do not know that he is called on to go out of his municipality to make inquiries, or to send to registry offices or surrogate courts miles away to search into deeds or wills: the words: "Estate of D. Milloy" or "Milloy Estate" are susceptible of explanation and proof of what they mean. They seem to have been used in the assessments at Niagara for several years, and the defendants themselves did not repudiate their own agent's act in recognizing the assessment and settling the amount. It is undoubtedly a most unsatisfactory mode of assessment, and one not to be encouraged, but I do not feel justified in holding it void.

As to the second objection, with respect to all the assessments except those of the "wharf" and "car shops," it appears that the several properties were occupied by tenants who are assessed for them, and it seems to me to follow under section 16 that the owners, if resident in the Province, must be assessed also.

With respect to the "wharf" and "car shops," if these properties were unoccupied, and if the defendant neither resided or had a legal domicile or place of business within the municipality, and had not given the notice mentioned in section 3, it is clear that these properties should be assessed as lands of non-residents. It appears to me, however, from the evidence of Murphy, that the wharf cannot be considered as unoccupied. A business was carried on there by the defendants through their agent Murphy; a personal occupation of the land is not necessary. I do not see how a property including a wharf at which boats stop daily, or at least frequently, and a warehouse in which goods are kept for remuneration, both under the control of an employé of the owner, can be treated as unoccupied, and I think it was properly assessed and should not have been assessed as non-resident land.

As to the "car shops" there is no evidence that they were occupied, but if the defendants who own them had a place of business in the municipality as they had at the wharf, I do not see why they should not be assessed for the property under section 15. There is an apparent conflict between sections 15 and 16; in the former the words are, "resident or have a legal domicile or place of business" in the municipality; in the latter they are, "is not resident within the municipality." Unless the word resident in the latter is construed to include "the having a place of business," I do not see how they can be reconciled, and I think it must be so construed in that section. A place of business seems to be preferred for purposes of assessment to a residence, see sections 31 and 32; and in these sections the terms are not used as representing the same thing, but are opposed to each other. In section 16 it seems to me to be different. I therefore think the "car shops" are properly assessed and should not have been assessed non-resident land.

As to the third objection, I think the memorandum of delivering the notice of assessment on the assessment roll sufficient evidence under section 41. As to the fourth objection, I am of opinion that it is not shown that the taxes could not be recovered in any special manner provided by the Assessment Act; and that for this reason the action cannot be maintained. It was on this ground that Mr. Justice Richards argued that the action could not be maintained in *Berlin* v. *Grange*, 5 C. P. 211; and his reasons seemed to be approved by Chief Justice Robinson in the Court of Appeal in same case: 1 E. & A., although the action was held not to be maintainable on other grounds also.

Mr. Justice Richards in that case, which was brought to recover taxes in arrears, after stating how non-resident owners of land should be assessed, gives his opinion (3rd) that having failed to recover the tax as to personal property of any person rated on the roll, for want of property to distrain, the amount of such tax may be recovered with interest as debt due to the municipality. (4th) As to taxes due on any lands that they cannot be sued for as a debt due to the municipality until after they have been five years in arrear, and on a sale of the lands the amount of the taxes cannot be recovered in that special manner provided by the Act. I have found no case in which this view of the law has been dissented from or reversed, and on this ground I am of opinion that the present action cannot be maintained, the plaintiffs not having attempted to collect the taxes by sale the lands assessed, which is one of the special modes pointed out by the Act for collecting the taxes. This practically disposes of the case, but as the question whether the claim of the town for those taxes had not been paid by the taking the note of Murphy for the amount was fully argued, I may give my opinion on this point.

Murphy was in the employ of defendants when he gave the note on the 19th or 20th Dec., 1879, to Rogers, the Town Clerk, who handed the receipt to him and entered in the collector's roll opposite each of the items, making up the amount for which he gave the receipt, the words "paid 20th Dec., 1879."

Murphy signed the note: "John Murphy, agent for the Milloy Estate," and the legal effect of this (the defendants contended) is that it is the personal note of Murphy and that he alone could be sued upon it, and they further contend that the plaintiff's having taken the note of a third person and given a receipt in full (treating the payment as cash), and