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DIVISIONAL COURT.

DECEMBER 24TH, 1912.

GAST v. MOORE.

4 O. W. N. 525.

Assessment and Taxes—Tax Sale—Action to Set Aside—Want of Notice—4 Edw. VII., ch. 23, sec. 165 (2)—Address of Non-resident — Knowledge of Treasurer — Consolidation of Municipalities.

Action by the former owner of certain lands sold for taxes against the purchaser at the tax sale for the right to redeem the lands so sold on payment of the charges paid by him, and for possession of the lands. The lands in question were situate in the town of Toronto Junction, later the city of West Toronto, which was finally annexed to the city of Toronto. Plaintiff bought the lands in 1892, and moved to New York city in 1894. He notified the town officials of his New York address, received assessment notices from 1894 up to 1911, and paid taxes up to 1905. He made default in 1906 and 1907, and the lands were sold for taxes in November, 1908, by virtue of 61 Vict., ch. 55, sec. 16, which allowed the lands of non-residents in Toronto Junction to be sold on twelve months' default. The sale was made by the city of West Toronto, and when it came necessary to give the notice required by 4 Edw. VII., ch. 23, sec. 165 (2), the duty fell upon the officials of the city of Toronto. The officials charged with that duty made enquiries of the former treasurer of West Toronto, was informed that two unofficial letters sent to plaintiff at his New York address by the treasurer, had been returned unopened, and thereupon sent the statutory notice to the address appearing in the registry office in the deed to plaintiff, which notice, of course, he never received.

RIDDELL, J., *held*, that as plaintiff's address was unknown to the city treasurer, the course taken was proper, and in accordance with the statutory requirements.

Action dismissed with costs.

DIVISIONAL COURT, *held*, that as plaintiff had notified the town officials of his non-resident address, that remained his address until new notice was given by him, and unless a notice, as provided by sec. 165 (2) of the Assessment Act, was sent to this address, the tax deed was invalid.

Appeal allowed and judgment given allowing plaintiff to redeem, both with costs.

[See *Beatty v. McConnell*, C. R., [1908] A. C. 166, and *Russell v. Toronto*, C. R., [1908] A. C. 455.—*Ed.*]