years from the committal of an act *proved* or *admitted* to have been at the time it was committed, illegal and wholly unwarranted. If this construction should be established, the first fruits of that decision would be to divest the true original owner of the land, which was the subject of litigation in *Hamilton* v. *Eggleton*, of his estate which the judgment in that case, so long as the construction it put upon the Act is maintained, secured to him, for the action there having been ejectment it is not final, and the party who there claimed under the wrongful deed may bring a new action and recover the estate from the rightful owner if a new construction should be put upon the Act by this Court.

Again it is said that, in these cases, the innocent purchaser should be protected, but I cannot see that he, however innocent, has any greater claims upon our sympathy than the innocent owner of the property, who would be cruelly wronged if the purchaser in the given case should succeed. In a matter so affecting the rights of property there is something more to be considered than which party is most entitled to our sympathies. That is a question with which we, as expounders merely of the law, have nothing to do. What the owner of the property submits to our jurisdiction is—whether or not the language used by the Legislature warrants the construction that the mere lapse of two or four years from the committal by a municipal officer of an utterly illegal and unwarranted act (whether such act was fraudulent, or only done in ignorance, or by mistake is all one to the owner) can have the effect of divesting the true owner who was in no default whatever to the municipality, and who had been guilty of no breach of any law, of his estate in real property.

In *Proudfoot* v. *Austin*, 21 Gr. 566, the plaintiff, who was a purchaser at a tax sale, rested his case upon the Sheriff's deed alone. Blake, V. C., held this to be insufficient, and that the 155th sec. of 32 Vict. ch. 36, only applies where there was an arrear of taxes at the time of sale; *and, where* there has been an actual sale—he adds—"I think, therefore, that the plaintiff should have shewn that at the time of the sale there were some taxes due *and* that an actual sale did take place," and he remitted the case for further evidence. This sentence extracted from the learned Judge's judgment by no means implies that he was of opinion that it was not necessary that some part of the arrears should be due for the period prescribed by the statute, he was simply adjudicating that the Sheriff's deed alone was not sufficient, but that proof of arrears of taxes *and* of an actual sale for such arrears under the provisions of the statute was necessary to be given.

This judgment is no more authority for the contention that an arrear, for any shorter period than the statute had prescribed, would be sufficient than is the expression in the judgment of the court in *Hamilton* v. *Eggleton*, viz.: That the section refers "only to cases of deeds given in pursuance of sales where *some* tax upon the land sold was in arrear."

When the evidence should be offered, would arise the question whether what was offered was sufficient. Upon this point I have referred to the records of the court in *Proudfoot* v. *Austin*, and I find that, upon the 11th and 25th of June, 1875, the Vice-Chancellor took the further evidence which his judgment at the hearing had directed to be given, and that then the treasurer of the county produced the several collectors' rolls for the years 1852, '53, '54, '55, '56 and '57, shewing arrears of taxes charged upon the lands for each of those years to the respective amounts, following in the order of the years, and which still remained due when the sale took place in 1858, viz.: £1 9 5½; £3 6 7½; £4 7 4½; £19 5 7½; £18 18 5½; and £19 7 2, and it was upon this evidence and evidence of the sale that a decree was made in favour of the plaintiff, upon the 28th of June, 1875.

In *Kempt* v. *Parkyn*, 28 C. P. 123, the Court of Common Pleas held that the section under consideration did not cure the defect, that no part of the tax was in arrears for the period prescribed by law, viz.: 5 years in that case before the treasurer's warrant, under which the sale took place issued.

In the case now in review before us, Mr. Justice Patterson delivering the judgment of the Court of Appeal says, that he does not wish to throw any doubt upon the construction, thus put upon the clause in the Court of Common Pleas, although he might have had some hesitation in arriving independently at that reading of the words, "sold for arrears of taxes"—he adds, however, language amply approbatory of the decisions as just and sound. He says, and this is the language of the court, "I see nothing objectionable in principle nor unreasonably restrictive of the beneficial operation of the clause, in holding that while it cures defects in procedure, either in the formal assessment of the land or in the steps leading to, and including, the sale, its operation is excluded when it appears that the substantial basis of liability on the fact that a portion of the tax on the land had been overdue for the period prescribed by the law, under which the sale took place, is wanting."

This language involves a complete affir-