there several times, witness supposed for taxes: witness paid his taxes there, having rented part of the premises. Beard had been down occasionally after July, but property, office and all had been purchased by others.

On this the plaintiffs' counsel contended that no demand was proved on plaintiffs fourteen days before seizure; that demand must be personal, not on agent; that in any event Leighton was not an agent for such purpose.

For defendants it was urged that the fourteen days' demand was only directory, and that going to the residence or place of business was sufficient.

The jury were told that the act required in terms, that a demand of fourteen days before seizure must be proved, and they were asked to find if such a demand was made on plaintiffs or their authorised agent after the collector had demanded it at their last known place of business. The plaintiffs' counsel contended that the judge should himself decide that Leighton was not an agent on whom such demand could be made. The judge left the question as to Leighton being such agent to the jury on all the facts.

The jury found for the defendants.

In Easter Term, *Freeman*, Q. C., for plaintiffs, obtained a rule to show cause why there should not be a new trial on the law and evidence, and for a misdirection, in leaving to the jury to decide whether Leighton was plaintiffs' agent, and in ruling that notice to an agent, not at the defendant's place of business, was a legal notice.

In Trinity Term, *M. C. Cameron* shewed cause, and *Freeman* supported the rule, citing 16 Vic. cap. 182, sec. 17.

DRAPER, C. J., delivered the judgment of the court.

I think the learned judge was bound to leave the question of agency as a fact to be decided by the jury: whether the evidence offered was admissable, and if admissable, whether there was really any proof whatsoever of the fact of agency, it was for the learned judge to decide. If he thought there was evidence, then it was for the jury; for the question of agency, is not, I apprehend, one of those preliminary questions, which a judge must himself decide upon in order to let in evidence to be submitted to the jury. Such as, whether a confession be admissable or no, on account of some alleged promise or threat under the influence of which it was given, or whether a party since dead made the declaration tendered in evidence, at a time when the conviction of his speedy death was present to his mind, or whether secondary evidence of the contents of a deed is admissable under existing circumstances.

Then, it appears to me there was evidence that Leighton was the plaintiffs' agent for the purpose of having this particular demand made upon him, and therefore the objection for misdirection fails upon both grounds.

Then it is objected that the names of the plaintiffs should have been entered on the roll as non-residents. That they were in fact non-residents is not disputed. That their names were entered on the roll with their agent, from which the jury might fairly infer a request on their part, is, I think, sufficiently established by the practice of previous years, and by the letter of the 17th of April, 1857; the lands therefore would not come within the description in section 8 of 16 Vic. cap. 182, nor under sec. 22, and no objection was urged, nor indeed could there be, to the amount at which they were assessed. So that if it amounts to anything, the objection is, that by not describing the plaintiffs as non-residents, the entry of their names, and the assessment of their property became nugatory. I think it sufficient to observe that the object of the proviso, requiring the words "non-resident" to be placed on the roll opposite the name of a freeholder, is chiefly if not exclusively designed to prevent his voting at any municipal election by reason of his name being on the assessors' or collectors' roll. We might as well hold the assessment of the party void because his address was omitted from the roll, as because the words non-resident are omitted. I think neither omission *per se* prevents the collection of taxes.

But it is argued that the 41st section (16 Vic. cap. 182) makes it the duty of the collector to call at least once on the party taxed or at the place of his usual residence, or domicile, or place of business, if within the collector's Township, &c., and to demand payment, and if any person whose name appears on his roll shall not be resident within the Municipality, he shall transmit to him by post a statement and demand of the taxes charged against him in the roll, and that as no such statement and demand were transmitted by post, the distress was illegal.

The letter of the 17th of April may be taken to be an answer to the notice transmitted by the assessors under the 23 section of the act. It would state the actual value at which the real property was assessed. All therefore must turn upon the necessity, as a condition precedent to distress, of making a demand, or transmitting one by post, and if necessary upon the proof given thereof.

The plaintiffs were entered on the roll as residents. It is admitted they were not residents in fact, but I do not think, for the reason already given, that the assessment is void for this mistake of description. The collector's duty, however, differs according to the place of residence or non-residence; the sec. 41 providing that "if any person whose name appears on his roll *shall not be resident within the municipality, he shall transmit by post*," &c.; this was precisely the plaintiffs' case. It depends, not on the description entered on the roll, resident or non-resident, which is material for the purpose of voting, but on the fact of being resident or no.

Then the collector should have transmitted them a statement and demand of the taxes charged against them in the roll. The 43rd section gives the power of distress. If any party neglects or refuses to pay for fourteen days "*after such demand made*" on him, referring in this case to actual residents, the collector may levy, "and *at any time after one month from the delivery of the roll to him*," (which must be done on or before the 1st of October, sec. 39), "the collector may make distress, of any goods and chattels which he may find upon the lands of non-residents on which the taxes inserted against the same on his roll have not been paid, and no claim of property, lien or privilege thereupon or thereto, shall be available to prevent the sale and payment of the taxes and costs out of the proceeds thereof." It is to be observed that this last mentioned provision does not say after demand, or after transmitting a statement or demand, but after one month from the delivery of the roll to the collector. It is true that this particular power relates to distress on the lands in respect of which the taxes were imposed, and this may well have been thought necessary, as the goods on such lands may not have been the property of the party assessed. But this provision taken in connection with section 45, leads to the conclusion, that in case of non-residents, the transmitting a statement and demand is not a condition precedent to the power of distress, though the collector may be liable for any damage resulting from the omission to transmit it. The 45th section enacts that if any party taxed shall not be resident, or shall have removed, &c., or if any party shall neglect or refuse to pay any tax assessed in any Township, &c., within the County in which he shall reside, it shall be lawful for the collector to levy such tax by distress, &c., of the goods of such party in any Township, which for judicial purposes, shall be in the same county, and to which such party shall have so removed, or in which he shall reside, "*or of any goods and chattels in his possession therein.*"

The distress appears to me to be covered by this last provision, and I think the rule should be discharged.

Per Cur.—Rule discharged.

CHANCERY.

(IN BANC.)

(Reported by THOMAS HODGINS, Esq., LL.B., Barrister-at-Law.)

BATES v. TATHAM.

Practice—Receiver for Partnership property—Master's Report.

When there is a reference to the Master to enquire what lands are partnership property, a motion to appoint a Receiver is informal.

(12th October, 1858.)

In this case, three lots had been bought by the parties who had at the time of purchase, been in partnership. The conveyances were made to Defendant, but the Plaintiff had advanced £100 for the purchase of the first lot, part of the purchase money for the second; and the third was bought by a debt due the partnership by the vendor. A decree had been pronounced referring to the Master to enquire what was partnership property.