The evidence was, that the Clerk of the Peace on the 12th July, 1837, certified to the Quarter Sessions, that there was the sum of £3 5s. due on the lot for eight years ending 1st July, 1837. The chairman made an order that a warrant for sale should issue, and the warrant was issued. Wilson, J., in his judgment in the Queen's Bench says: "There is no reason to doubt that the land was actually, though perhaps, not formally, taxed."

Now, as to the £1 5s., that was a tax clearly charged upon the land, being a tax directly imposed by statute. So that the amount was certainly due and for the eight years, whether the 1d. in the £ was properly charged or not. There was no evidence as in *Cotter* v. *Sutherland*, that it was not. The certificate of the Clerk of the Peace that it was charged upon the land, if not conclusive evidence upon that point, would be sufficient *prima facie* evidence. When the learned Judge says, that *perhaps it was not formally taxed*, he was alluding, no doubt, to his knowledge of the practice which used to prevail rather than to anything in the evidence shewing it not to have been formally taxed. It was, he says, *actually* done. There was, however, no question that the £1 5s for road tax was due and in arrear for the proper time, and the sale did take place to realize the £3 5s arrears of taxes, all of which was certified by the proper officer to have been imposed upon the land, £1 5s of which was completely imposed by statute directly. There was no suggestion that anything appearing in the evidence raised a presumption as, it is contended, the evidence in the case now before us does, that this charge had been paid before the sale. The case, therefore, had all the elements to support a sale, which *Hamilton* v. *Eggleton* and *Kempt* v. *Parkyn* pronounce to be necessary, and for this reason *Hamilton* v. *Eggleton* appears to have been referred to for the purpose of distinguishing it. There were, however, in *Jones* v. *Cowden*, objections taken to the inefficiency of the advertisement of the sale. In the Court of Appeal we have not, unfortunately, the judgment of the Chief Justice Draper, which, although written, appears to have been mislaid. He, certainly, was not in the habit of going out of the way to overrule, or to cast a doubt upon, a judgment of a court upon a point not even necessary for the decision of the case before him, and which, in fact, the evidence in the case before him did not raise. If Blake, V. C., had changed the opinion which he had then but recently expressed in *Proudfoot* v. *Austin*, he surely would have pointedly intimated that change, and he could not have thought it necessary shortly afterwards to take, as he did, the further evidence in *Proudfoot* v. *Austin*, and base his decree upon such further evidence; but that he had not changed his mind, appears from the fact that he bases his judgment expressly upon the ground that it was shewn, sufficiently in his opinion, that at the time of the sale there were taxes in arrear, and as I have already shewn, these taxes were due for the period then required. The judgment of Burton, J., wherein he says, that by reason of the 155th section of the Assessment Act, it was not open to the defendants to impeach the sale by reason of the alleged *irregularities* which were urged against it, must be confined to the objections as to the irregularities in the advertisement of the sale, and cannot be extended to refer to a matter which did not exist, and which, therefore, did not call for adjudication, as the case was argued upon the assumption that there did sufficiently appear to be taxes in arrear for the period necessary to warrant a sale.

I had never heard that the *Bank of Toronto* v. *Fanning*, in Appeal, 18 Gr. 391, was supposed to be an authority in favour of the plaintiff upon the point now before us, until I heard my brother Strong's judgment here to-day; if I had, it would have been easy to shew that it does not affect this case any more than *Jones* v. *Cowden* does. The result is, that, in all the reported cases since the first enactment of the clause under discussion, which have been decided in favour of the purchaser, it was proved that the event, upon the happening of which alone, the power of sale comes into existence, has occurred, and that, in the only cases in which that event did not appear to have occurred, the title of the original and true owner has been upheld. Both authority and principle concur then in laying down the law to be, as this court should take this, the earliest opportunity of affirming it to be, that the section under discussion does not remove an infirmity arising from there not appearing to have been at the time of the sale some portion of the tax due which has been in arrear for the period prescribed by law before the sale—that the section covers all mere defects of form which may have occurred in the procedure to impose an assessment actually charged against the land, and all irregularities and defects in the execution of the power, but cannot, upon any principle of justice be construed to supply or cure the want of that condition precedent, the existence of which is essential to the carrying into execution of the power, namely: that some portion of the tax imposed was in arrear for the period prescribed by law, and was still unpaid at the time of the sale.

The Court of Appeal has held that this condition has been fulfilled in the case before us; it is necessary, therefore, to dispose of that point also.