

sheriff's advertisement for their sale for taxes, instead of "granted in fee" by the Crown, sufficiently conforms to the statute.

Action of treasurer and other officers in not using the language of the statute animadverted upon.

The bill in this case was filed by the plaintiffs, Daniel Brooke, mortgagee, and James Slaght, mortgagor of the lands in question, against the purchaser at sheriff's sale and the treasurer of the county, to set aside a sheriff's deed of land sold for taxes, and all proceedings taken before and after such sale.

The cause came on for hearing and examination of witnesses at the town of Simcoe, on the nineteenth day of October, 1866.

The grounds upon which the sale was sought to be impeached were as follows:

1st. That the premises in question, being the south half of lot 11 in the 5th concession of the township of Windham, county of Norfolk, were assessed for several years as non-resident lands, as one parcel, with the exception of one year, and that the defendant, Henry Groff, treasurer of the county of Norfolk, notwithstanding such assessment, entered the said lands in his treasurer's books as two parcels, composed of the south quarter and the south half of the north half of the said lot, and charged for statute labor as upon separate parcels, more than legal charges.

2nd. That the plaintiff, Daniel Brooke, forwarded to the said treasurer, in the month of May, 1863, a draft for \$30 76, payable to "Henry Groff, treasurer of the county of Norfolk, or order," which sum the plaintiffs alleged was more than sufficient to satisfy all the taxes legally due on the premises, and that the defendant, Henry Groff, endorsed the said draft as *such treasurer*, and received the proceeds thereof in or towards the payment of the taxes.

3rd. That the warrant of the treasurer, sheriff's advertisement and sale, respectively, were void.

The sale took place in November, 1864.

The following evidence was taken at the hearing:—As to the execution of the deed, plaintiff Brooke to plaintiff Slaght, and mortgage back.

The township clerk for Windham proved the by-laws, fixing the commutation for statute labor at seventy-five cents a day, which were put in.

The agent for the Bank of Montreal, Simcoe, proved the payment of the draft sent by plaintiff Brooke to defendant Groff, treasurer of the county, in June, 1863, and also proved the endorsement, "Henry Groff, treasurer, county of Norfolk," to be in his handwriting.

Henry Groff, one of the defendants, sworn (subject to objections to his evidence, raised by the plaintiffs on the ground that he was a defendant in the case and liable for the costs):—"I am treasurer for the county of Norfolk, and have been since 1849. In 1858, the whole south half was returned on the non-resident roll. This was not so in 1859, when it was assessed, and would appear on the assessment and collector's roll. In 1860, the taxes were assessed on the south quarter, 50 acres, as non-resident land, it alone of the lot being returned as such, leaving the north half of the south half as resident land upon the assessor's roll, and I charged against it only the ten per cent. After charging ten per cent. on 1st May, 1859, and ten per cent. on 1st May, 1860, I divided the taxes for 1858 and

1859 between the two parcels of the south half. No portion of the south half of the lot was returned on the non-resident roll, and I therefore only charged the ten per cent. In 1862 and 1863, the whole south half was returned on the non-resident roll, and I divided the tax equally between those two lots for those two years. From the non-resident roll for 1862, it appears that the whole south half was returned in that year assessed at \$900 in value. The same return was made for 1863. In consequence of only the 50 acres, that is, the south half of the south half, having been returned to me as non-resident lands in 1860, I in that year sub-divided the previous taxes, charging 50 acres with its proportions, and making a separate charge against each for the taxes in that year; and this sub-division I thenceforward continued as each portion has become chargeable with a different amount of taxes. In 1858, the statute labor was assessed at one dollar per diem; and in 1860, the same. In 1862 and 1863, seventy-five cents per diem was charged for the statute labor. I forwarded Mr. Brooke a statement of taxes made up to 31st March, 1863, on the 30th May. Mr. Brooke remitted me the amount referred to in the pleadings when the taxes had been increased by the addition of the ten per cent. At the time of the statement, sent on the 31st of March, the two last items, viz., add 10 per cent. to 1st May, 1865, and search, were not written in. This was due after the statement was sent back to me with the remittance. I deposited the draft received from plaintiff Brooke in the Gore Bank to my individual credit, as I do with all moneys received by me. I never placed this sum in any way to the credit of the municipality. If the amount received had been sufficient to cover the taxes, I would have carried the amount to the credit of the municipality, and marked the lot paid. Mr. Brooke never remitted the balance. Mr. Brooke has never applied for the money so sent me. I had no further communication with Mr. Brooke till February, 1866. He never required me to apply the money forwarded me on any particular portion of the lot. In 1864, I transmitted to the township clerk a list of the lands liable to be sold in that year for arrears of taxes (lists put in). There were two lists sent; the first did not contain the amounts of taxes in arrear. This was supplied by second list."

Cross-examined by Mr. Blake, Q. C., without prejudice:—

"In 1862, the commutation for statute labor against the whole south half was returned to me as \$3 75; and in 1863, the same. I did not make any enquiry as to or ascertain the relation or respective values of the two quarters of the south half when I sub-divided and charged them in 1860. When I received plaintiff's draft, I had no account as treasurer of the county with any bank. I keep the county moneys, with my own private moneys, in one account."

Edward Blake, Q. C., for the plaintiff, took objections to the proceedings concerning the sale before stated, and argued that the treasurer had not a right to divide the lot into two parcels, as by that means the taxes were increased, and to charge the statute labor upon each; and that if he had that right, he should have applied the moneys sent by the plaintiff Brooke, which were