

mation by the Court of Appeal of the judgment in *Hamilton v. Eggleton*, and *Kempt v. Parkyn*; for if the construction which, in those cases, is put upon the section is "unobjectionable in principle," and is not unreasonably restrictive "of the beneficial operation of the clause," then the canons of construction imperatively direct that this construction which is reasonable, wholesome and unobjectionable in principle, must be preferred to a construction such as that now contended for, which is unreasonable, unjust and mischievous in the extreme, inasmuch as it would without, any shadow of reason, deprive a man in no default whatever, and guilty of no breach of any law, of his legal rights in real property without any value or consideration whatever.

In *Nicholls v. Cumming*, reported in the 1st vol. of the reports of the judgments of this court, I find language relating to this same Assessment Act, confirmatory of that quoted from the several cases which I have above referred to, and conclusive as it appears to me, upon the clause now under discussion. The question there arose under the 61st sec. of this Act, 32 Vict. ch. 36, which enacts that the Assessment Roll as finally passed by the Court of Revision, and certified by the clerk as passed, "shall be valid and shall bind all parties concerned, notwithstanding any defect or error committed in, or with regard to such roll." Upon the roll so passed and certified, a party appeared to be assessed for \$43,400 00, who had had delivered to him an assessment slip, stating his assessment to be only \$20,900.

It was contended that this 61st section made the roll, as passed, binding, and conclusive upon the party. I find, however, at p. 419 of the report, this language in the judgment of the court, "I think it more consistent with justice that the fundamental rule which ought to prevail is, that the provisions that the Legislature has made to guard the subject from unjust or illegal imposition, should be carried out and acted on." And again, at p. 422, "When a statute derogates from a common law right and divests a party of his property or imposes a burthen on him, every provision of the statute beneficial to the party must be observed; therefore it has been often held that Acts which impose a charge or a duty upon the subject, must be construed strictly, and it is equally clear that no provision for the benefit or protection of the subject can be ignored or rejected." And again at p. 427: "It needs no reference to authorities to authorise the proposition that, in all cases of interference with private rights of property in order to subserve public interests, the authority conferred by the Sovereign (here the Legislature) must be pursued with the utmost exactitude, as regards the compliance with all pre-

requisites introduced for the benefit of parties whose rights are to be affected." And the court held accordingly that the 61st section applied only when pre-requisites ordained by previous clauses had been complied with. This case as it appears to me, if it stood alone, ought to be conclusive authority in this court, that the essential pre-requisite which the statute ordains shall occur before the power to sell conferred by the statute comes into being, should occur to enable the clause in question to apply—that the coming into existence of the power to sell, under the conditions prescribed in the statute, is an essential element in every deed authorised or confirmed by the statute.

But it is said that the judgment of the Court of Appeal in *Jones v. Cowden*, 36 U. C. 495, is at variance with, and that, therefore being the judgment of a Court of Appeal it in effect reversed, the judgment in *Hamilton v. Eggleton*. If that were the effect of the judgment in *Jones v. Cowden*, it ought, in my opinion, to be reversed here, for the reasons which I have already given, but in truth *Jones v. Cowden* has never been regarded as at variance with *Hamilton v. Eggleton*, or as an adjudication upon the point now under discussion. If it had been, *Kempt v. Parkyn* would not have been decided as it was; nor, in the case now under review before us, would the Court of Appeal itself have expressed itself in the terms it has of the judgment in *Hamilton v. Eggleton*, and *Kempt v. Parkyn*. The court, on the contrary, would naturally have felt itself bound by *Jones v. Cowden*, and would have decided this case upon the short point as to the construction of the clause, and have so got rid of the difficulty with which it seems to have been pressed in arriving at the conclusion that there was direct evidence of there having been some portion of tax in arrear for five years, sufficient to support the sale. A reference, however, to *Jones v. Cowden* will shew that neither did the point which arose and was adjudicated in *Hamilton v. Eggleton*, nor that which arose and was adjudicated in *Kempt v. Parkyn*, arise in *Jones v. Cowden*. The sale took place in 1839, for arrears of taxes to 1st July, 1837, made up as follows:

200 acres at 1s. 8d per acre, under 59 Geo. 3, ch. 8, sec. 5, road tax 2s. 1d.	
which for eight years amounted to	£0 16 8
Add 50 per cent. under 9 Geo. 4th, ch. 3.	
s. 4	0 8 4
	£1 5 0

Then an assessment of 1d. to the £ on 209 acres at 4s. per acre under 59 Geo. 3rd, ch. 7, sec. 3, 3s. 4d. per acre for 8 years	£1 6 8
Add 50 per cent	0 13 4

Total. £3 5