the returns made to him he discovers the arrearages and charges the land in his books, for the law strictly prescribes what appropriation of it shall be made when he receives it. The effect then of the defendants' argument is, that the school, sections must lose the money, and either the landowner will get the benefit by not paying his school rate, or the non-resident land fund will be increased by the amount, and so the municipality will ultimately receive it without having previously made up the deficiency caused by its non-payment as part of their general funds. I am satisfied this was not meant by the legislature, and though it is not easy to deal with the section as it stands, and yet under such circumstances to prevent a consequence plainly contrary to the intention of the two acts, I think we may hold that the trustees may before the end of each current year, return all school rates upon lands not collected, for the reasons stated in the act, and of which no prior return has been made to the clerk of the municipality. With this construction the plaintiffs will be entitled to retain their verdict, otherwise it must be entered on the third count only for the plaintiffs' damages and for the defendants on the first and second counts.

Per Cur—Judgment for plaintiffs

IN PRACTICE COURT.

Reported by ROBERT A HARRISON, ESQ., *Barrister-at-Law*

THE QUEEN V. CHARLES MERRIGOLD.

Writ of Extent—Lands—Issue of second of same teste as former writ—Grounds therefor

Where, in the execution of a Writ of Extent the counsel for the Crown considering the property returned by the finding of the jury to be ample to cover the Crown debt designedly omits property sold before the execution of the writ by the Crown debtor to *bona fide* purchasers for value and on an application subsequently made to quash that writ of extent and issue a second writ of the same teste as the former writ in order to seize and make contribute the last mentioned property, there was no reason suggested for allowing the application but the fact that the Crown debtor appeared from the books of the County Register office to have been possessed of other property than that returned, the application was refused.

(Sittings after Mich. T., 1860)

In Hilary Term, 1860, a Rule was obtained calling on the Defendant and George William Malloch, Matthew William Pruyn and others, to shew cause why the Writ of Extent issued in this cause on the twenty seventh of November, in the twenty second year of the reign of Her Majesty the Queen, and directed to the Sheriff of county of Brant, and all proceedings in this cause subsequent thereto should not be quashed and a new writ directed to the same county of the same teste as the former writ be issued upon the ground that there are certain lands situate in the said county of Brant now or at one time belonging to the said defendant which ought to have been extended under and by virtue of the said writ which were not so extended.

The affidavit filed on moving the Rule shewed the recovery of the judgment against the defendant, the issue of the Extent and the return of the Sheriff as to certain lands which the defendant was seized, the issue of a writ of *venditioni exponas* and that no lands had been sold, and then proceeded to state that as appears from the County Register Books in addition to the lands returned under the inquisition, the defendant was seized, on 10th April, 1849, of Lot No 18 on North side of Dalhousie street in Brantford, and on the 11th February, 1852, of Lots No 20 and 21 on the North side of said street as well as several other lots of land, as appeared from the certificate of the Registrar.

In Easter Term last *Mr Long* shewed cause and filed an affidavit, stating that the Reverend Hugh McLeod of Cape Briton, who is the holder of a Mortgage in fee on the west half of Lot No. 17, on the south side of Darling street, made to him by the trustees of the congregation of the Presbyterian Church of Canada, in Brantford Mr. Long appeared also for John Turner and the trustees of the Presbyterian Church.

Mr E B. Wood appeared for the estate of the late John Russell and stated that what was seized is sufficient to satisfy the crown debt.

It was admitted that the property seized under the writ exceeds in value one hundred and ninety-nine pounds, the claim of the Crown.

Mr E B Wood also objected that the bond does not constitute a lien, and that it does not appear from it for how much it is to be considered as a lien

Mr R A Harrison for the Crown referred to *Rex* v *Gibson*, Parker's Revenue Cases page 35—*Rex* v. *Buchanan*, *Ib.* page 176, and Imperial Statute 33 Henry VIII, chapter 39

RICHARDS, J.—The case of the *King* v *Gibson*, referred to by Mr. Harrison, shows that a second Extent may issue, tested the same day as a former one. But in the case referred to it appeared that a considerable portion of the defendant's effects were secreted so that they could not be discovered before the first writ of Extent, under which a portion of the defendants effects seized, was returned A second writ was also sued out, but in consequence of the Bankruptcy of the party to whose hands the defendant's goods came after the issuing of the first writ and before the issuing of the second, the proceedings on the second writ were of no effect. The Court allowed the last or second writ, and the proceedings under it to be quashed and set aside, and directed that a new Extent should issue bearing the same teste as the first Extent.

The note of the case of the *King* v. *Buchanan et al*, does not show the facts very clearly, but states that after the issue of an Extent against the defendants, an inquisition was taken and goods were seized, but it was afterwards found that there were some cloths in the hands of a packer belonging to them. On an affidavit of this fact a motion was made to quash the Extent and inquisition and to have a new Extent of the same teste as the former, in order to find and seize these cloths. An order was made absolute to that effect.

It was stated in the argument, that the property, which it is now sought to cover by the writ, was designedly omitted in the finding of the jury, as the gentleman who acted on behalf of the Crown, considered the property returned by the finding of the jury ample to cover the debt of the Crown, and that he did not desire to interfere with "*bona fide*" purchasers from the Crown debtor. There was no affidavit filed on this point, and Mr Harrison, who argued the case on behalf of the Crown, neither affirmed nor denied the statement, although it was admitted that the property returned by the jury was sufficient to satisfy the amount due the Crown.

There is no reason suggested for allowing the application, but the bald fact that Merrigold appears to from the abstract of title from the Registry office, to have been possessed of other property than that returned. As what is returned appears to be sufficient to satisfy the claim of the Crown, I cannot suppose there was any fraud used to prevent the Crown from covering as much property as they desired to include in the finding of the jury, particularly as a reference to the Registry office would have given all the information as to Merrigold's real estate that is now presented to the court I think therefore I must assume that the Crown intentionally omitted the other property from the finding of the jury; if so then there is no reason suggested why the parties, who from their peculiar position, it was then thought, ought not to be compelled to contribute to the payment of this debt, should now be placed in a different position.

I do not therefore see my way clear in making this rule absolute.

IN CHAMBERS.

Reported by ROBERT A. HARRISON, ESQ., *Barrister-at-Law*

JOHN MELLING V. JOSEPH ELLIS.

Consol Stat U C cap 23, ss 9, 11, 12, 13—Writ of Injunction—Violation—Contempt—Attachment

No order can be made for the issue of a writ of attachment for violating the terms of a writ of injunction without a previous notice of some kind to the defendant. Where the injunction operates strictly by way of restraint, the proper course is either to move that the defendant be committed for breach of the injunction, or to move that he be committed unless he show cause at a future day to the contrary.

If the first course be adopted, the motion must be made on personal service of a notice of motion on defendant

(December 18, 1860)

On 14th June, 1855, George Tate became the purchaser of about 10½ acres of land near Queenston, known as "The Great Trunk Quarries."