

JUNE 28TH, 1902.

C. A.

MCDONELL v. CITY OF TORONTO.

*Assessment and Taxes—Local Improvement Rates—Charge on Land—
Distress—Invalid By-law—Validating Statute—Effect of—Front-
age Tax—Special Rate.*

Appeal by plaintiff from judgment of ROBERTSON, J., dismissing the action. The plaintiff claimed a declaration that the assessment of plaintiff's property for local improvements (part of the cost of opening up Sunnyside avenue, in the city of Toronto) for the years 1892, 1893, 1894, 1896, and 1897, was illegal and void; that the defendants had no right to distrain for such taxes; and that they had now no right to collect such taxes by action or in any other way; and that such taxes did not form a charge on plaintiff's lands fronting on Indian road.

On 12th January, 1892, \$36,517.77 was required to be raised by the issue of debentures to pay for the opening and construction of Sunnyside avenue, and the city engineer having submitted a description of the property that would be benefited by such opening, as recommended on the initiative, the defendants' counsel on 1st February, 1892, passed by-law No. 3012 to provide for borrowing money by the issue of debentures secured by local special rates on the property fronting or abutting on Sunnyside avenue. The by-law imposed a special rate of 34 cents and 8 mills on the real property described in it, according to the frontage thereof, sufficient to produce in each year \$2,687.70, for 20 years. Under this by-law the defendants assessed the plaintiff upon a frontage of 671.3 feet for an annual payment of \$233.60. In passing the by-law and making the assessment the provisions of 53 Vict. ch. 50, sec. 618 (1) and (2), (O.) then in force, were not observed.

By 56 Vict. ch. 85 (O.) this by-law and all debentures issued and to be issued thereunder, and all assessments made were validated and confirmed.

The plaintiff's land was assessed in the assessment rolls for the years 1892 to 1898, inclusive, but she disputed the assessments, and paid no taxes for any of these years.

A bailiff, acting under a warrant from the collector of taxes for 1896 and 1897, on the 17th May, 1899, distrained the plaintiff's goods for \$1,347.77 for taxes therein alleged to be in arrear for 1896 and 1897.