

pany or corporation such powers, the area sought to be appropriated must be set out and ascertained in accordance with the terms of the statute.

*Macdonell*, for plaintiff. *Hammersley*, K.C., for defendant.

Full Court.]

[Jan. 25.

CANADIAN CANNING CO. v. FAGAN.

*Taxes, distress for—Notice of sale—“At least ten days”—“Ten clear days”—Time, computation of—Damages—New trial.*

The plaintiff company was organized in 1899. The defendants were tax-collecting officials of the Provincial Government. Of three canneries purchased by the company two of them were from the liquidators of defunct companies. One of these, the Star cannery, was in arrears for personal property tax for 1894, 1895, 1896, 1899, 1900 and 1901. Claim was made by defendant Fagan for these arrears together with arrears in respect of the other properties from 1899. The company contended that they were liable only for taxes on their property acquired since their incorporation, and tendered the sum of \$890 in satisfaction of all claims to the end of 1902, which was refused; distress was made on the goods and chattels of the company and in pursuance of a notice dated 5th August, 1902, a sale was had on the 15th of certain goods of the company for \$825 and costs. This notice was given under s. 88 of the Assessment Act, which requires that the collector shall give “at least ten days’ public notice of the time and place of such sale.” At the trial, DUFF, J., held that the notice was one day short.

*Held*, on appeal, 1. The provision in s. 88 of the Assessment Act directing that the collector of taxes shall give at least ten days’ public notice of the time and place of sale of goods for delinquent taxes, means “ten clear days,” and the party making a distress on less notice becomes a trespasser ab initio.

2. Sec. 87 does not create the relationship of landlord and tenant between the parties; nor does it give a lien upon goods such as the preferential charge upon lands under s. 80.

*Martin*, K.C., for plaintiffs (respondents). *Maclean*, K.C., D.A.-G., for defendants (appellants).