

I think it is quite clear that the plaintiffs are entitled to judgment on the demurrer to the avowries.

As to the demurrer to the replication of the defendants to the several pleas of the plaintiffs, and the issue thereby intended to be raised in reference to the assessment rolls, it appears to me that the plaintiffs are equally entitled to judgment. The plaintiffs simply take issue on the various facts set forth in the avowry, some of which are facts which operate in favour of the plaintiffs, but the defendants certainly can have no right to raise any other issue not raised by the pleas.

BURNS, J.—It does not appear to me the defendant has shewn any legal authority in the avowry pleaded for distraining the plaintiffs' goods. He relies chiefly, first upon the 24th section of the Assessment Act, Consol. Stats. U. C., ch. 55, which enacts that "when the land is assessed against both the owner and occupant, the assessor shall on the roll add to the name of the owner the word "owner," and to the name of the occupant the word "occupant," and the taxes may be recovered from either, or from any future owner or occupant, saving his recourse against any other person; and secondly, upon the provisions of the 104th section, giving the council power to appoint the collector or any other person to collect taxes where the collector has failed or omitted to collect the taxes by the 14th of December in each year.

The first matter for consideration is what is the true meaning of the expression, that the taxes may be recovered from any future owner or occupant, and the expression in the 96th section, "*the collector shall levy the same with costs, by distress of the goods and chattels of the person who ought to pay the same.*" Are they to be construed with reference to the time during which it may be said the collector's roll is in force for each year's taxes, or are they to be understood, as the defendant contends for in this case, as extending over and covering any length of time, so that the plaintiffs' goods are liable to be distrained upon for taxes assessed to another person in respect of the property six years before, and the property having passed through the hands of several persons, perhaps, in the meantime? I entertain no doubt what the proper meaning is.

By the 49th section the assessors are directed to complete their rolls in every year between the 1st of February and such day, not later than the 1st of May, as the council of the municipality appoints. The assessor of course sets down in his roll the facts in regard to owners and occupiers as he finds them at the time he makes the assessment. Between that time and the time the collector should return the roll, under the 103rd and 104th sections, the property assessed may have changed both ownership and occupancy, by sale, devise, or in various other ways, and in such cases the new owner or occupant may be said to be the proper person or party to pay that year's taxes.

The 105th section directs that the collector shall state in his return of the roll the reason why he could not collect that year's taxes, and if there be no property to distrain, should say so. The land is not thereby excused those taxes, for the 107th section enacts that it shall be a special lien upon it, and therefore it would be incumbent upon a purchaser to make enquiry, for the land itself would be liable to be sold, but that is a very different matter from distraining a purchaser's goods after a lapse of half a dozen years for the unpaid taxes.

The avowry states that the collector for the years now claimed returned the rolls as required by law. The 111th section of the act enacts that after the collector's roll has been returned no more money on account of the arrears then due shall be received by any officer of the municipality to which the roll relates, and the 112th section declares that the collection of the arrears shall thenceforth belong to the treasurer of the county alone. If the provisions of the statute have been carried out in respect to the non-payment of the taxes for 1855, the treasurer of the county may now be taking the steps he is directed to do to sell the land, at the same time that the defendant under the authority he says he has from the municipal council of Kingston, is selling the goods of the plaintiffs for the same taxes.

This brings me to the next matter for consideration, namely, the allegation in the avowry, that in the year 1861 the defendant was appointed, by a resolution of the council, to collect the unpaid taxes remaining upon the rolls of 1855 and 1859, and to collect

them from the person or persons who ought to pay the same. The defendant relies upon the 104th section as the authority for the council deputing him now to make collection of those taxes, and it would seem that it is imagined, by combining such an authority with what is enacted in the 24th section of the act, that a power exists by which, as exercised in the way stated here, the goods and chattels of a stranger may be rendered liable to the unpaid assessments against another person, after the lapse of any number of years.

The provisions of the 103rd and 104th sections, when combined in the same act, are not altogether consistent with each other. The first of these names the 14th of December in each year, or not later than the 1st of March in the next year, as the council may appoint, when the collector shall make his final return of the roll to the treasurer, whereas the latter section says that in case the collector does not collect the taxes by the 14th December, or such other day appointed by the council, the council may by resolution authorize the collector, or any other person in his stead, to continue the levy and collection of the unpaid taxes, but no such resolution shall alter or affect the duty of the collector to return his roll. These provisions were consistent enough with each other when they were respectively enacted, because they were enacted in different years. The first was by 16 Vic. cap. 182, sec. 46, and that gave the council authority to extend the time of payment of the taxes from the 14th of December to the 1st of March in the following year, and for the time of making the final return of the roll to such period. The second provision, which was enacted by 18 Vic. cap. 21, sec. 3, gave the council authority to extend the time for making the return still further, and authority also to appoint another person instead of the collector of the year to collect the unpaid taxes. In order, however, to show that it was the same years roll that was being dealt with, and reading the two sections together, as they should be, that it was a provision for extending the time of collection and final return of the collector's roll, the legislature use the expression that the new or additional power given to the council was in order to continue the levy and collection of the unpaid taxes, but that authority should not alter or affect the duty of the collector to return his roll. We have acted upon that view of the subject in the several cases cited in the argument, and have held that so long as the collector held the roll not returned, and time given, his authority to collect remained in force.

In the present case it is admitted that the collectors for the years 1855 and 1859 have returned the rolls of those years according to law, but it is contended that the council has the authority to appoint a person, notwithstanding the return of the roll, to collect the unpaid taxes of those years, and make the goods of a stranger to the lands assessed in those years liable for it. It is unnecessary in this case, I think, to express any opinion to what extent the legislature meant the 24th section and the power given to the collector by the 96th section to be carried, in making the goods of persons other than those appearing upon the assessment roll liable for the taxes, beyond the time within which the collector should return his roll, for the case may be decided upon the effect of the 110th, 111th and 112th sections of the act, which place the power of collecting unpaid taxes after the roll has been returned in other hands than the collectors of the municipality. After the collector's return of the roll the municipal council of Kingston had no authority to appoint any one to collect any of the unpaid taxes; the duty of collecting the unpaid taxes from the land belonged to the treasurer.

HAGARTY, J.—The avowry distinctly avers that the collector's rolls for the years 1855 and 1859 respectively were returned by the collector as required by law, and that after the return thereof the defendant was appointed by the council as collector to collect the taxes unpaid thereon.

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 statute to enforce payment, by sale of the land.

Mr. Justice Burns has entered fully into these points, and I concur in his opinion.