

and compare his receipts with the credits given and the respective dates thereof, and to obtain any other pertinent information available in the premises for the information of the council. It further appears that the collector has failed to comply with the requirements of previous resolutions of the council as to duly returning his rolls, with schedule, and certified as the law directs; it be therefore an instruction to the said treasurer to demand the immediate custody of the said rolls and of all moneys received by him, the said collector, by virtue of his office on account of the said rolls, and not already paid over, and report immediately to the council or reeve what may have been done in the premises.

The treasurer, on the 2nd of April, 1867, demanded of the said Thomas Moore the amounts above mentioned as the amounts collected and not paid over for the years 1864 and 1865.

On the 6th of April, 1867, the treasurer of the said township issued his warrant, claiming and assuming to act under the authority of sec. 182 of the Assessment Act of 1866 above mentioned, directed to the sheriff of the county of Grey, commanding him to levy of the goods, chattels, lands, and tenements of the collector and his sureties, the respective sums above mentioned. These warrants were on the same day placed in the sheriff's hands.

On the 8th of April, 1867, the said sheriff, under the said warrants, levied upon certain goods and chattels, and upon the said above-mentioned lands of the said Thomas Moore, and afterwards, on the 7th of May, 1867, sold the said land to the said John W. Armstrong, under whom the defendant claims; and on the 15th of May, 1867, the sheriff executed a deed of the said land, in pursuance of the said sale, to the said John W. Armstrong, as a trustee, the said John W. Armstrong being then, and at the date of the said warrants, treasurer of the said township. (Copies of the said warrants and deed were annexed to the case.)

The said Thomas Moore had duly entered into bonds for the due performance of his office of collector for the years 1864 and 1865, respectively, with two sureties.

The question for the opinion of the court is, whether the title of the plaintiff under the said mortgages is entitled to prevail over the said warrants of the treasurer of the said township, and the said sale of the sheriff, and the deed executed by him in pursuance of such sale. If the court shall be of opinion that the title of the plaintiff is entitled to prevail, their judgment to recover the said land shall be entered for the plaintiff, with costs.

But if the court shall be of opinion that the title of the plaintiff is not entitled to prevail, their judgment shall be entered for the defendant, with costs.

The case was argued during Easter term last.

*M. C. Cameron*, Q. C., for the plaintiff. The sale cannot be supported. The Consol. Stat. U. C. ch. 55, had been repealed by 29 & 30 Vic. ch. 53, when the warrant issued, "saving any rights, proceedings, or things legally had, acquired, or done under the said Acts, or any of them." This gives no right to continue pending proceedings, or to issue the warrant: *Bryant v. Hill*, 23 U. C. R. 96; *McDonald v. McDonnell et al.*, 24 U. C. R. 424. This power to levy summarily is an extraordinary one, and it must be

exercised strictly within the statute. Here no definite time was named for the return of the roll or for payment. Moreover, the warrant was premature. It must be issued "within twenty days after the time when the payment ought to have been made," and this, according to the true construction, means after the expiration of twenty days. There was no demand until the 2nd April. The payment could not be due until then, and the warrant issued on the 6th. [*Morrison, J.*, referred to *O'Meara v. Foley*, Ir. L. R. 4 C. L. 116.] The conveyance, moreover, is void. It is made to the treasurer for the corporation, but the corporation cannot hold it for any acknowledged or avowed purpose under the Municipal Act.

*Harrison*, Q. C., contra. The limitation of time for returning the roll is for the benefit of the Corporation. They can give further time, and their rights should not be prejudiced by so doing. So long as the Township Corporation allow the roll to remain in the collector's hands, neither he nor his sureties can say that he should have been called upon sooner to return it; only the Corporation or the School Trustees can be prejudiced or can complain. Here the roll was legally in his hands, and when the demand for payment was made upon him it was his duty to comply with it. Not having done so, the warrant and the sale after it were authorized: *Newberry v. Stephens*, 16 U. C. R. 65; *McBride v. Gardham*, 8 C. P. 296; *In re McLean v. Farrell*, 21 U. C. R. 441; *Coleman v. Kerr*, 27 U. C. R. 5. As to the position of the sureties, *The Corporation of Whitby v. Harrison*, 18 U. C. R. 603; and *Todd v. Perry*, 20 U. C. R. 649, may be referred to, but here there is no question as to the sureties, for the land sold was the collector's, not theirs. The Statute authorizing the warrant does not say that if not issued within the time it shall be void: *Duarris* on Statutes, 606, 611.

*RICHARDS*, C. J.—When the Collector's Rolls of 1864 and 1865 were given to Moore, he being collector for those years, sec. 103 of the Consol. Stat. U. C. ch. 55, as amended by 27 Vic. ch. 19, sec. 12, was in force, and is as follows, as far as relates to townships and counties:—

"On or before the 14th day of December in every year, or on such day in the next year, not later than the 1st of May, as the council of the county or city may appoint, every collector shall return his roll to the treasurer of the township, town, or village, or to the city chamberlain, and shall pay over the amount payable to such treasurer or chamberlain, specifying, in a separate column on his roll, how much of the whole amount paid over is on account of each respective rate."

Sec. 104.—"In case the collector fails or omits to collect the taxes, or any portion thereof, by the 14th day of December, or by such other day appointed by the council of the county or city as aforesaid, such council may, by resolution, authorize the collector, or any other person in his stead, to continue the levy and collection of the unpaid taxes in the manner and with the powers provided by law for the general levy and collection of taxes; but no such resolution or authority shall alter or affect the duty of the collector to return his roll, or shall in any manner whatsoever invalidate or otherwise affect the liability of the collector or his sureties."