

1865, and duly delivered the said roll with the addition aforesaid to the defendant as such collector aforesaid, and thereupon it became and was the duty of defendant as such collector to collect such arrears in the same manner and subject to the same conditions as all other taxes entered upon the collector's roll for said last mentioned year: that thereupon defendant, so being such collector, proceeded to collect the said arrears of taxes, and for that purpose called at least once on the plaintiff (being the person taxed) at his usual residence in the said township, and demanded payment from the plaintiff of said arrears of taxes, and that the plaintiff neglected to pay such arrears of taxes for the space of more than fourteen days after such demand—whereupon the defendant, so being such collector as aforesaid and the proper officer in that behalf, seized and took at the said township of Etobicoke the goods and chattels in the said declaration mentioned, being the goods and chattels of the plaintiff (being the person who ought to pay the said arrears of taxes as therein mentioned), and being goods and chattels at the time in plaintiff's possession in said township of Etobicoke, and detained the same for a distress for the arrears of said taxes, as he lawfully might for the causes aforesaid.

**Plea to the avowry**—That the plaintiff never was the occupant or tenant of that part of lot No. 21 in concession C of the township of Etobicoke, in the said avowry mentioned, or in any way interested therein, until the 1st of April, 1865, after all the arrears of taxes in the said plea mentioned had accrued due: that he, the said plaintiff, although in possession of and cultivating the said lot as a tenant before and at the time of the delivery of the list in said avowry mentioned to the assessor, and thence up to and at the time of said seizure, under a lease from one Marianne Arnold, the owner thereof, to him the said plaintiff executed on the said 1st day of April, 1865, had never lived or resided thereon, but upon lot No. 21, in concession B of the said township of Etobicoke; and that the goods in the declaration and in the said avowry mentioned were seized for such arrears, not upon the said lot No. 21 in concession C, in respect of which the said taxes accrued due, but upon the said lot No. 21 in concession B, on which the said plaintiff was resident at the time of such seizure.

Demurrer and joinder, raising substantially the question, whether under the facts admitted the plaintiff's goods were liable.

*Robert A. Harrison*, for the demurrer.

*C. Robinson, Q. C.*, contra.—*Municipality of Berlin v. Grange*, 5 U. C. C. P. 211; *Holcomb v. Shaw*, 22 U. C. Q. B. 92; *Fraser v. Page*, 18 U. C. Q. B. 337, were referred to on the argument.

The sections of the statute bearing upon the question are cited in the judgment.

HAGARTY, J., delivered the judgment of the court.

The case turns upon the construction to be given to the act of 1863 as to "non-resident" lands.

This statute, after giving directions how the township clerk is to be furnished with a list of non-resident lands five years in arrear for taxes, and how the assessor to any such list is to return

if any and which of the lands are occupied, and notify the occupants and owners, directs that "the clerk of each municipality shall, in making out the collector's roll of the year, add and include such arrears of taxes to the taxes assessed against such occupied lands for the then current year, and such arrears shall be collected by the collectors of the municipalities, in the same manner and subject to the same conditions as all other taxes entered upon the collector's roll."

The act contains no special provision for the disposition of the moneys levied for arrears; but section 5 directs that the county treasurer shall not issue his warrant for the sale of any lands returned to him as occupied under sec. 8 of the act.

The statute seems, in very express words, to direct that these arrears are to be collected in the same manner as all the other taxes on the roll. We must now see what that "same manner" is.

Under "The Assessment Act," Con Stat. U.C. ch. 55, land is assessable against the occupant, if the owner were not resident or unknown; but if unoccupied and the owner non-resident, then it is returned as non-resident land, under sec. 24. When assessed against both owner and occupant, the taxes are recoverable from either, or from any future owner or occupant.

By sec. 89 it is provided how taxes are to be entered on the collector's roll, the names of persons assessed, number of lot, any amount for county rate in a separate column, in another the local municipal rates, and in separate columns any special rate for schools, &c.

Section 96 allows the collector to levy the taxes "by distress of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession wherever the same may be found within the county in which the local municipality lies."

By sec. 97 in case of the land of non-residents, the collector may distrain "any goods and chattels which he may find upon the land."

If the amount of taxes be not levied on non-resident lands, return is made to the county treasurer, to whom the future collection belongs; and sec. 122 enables him, whenever satisfied that there is distress upon non-resident lands in arrear for taxes, to authorize the sheriff by warrant to levy "upon any goods and chattels found upon the land."

Sec. 134 enables the sheriff to distrain goods on the land after the warrant for sale comes to his hand.

To the time of the passing of the act of 1863 it seems clear that as this land was "non-resident," only the chattels actually on the land were liable to distress. The avowry expressly states it is to be non-resident land up to 1865. The case turns upon the effect of the new act—whether it makes the plaintiff's goods, he being merely the tenant and occupant, in any part of the municipality, and off the land, liable for arrears accrued before his tenancy.

The act of 1863 says: "For the greater protection of persons owning non-resident lands in Upper Canada, and also for the more sure collection of taxes thereon," be it enacted, &c. Except in this place and in the title, the words "non-resident" do not occur throughout the act.