

LENNOX, J.

OCTOBER 15TH, 1918.

HEIGHINGTON v. CITY OF TORONTO.

Assessment and Taxes—Sale of Land for Arrears of Taxes—Assessment Act, R.S.O. 1914 ch. 195, sec. 22—Ownership of Land—Illegal Assessment—Duty of Assessor—Inquiry—Knowledge of City Council—Necessity for Substantial Compliance with Statutory Provisions—Sale Set aside.

Action for a declaration that an alleged sale of parts of certain lands of the plaintiffs for taxes was illegal, and to restrain the defendants, the Corporation of the City of Toronto, from carrying it out by conveyance.

The action was tried without a jury at a Toronto sittings.

A J. Russell Snow, K.C., for the plaintiffs.

Irving S. Fairty, for the defendants.

LENNOX, J., in a written judgment, said that he was of opinion that the land was not legally assessed under the provisions—particularly as to ownership—of sec. 22 of the Assessment Act, R.S.O. 1914 ch. 195. It was not a question whether the assessor made “diligent inquiry” and assessed the property “according to the best information to be had;” it was not pretended that he made any inquiry; nor was further inquiry necessary, for the municipal council had the fullest information as to the title; it was fully registered; and knowledge of the ownership of these lots was directly brought home to the defendants by expropriation proceedings by which the defendants acquired 20 feet of each lot.

Statutes conferring rights must be strictly construed, and there must be substantial if not rigid compliance by the parties benefited by them.

The taxes for 1913 were paid on the 15th June, 1917; payment was accepted and was recognised and acted on at the sale and otherwise. A municipal treasurer cannot legally accept taxes after the lands have been advertised for sale; and, as a matter of construction and law, the payment was made before the lands were “advertised” within the meaning of the statute. Assuming that to be so, it did not go to the root of the matter. The substantial question was, whether there were taxes three years in arrear at the time of sale, and it appeared that the taxes for 1914 were so in arrear.

There should be judgment for the plaintiffs as claimed, with costs.