through or under him. R.S.O. 1897, c. 224, s. 220.

In *Austin* v. *Armstrong*, 28 C.P. 47, a claim was made on behalf of a tax purchaser, after the lapse of nearly twenty years, the original owner being in possession and in ignorance of the sale. A new trial was granted to dispose of the question which that state of facts raised,

The provisions of the *Real Property Limitation Act*, which requires twenty years' possession of wild lands to give title as against the patentee and those claiming under him, are not available in favour of a purchaser of wild lands at a tax sale: *Brooke* v. *Gibson*, 27 O.R. 218.

Construction of "Tax-purchaser," "Original Owner."

185. In the construction of the next preceding eleven sections of this Act, occupation by a tenant shall be deemed the occupation of the reversioner; and the words "tax purchaser" shall apply to any person who purchases at any sale under colour of any statute authorizing sale of land for taxes and shall include and extend to all persons claiming through or under him; and the words "original owner" shall include and extend to any person who, at the time of such sale, was interested in or entitled to the land sold, or assumed to be sold, and to all persons claiming through or under him. R.S.O. 1897, c. 224, s. 222.

See section 175 and the note thereunder on 32 Henry VIII., c. 9.

Arrears of Taxes in Cities and Towns.

Collection of Arrears of Taxes in Cities or Towns.

186. In cities and towns arrears of taxes shall be collected and managed in the same way as is hereinbefore provided in the case of other municipalities; and for such purposes the municipal officers of cities and towns shall perform the same duties and have the same powers as the like officers in other municipalities under

sections 116 to 185; and the treasurer and mayor of every city or town shall, for such purposes, also perform the like duties as are hereinbefore, in the case of other municipalities, imposed on the county treasurer and warden respectively, and shall have the like powers; and words referring to the county treasurer or warden shall as to a city or town be taken and deemed to refer to the mayor and treasurer of such city or town. Provided, however, that in cities and towns the performance of any such duty after the date or within a longer time than hereinbefore set out shall not render any proceeding under this Act invalid or illegal so long as the provisions of this Act are in other respects duly complied with. R.S.O. 1897, c. 224, s. 224, *amended*; 3 Edw. VII., c. 21, s. 12.

Cities and towns conduct their own tax sales without the intervention of the treasurer or warden of the county. The treasurer of the city or town has to discharge all the duties which by sections 116 to 185 are imposed on either the treasurer of a local municipality or on the treasurer of the county. He has the powers and discharges the duties of both these officers in all matters dealt with by these sections. In construing them in regard cities and towns, they are to be read as if the city treasurer, or town treasurer as the case may be, was substituted throughout for the county treasurer, and the mayor for the warden.

For the special provisions in regard to time in cities and towns see sections 53 to 56.

Arrears of Taxes in Certain Townships.

Sale of Lands for Taxes in Certain Townships.

187.—(1) All powers conferred upon cities and towns by section 186 of this Act, or any of the sections referred to in that section, and all duties imposed by said sections upon the officers of such cities and towns, and the mayors thereof, shall hereafter be vested in and apply to the Townships of York, Scarborough and Etobicoke, in the County of York, and to the reeves of said townships, and for the purposes of the collection of arrears of taxes on lands therein and the sale of such lands for taxes, the said townships shall be considered as towns, and wherever the

word "town" occurs in any of the said sections it shall be held to apply to and include the said townships, and wherever the word "mayor" occurs in the said sections it shall be held to apply to the reeve of each of the said townships for the time being. R.S.O. 1897, c. 224, s. 226 (1), *amended.* [*For similar provisions as to the Village of East Toronto, see* 60 V. c. 46, s. 2].

(2) This section shall not in any way alter or affect the Act passed in the 58th year of Her late Majesty's reign and chaptered 94 or the by-laws confirmed thereby. R.S.O. 1897, c. 224, s. 226 (2).

Deficiency from non-payment of Certain Taxes provided for.

Deficiencies in Certain Taxes to be Supplied by Local Municipality.

188. Every municipal council in paying over any school or local rate, or its share of any county rate, or of any other tax or rate lawfully imposed for Provincial or local purposes, shall supply, out of the funds of the municipality, any deficiency arising from the non-payment of the tax, but shall not be held answerable for any deficiency arising from the abatement of, or inability to collect, any taxes other than for county rates. R.S.O. 1897, c. 224, s. 223.

This section deals with deficiencies in rates, especially in county, school and local rates. Very great inconvenience would arise, if for instance a deficiency arising from the non-payment in some instances of a rate to redeem debentures which fell due in that year, could not be made good out of general funds. If it were not for this section, obligations frequently could not be met. The county rates are put on somewhat more definite ground by this section than rates in respect of which there may possibly be some discretion. The deficiency in county rates imposes a liability on the municipality which must be met.

Debentures on Credit of Arrears of Taxes.

Issue of Debentures on Credit of Arrears of Taxes Authorized.

189.—(1) The council of any municipality, whose officers have power to sell lands for arrears of taxes, may from time

to time, without the assent of the ratepayers, by by-law authorize the mayor or other head of the municipality to issue, under the corporate seal, upon the credit of the taxes in arrear in the municipality, debentures payable not later than eight years after the date thereof, and for sums not less than $100 each, so that the whole of the debentures at any time issued and unpaid do not exceed one-half of all the arrears then due and owing upon land in the municipality, together with the money standing to the credit of the special fund hereinafter provided.

(2) Such debentures shall be negotiated by the mayor or other head of the municipality and treasurer, and all money received in payment of taxes upon the security of which such debentures are issued shall be set apart as a special fund out of which to pay the debentures and interest thereon.

(3) If at any time there is not to the credit of such special fund sufficient money to redeem the debentures due and accrued interest, such debentures and interest shall be payable out of the general funds of the municipality, and the payment thereof may be enforced in the same manner as is by law provided in the case of other debentures. 62 V. (2), c. 27, s. 15, *amended.*

It may be desirable that the arrears charged against lands should be available, in part at least, for current expenditure, though such arrears may not be realized until several years later, when the lands are sold.

Power is given to cities, towns and other municipalities whose officers have power to sell lands for arrears of taxes, to borrow on the credit of the taxes in arrear. The sum borrowed is not to exceed one half the amount of the arrears, and of the special fund for repayment of the loans. No vote of the ratepayers is necessary. The debentures are to for be sums not less than $100, and for a period not greater than eight years.

All sums realized from arrears of taxes while any such debentures are current, must be put into a special fund, out of which the debentures and interest thereon are repayable. Any deficiency at any time in such special fund must be made up out of general funds.

Sections 232 to 245 of R.S.O. 1897, cap. 224, dealt with what was known as the Non-Resident Land Fund, a fund composed of all moneys received by the county treasurer on account of taxes on non-resident lands. Section 237 authorized the county council to issue debentures of the county on the credit of that fund. These provisions have not been continued in this Act. The provisions of this section are not applicable to counties. "Municipality" by section 2, sub-section 5, ante page 2, denotes cities, towns, townships and villages, but not counties. See *Township of Nottawasaga* v. *Boys*, 21 C.P. 106; *Township of Mara and Rama* v. *County of Ontario*, 13 Gr. 347

The non-resident land fund was so far the property of the county that they may be liable in an action for taxes paid under protest to prevent non-resident lands from being sold for taxes under the treasurer's warrant: *Robertson* v. *County of Wellington*, 27 U.C.R. 336. But after sale the money was received by the treasurer for the use of the purchaser, and could not be recovered from the county: *Boulton* v. *United Counties of York and Peel*, 25 U.C.R. 21. See also, *Austin* v. *County of Simcoe*, 22 U.C.R. 73.

The power to issue debentures on the credit of arrears of taxes on lands was first given to cities and towns by 62 Vict, (2) cap. 27, s 11.

Arrears of taxes in new Municipalities.

On Incorporation of a Town, County Treasurer to Transmit List of Arrears to Town Treasurer.

190. Upon the incorporation of any new town, in any county, the county treasurer shall make out a list of all arrears of taxes then due and unpaid in his books upon lands situated in the newly incorporated town, and shall transmit the same to the treasurer of the town, who, after receipt of the said list, shall have, with the mayor, all the powers possessed by the county treasurer and warden for the collection of such taxes and for enforcement of the same by sale; but in such list the county treasurer shall not include any lot then advertised for sale for taxes. R.S.O. 1897, c. 224, s. 227.

A new town is incorporated out of territory formerly compris-

ing a village or parts of a township or townships. All arrears of taxes within the area so incorporated have been recorded in the books of the county treasurer. As soon as the new town is incorporated, it is his duty to make out a list of all arrears appearing by his books to be due and unpaid on any lands included therein, and forward it to the treasurer of such town. Thereafter the treasurer and mayor of the town deal with such arrears. If the lands have been advertised for sale, the county treasurer proceeds to complete the sale and conveyance of such lands. See the last part of section 192.

Arrears of Taxes. Now Collected Where New Municipality Formed.

191. In cases where a new local municipality is formed from two or more municipalities or portions of two or more municipalities situated in different counties, the collection of arrears of taxes due at the time of formation shall be made by the treasurer of the county in which the new municipality is situate, if the new municipality is a township or village, or if the new municipality is a town by the treasurer of such town; and for the purpose of enabling him to make the collection, the treasurer or the treasurers of the other county or counties from which any portion of the new municipality is detached, shall immediately upon the formation thereof make out lists of the arrears of taxes then due in their respective portions, and transmit the same to the treasurer of the county in which the new municipality is situate, or of the town (as the case may be); and where a new municipality is formed from two or more municipalities situate in any one county, the treasurer shall keep a separate account for such new municipality. R.S.O. 1897, c. 224, s. 228.

If a new township or village is formed out of parts of two counties, the treasurer of the county in which the new municipality is situate, is entrusted with the collection of arrears therein. The treasurers of the other counties from which territory has been taken, furnish to the treasurer of the county containing the new municipality, a list of all arrears in their books against lands in such municipality.

If the new municipality is a town, the treasurer of the town is thereafter entrusted with the collecton of arrears. The treasurers of the counties from which territory has been taken to form the new town, give to him lists of all arrears shown by their books in any portion of such territory.

Where a new township or village is formed within a county, the treasurer opens a new account for such municipality

Who may take Proceedings to Enforce Collection.

192. The treasurer and warden of the county in which the new municipality, if it be a township or village, is situate, and the treasurer and mayor of the new municipality, if it be a town, shall have power, respectively, to take for the collection of such arrears of taxes all the proceedings which treasurers and wardens or treasurers and mayors can take for the sale and conveyance of land in arrear for taxes; and in case the lands in the new municipality have been advertised by the treasurer or treasurers of the county or counties of which the new municipality formed part before its formation, the sale of such lands shall be completed in the same manner as if such new municipality had not been formed. R.S.O. 1897, c. 224, s. 229.

If a new township or village is formed, this section gives the treasurer of the county to which it belongs, authority to proceed with the collection of arrears of taxes for such municipality, just as if it had been a partof such county when the arrears originated.

If a new town is formed, the mayor and treasurer proceed to collect the arrears just as if the town had been incorporated when the arrears originated.

If the lands have been advertised for sale before the formation of the new municipality, the county treasurer who has so advertised the sale, will proceed to complete the sale, as if no new municipality had been formed,

Proceedings where Returns Made to Treasurer Before Separation.

193. Where a municipality or part of a municipality has been or is hereafter separated from one county and included in another

after a return has been made to the treasurer of the county to which it formerly belonged, of lands in arrear for taxes, but the lands have not been advertised for sale by the treasurer of the former county, such treasurer shall return to the treasurer of the county to which such territory belongs a list of all the lands within such territory returned as in arrear for taxes and not advertised; and the treausrer and warden of the county to which the territory belongs shall have power respectively to take all the proceedings which treasurers and wardens under this Act can take for the sale and conveyance of lands in arrear for taxes; but in case the lands in such territory have been advertised before the separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place, and conveyances of lands previously sold shall be made in like manner. R.S.O. 1897, c. 224, s. 230.

In *Canada Permanent Building Society* v. *Agnew*, 23 C.P. 200, a sale was made by the treasurer of the county of Huron, of lands situate in the county of Bruce, after the separation of that county from Huron, for arrears which had accrued before the separation, The statute in force at the time was 29 & 30 Vict., c. 53, section 133, which authorized a sale after the separation by the treasurer of the senior county, of lands situate in the junior county, only when the sale had been advertised by him before the separation. The sale was therefore set aside, as he had no authority to sell. The curative sections, secs. 172 and 173, only apply where the officers selling had authority to sell, and are of no avail to remedy absence of jurisdiction to sell.

In *Doe d. Mountcashel* v. *Grover*, 4 U.C.R. 23, a sale of lands was made by the officers of the District of Colborne for arrears, part of which had arisen while the land was in the district of Newcastle before that district was divided. The statute creating the new district was silent in regard to such arrears. Robinson, C.J., apparently thought the officers of the new district had implied power to sell for such arrears, though the officers of the District ot Newcastle had not. Macaulay, J, was of the same opinion. McLean, J., was of the contrary opinion, as no officer of the new district had any means officially of knowing what arrears there were against any particular parcel of land.

Sales for Taxes on Lands which have been Annexed to City or Separated Town.

194. Where a municipality or any part of a municipality has been or is hereafter separated from a county and included in a city or town separated from the county for municipal purposes, after a return has been made to the treasurer of the county of lands in arrear for taxes, but the lands have not been advertised for sale by the treasurer of the county, such treasurer shall return to the treasurer of the city or town a list of all the lands within such territory returned as in arrear for taxes and not advertised; and the treasurer and mayor of the city or town shall have power to take all the proceedings which treasurers and wardens under this Act can take for the sale and conveyance of lands in arrear for taxes; but in case the lands in such territory have been advertised before the separation, the sale of such lands shall be completed in the same manner as if the separation had not taken place, and conveyance of lands previously sold shall be made in like manner. R.S.O. 1897, c. 224, s. 231.

The uniform principle applicable to territory changed from one municipality or county to another, is that if the lands have, at the time of the change, been advertised for sale, the officer who advertised shall continue and complete the sale. But if the lands have not been advertised for sale, the officer in whose books the arrears have been recorded, shall furnish a list of the arrears to the officer under whose jurisdiction the lands have now come, and the latter shall deal with the collection of the arrears.

Responsibility of Officers.

Security by Treasurers and Collectors.

195. Every treasurer and collector, before entering on the duties of his office, shall enter into a bond to the corporation for the faithful performance of his duties. R.S.O. 1897, c. 224, s. 247.

The treasurer and collector must give security for the due performance of their respective duties. The duties of the treasurer are, in part, defined by this Act; but he has numerous duties under

other statutes. His duties are, in a general way, defined by *The Consolidated Municipal Act*, 1903, sections 288 to 294*a*. It would seem that the collector and his sureties are responsible for the whole of the taxes on the collector's roll, and it is only on his making the oath required by section 115, that he receives credit for the amount not realized. But they are not responsible for taxes which he has failed to collect by reason of the roll being without the signature of the clerk to authenticate it, as required by section 95; though it would be otherwise as to taxes which he had collected under a defective roll: *Town of Trenton* v. *Dyer*, 24 S.C.R. 474. In *County of Simcoe* v. *Burton*, 25 A.R. 478, the county treasurer had embezzled the funds of the county for a number of years, and had so manipulated his accounts as to deceive the auditors, and their reports were from time to time adopted by the County Council in good faith. The defendant, who was a ratepayer and a relative of the treasurer, was informed by a member of the council, and by some of the county officials, that the treasurer's accounts were correct, and he, relying on the correctness of this information, became one of the treasurer's sureties. The treasurer was then a defaulter for a large sum. The auditors' reports, though adopted by the council, were not representations by the council which discharged the surety. Nor did the statements made by the members of the council and the county officials bind the council, and if they did, having been made in good faith, they formed no defence.

In *Town of Meaford* v. *Lang*, 20 O.R. 541, there had been great laxity on the part of the town council, but up to the time when the collector of taxes absconded, a majority of the members of the council had confidence in his honesty. The sureties had made no inquiries from the town council or officials. In a former year a motion had been made in council that if the roll of the previous year was not returned by a date named in the motion, an enquiry by the County Judge would be asked for. At a later date in the same year, the treasurer was instructed to take proceedings against the collector and his sureties for the amount still due for the previous year. There was a similar resolution in a later year for the then previous year, and the roll for that year was not returned for three years. The non-disclosure of these things did not amount to constructive fraud on the sureties, so as to relieve them from their obligation to make good the loss.

In *Township of Adjala* v. *McElroy*, 9 O.R. 580, it was held that the annual appointment of a treasurer did not relieve his sureties upon a bond, given at the beginning of his term of office, conditioned for the faithful discharge of his duties "during his continuance in office." After the treasurer had been a defaulter to the knowledge of the council, they continued him in office for several years without notice to the sureties of the default. Such conduct released the sureties from all liability arising after the date when the council were shown to have actual knowledge of the default.

In *Village of Weston* v. *Conron*, 15 O.R. 595, the village clerk was treasurer. He was authorized to retain the roll for three months, and was given a percentage on the taxes he collected. As clerk and treasurer he could not also be collector. His acting temporarily in that capacity did not release his sureties, but their liability was restricted to the moneys which he had entered in the treasurer's books as received in that capacity.

The Jury allowed the collector a commission of three and a half per cent. on the amount uncollected for which they found him liable. On appeal the commission was disallowed: *Town of Welland* v. *Brown*, 4 O. R. 217. A bond of a township treasurer bound him to account for all money coming into his hands and "applicable to the general uses of the municipality." This bond bound the sureties in regard to clergy revenue funds, and money received from the distribution of the provincial surplus, which had been specifically appropriated to educational purposes by by-law: *Township of Oakland* v. *Proper*, 1, O.R. 330. In *Village of Gananoque* v. *Stunden*, 1, O.R. 1, a charge of fraud in reference to the representations made by the Reeve was allowed to be added on notice at the trial; but the action was dismissed. The surety was induced to execute the bond on the representation of the Reeve that the treasurer was not in default, which was not true. The representation seems to have been made in good faith.

The negligence of the auditors in examining the treasurer's books, does not release the sureties: *County of Frontenac* v. *Bredin*, 17 Gr. 645.

The treasurer should not mix his own funds and the funds of the municipality. To invalidate a bond for concealment of material facts, the concealment must be fraudulent: *Peers* v. *County of Oxford*, 17 Gr. 472.

Ignorance of material facts which, if the surety had known

them, would have kept him from going on the bond, will not relieve him, unless there was fraudulent concealment. Mere negligence, or tacit permission by the council to the treasurer to mix township moneys with his own, will not discharge the sureties: *Township of East Zorra* v. *Douglas*, 17 Gr. 462. A surety is liable on a bond of the treasurer executed before his appointment: *County of Essex* v. *Strong*, 21 U.C.R. 149. Delay in delivering the roll to the collector by the clerk until after the 1st of October, extensions of time given by the village council for the return by the collector of his roll, and the taking of the bond to the treasurer instead of to the municipality, are insufficient to release the sureties: *Todd* v. *Perry*, 20 U.C.R. 649. The roll is sufficient, if signed by the clerk, to render the collector's sureties liable: *Township of Whitby* v. *Harrison*, 18 U.C.R. 603. The proof of the plea that the collector had not taken the declaration of office, is on the defendant. *Ib.* The receipt, by the collector, of taxes without any roll having been delivered to him, and without his having taken the oath of office, is no defence for his sureties in regard to the money actually received: *Township of Whitby* v. *Harrison*, 18 U.C.R. 606. The representatives of a deceased collector are liable for his default to pay over money he collected: *County of Lincoln* v. *Thompson*, 8 U.C.R. 615. For the liability of the surety of a deputy treasurer on a bond to the treasurer to secure him against default, see *Baby* v. *Baby*, 8 U.C.R. 76.

Money which was payable to the government, was fraudulently entered in the County treasurer's books as paid. No demand had been made for it by the government. That circumstance afforded no defence to the sureties, in an action by the county against the treasurer: *County of Essex* v. *Park*, 11 C.P. 473. The imposition of additional taxes, whereby the risk is increased after the giving of the bond, is no defence for the surety: *Township of Beverley v. Barlow*, 10 C.P. 178.

A corporation is not bound to see that the collector takes the oath of office: *Municipality of Whitby* v. *Flint*, 9 C.P. 449.

A demand upon some of the executors of a deceased treasurer, without demand upon all of them, is sufficient in an action upon a bond in which the treasurer undertakes to give a just account of all moneys, upon request. A bond to The Provisional Municipal County Council of the County of Bruce was sufficient, the corporate name being The Provisional Corporation of the County of Bruce: *Provisional Corporation of Bruce* v. *Cromar*, 22 U.C.R. 321.

Bonds With Sureties. 3 Edw. VII., c. 19.

196. Subject to the provisions of section 323 of *The Consolidated Municipal Act*, 1903, as to accepting the bonds or policies of guarantee of incorporated companies, such bond shall be given by the officer and two or more sufficient sureties, in such sum and in such manner as the council by any by-law in that behalf may require and shall conform to all the provisions of such by-law. R.S.O. 1897, c. 224, s. 248, *amended*.

Section 323 of *The Consolidated Municipal Act*, 1903, authorizes municipal corporations to take the bonds or policies of guarantee of incorporated companies for the proper discharge of the duties of municipal officers. Such guarantee companies must be authorized by their charter to transact that class of business, in order to authorize their bonds or policies of guarantee to be taken by a municipality.

If such a bond is not taken, the treasurer, or collector, as the case may be, gives a bond with two sufficient sureties. The council by by-law determines the amount of the security, and the character of the bond. The bond should conform to the by-law.

Penalty on Officers Failing to Perform Their Duty, and how Enforced.

197. If any treasurer, assessor, clerk or other officer refuses or neglects to perform any duty required of him by this Act, he shall, upon conviction thereof before any Court of competent jurisdiction in the County in which he is treasurer, assessor, clerk or other officer, forfeit to His Majesty such sum as the Court may order and adjudge, not exceeding $100. R.S.O. 1897, c. 224, s. 249.

The effect of a tax collector's not having taken the declaration of office required by section 311 of *The Consolidated Municipal Act*, 1903, is to subject him to the penalty imposed by section 319 of that Act for his failure to do so, but it has not the effect of making his acts void: *Lewis* v. *Brady*, 17 O.R. 377.

"When an assessor has reasonable notice, before he returns his roll, that a change in occupancy has been made, and he omits to make the necessary changes, it may properly be considered when

the assessor fails to do this, that he has wrongfully refused to insert the proper name on the roll:'' *Re McCulloch and Judge of Leeds and Grenville*, 35 U.C.R. 449, at p. 452, per Richards, C.J. In *Regina* v. *Court of Revision of Cornwall*, 1866, 25 U.C.R. 286, referring to the neglect of the clerk to give the six clear days notice of the sittings of the Court of Revision required by section 65, Morrison, J., said: "By the 171st section of *The Assessment Act*, if the clerk refuses or neglects to perform any duty required of him by the Act, for every offence he shall forfeit $100; and by the 173rd section, if he wilfully omits any duty required of him by the Act, he shall be guilty of a misdemeanor, and liable to a fine of $200 and imprisonment. As Lord Denman said in *King* v. *Burrell*, 12 A. & E. 467, 'these are wise and prudent provisions to secure the due execution of the Act, by officers whose duty it is to learn their duty and to do it accordingly.'''

A mandamus will not issue against a collector to compel him to account for moneys collected. The Act provides other remedies: *Re Quin*, 23 U.C.R. 308.

The clerk of Amherstburg upon a notice claiming exemption from common school rates signed by certain persons, of whom he was one, having been delivered to him, wrongfully and illegally omitted to charge them with common school rates in the collector's roll. Referring to this Burns, J., in discharging a rule for a mandamus said: ''He (the clerk) seems to have thought that he, as clerk of the municipality, had a right to omit, on the collector's roll, carrying out the rate to his own name and others who signed the notice. This is a clear violation of his duty. . . . The 171st and 173rd sections of *The Assessment Act* provide for punishing the clerk of a municipality who refuses to do his duty, or who commits malversation in the discharge of it, by indictment. The insinuations thrown out on this case against Mr. Brush (the clerk) are of the latter description:'' *Re Ridsdale and Brush*, 22 U.C.R. 122.

In *Reg*. v. *Preston*, 21 U.C.R. 86, it was held that an indictment would not lie, under C.S.U.C. cap. 94, for the forging or altering of the assessment roll for a township, deposited with the clerk. But see now sec. 422 of The Criminal Code.

In *Regina* v. *Snider*, 23 C.P. 330, the Court held that the failure of the assessors to return their roll by the 1st of May, was not an indictable offence under section 175 of *The Assessment Act*, 32

Vict. c. 36, and that, if it were, the two assessors would not be jointly liable.

Where three separate lots were rated in bulk by the assessor, a subsequent sale based on that assessment was set aside. "It is most provoking that the officers charged with the execution of the law in these cases, will not observe the plain directions of the statute, but pursue, at least, a most careless practice, by which they may on some occasion suffer. It will be well for them to consider whether they may not be liable for any loss which the municipality may sustain in consequence of their blunders; at all events whether they may not lose all compensation for their services, as well as any expense they may have incurred:" *Christie* v. *Johnston*, 12 Gr. 534.

In a civil action against the clerk of a town for omitting from the collector's roll a number of persons whose names were on the assessment roll, it must be alleged and proved that the omission was made negligently, falsely or dishonestly, and not by mere mistake. A mistake would not render him civilly liable: *Town of Peterborough* v. *Edwards*, 31 C.P. 231.

A tax collector sued for damages in respect of acts done by him in the course of his duty as such, is entitled to notice under R.S.O. 1897, c. 88; and the action must be brought in the County within which the cause of action arose : *Howard v. Herrington*, 20 A.R. 175.

The penalties imposed under this section and the three following ones, are recoverable before any Court of competent jurisdiction. There is no jurisdiction to proceed summarily for them before a Justice of the Peace.

Other Assessors may act for those in Default.

198. If an assessor neglects or omits to perform his duties the other assesor, or other assessors (if there be more than one for the same locality), or one of such assessors, shall, until a new appointment, perform the duties; and any council may, after an assessor neglects or omits to perform his duties, appoint some other person to discharge such duties; and the assessor so appointed shall have all the powers and be entitled to all the emoluments which appertain to the office. R.S.O. 1897, c. 224, s. 250.

Under section 321 of *The Consolidated Municipal Act*, 1903, all officers appointed by the council hold office only until removed by the council. The result is that they hold office only during the pleasure of the council, and may be dismissed at any time: *Willson* v. *Township of York*, 46 U.C.R. 289; *Vernon* v. *Town of Smith's Falls*, 21 O.R. 331; *Hellems* v. *City of St. Catharines*, 25 O.R. 583.

Punishment of Clerks, Assessors, Etc., Making Fraudulent Assessments, Etc.

199. If any clerk, treasurer, assessment commissioner, assessor or collector, or any assistant or other person in the employment of the municipality, acting under this Act, makes an unjust or fraudulent assessment or collection, or copy of any assessor's or collector's roll, or wilfully and fraudulently inserts, or permits to be inserted, therein the name of any person which should not be entered, or fraudulently omits, or allows to be omitted, the name of any person which should be entered, or wilfully omits any duty required of him by this Act, he shall, upon conviction thereof before a Court of competent jurisdiction be liable to a fine not exceeding $200, and to imprisonment until the fine is paid, in the common gaol of the county or city for a period not exceeding six months, or to both such fine and imprisonment, in the discretion of the Court. R.S.O. 1897, c. 224, s. 251, *amended*.

Section 197 deals with the refusal or neglect of an officer to perform the duties of his office. This section deals with more flagrant offences involving fraud or other wilful misconduct. The enumeration of officers concerned with assessments and taxation is comprehensive. It imposes penalties for,

(*a*) An unjust or fraudulent assessment,

(*b*) Or collection.

(*c*) An unjust or fraudulent copy of any assessor's or collector's roll.

(*d*) The wilful and fraudulent insertion of the name of any person in the assessment roll, or collector's roll, which should not be entered.

(*e*) Permitting the insertion of such name.

(*f*) The fraudulent omission of the name of any person from either of such rolls, which should be entered thereon.

(*g*) The wilful omission of any duty required to be performed by such officer under this Act.

See the next section.

"Wilful is a word of familiar use in every branch of law, and although in some branches of the law it may have a special meaning, it generally as used in Courts of Law, implies nothing blameable, but merely that the person of whose action or default the expression is used, is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and is a free agent:" *Re Young and Harston*, 31 Ch. D. 174, per Bowen, L.J.

Section 252 of R.S.O. 1897, cap. 224, provided that proof to the satisfaction of the jury, that any real property was assessed by the assessor at an actual value greater or less than its true actual value by thirty per centum thereof, shall be *prima facie* evidence that the assessment was unjust or fraudulent. That provision has been wholly omitted from this Act.

The actual value of land is a matter of opinion. Men's judgments differ greatly in regard to the value of property, as the result or differences of temperament, financial position, and a score of other circumstances. Strictly speaking, the value of land, as of any other commodity, is the price it will bring at the time it is offered for sale: *Squire qui tam* v. *Wilson*, 15 C.P. 284.

Punishment of Culpable Assessors.

200. An assessor convicted of having made any wilfully unjust or fraudulent assessment, shall be sentenced to the greatest punishment, both by fine and imprisonment, allowed by this Act. R.S.O. 1897, c. 224, s. 253, *amended.*

The maximum penalty must be imposed, $200 fine and six months imprisonment, if the assessment is wilfully unjust or fraudulent.

Penalty for not Making and Completing Assessment Rolls by the Proper Time.

201. If any assessor of any township, village or ward, except in the cases provided for by sections 53 and 56 of this Act, neglects

or omits to make out and complete his assessment roll for the township, village or ward, and to return the same to the clerk of such township or village, or of the city or town in which such ward is situated, or to the proper officer or place of deposit of such roll, on or before the 1st day of September of the year for which he is assessor, every such assessor so offending shall forfeit for every such offence the sum of $200, one moiety thereof to the use of the municipality and the other moiety, with costs, to such person as may sue for the same in any Court of competent jurisdiction; but nothing herein contained shall be construed to relieve any assessor from the obligation of returning his assessment roll at the period required elsewhere by this Act, or from the penalties incurred by him for not returning the same accordingly. R.S.O. 1897, c. 224, s. 254.

When by-laws have been passed under sections 53 to 56 change ing the date for the completion of the assessment roll, this section is not applicable. It applies when the time fixed for the return of the assessment roll by the assessor is the 1st day of May.

The offence is failure to make out, complete and return the roll on or before the 1st day of September of the year for which he is assessor. The penalty for the offence is the forfeiture of the sum of $200. The money may be recovered at the suit of any person who chooses to bring an action therefor. One half of the penalty belongs to the plaintiff, and the other half to the municipality.

This punishment is in addition to any other penalty to which the assessor may be exposed for his failure to do his duty.

This section must not be construed as giving any authority or excuse for delay in returning the assessment roll, completed, on or before the 1st day of May.

Proceedings for Compelling Collectors to pay over Moneys Collected to the Proper Treasurer.

202. If a collector refuses or neglects to pay to the proper treasurer, or other person legally authorized to receive the same, the sums contained in his roll, or duly to account for the same, as uncollected, the treasurer shall, within twenty days after

time when the payment ought to have been made, issue a warrant, under his hand and seal, directed to the sheriff of the county or city (as the case may be), commanding him to levy of the goods, chattels, lands and tenements of the collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the treasurer the sum so unaccounted for, and to return the warrant within forty days after the date thereof. R.S.O. 1897, c. 224, s. 255.

The collector is responsible for the whole amount shown upon his roll. He must either collect it and pay it over, or show by a proper return, verified by oath, why he has been unable to collect the amounts still uncollected. See sections 113 and 115 and the notes thereon. If he fails to either pay the money or account for his not collecting it, this section furnishes a summary remedy. In *Re Quin and the Treasurer of the Town of Dundas*, 23 U.C.R. 308, an application was made for a mandamus to compel the collector to account for the taxes on his rolls for the seven years during which he had held office, and to show the reason why he had not collected such sums as were still uncollected. The application was made by the treasurer, acting upon the instructions of the corporation. The mandamus was refused. There is a remedy by action on his bond under section 195; section 199 gives a remedy "if he wilfully omits any duty required of him by this Act;" and section 202 gives a summary remedy for the collection of the money unaccounted for. Some one or more of these methods of redress must be resorted to, or it must be clearly shown that they cannot be used or will be of no avail, before the Court will grant the prerogative writ of mandamus.

In *Charlesworth* v. *Ward* (1871), 31 U.C.R. 94, the proceedings were under this section. The case was remarkable for the great divergence of judicial opinion it evolved in reference to the expression "within twenty days after the time when the payment ought to have been made." By the statute then in force the roll was to be returned to the township treasurer by the 14th of December in each year, or on such day in the next year not later than the 1st of May as the County Council might appoint. In January, 1865, the collector was authorized by resolution of the

County Council to continue the collection of the taxes for 1864 until the 1st of May then next; and in January, 1866, to continue the collection of taxes for the township "so long as he should be recognized by the said township." He did not return the rolls until April, 1867, when a large amount of the taxes of each year appeared not to be accounted for.

Richards, C.J., thought that the warrant of the treasurer under this section was not issued in time. "The only time mentioned in the statute then in force was the 14th day of December, or such other day as the municipal council of the county may appoint not later than the 1st day of May in the next year. Now here no other day than the 14th day of December was appointed for the return of the rolls or the paying over of the money, and the power contained in the section to issue the warrant was not exercised within twenty days of that time. . . . The subsequent resolution of the township council, passed in 1866, authorized the said Thomas Moore (the collector) to continue the levy and collection of taxes so long as he should be recognized by the municipality of the township. Here no time is fixed within which he is to pay over the money, and things continued in this state until the law under which they were then acting was repealed. At that time, then, *the time* when the payment ought to have been made was not fixed, unless it was the time named in the statute, and the twenty days within which the warrant ought to have issued had then long passed. Another question to be considered is, what do the words 'within twenty days after the time when the payment ought to have been made' mean? Are they to be interpreted literally, or is the true meaning that the warrant is not to issue until the expiration of the twenty days from the time? If the latter be the true meaning . . . then twenty days did not elapse before the issuing of the warrant, and in that view it would be void. I do not, however, feel inclined to put that interpretation on the section. I think the safest rule to lay down, and the one more in accordance with the true meaning of the statute and the general doctrine as to the view taken of extraordinary and unusual remedies given to enforce the collection of money, is to hold the parties to the strict letter of the law on the subject. I think this may be carried out by deciding that, when the time of returning the roll and paying over the money is fixed within the period allowed by law, and the collector neglects or refuses to pay over the money by that time, that the treasurer of the corpora-

tion may, within twenty days from that time, issue his warrant to collect the amount from the collector and his sureties; but if that is not done within such time and the municipality authorizes the collector to continue the collection of the unpaid taxes, though it does not alter or affect the duty of the collector to return his roll, or invalidate or otherwise affect the liability of the collector or his sureties, yet the usual legal remedies must be resorted to, to enforce those liabilities.''

Wilson, J., took a wholly different view. He said: ''But does the statute mean that the warrant is to issue only within the twenty days? If so, this warrant may issue the very day after the payment should have been made, and cannot issue after these twenty days have expired. Or does it mean that the warrant shall not be issued for twenty days after the default was made?'' He then proceeds to cite and consider a number of cases on the construction of similar expressions. He then proceeds: ''I am of opinion that the collector had until the 2nd of April, 1867, within which to pay, the demand on that day determining his right to any further day, and upon the authorities the warrant by way of execution, which issued on the 6th of April, having issued before the twenty days after default to pay had elapsed, was improperly because prematurely issued.'' Morrison, J., concurred with Wilson, J., In the result the sale under the warrant was invalid, one Judge thinking the warrant was issued too late, and two others thinking that it was issued too soon. The conclusion suggested by Richards, C.J., seems indisputable, that an action on the collector's bond would in the circumstances have been preferable to the summary remedy given by this section. It certainly would have been so in the outcome.

The warrant must be under the hand and seal of the treasurer, directed to the proper sheriff, it must command him to levy of the goods and chattels, lands and tenements of the collector and his sureties, who are of course named in the warrant, the amount specified in the warrant, which amount the treasurer ascertains by deducting the sums paid over to him or accounted for by the collector, from the whole amount of taxes shown on the collector's roll. The warrant also directs the sheriff to levy the costs. These would be the same as the costs of levying on an execution. The warrant must further direct the sheriff to return the same within forty days.

Warrant to be Delivered to Sheriff, Etc.

203. The treasurer shall immediately deliver the warrant to the sheriff of the county or city, as the case may require. R.S.O. 1897, c. 224, s. 256.

Sheriff, Etc., to Execute it, and pay Money Levied.

204. The sheriff to whom the warrant is directed shall within forty days cause the same to be executed and make return thereof to the treasurer, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation as upon writs of execution issued out of courts of record. R.S.O. 1897, c. 224, s. 257.

Mode of Compelling Sheriffs, etc., to Pay over.

205. If a sheriff refuses or neglects to levy any money when so commanded, or to pay over the same, or makes a false return to the warrant or neglects or refuses to make any return, or makes an insufficient return, the treasurer may, upon affidavit of the facts, apply in a summary manner to the High Court, or to a Judge thereof for an order *nisi* or summons calling on the sheriff to answer the matter of the affidavit. R.S.O. 1897, c. 224, s. 258.

When Returnable.

206. The order *nisi* or summons shall be returnable at such time as the Court or Judge directs. R.S.O. 1897, c. 224, s. 259.

Hearing on Return.

207. Upon the return of the order *nisi* or summons, the Court or Judge may proceed in a summary manner upon affidavit, and without formal pleading, to hear and determine the matter of the application. R.S.O. 1897, c. 224, s. 260.

Fi. Fa. to the Coroner to Levy the Money.

208. If the Court or Judge is of opinion that the sheriff has been guilty of the dereliction alleged against him, the Court or

Judge shall order the proper officer of the Court to issue a writ of *fieri facias*, adapted to the case, directed to a coroner of the county in which the municipality is situate, or to a coroner of the city or town (as the case may be) for which the collector is in default. R.S.O. 1897, c. 224, s. 261.

Tenor of Such Writ.

209. The writ shall direct the coroner to levy of the goods and chattels of the sheriff, the sum which the sheriff was ordered to levy by the warrant of the treasurer, together with the costs of the application and of the writ and of its execution; and the writ shall bear date on the day of its issue, and shall be returnable forthwith on its being executed; and the coroner, upon executing the same, shall be entitled to the same fees as upon a writ grounded upon a judgment of the Court. R.S.O. 1897, c. 224, s. 262.

These sections are intended to provide a speedy and effectual remedy against the collector and his sureties; and to insure prompt and speedy action on the part of the sheriff, who must levy, sell and pay over the money to the treasurer within forty days after the receipt by him of the warrant, directed to him. A summary remedy is also furnished for compelling the prompt performance by the sheriff of his duty. The application for that purpose is upon affidavit, and without formal pleading.

The coroner is the usual officer to enforce an execution against a sheriff. A writ of execution directed to no one is void: *Wood* v. *Campbell,* 3 U.C.R. 269. The fees of the sheriff, poundage, etc., are payable only out of the money made by him on the warrant.

Penalty on Sheriff if no Other Imposed.

210. If a sheriff wilfully omits to perform any duty required of him by this Act, and no other penalty is hereby imposed for the omission, he shall be liable to a penalty of $200, to be recovered from him in any Court of competent jurisdiction at the suit of the treasurer of the municipality affected thereby. R.S.O. 1897, c. 224, s. 263.

See notes on sections 197-199.

Payment of Money Collected for the Province.

211. All money assessed, levied and collected for the purpose of being paid to the Treasurer of the Province, or to any other public officer, for the public uses of the Province, or for any special purpose or use mentioned in the Act under which the same is raised, shall be assessed, levied and collected by, and accounted for and paid over to the same persons, in the same manner, and at the same time as taxes imposed on the same property for county, city or town purposes and shall be deemed and taken to be money collected for the county, city or town, so far as to charge every collector, or treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, in like manner as in the case of money assessed, levied and collected for the use of the county, city or town. R.S.O. 1897, c. 224, s. 264.

The lunatic asylum tax for 1852 was a tax imposed by the Legislature, to be collected through the local municipal machinery. In an action brought by the county against the county treasurer and his sureties for sums on account of this tax which had reached the hands of the treasurer, and had been fraudulently credited as paid over to the government, it was held that the liability of the treasurer was between the county and himself, and was not affected by the fact that the government had not demanded payment: *Corporation of Essex* v. *Park*, 11 C.P. 473.

How money Collected for County Purposes to be paid Over

212. All money collected for county purposes, or for any of the purposes mentioned in the preceding section, shall be payable by the collector to the townsihp, town or village treasurer and by him to the county treasurer ; and the corporation of the township, town or village shall be responsible therefor to the corporation of the county. R.S.O. 1897, c. 224, s. 265.

Collectors or Treasurers Bound to Account for all Moneys Collected by them.

213. Any bond or security given by the collector or treasurer to the corporation of the township, town or village, to account

for and pay over all money collected or received by him, shall apply to money collected or received for county purposes, or for any of the purposes mentioned in section 220. R.S.O. 1897, c. 224, s. 226.

Local Treasurer to pay over County Moneys to County Treasurer.

214. The treasurer of every township, town or village shall on or before the 31st day of December in each year pay to the treasurer of the county, all money then collected in the municipality for county purposes and shall within fourteen days after the time appointed for the final settlement of the collector's rolls, pay to the treasurer of the county any balance remaining unpaid of the money by law required to be levied and collected in the municipality for county purposes, or for any purpose mentioned in section 211 of this Act. R.S.O. 1897, c. 224, s. 267.

This section applies to townships, towns and villages. All money collected for county purposes, on or before the 31st day of December, must then be paid over to the county treasurer. The balance of the money payable to the county must be paid over within fourteen days of the time appointed for the final settlement of the collector's rolls. The time for the return of the collector's roll is governed by by-law under section 102, and by section 109. Section 188 deals with any deficiency in the amount collected for county purposes. Such deficiency must be made good out of general funds.

Mode of Enforcing such Payment.

215. If default be made in such payment, the county treasurer may retain or stop a like amount out of any money which would otherwise be payable by him to the municipality, or may recover the same by an action against the municipality, or where the same has been in arrear for three months, he may, by warrant under his hand and seal, reciting the facts, direct the sheriff of the county to levy and collect the amount due with interest and costs from the municipality in default. R.S.O. 1897, c. 224, s. 268.

Three remedies are provided for collecting from a municipality any sums which it should levy and pay over to the county as a part of the taxes. The county treasurer may:

(1) Retain or stop a like amount out of any money payable by the county to the municipality.

(2) Recover the amount by an action against the municipality. The right to bring this action is given to the *county treasurer.*

(3) When default in payment has been made for three months by warrant under his hand and seal, reciting the facts, direct the sheriff to levy and collect the amount with interest and costs.

How Sheriff to make Levy.

216. The sheriff, upon receipt of the warrant, shall levy and collect the amount, with his own fees and costs in the same manner as is provided by *The Consolidated Municipal Act,* 1903, in case of writs of execution. R.S.O. 1897, c. 224, s. 269.

Section 471 of *The Consolidated Municipal Act,* 1903, provides for the collection, under a writ of execution, of the amount thereof by the sheriff from a municipality. He delivers a copy of the writ and a statement of the costs of the execution, to the treasurer of the municipality. If the amount is not paid within a month, he then proceeds, from the assessment roll, to strike a rate in the dollar sufficient to make the amount, and delivers a precept to the collectors along with such rate roll, and they are obliged to levy such rate at the time and in the manner provided in respect to the general rate.

Treasurer, etc., to Account for and pay Over Crown Moneys.

217. The county, city or town treasurer shall be accountable and responsible to the Crown for all money collected for any of the purposes mentioned in section 211 of this Act, and shall pay over such money to the Treasurer of the Province. R.S.O. 1897, c. 224, s. 270.

Municipality Responsible for such Moneys.

218. Every county, city and town shall be responsible to His Majesty, and to all other persons interested, that all money coming

into the hands of the treasurer of the county, city or town in virtue of his office, shall be by him duly paid over and accounted for according to law. R.S.O. 1897, c. 224, s. 271.

Both the officials and the corporation are responsible to the Crown for all moneys collected under section 211.

The next section makes both the treasurer and his sureties responsible to the corporation.

Treasurer, etc., Responsible to County, etc.

219. The treasurer, and his sureties shall be responsible and accountable for such money to the county, city or town; and any bond or security given by them for the duly accounting for and paying over money belonging to the county, city or town, shall apply to all money mentioned in section 211 and may be enforced against the treasurer or his sureties, in case of default. R.S.O. 1897, c. 224, s. 272.

Bonds to Apply to School Moneys.

220. The bond of the treasurer and his sureties shall apply to school money, and to all public money of the Province; and, in case of default, His Majesty may enforce the responsibility of the county, city or town, by stopping a like amount out of any public money which would otherwise be payable to the county, city or town or to the treasurer thereof, or by action against the corporation. R.S.O. 1897, c. 224, s. 273.

See section 195 and the notes thereon.

City, etc., Responsible for Default of Treasurer, etc.

221. Any person aggrieved by the default of the treasurer, may recover from the corporation of the county, city or town, the amount due or payable to such person as money had and received to his use. R.S.O. 1897, c. 224, s. 274.

Miscellaneous.

Oaths and Affidavits.

222. Any affidavit or oath required bv this Act to be made may be made before any Justice of the Peace having jurisdiction

in the municipality or any commissioner for taking affidavits in the county or any notary public for the Province. *New.*

Certain declarations may also be made before the assessor. Section 18. Under section 115, the collector makes oath before the treasurer in regard to the correctness of his account.

Penalty for Tearing Down Notices, etc.

223. If any person wilfully tears down, injures or defaces any advertisement, notice or other document, which is required by this Act to be posted up in a public place for the information of persons interested, he shall, on conviction thereof in a summary way before any Justice of the Peace having jurisdiction in the county, city or town, be liable to a fine of $20. R.S.O. 1897, c. 224, s. 275.

Wilfully. See note on the word under section 199.

Recovery of Fines and Forfeitures Hereby Imposed.

224. The fines and forfeitures authorized to be summarily imposed by this Act, shall, when not otherwise provided, be levied and collected by distress and sale of the offender's goods and chattels, under authority of a warrant of distress to be issued by a Justice of the Peace of the county, city or town; and, in default of sufficient distress, the offender shall be committed to the common gaol of the county, and be there kept at hard labour for a period not exceeding one month. R.S.O. 1897, c. 224, s. 276.

This section deals only with the fines and forfeitures which may be imposed by a summary conviction. The amount may be levied and collected, under a warrant, by distress and sale of the offender's goods. Imprisonment cannot be awarded in the first instance, but only in the event of there being no sufficient distress. The duration of the imprisonment imposed in default of distress, must not exceed a month.

Application of Penalties.

225. When not otherwise provided all penalties recovered

under this Act shall be paid to the treasurer to the use of the municipality. R.S.O. 1897, c. 224, s. 277.

The penalties under sections 197 are to the use of His Majesty.

Act not to Affect Agreements.

226. This Act shall not affect the terms of any agreement made with a municipality, or any by-law heretofore or hereafter passed by a municipal council under any other Act for fixing the assessment of any property, or for commuting or otherwise relating to municipal taxation. (1) But whenever in any Act of this Legislature or by any Proclamation of the Lieutenant-Governor in Council or by any valid by-law of a municipality heretofore passed or by any valid agreement heretofore entered into the assessment of the real and personal property of any person in a municipality is fixed at a certain amount for a period of years, unexpired at the time of the coming into force of this Act, or the taxes payable annually by any person in respect to the real and personal property are fixed at a stated amount during any such period, or the real and personal property of any person or any part thereof is exempt from municipal taxation in whole or in part for any such period, such fixed assessment, or commutation of taxes or exemption shall be deemed to include any business assessment or other assessment and any taxes thereon in respect to the property or business mentioned in such Act, Proclamation, by-law or agreement to which such person or the property of such person would otherwise be liable under the provisions of this Act. *New*. (2).

(1) Agreements lawfully made for fixing assessments, or for commuting or otherwise regulating municipal taxation and any by-law present or future under this or any other Act for the same purpose are not rendered invalid by this Act.

(2) Whenever

(*a*) Any Act of the Legislature;

(*b*) Any proclamation of the Lieutenant-Governor in Council;

(*c*) Any valid by-law heretofore or hereafter passed, or

(*d*) Any valid agreement heretofore entered into;

Has

(*A*) Fixed the assessment of a person or company for real and personal property at a stated amount for a period of years not expired on the 1st day of January, 1905.

(*B*) Fixed his or their taxes at a stated amount during such period for real and personal property.

(*C*) Exempted him or them from municipal taxation in whole or in part: Such

(1) Fixed assessment,

(2) Commutation of taxes, or

(3) Exemption

Shall be deemed to include any BUSINESS ASSESSMENT or other assessment and taxes thereon in respect to the business mentioned in such Act, Proclamation, by-law or agreement.

The Imperial Oil Company, Limited, has under a by-law of the Town of Sarnia, confirmed by 62 Vict. (2) cap. 76, a fixed assessment on its real and personal property acquired at the time the by-law was passed, of $30,000. As manufacturers they would, if this section had not been passed, have a business assessment of $18,000. They are, by this section, exempt from business assessment.

Confirmation of Assessments, etc., Prior to Commencement of Act.

227. Notwithstanding anything contained in this Act, all assessments made, collectors' rolls prepared, and acts and things authorized to be done under *The Assessment Act* and amendments thereto hereby repealed, shall, notwithstanding the repeal of the said Act and amendmeats be and remain good, valid and subsisting, and if any assessments are adopted by councils of municipalities in the year 1905 where such assessments are made in the year 1904 for the next year, the assessments so adopted shall be legal and be binding upon all parties thereto as if the said Acts and amendments had not been repealed, but the taxes which may be imposed or levied under such assessments and all taxes due and remaining unpaid in any collectors' rolls in the hands of collectors

of taxes or treasurers or other officers at the time of the repealing of the said Acts and amendments shall be collected in the manner and under the procedure provided in this Act.

See the notes on sections 166 and 174, and the cases there cited.

Enactments Repealed.

228. Subject to the provisions of the next two preceding sections the Acts and parts of Acts in Schedule M hereto are hereby repealed to the extent mentioned in said Schedule.

Commencement of Act.

229. This Act shall come into force and take effect on, from and after the first day of January, 1905.

SCHEDULE A:

(*Section* 8.)

FORM OF AFFIDAVIT TO BE MADE BY A PERSON DESIRING TO BE ASSESSED IN RESPECT OF EXEMPTED INCOME.

I, make oath and say as follows:

(1) I am and I am a resident in the of residing at (*giving where possible name of street and number of house*).

(2) I am in receipt of an annual income of $

(3) I desire to be assessed in respect of such income, for the purpose of being entitled to vote at municipal elections, and that my name be duly entered in the assessment roll accordingly for the current year.

Sworn before me at in the County of this day of 19 .

J.P., *etc.* J.S.

SCHEDULE B.

(*Section* 24.)

FORM 1.

FORM OF AFFIDAVIT BY PERSONS CLAIMING TO BE PLACED ON THE ASSESSMENT ROLL AS A VOTER.

I, make oath and say as follows:

I am a British subject by birth (*or* naturalization), and I have resided in this Province for the nine months next preceding the day of in the present year (*the day to be filled in here is the date on which by Statute or by-law the Assessor is to begin making his roll.*)

I was at the said date in good faith a resident of and domiciled in (*giving name of municipality for which the assessor is making his roll*), and I have resided therein continuously from the said date, and I now reside therein at (*here give the deponent's residence by the number thereof if any and the street or locality whereon or wherein the same is situated, if in a town or village. If the residence is in a township, give the concession wherein, and the lot or part of lot whereon it is situated.*)

I am of the full age of 21 years, and am not disqualified from voting at elections for the Legislative Assembly of Ontario.

Sworn before me at in the County of this day of 19 } (*Signature of Voter*).

Signature of J. P., etc.

(*This oath may be taken before any Assessor or any Justice of the Peace, Commissioner for taking Affidavits, or Notary Public.*)

R.S.O. 1897, c. 224, *Sched.* B., Form 1.

FORM 2.

FORM OF AFFIDAVIT FOR SAME PURPOSE AS FORM 1.

But where the person has been temporarily absent from the municipality.

I , make oath and say as follows:

I am a British subject by birth, (*or* naturalization) and I have resided in this Province for the nine months next preceding the day of in the present year (*the day to be filled in here is the date on which by Statute or by-law the Assessor is to begin making his roll.*)

I was at the said date in good faith a resident of and domiciled in— (*giving name of municipality for which the assessor is making his roll*) and have resided therein continuously from the said date, and I now reside therein at (*here give the deponent's residence, by the number thereof, if any and the street or locality whereon or wherein the same is situated if in a town or village. If the residence is in a township, give the concession wherein and lot or part of lot whereon it is situated.*)

And I have not been absent from this Province during the said nine months except occasionally or temperarily in the prosecution of my occupation as (*mentioning as the case may be*), a lumberman, *or* mariner, *or* fisherman, *or* as a student in attendance at an institution of learning in the Dominion of Canada, *naming the institution if absent as student.*)

I am of the full age of 21 years, and am not disqualified from voting at elections for the Legislative Assembly of Ontario.

Sworn before me at in the County of this day of 19 .

(*Signature of J.P., or Commissioner, etc.*) (*Signature of Voter.*)

(*The oath may be taken before any Assessor or any Justice of the Peace, Commissioner for taking Affidavits, or Notary Public.*)

R.S.O. 1897, c. 224, *Sched.* B., Form 2.

SCHEDULE C.

(*Section* 29.)

Census of all children between the ages of eight and fourteen in the city, town, village or township, (*as the case may be,*) of

Name of Child	Age	Parent or Guardian	Residence

R.S.O. 1897, c. 224, *Sched.* C.

SCHEDULE D.

(*Section* 33, *sub-section* 6.)

Form of notice by non-resident owner of land requiring to be assessed therefor.

To the Clerk of the Municipality of

Take notice that I (*or* we) own the land hereunder mentioned, and require to be assessed, and to have my name (*or* our names) entered therefor on the Assessment roll of the Municiaplity of

That my (*or* our) full name (*or* names), place of residence and Post Office Address are as follows:

A.B., of the Township of York, shoemaker, Weston Post Office (*as the case may be*). Description of land (*here give such description as will readily lead to the identification of the land.*

Dated the day of , 19

C.D.

Witness, G.H.

R.S.O. 1897, c. 224, *Sched.* A.

SCHEDULE E.

(*Section* 18.)

FORMS OF ASSESSMENT RETURNS.

NOTICE TO RATEPAYERS.

(City of)

Pursuant to *The Assessment Act* you are herebv required to fill up such of the following returns as are applicable to your case, and to deliver the same to me at my office No. Street, within ten days from the delivery or mailing, as the case may be, to you of this notice, under the penalty contained in the said Act for neglect so to do

Dated this day of 19

Assessor.

No. 1.

General Return.

SCHEDULE E.

(*Section* 18.)

Township of (*or* City, Town *or* Village) of

Con. Street Side.

Names and description of persons assessed				Description of Real Property.							Assessed Value of Land and Buildings.					Statistics.								Statute Labour.		Dog Tax.		
2	3	4	5	6	7	8	9	10	11	12	13	14	15	17	18	22	23		24	25	26	28	29	27		30		32
Name (*surname first*) of person taxable (*owners and tenants of land and persons otherwise taxable*).	Age	Freeholder or tenant, M.F. or F.S.	Occupation, and in case of females S.M. or W., and in case of non-resident N.R.	Number of concession, name of street, etc., or other local designation of the local division in which the land lies or residence, in case of persons not assessable for land or in the case of manhood suffrage voters, &c.	Number of lot, house, etc., in such division.	Number of acres or other measure shewing the extent of the property.	Number of acres cleared (*or in cities, towns or villages* whether vacant or built upon).	Number of acres of woodland.	Number of acres of slash land.	Number of acres of swamp, marsh or waste land.	Value of land exclusive of buildings.	Value of buildings.	Total value of real property.	Total value of land liable for school rates only.	Total value of property exempt from taxation, or liable for local improvements only.	Religion.	Number of school section.	Public or Separate School supporter (P. or S.)	Number of children between the ages of 5 and 21.	Number of children between the ages of 5 and 16.	Number of persons in the family of person rated as a resident, including such person and all other persons residing on the premises.	Births.	Deaths.	Number of persons from 21 to 60.	Number of days' labour.	Number of dogs.	Number of bitches.	Remarks.

OATH.

I hereby make oath that I have knowledge of the particulars contained in the foregoing statement, and that the same are in every respect fully and truly stated to the best of my knowledge and belief.

Sworn before me at in the County of this day of A.D. 19 .

Signature.

Examples of Returns.

No. 2.

Return to be delivered by all persons as to their Income.

Name.

Occupation.

Address of Residence.

Address of place of business.

1. Income from Profession or Calling in this Municipality.
   (*Insert full particulars.*)

2. Income, wheresoever derived, from mortgages.
   (*Insert full particulars.*)

3. Income, wheresoever derived, from Bonds, Stocks, Debentures, Personal Securities, and from money lent or invested on any other securities, or on bank deposit, or without security.
   (*Insert full particulars.*)

4. Taxable income from any other source.
   (*Insert full particulars.*)

Oath.

(*To be inserted at the end of each return.*)

I hereby make oath that I have knowledge of particulars contained in the foregoing statement and that the same are in every respect fully and truly stated to the best of my knowledge and belief.

Sworn before me at
in the County of
this day of 19 . } (*Signature.*)

SCHEDULE F.

(*Section* 28 *and* 46.)

ASSESSMENT NOTICE FOR 19 .

TOWNSHIP OF (*or* CITY, TOWN, *or* VILLAGE) OF WARD NO.

CON. (*or* STREET), SIDE.

No. on Roll.	Name and description of person assessed.			School Supporter.	Description of Real Property.		Assessment of land and buildings.					Assessment for personal taxes.	
	Name.	Occupation	"F" or "T" "M F" "F S"	"P" or "S" (Public or Separate School Supporter.)	No of lot or house	No. of concession, street or other designation of local division.	Actual Value of land	Value of buildings.	Total actual value of real property.	Total value of real property liable for school tax only	Total value of real property liable for local improvements only	For business assessment.	For income
							$	$	$	$	$	$	$

Take notice that you are assessed as above specified for the year 19 . If you deem yourself overcharged, or otherwise improperly assessed, you or your agent may notify the Clerk of the Municipality (or Assessment Commissioner) in writing of such overcharge or improper assessment, within fourteen days after the day of (*insert date on which the Assessment Roll was returned*), and your complaint shall be tried by the Court of Revision for the Municipality of

NOTICE DELIVERED, 19 .

(INDORSED)

SIR,—Take notice that I intend to appeal against this assessment for the following reasons:

I am, Sir, your obedient servant,

A. B , Township Clerk
or Assessment Commissioner.

R.S.O. 1897, c. 224, Sched. D amended.

NOTE - *In the case of a Municipality in which there are supporters of a Roman Catholic Separate School therein or contiguous thereto, the notice required by Section 28 must also be added.*

SCHEDULE G.

(*Section* 47.)

AFFIDAVIT OR AFFIRMATION OF ASSESSOR IN VERIFICATION OF ASSESSMENT ROLL.

I (*name and residence*) make oath and say (*or* solemnly declare and affirm) as follows:—

1. I have according to the best of my information and belief, set down in the above assessment roll all the real property liable to taxation situate in the municipality (*or* ward) of (*as the case may be*); and I have justly and truly assessed each of the parcels of real property so set down at its actual value.

]*And in the case of vacant ground in cities, towns and villages assessed under section* 40 *of this Act, add*,)

Except vacant ground and ground used as a farm, garden or nursery, and not in immediate demand for building purposes, which I have assessed according to the value prescribed by By-law (*describing by its number or title any by-law passed under the provisions of section* 40.)

2. I have estimated and set down according to the best of my information and belief, in said assessment roll, *the amounts assessable against every person named in the said roll for the purpose of the tax in respect of his trade, business, profession or calling, and in respect of his income.*

3. I have entered therein the names of all the resident tenants and freeholders, and of all other persons of whose names I am aware or who have required their names to be entered therein, with the true amount of property occupied or owned by each; and I have not entered the name of any person whom I do not truly believe to be a tenant or freeholder, or the *bona fide* occupier or owner of the property, or in receipt of the income set down opposite his name, for his own use and benefit, or otherwise to be entitled by law to be so entered.

4. According to the best of my knowledge and belief, I have entered therein the name of every person entitled to be so entered either under *The Assessment Act* or any other Act; and I have not intentionally omitted from said roll the name of any person whom I knew or had good reason to believe, to be entitled to be entered thereon under any or either of the said Acts.

5. I have entered in the said roll the date of delivery or transmitting of the notice required by section 46 of *The Assessment Act*; and every such date is truly and correctly stated in the said roll.

6. I have not entered the name of any person at too low a rate in order to deprive such person of a vote, or at too high a rate in order to give such person a vote; and the amount for which each such person is assessed in the said roll truly and correctly appears in the said notice delivered or transmitted to him as aforesaid.

7. I have not entered any name in the above roll, or improperly placed any letter or letters in column 4, opposite any name, with intent to give to any person not entitled to vote, a right of voting; and I have not intentionally omitted from the said roll the name of any person whom I believe to be entitled to be placed therein, nor have I, in order to deprive any person of a right of voting, omitted from column 4 opposite the name of such person, any letter or letters which I ought to have placed there.

Sworn (*or* solemnly declared and affirmed) before me at , of in the county of , this day of , A.D. 19

R.S.O. 1897, c. 224, *Sched.* E., *amended.*

FORM OF OATH TO BE ATTACHED TO ASSESSMENT ROLL.

(*Where assistant of an Assessment Commissioner enters date of delivery or transmission of notices under section* 46.)

I (*name of assistant and residence*) make oath and say (*or* solemnly declare and affirm) as follows:—

I have entered in the assessment roll attached hereto, the date of delivery or transmission of the notice required by section 46 of *The Assessment Act*; and every such date has been truly stated in said roll. *New.*

SCHEDULE H.

(*Section* 110.)

FORM OF OATH TO BE ATTACHED TO COLLECTOR'S ROLL.

I, (*name and residence*) make oath and say (*or* solemnly declare and affirm) as follows:—

I have appended my initials in the collector's roll attached hereto to every date entered by me in said roll as the date of demand of payment, or notice of taxes, pursuant to section 99 (or section 102) and of every transmission of statement and demand of taxes pursuant to section 101 of *The Assessment Act*; and every such date has been truly stated in said roll. *New.*

SCHEDULE I.

(*Section* 65, *sub-section* 15.)

FORM OF DECLARATION OF PERSON COMPLAINING IN PERSON OF OVER CHARGE ON AN ACCOUNT OF TAXABLE INCOME.

I, *A.B.*, (*set out name in full, with place of residence, business, trade, profession or calling*), do solemnly declare that my net income, derived from all sources not exempted by law from taxation is

R.S.O. 1897, c. 224, *Sched.* G.

SCHEDULE J.

(*Section* 65, *sub-section* 15.)

FORM OF DECLARATION BY AGENT OF PERSON COMPLAINING OF OVERCHARGE ON TAXABLE INCOME.

I, *A.B.* (*set out name in full, and place of residence, business, trade, profession or calling*), agent for *C.D.* (*set out name in full, with place of residence, and calling of person assessed*), do solemnly declare that the net income of the said *C.D.*, derived from all sources not exempt from taxation by law, is ; and that I have the means of knowing, and do know, the income of the said *C.D.*

R.S.O. 1897. c. 224, *Sched.* J.

SCHEDULE K.

CERTIFICATE UNDER SECTION 130, SUB-SECTION 2.

Treasurer's Office of the County (*or* City *or* Town *or* Township of)

Statement showing arrears of taxes upon the following lands in the Township, or City or Town of

Lot.	Concession or Street.	Quantity of Land.	Amount.	Year.

I hereby certify that the above statement shows all arrears of taxes returned to this office against the above lands, and that no part of the said lands has been sold for taxes within the last eighteen months nor re-

turned to the Clerk for collection within the last twelve months, under Sub-section 1 of Section 123 of *The Assessment Act*, and that the return under Section 116 of said Act has been made for the year 19

Treasurer.

SCHEDULE L.

(*Section* 167.)

FORM OF TAX DEED.

To all to whom these Presents shall come:

We, , of the of , Esquire, Warden (*or* Mayor *or* Reeve), and of the of Esquire, Treasurer of the County (*or* City *or* Town *or* Township) of , Send Greeting:

Whereas by virtue of a warrant under the hand of the Warden (*or* Mayor *or* Reeve) and seal of the said County(*or* City *or* Town *or* Township) bearing date the day of , in the year of our Lord one thousand nine hundred and , commanding the Treasurer of the said County (*or* City *or* Town *or* Township) to levy upon the land hereinafter mentioned, for the arrears of taxes due thereon, with his costs the Treasurer of the said County (*or* City *or* Town *or* Township) did, on the day of 19 , sell by public auction to , of the of , in the County of , that certain parcel or tract of land and premises hereinafter mentioned, at and for the price or sum of of lawful money of Canada, on account of the arrears of taxes alleged to be due thereon up to the day of , in the year of our Lord one thousand nine hundred and , together with the costs:

Now know ye, that we, the said and , as Warden (*or* Mayor *or* Reeve) and Treasurer of the said County (*or* City *or* Town *or* Township) in pursuance of such sale, and of *The Assessment Act*, and for the consideration aforesaid, do hereby grant, bargain and sell unto the said , his heirs and assigns, all that certain parcel or tract of land and premises containing , being composed of (*describe the land so that the same may be readily identified.*)

In witness whereof, we, the said Warden (*or* Mayor *or* Reeve) and Treasurer of the said County (*or* City *or* Town *or* Township) have here unto set our hands and affixed the seal of the said County (or City *or* Town *or* Township), this day of in the year of our Lord one thousand nine hundred and ; and the Clerk of the County (*or* City *or* Town *or* Township) Council has countersigned.

A.B., Warden (*or* Mayor *or* Reeve). (*Corporate Seal.*)
C.D., Treasurer.

Countersigned,
E.F., Clerk.

R.S.O. 1897, c. 224, *Sched.* L.

SCHEDULE M.

ACTS AND PARTS OF ACTS REPEALED.

(*See Section* 8.)

Act.	Extent of repeal.
Revised Statutes of Ontario, chapter 224	The whole except sub-section 9 of section 184 and sections 232 to 245 inclusive.
Revised Statutes of Ontario, chapter 225	Sections 56, 57 and 59
61 Victoria, chapter 25	The whole.
62 Victoria (2nd Session), chapter 8	Sections 6 to 11 inclusive.
62 Victoria (2nd Session), chapter 27	The whole except section 16.
63 Victoria, chapter 34	The whole.
1 Edward vii, chapter 29	The whole.
1 Edward vii, chapter 26	Sections 13 and 14.
2 Edward vii, chapter 31	The whole.
3 Edward vii, chapter 19	Section 310.
3 Edward vii, chapter 21	The whole.

DUTIES OF ASSESSORS UNDER THE PUBLIC SCHOOLS ACT.

The Public Schools Act, 1 Edw. VII., cap. 39, section 12, sub-section (2) is as follows:

12.—(2) Where the land or property of any individual or company is situated within the limits of two or more school sections, the parts of such land or property so situated shall be assessed and returned upon the assessment roll separately, according to the divisions of the school sections within the limits of which such land or property is situate.

Section 54 of The Public Schools Act as amended by 3 Edw. VII., cap. 32, section (3), is as follows:

54.—(1) Once in every five years the assessors of the municipalities in which a union school section is situated, shall, after they have completed their respective assessments and before the first day of June, meet and determine what proportion of the annual requisition made by the trustees for school purposes shall be levied upon and collected from the taxable property of the respective municipalities out of which the union school section is formed. Notice of such determination shall be given forthwith to the secretary-treasurer of the union school section concerned, and to the clerks of the respective municipalities. In any municipality where more than one assessor is appointed and employed, the reeve or mayor of the municipality shall name the assessor who shall act for and on behalf of such municipality.

(2) In the event of the assessors disagreeing as to the proportion as aforesaid, the inspector in whose district the union school section is situated, with the assessors aforesaid shall determine the said matter and report the same to the clerks of the respective municipalities, on or before the first day of July, and the decision of a majority shall be final and conclusive for the period of five years.

(3) When the union school section is composed of portions of two adjoining counties, then on the disagreement of the assessors the inspector of the county in which the schoolhouse of the union section is situated shall act as arbitrator, and the decision of a majority shall be final and conclusive for the period of five years.

(4) The meeting of the assessors, for the purposes herein set forth, shall be called by the assessor of the municipality in which the schoolhouse of the union section is situated.

(5) The assessors or the assessors and arbitrator appointed as herein required may, at the request of the inspector or five ratepayers, within one month after the filing thereof with the clerk reconsider their award, and alter or amend the same so far as to correct any omission or error in the terms in which such award is expressed. R.S.O. 1897, c. 292, s. 51; 62 V. (2) c. 36, s. 17, amended by 3 Edw. VII., c. 32, s. 3.

Section 4 of 3 Edw. VII., cap. 32, is as follows:

4. The cost of proceedings under the said section 54, including the fees of assessors and arbitrators, shall be borne and be paid by the municipality in which the union school section is situate, and in case such section includes portions of two or more municipalities the said cost shall be borne and be paid by the municipalities in the same proportion as the equalized assessments of the municipalities bear to each other.

The finding of the assessors, or of the assessors and inspector, as the case may be, is spoken of as an award. Section 89 of *The Public Schools Act* enacts that any person engaged as an arbitrator in any matter arising under that Act shall be paid the sum of $4 per diem and travelling expenses.

An Act Respecting Statute Labour.

4 Edw. VII., c. 25.

Assented to 26th April, 1904.

HIS MAJESTY, by and with the consent and advice of the Legislative Assembly of the Province of Ontario, enacts as follows:—

The statutory provisions relating to statute labour were formerly contained in sections 96-128 of *The Assessment Act*, R.S.O. 1897, c. 224, and the amendments from time to time made thereto. They are now embodied in this Act.

By-laws in Townships.

1. The council in every township may pass by-laws respecting statute labour as enacted in sub-section 3 of section 531 and section 561 of *The Consolidated Municipal Act*, 1903. *New.*

Sub-section 3 of section 537 of *The Consolidated Municipal Act*, 1903, is as follows:

537. By-laws may be passed by the councils of the municipalities and for the purposes in this section respectively mentioned that is to say:

By the councils of townships—

(3) For appointing overseers of highways or pathmasters to perform the duty of making and keeping open township roads during the season of sleighing in each year. Such overseers and pathmasters shall have full power to call out persons liable to perform statute labour within their respective municipalities, to assist in keeping open such roads, and they may give to persons so employed certificates of having performed statute labour to the amount of the days' work done; and such persons shall be allowed for such work in their next season's statute labour.

In *Hogg* v. *Township of Brooke*, 7 O.L.R. 273, the municipality was held liable for damages arising from personal injuries occasioned by the non-repair of the highway by reason of its being obstructed for a distance of about half a mile by drifts, which compelled travel

along a temporary and unsafe track between the ditch and the adjoining fence. The pathmaster was aware of the condition of the road, but took no steps to make it safe. The expenditure necessary to do so would have been, according to the evidence, from six to twenty-five dollars, which the Court thought a reasonable expenditure for the purpose. "When the barrier of snow is local, as in the present case, especially at a place known to be usually drifted, the corporation must, I think, at the peril of a charge of negligence, use the means at its command to supply that which the travelling public is entitled to demand, namely, an open and reasonably safe highway. Here it is not too much to say that half a dozen neighbours applying, under the direction of the pathmaster, one or two days' statute labour each, under the township by-law, would have made a safe and sufficient track through the drift, and so probably have spared to the plaintiff his painful accident, and to the defendants the heavy expense to which they have been put by this litigation." *Ib.* per Garrow, J.A., at p. 285. See also *Caswell* v. *The St. Mary's and Proof Line Junction Gravel Road Co.*, 28 U.C.R. 247.

Section 561 of *The Consolidated Municipal Act*, 1903, reads thus:

561. The council of every township may pass by-laws—

Statute Labour.

1. For empowering any person (resident or non-resident) liable to statute labour within the municipality, to compound for such labour, for any term not exceeding five years, at any sum not exceeding $1 for each day's labour;

2. For providing that a sum of money, not exceeding $1 for each day's labour, may or shall be paid in commutation of such statute labour;

3. For increasing or reducing the number of days' labour to which the person rated on the assessment roll or otherwise shall be liable, in proportion to the statute labour to which such persons are liable in respect of the amounts at which they are assessed, or otherwise respectively;

4. For enforcing the performance of statute labour, or the payment of a commutation in money in lieu thereof, when not otherwise provided by law;

5. For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended;

6. For reducing the amount of statute labour to be performed by ratepayers or others within the municipality, or for entirely abolishing such statute labour.

7. For reducing or varying the amount of statute labour to be performed by the ratepayers or others within certain defined areas in the municipality when, in the opinion of the council, exceptional circumstances exist rendering such reduction or variation equitable, and upon such conditions as may be imposed by the by-law.

8. For providing for the making and keeping open of township roads during the season of sleighing in each year;

9. For providing for the application of so much of the commutation of the Statute Labour Fund, as may be necessary for keeping open such roads as last aforesaid, within such respective municipalities. R.S.O. 1897, c. 223, s. 561.

10. To compel all persons (resident or non-resident) liable to statute labour within any unincorporated village the limits of which are defined in the by-law, to compound for such labour at any sum not exceeding $1 for each day's labour, and to provide that such sum shall be paid in commutation of such statute labour, and to enforce the payment of such commutation in money in lieu of such statute labour; and for the purpose of enforcing such payment the like remedies may be had, and proceedings taken against the person in default, as are provided by sub-section 1 of section 107 of *The Assessment Act*, in cases of neglect or refusal to pay any sum for statute labour commuted under section 103 of *The Assessment Act*. 3 Edw. VII. c. 18, s. 112.

Exemptions.

Certain Persons in Naval and Military Service, Etc., Exempt.

2. The following persons shall not be liable to perform statute labour or to commute therefor:—

(*a*) Every person in His Majesty's Naval or Military Service on full pay, or on actual service;

(*b*) Every non-commissioned officer or private of the Volunteer Force, certified by the officer commanding the company to which

such volunteer belongs or is attached, as being an efficient volunteer; but this last exemption shall not apply to any volunteer who is assessed for property. R.S.O. 1897, c. 224, s. 96.

Every person in His Majesty's Naval or Military Service on full pay, or on actual service, is wholly exempt from the performance of statute labour. Non-commissioned officers and privates in the volunteer force, when duly certified as efficient by the officer commanding the company to which they belong, are exempt only as to the obligations imposed by sections 4 and 5. They are not exempt from the performance of statute labour for the property for which they are assessed.

Firemen exempted in certain cases. See also R.S.O. 1897, *Cap.* 231, *s.* 6.

The provision referred to, by which firemen are exempt, is contained in R.S.O. 1897, cap. 231, section 6 and is as follows:—

6. The certificate shall exempt the person named therein from the payment of any personal statute labour tax thereafter, and from serving as a juror on the trial of any cause in any Court within this Province. R.S.O. 1887, c. 188, s. 6.

The certificate referred to is a certificate under section 2 of the same Act. It is given to firemen by the corporate authorities or board of police in cities and towns. The Justices of the Peace for the district or county or the majority of them, on being satisfied that the fireman is enrolled as such, and is an efficient fireman, may direct the clerk of the peace to give the certificate. The certificate to each member of the company of firemen is to the effect that he is enrolled in the same.

Islands Used as Summer Resorts.

3. The owner or tenant of an island in the lakes not exceeding ten acres in extent and used with the houses erected thereon exclusively as a summer resort, and upon which the owner or his tenants do not reside more than three months in the year, and whereon no statute labour is done, shall not be rated for statute labour, nor shall the owner or tenant be rated for statute labour, nor shall the owner or tenant thereof be liable for the performance

of statute labour or for the payment of commutation thereof for or in respect of such property. R.S.O. 1897, c. 224, s. 30 (2).

This section was formerly sec. 30, sub-section 2 of *The Assessment Act*. R.S.O. 1897, cap. 224. To entitle an owner or tenant to exemption under this section the following conditions are necessary:—

(*a*) The property must be an island in the lakes.

(*b*) It must not exceed ten acres in extent.

(*c*) The island and the houses thereon must be used exclusively as a summer resort.

(*d*) It must not be resided upon for more than three months in the year.

(*e*) There must be no statute labour done upon such island.

If these conditions are present,

(1) The island shall not be rated for statute labour.

(2) The owner or tenant shall not be liable for the performance of statute labour in respect thereof.

(3) There shall be no payment of commutation for such property.

In *Township of Walsingham* v. *Long Point Company*, 5 P.R. 279, the Court considered the powers of a County Judge in respect to statute labour, upon an appeal to him from the Court of Revision. The defendants were the owners of an island largely marsh, without roads and used only as a game preserve, in Lake Erie, the nearest part of it being three or four miles and the furthest part twenty-five miles from the road division in which the council placed it. It was rated for thirty days statute labour. No roads built on the mainland could be of any benefit to the island. The County Judge struck off the statute labour. An order for prohibition was made against him on the ground that he had no jurisdiction. "There can be no appeal as regards the question of statute labour, as a separate and distinct complaint, for the reason already given, namely, that the amount of statute labour is regulated by the assessed value of the property under section 83" [now section 9 of this Act]. Per Galt, J., p. 283.

Cities, Towns and Villages.

Who Liable and What Ratio, in Cities, Towns and Villages.

4. Subject to the provisions of section 7, every other male inhabitant of a city, town or village of the age of twenty-one

years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labour), who has not been assessed upon the assessment roll of the city, town or village, shall, instead of such labour, be taxed at $1 yearly therefor, to be levied and collected as the council of the municipality may, by by-law direct. R.S.O. 1897, c. 224, s. 97, *amended.*

Section 7 authorizes a by-law to reduce or abolish the payments required by this section. Where such a by-law is passed, its provisions govern, and this section is not applicable.

The persons who are liable are the male inhabitants of cities, towns and villages, twenty-one years old and upwards and under sixty years of age, who are not exempt under section 2, or as firemen under section 6 of cap. 231 of R.S.O. 1897, and who are not assessed upon the assessment roll of the city, town or village. Formerly a person "who has not been assessed upon the assessment roll of the city, town or village, or whose taxes do not amount to $2" was liable to pay the prescribed sum. R.S.O. 1897, c. 224, s. 97. But now if a person is assessed at all in the city, town or village, for any amount which leaves him liable to taxes, he does not pay the tax under this section instead of statute labour.

In *Dickson* v. *Village of Galt*, 9 U.C.R. 257, the municipality assumed by by-law to fix the rate of commutation at ten shillings per day, and to provide that every person assessed for not more than £3 annual value should be assessed at two days labour; if more than £3 and not over £6, three days, and so on on a graduated scale, and that every person so assessed should pay in commutation of statute labour 1s. 3d. per day. The Court thought it clear that section 22 of 13 & 14 Vict., c. 67, did not authorize the imposition of statute labour by a by-law to be passed by the municipal council of any city, town or village, except upon inhabitants not otherwise assessed, though it was otherwise in townships, and the by-law was quashed.

Townships.

Liability of Persons not Otherwise Assessed in Townships.

5. Subject to the provisions of section 7, every male inhabitant of a township, between the ages aforesaid, who is not other-

wise assessed in any municipality in the Province, and who is not exempt by law from performing statute labour, shall be liable to one day of statute labour on the roads and highways in the township. R.S.O. 1897, c. 224, s. 100.

Section 4 relates to cities, towns and villages. Section 5 deals with townships. Under section 4 there must be a payment in money. Section 5 requires a day's labour. In section 4 the person liable is one "who has not been assessed upon the assessment roll of the city, town or village." Under that section assessment in some *other* municipality does not exempt. In section 5 the person liable is one "who is not otherwise assessed in any municipality in the Province."

Section 8 seems, however, to intend that under both sections, 4 and 5, assessment elsewhere, or the performance of statute labour or payment of the tax elsewhere, in the Province, properly certified, shall be sufficient to entitle a person otherwise liable, to exemption.

Farmers' Sons.

Farmers' Sons.

6. Every farmer's son entered as such on the assessment roll of any municipality, shall, if not otherwise exempted, by law, be liable to perform statute labour or commute therefor as if he were not so entered. R.S.O. 1897, c. 224, s. 106; 62 V. (2) c. 27, s. 8, *amended.*

Entry on the assessment roll as a farmer's son does not entitle the person so entered to exemption under sections 4 as a person "assessed upon the assessment roll" or under section 5 as "otherwise assessed."

Reduction or Abolition of Tax.

Power to Reduce or Abolish Statute Labor.

7. The council of every city, town, village and township may pass by-laws to reduce or abolish the amount of statute labour to be performed or the amount to be paid in lieu thereof or to entirely

abolish such statute labour and the performance thereof by all persons within the municipality. R.S.O. 1897, c. 224, ss. 98, 101.

Two sections 98 and 101 of R.S.O. 1897, c. 224, were consolidated to form this section. Section 98 read thus: "The council of every city, town and village may pass by-laws to reduce or abolish the amount to be paid in lieu of statute labour as provided by the next preceding section." Section 101 was: "The council of every township shall have the power to pass by-laws to reduce the amount of statute labour to be performed by the ratepayers or others within the township, or to entirely abolish such satute labour and the performance thereof by all persons within the township." In construing this section it must be remembered that in urban municipalities there is no "statute labour and the performance thereof" to abolish. In cities, towns and villages a by-law might be passed to reduce or abolish the amount to be paid in lieu thereof. In townships there is power in addition to reduce or abolish statute labour and the performance thereof.

It would seem that the meaning of this section might be more concisely expressed. It would seem as if the last two lines, "to entirely abolish such statute labour and the performance thereof", add nothing to the power given earlier in the section, "to reduce or abolish the amount of statute labour to be performed."

Non-residents whose names do not appear upon the assessment roll do not perform statute labour. It is commuted under section 14. See *The Assessment Act*, section 33, subsection 6.

A by-law of a village, authorizing the persons liable to perform statute labour in the municipality according to the assessment roll, to commute the same, is invalid, as statute labour is to be performed in townships only: *In Re Stayner*, 46 U.C.R. 275; *Dickson* v. *Village of Galt*, 9 U.C.R. 257.

Section 598 of *The Consolidated Municipal Act*, 1903, provides that any roads whereon statute labour has usually been performed shall be deemed common and public highways: See *Holland* v. *Township of York*, 7 O.L.R. 533; but not when it is insignificant in amount: *Andrews* v. *Township of Pakenham*, 4 U.C.R. 6.

Proof to Relieve from Tax.

8. Subject to the provisions of section 7, no person shall be exempted from the tax in sections 4 or 5 mentioned, unless he

produces a certificate that he is assessed elsewhere or that he has performed statute labour or paid the tax elsewhere in the Province. *New.*

See sections 4 and 5 and the notes thereon.

Performance of Statute Labour.

Ratio of Service in Case of Persons Assessed.

9.—(1) Every person assessed upon the assessment roll of a township shall, if his property is assessed at not more than $300, be liable to two days' statute labour; at more than $300 but not more than $500, three days ; at more than $500 but not more than $700, four days; at more than $700 but not more than $900, five days; and for every $300 over $900 or any fractional part thereof over $150, one additional day; but the council of any township may, by a by-law operating generally and rateably, reduce or increase the number of days' labour to which all the persons, rated on the assessment roll or otherwise, shall be respectively liable, so that the number of days' labour to which each person is liable shall be in proportion to the amount at which he is assessed; and in all cases both of residents and non-residents, the statute labour shall be rated and charged against every separate lot or parcel according to its assessed value. R.S.O. 1897, c. 224, s. 102 (1); s. 17 (1) *last part.*

The amount of statute labour to be performed varies with the assessment. The statute fixes the ratio; but the council of the township may by by-law reduce or increase the number of days labour to be performed. Such by-law must operate rateably and generally, and it must be uniform in its application to persons. The number of days' work to which each person is liable must be in proportion to the amount fo his assessment. All must be treated fairly, without discrimination or partiality. See sections 3 and 4 of *The Assessment Act*, and the cases there cited, ante p. 23.

In all cases, both of residents and non-residents, the statute labour must be charged against each separate lot or parcel by

itself. This direction is imperative, not merely directory. When therefore a lump sum was assessed against 600 acres, instead of each of the several lots being separately assessed, and a bulk sum was assessed for statute labour against the whole of the lots comprising the property, the assessment of statute labour was illegal, and would not justify a distress for taxes for the sum put on the collector's roll therefor: *Wæchter* v. *Pinkerton*, 6 O.L.R. 241; *Love* v. *Webster*, 26 O.R. 453; *Hall* v. *Farquharson*, 15 A.R. 457; *Canada Company* v. *Howard*, 9 U.C.R. 654. But see sub. sec. 2 of this section.

The County Judge has no power to deal with the amount of statute labour rated against a lot or parcel of land on an appeal from the Court of Revision to him in regard thereto: *Township of Walsingham* v. *Long Point Co.*, 5 P.R. 279.

Amount of Statute Labor.

(2) Wherever one person is assessed for lots or parts of several lots in one municipality, not exceeding in the aggregate two hundred acres, the said part or parts shall be rated and charged for statute labour as if the same were one lot, and the statute labour shall be rated and charged against any excess of said parts in like manner. R.S.O. 1897, c. 224, s. 109, (2), *first part.*

The whole of the land belonging to one person in a township is to be rated and charged as one lot or parcel for statute labour, so long as the lots or parts of lots taken together do not exceed two hundred acres; and any excess is charged in the same manner. To charge statute labour separately against each of several parcels of land in the same township, the parcels in the aggregate being less than two hundred acres, is illegal, and the legality of a sale for the sums charged for such statute labour was questioned by Patterson, J.A., in *Hall* v. *Farquharson*, 15 A.R. at p. 470. For non-resident lands see section 14.

Commutation of Statute Labour of Non-Residents.

(3) In townships where farm lots or portions thereof are owned by non-residents who have not required their names to be entered on the assessment roll, the statute labour shall be commuted by the township clerk in making out the roll required under section

96 of *The Assessment Act*, where such lots are under the value of $200, to a rate not exceeding one-half per centum on the valuation; but the council may direct a less rate to be imposed by a general by-law affecting such lots. R.S.O. 1897, c. 224, s. 102 (2).

This sub-section applies only to farm lots of non-residents in townships. The statute labour is to be commuted on the non-resident tax roll when such lots are under the value of $200, but the rate in such case must not exceed one half per cent. on the assessed value. The council may by a general by-law still further reduce the rate. They have power to do so only by a general by-law. See sections 3 and 4 of *The Assessment Act*. See also section 14 of this Act.

(4) Every resident shall have the right to perform his whole statute labour in the statute labour division in which his residence is situate, unless otherwise ordered by the municipal council. R.S.O. 1897, c. 224, s. 102 (2), *last part*.

Every resident performs his statute labour in the division in which he resides, unless otherwise ordered by the municipal council. He cannot be compelled to do statute labour in a municipality in which he does not reside: *Moore* v. *Jarron*, 9 U.C.R. 233. But he must perform it, when called upon, within the division of the township in which he resides, to protect himself from fine: *Gates* v. *Davenish*, 6 U.C.R. 260. A non-resident whose name is not on the resident assessment roll, is not permitted to perform statute labour. Section 14.

[*As to the allowance of work in extinguishing bush fires as statute labour, see R.S.O.* 1897, *Cap.* 269, *Sec.* 2.]

Section 2 of cap. 269 of R.S.O. 1897 is as follows:

1.—(1) The county council of each county may provide by by-law that fire guardians, fence-viewers, overseers of highways or pathmasters, appointed by township councils, whenever the woods or prairies in any township are on fire, so as to endanger property, shall order as many of the inhabitants of such township liable to work on the highways and residing in the vicinity of the place where such fire is, as they may severally deem necessary, to repair to the place where such fire prevails, and there to assist in extinguishing the same, or in stopping its progress.

(2) In portions of the Province where there are no county councils, the council of any township may pass the by-law mentioned in the foregoing sub-section. 53 V. c. 64, s. 1.

2. Such fire guardians, fence-viewers, overseers of highways or pathmasters, may give to such persons as may be employed by them respectively in so doing, certificates of having performed statute labour to the amount of the days' work done, and such work shall be allowed for to such persons in their next year's statute labour, or, if such persons are not liable to perform statute labour, the council may direct that such work shall be paid for out of the funds of the municipality, and such persons shall be entitled to be paid the amount of such certificate by the township treasurer, and the county council may also provide for the application by the township councils of so much of the commutation of statute labour as may be required for assisting to extinguish or stop the progress of such fires within their respective municipalities. 53 V. c. 64, s. 2.

Commutation of Statute Labour.

Commutation may be at $1 per day.

10. The council of any township may, by by-law direct that a sum not exceeding $1 a day shall be paid as commutation of statute labour, for the whole or any part of such township, in which case the commutation tax shall be added in a separate column in the collector's roll and shall be collected and accounted for like other taxes. R.S.O. 1897, c. 224, s. 103.

This section enables the township council by by-law to direct the whole of the statute labour of the township, or of some part of it defined by the by-law, to be commuted at a rate fixed by the by-law. The commutation tax is then added in a separate column in the collector's roll and collected like other taxes. Section 7 enables the council to reduce or abolish statute labour and the amount to be paid in lieu thereof. This section enables the council to commute it, so that for the whole township, or within the defined area, no statute labour will be performed, but a tax will be paid instead at a defined rate for each day's labour which would otherwise have to be performed. See *Re Allan and the Corporation*

of Amabel, 32 C.P. 242. The commutation provided for by this section is compulsory. There is no option given to perform the statute labour, or to pay the commutation.

Commutation may be Fixed at any Sum not Exceeding $1.

11. Any local municipal council may, by a by-law passed for that purpose, fix the rate at which persons may commute their statute labour, at any sum not exceeding $1 for each day's labour; and the sum so fixed shall apply equally to residents who are subject to statute labour and to non-residents in respect to their property. R.S.O. 1897, c. 224, s. 104.

Statute labour is now performed only in townships. Under 16 Vict. ch. 182 and 22 Vict. ch. 99, section 409, statute labour was imposed on all persons who were assessed on the assessment roll of a town, whether residents or non-residents. In the case of non-residents the statute fixed the commutation at 2s. 6d. per day, and no by-law was necessary unless the council wished to vary the rate: *Robinson* v. *Town of Stratford*, 23 U.C.R. 99.

The rate must not exceed $1 per day, but it may be less. It must apply equally to residents and non-residents.

There is no power to fix the rate at more than $1 per day: *Re Tilt and Township of Toronto*, 13 U.C.R. 447.

If No By-Law Commutation to be at $1.

12. Where no such by-law has been passed the statute labour in townships, in respect of lands of residents and non-residents, shall be commuted at the rate of $1 for each day's labour. R.S.O. 1897, c. 224, s. 105.

No by-law is necessary unless the township wishes to reduce the rate: *Robinson* v. *Town of Stratford*, 23 U.C.R. 99.

Payment of Tax in Lieu of Statute Labour may be Enforced by Distress or Imprisonment.

13.—(1) Any person liable to pay the sum named in section 4, (1) or any sum for statute labour commuted under section 10, (2) of this Act, shall pay the same to the collector to be appointed

to collect the same, within two days after demand thereof by the said collector, and in case of neglect or refusal to pay the same, the collector may levy the same by distress of goods and chattels of the defaulter, with costs of the distress; and if no sufficient distress can be found, then upon summary conviction before a Justice of the Peace of the county in which the local municipality is situate, of his refusal or neglect to pay the said sum, and of there being no sufficient distress, he shall incur a penalty of $5 with costs, and, in default of payment at such time as the convicting Judge orders, shall be committed to the common gaol of the county, and be there put to hard labour for any time not exceeding ten days, unless such penalty and costs and the costs of the warrant of committment and of conveying the said person to gaol are sooner paid.

(1) The sum named in section 4 is the yearly tax, instead of statute labour, imposed on the unassessed male inhabitants, between the ages of twenty-one and sixty, of cities, towns and villages.

(2) The sum for statute labour commuted under section 10 is the money charged and exacted in lieu thereof under a by-law, in a whole township or in a defined part of such townsihp, in which the by-law has substituted for the performance of statute labour, a money payment computed at a fixed rate per day.

All persons liable to pay under either section 4 or 10 must pay the required amount within two days after demand is made therefor by the collector who has been appointed by the council of the municipality to collect such sums. Under section 10, the collector of taxes has these sums on his roll. In case of neglect or refusal, a summary remedy is given to the collector. He may levy the same by distress and sale of the goods and chattels of the delinquent with the costs of the distress. See section 103 of *The Assessment Act*. Sub-section 8 of that section fixes the costs of a similar distress for taxes.

It is only where the collector fails to find any sufficient distress, that he is authorized to proceed summarily before a Justice of the Peace. See *Regina* v. *Morris*, 21 U.C.R. 392; *Re Allan and Corporation of Amabel*, 32 C.P. 242.

Performance.

(2) Any person liable to perform statute labour under section 5 of this Act not commuted, shall perform the same when required so to do by the pathmaster or other officer of the municipality appointed for the purpose; and, in case of wilful neglect or refusal to perform such labour after six days' notice requiring him to do the same, shall incur a penalty of $5, and upon summary conviction thereof before such Justice of the Peace as aforesaid, the Justice shall order the same, together with the costs of prosecution and distress, to be levied by distress of the offender's goods and chattels, and in case there is no sufficient distress, such offender may be committed to the common gaol of the county and there put to hard labour for any time not exceeding ten days unless the penalty and costs and the costs of the warrant of committment and of conveying the said person to gaol are sooner paid.

The last sub-section dealt with non-payment of money, instead of statute labour, where there was no right to perform the work. This sub-section deals with default when the obligation is to do a definite number of days' work.

Before this sub-section is applicable, the person who ought to do the work must have been *required* by the pathmaster, or other proper officer, to do the work. He is entitled to six days' notice, and it is only upon his failure to do the work when required, after six days notice, that he is liable to a fine upon a summary conviction.

See *Re Stoddart and the Townships of Wilberforce, Grattan and Fraser,* 15 U.C.R. 163.

Penalties to be Paid to Treasurer of Municipality.

(3) All sums and penalties, other than costs, recovered under this section shall be paid to the treausrer of the local municipality, and shall form part of the Statute Labour Fund thereof. R.S.O. 1897, c. 224, s. 107.

In *Re Allan and the Township of Amabel,* 32 C.P. 242, it was held that a township council can provide for the performance of

statute labour upon the roads of their township to the extent of the commutation tax charged in respect of non-resident lands, and for payment thereof out of the general funds of the municipality before such tax has been received from the county treasurer, and that the performance of such work is not necessarily restricted to any particular statute labour division.

Non-Residents when not Permitted to Perform Statute Labour.

14. A non-resident whose name does not appear on the resident assessment roll, shall not be permitted to perform statute labour in respect of any land owned by him; but a commutation tax shall be charged against every separate lot or parcel, according to its assessed value and be entered in the non-residents collector's roll. In all cases in which taxes on such non-resident lands are paid, the municipal council shall order the amount to be expended in the statute labour division in which the property is situate. R.S.O. 1897, c. 224, s. 108, *amended.*

See section 33, sub-section 6 of *The Assessment Act.*

If a person does not either reside or carry on business in the township, and has not given notice requiring his name to be entered on the assessment roll, he will be entered on the non-resident roll.

The commutation tax is to be charged against every separate lot or parcel of such non-resident lands. They are not now to be grouped in groups of 200 acres, as provided in section 9 for lands on the resident assessment roll. See *Hall* v. *Farquharson,* 15 A.R. 457.

The tax must now be expended in the statute labour division in which the lands are situate. Formerly the law was otherwise: *Re Allan and the Corporation of Amabel,* 32 C.P. 242. See also *Robertson* v. *County of Wellington,* 27 U.C.R. 336.

The non-resident who owns several lots of land in the same township, is charged with the rate of commutation with reference to the value of each lot separately, and cannot have them rated according to their aggregate value: *The Canada Company* v. *Howard,* 9 U.C.R. 654.

If Resident Owner, etc., makes Default Commutation for Statute Labour to be Entered upon Collector's Roll.

15. (1) Where an owner or tenant makes default in performing his statute labour or in payment of commutation for the same, the overseer of highways in whose division he is placed, shall return him as a defaulter to the clerk of the municipality before the 15th day of August, and the clerk shall in that case enter the commutation for statute labour against the land in the collector's roll of the current or following year, and the same shall be collected by the collector. R.S.O. 1897, c. 224, s. 110 (1): 62 V. (2), c. 27, s. 9; 1 Edw. VII., c. 2, s. 6, *amended.*

A person is in default, if he does not perform his statute labour *when required to do so* by the pathmaster or other officer of the municipality appointed for the purpose.

Overseer to Expend the Commutation Money in the Division.

(2) In every such case the clerk shall notify the overseer of highways, who may be appointed for such division in the following year, or after it has been collected, of the amount of such commutation, and the overseer shall expend the amount of such commutation upon the roads in the statute labour division where the property is situate, and shall give an order upon the treasurer of the municipality to the person performing the work. R.S.O. 1897, c. 224, s. 110 (2) *amended.*

The intention is that money shall be expended upon the roads in the statute labour division equal to the value of the labour in respect to which default has been made.

Statute Labour in Unincorporated Townships—Road Commissioners.

Meeting for the Election of Road Commissioners.

16. Twenty resident landholders in any township which has not been incorporated (either alone or in union with some other

township) shall have the right to have a public meeting called for the purpose of electing road commissioners. R.S.O. 1897, c. 224 s. 111.

To initiate the application of sections 16 to 34 of this Act, the concurrence of twenty persons who reside in the unincorporated township and are landholders therein, is essential. These sections apply only to unincorporated townships in the newer and undeveloped parts of the Province. The provisions of the Act are wisely directed to the opening up of roads in advance of municipal organization. For that purpose a meeting of the landholders is called to elect road commissioners. "Landholder" seems to be used as meaning an owner or locatee of land. See sec. 24.

Requisition for Meeting.

17. The persons desiring the meeting to be called shall sign a requisition authorizing some person who shall be named in the requisition, and may either reside in the township or otherwise, to call a meeting of the resident landholders of the township for the purpose aforesaid. R.S.O. 1897, c. 224, s. 112.

The requisition must be in writing, signed by at least twenty resident landholders of the unincorporated township. The person who is to issue the notice calling the meeting, is selected by those getting up the requisition, and his name inserted in it. No special form is necessary. The document is an informal request to the person named, asking him to call a meeting of the landholders of the township to elect road commissioners. The person asked to call the meeting need not be a resident of the township. The requisition must be signed by at least twenty landholders. It should state whether there are to be three road commissioners or five, but the meeting may decide on a different number from that stated in the requisition.

How Meeting may be called in case person named in requisition fails to call it.

18. In case the person so named declines to call a meeting or neglects to do so, for ten days after the requisition is presented to him, any three of the persons who signed the requisition may call the meeting. R.S.O. 1897, c. 224, s. 113.

If after the requisition is presented to him, the person who was selected to call the meeting, declines to call it or neglects for ten days to do so, any three of those who signed the requisition may issue the notice calling the meeting. The ten days, in case he neglects the duty, must be computed exclusive of the day on which the requisition is presented.

Notice of Meeting.

19. The notice calling the meeting shall name a place, day and hour, for holding the meeting and shall be posted at six places at the least in the township, and the day named shall be at least six days distant from the day of posting the notice. R.S.O. 1897, c. 224, s. 114.

The meeting is called by a notice which names the place, day and hour at which it is to be held. It should state clearly the purpose for which it is called. The notice must be posted up at not less than six places in the township. The day of the meeting must be six clear days later than the day on which the last of the six notices is posted up.

Number of Commissioners.

20. The election shall take place at the time named, and the number of the commissioners to be elected shall be either three or five, as may be stated in the requisition, unless the meeting, before proceeding to an election, decides that a number different from that stated in the requisition, shall be elected, but such number shall not be less than three nor more than five. R.S.O. 1897, c. 224, s. 115.

The election shall take place at the time named. The meeting before proceeding to the election may decide upon a different number of commissioners from that given in the requisition, but the number must be either three or five, not any other number. If the meeting does not decide upon a different number before the election, the number in the requisition will be final.

Chairman of Meeting.

21. In case the meeting is called by the person named in the requisition, he shall be entitled to preside at the meeting as chairman, but if he is absent, or declines to act, the landholders present may appoint another chairman; the chairman shall act as returning officer, and shall, in the event of a tie, have a casting vote, although he may have previously voted, or may not be a landholder of the township; the landholders present shall also appoint a secretary, who shall record the proceedings. R.S.O. 1897, c. 224, s. 116.

The person named in the requisition, if he calls the meeting, is the chairman. In his absence, or if he declines to act, the meeting selects a chairman. The chairman is the returning officer and has the casting vote, even though, if a landholder in the township, he has already voted, or if because he is not a resident landholder in the township he has no vote. The secretary is elected by the meeting, and records the votes.

Mode of Voting.

22. The landholders present shall decide how the voting for commissioners shall be conducted; and if the vote is taken openly the commissioners shall be elected one at a time, but if it is decided to proceed by ballot all the commissioners shall be elected together each person having the right to vote for as many persons as there are commissioners to be elected. R.S.O. 1897, c. 224, s. 117.

Record of Persons Voting.

23. The chairman shall, at the request of any two landholders present, direct the secretary to record the names of all persons voting and (unless the vote is by ballot) how each votes. R.S.O. 1897, c. 224, s. 118.

Objections to Voters.

24. If an objection is made to the right of any person to vote at the meeting, such person shall name the property in respect of

which he claims the right to vote, and the chairman shall administer to such a person an oath, or affirmation if he be by law permitted to affirm, according to the following form, whereupon such person shall be permitted to vote:

You swear (*or if the voter is entitled to affirm*, solemnly affirm) that you are of the age of twenty-one years, and that you are the owner or locatee of lot in the concession of this township, and that you are entitled to vote at this election

So help your God.

R.S.O. 1897, c. 224, s. 119.

Terms of Office.

25. The commissioners elected shall hold office until the 31st day of December next after their election, and shall take, before a Justice of the Peace, a declaration of office similar to that of a councillor in a municipal corporation. R.S.O. 1897, c. 224, s. 120.

For the declaration of office of a municipal councillor see section 312 of *The Consolidated Municipal Act*. The declaration is in the same form with the necessary verbal changes as that of assessors and collectors, ante p. 94.

First Meeting of Commissioners.

26. The commissioners shall meet within a fortnight after their election, and shall then or as soon thereafter as may be, name the roads and parts of roads upon which statute labour is to be performed, and shall appoint the places and times at which the persons required to perform statute labour are to work. R.S.O. 1897, c. 224, s. 121.

Time for Performance of Statute Labor.

27. The times to be appointed for the performance of statute labour shall, unless the meeting of the landholders to elect commissioners otherwise directs, be not earlier than the 20th day of June, not later than the 20th day of July in any year. R.S.O. 1897, c. 224, s. 122.

The meeting of the landholders has power to determine within what time limits the statute labour shall be performed. If no change is made in the time at the meeting, the work must be done between the 20th day of June and the 20th day of July in each year.

Ratio for Service by Owners and Locatees of Land.

28.—(1) Each owner or locatee of land may be required each year to perform two days' labour for every one hundred acres he holds, and for the first ten acres which he has cleared after the first ten, he may be required to perform one days' additional labour, and for every twenty acres over and above the first ten, one additional day's labour, and each householder may be required each year to perform one day's labour.

Liability of Land Owners to Statute Labor.

(2) Any land-owner, owning less than one hundred acres, may be required to perform statute labour as the commissioners may direct, but not exceeding the scale provided for in subsection 1 of this section where the land is in part cleared, and not exceeding two days where no part of the land is cleared. R.S.O. 1897, c. 224, s. 123.

Each landholder, that is each owner or locatee, performs two days labour for each one hundred acres he holds, apart from clearing. For the first ten acres he has cleared he does no additional statute labour. For the second ten acres he does an additional day's work, and a day more for each additional twenty acres.

If the land-owner holds less than one hundred acres, the commissioners decide how much labour he performs. It must not be more than if he had one hundred acres, and it may be less.

Commissioners to Oversee Work.

29. Each commissioner shall, during the time he is required to perform statute labour, act as overseer, and the commissioners shall arrange among themselves for overseeing the various bodies of men engaged in doing statute labour. A commissioner may be paid out of the commutation fund for not exceeding two days'

labour at the rate of $1.25 per day if performed by him over and above the number of days' labour he may by law be required to perform in respect of his own property. The commissioners shall have the same powers as municipalities have in reference to statute labour, to appoint overseers and require returns to be made to them of the labour performed in their districts respectively. R.S.O. 1897, c. 224, s. 124.

During the time each commissioner is doing his own statute labour he acts as overseer and directs when, where, and how the work is to be done. The commissioners arrange among themselves in regard to overseeing the work. They may put in extra time in overseeing work, or they may appoint overseers, and for that purpose they have all the powers of township councils. If overseers are appointed, they must make returns to the commissioners, similar to the returns made under section 15 of this Act to the clerk of the municipality.

Commutation.

30. Any person instead of performing the statute labour required of him may commute therefor by payment at the rate of $1 per day, and the commissioners shall expend all commutation moneys upon the roads on which the labour which is commuted for should have been performed. R.S.O. 1897, c. 224, s. 125.

Any person may pay at the rate of $1 per day, instead of doing statute labour. The extra services of the commissioners are paid out of the commuiatton fund. Section 29. The money must be spent on the roads on which the work in lieu of which it is paid, would have been done.

Meeting for election of new Commissioners.

31. The majority of the commissioners may call a meeting to be held at any time during the month of January, for the election of their successors, but in case of their failure so to do a meeting may be called in the manner hereinbefore provided for a first election. R.S.O. 1897, c. 224, s. 126.

The duty of calling all meetings, after the first, belongs to the commissioners. If they neglect it, steps may be taken to call a meeting, as if no commissioners had ever been elected.

Penalty for Neglect to Perform Work.

32. Any person liable to perform statute labour under the provisions of sections 16 to 33, who, after six days' notice requiring him to do the same, wilfully neglects or refuses to perform, at the time and place named by the commissioners, the number of days' labour for which he is liable, shall incur a penalty of $5, aad in addition $1 for each day in respect of which he makes default, the same to be paid to the commissioners and to be expended in improving the said roads; and upon such person's conviction thereof, before a Justice of the Peace having jurisdiction in the township, such Justice shall order the penalty together with the penalty and costs of prosecution and distress to be levied by distress of the offender's goods and chattels. R.S.O. 1897, c. 224, s. 127.

Compare this section with section 13. In organized townships the fine and costs are imposed, but the statute labour is returned as undone, and charged against the land under section 15. In an unorganized township that can not be done, and the value of the statute labour at $1 per day is exacted as a part of the penalty.

Penalty for Neglect to Serve as Commissioners.

33. The commissioners, when duly elected, shall serve during the term for which they are elected, or shall forfeit the sum of $5, which may be sued for, together with costs, in any Court having jurisdiction, by any three electors making the complaint. R.S.O. 1897, c. 224, s. 128.

Any three landholders, entitled to vote at the election of commissioners, may sue a commissioner who refuses to serve during the term for which he was elected, and recover five dollars and the costs of the suit.

Commencement of Act.

34. This Act shall come into force and take effect on, from and after the first day of January, 1905.

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