But since that time the case of *Kelly* v. *Solari* 9 M. & W. 54, it has been established that it is not enough that the party had the means of learning the truth if he had chosen to make an enquiry. The only limitation now is, that he must not waive all enquiry. Nearly all the cases on the subject are collected in *Holland* v. *Russell*, 4 B. & S. 14.

Then as to the Consol. Stat. U. C. ch. 55. After creating the Court of Revision to try all complaints in regard to persons being wrongfully placed upon or omitted from the roll, or being assessed at too high or too low a sum, it provides (sec. 60, sub-sec. 1) that any person complaining (among other things) as having been overcharged, may give notice to the clerk of the municipality, who is to post up a list of complaints, with an announcement when the court will be held to hear them (sub-sec. 3), and shall give certain prescribed notices. The court, after hearing upon oath the complainant and the assessor, and any witness adduced, "shall determine the matter, and confirm or amend the roll accordingly" (sub-sec. 12); and (sec. 61) "the roll as finally passed and certified by the clerk as so passed, shall be valid and bind all parties concerned, notwithstanding any error committed in or with regard to such roll, except in so far as the same may be further amended on appeal to the judge of the County Court, which appeal is given by sec. 63; and certain prescribed notices having been given, "the judge shall hear the appeals, and may adjourn the hearing from time to time, and defer the judgment thereon at his pleasure, so that a return can be made to the clerk of the municipality before the 15th of July," and his decision is conclusive; and when after this appeal the roll shall be finally revised and corrected, the clerk of the municipality shall without delay transmit to the county clerk a copy thereof.

The appeal to the county judge cannot take place until the Court of Revision has decided upon the appeal to them, and their determination on each appeal to them is a part of the duty imposed upon them by sub-sec. 72 of sec. 60, and the performance of that duty must necessarily precede any confirming or altering the roll. It would be a singular construction of the powers of the Court of Revision, upon any appeal made to them by a ratepayer, which would enable them to withhold giving a decision and yet to confirm the roll as prepared by the assessor as if no appeal had been made. Nevertheless, that appears to be the result of the contention of the defendants.

I think it is more consistent with the expressed intention of the act to hold that an appeal made to the Court of Revision must be determined in some way: that to abstain from determining is no determination; and that such withholding or abstaining from a determination, and then finally passing the roll as if no such appeal had been made, is not a "defect or error committed in or with regard to such roll."

Even if the want of a determination had arisen from accident or oversight, I should incline to this conclusion; but where the facts tend to establish that it was not overlooked, and no explanation of any kind is even suggested, I feel compelled to decide that no ratepayer can be thus deprived of his appeal and at the same time be bound by the assessment complained against. It may happen, as was pointed out on the argument, that a ratepayer under such circumstances would escape paying anything for that year, but conceding, without adjudging, that such a consequence must follow, it is the omission of the Court of Revision which causes it, in neither confirming or correcting the roll *quoad* his appeal. As to his assessment they have done nothing, and as to him, therefore, they have not passed the roll so as to bind him, though the other portions of the roll may be held to be final and conclusive.

I think this rule should be discharged.

My brother Hagarty's judgment has not changed my opinion. The Court of Revision, according to the evidence, had an established course of procedure in disposing of appeals from the assessor's entries on the roll, for they had a book kept in which all their decisions on such appeals were entered, and it is sworn there is no entry of any such decision on this appeal. And, further, their own clerk has sworn that no such decision was ever pronounced. When it appears that a similar assessment had been made for some years preceding, and that the Court of Revision had invariably upheld the settlement and decided against the appellants, on which the judge of the county had been appealed to, and had uniformly, on a clear intelligible principle, decided that the assessment was wrong, and had reduced it accordingly, I think that I am warranted in holding that the evidence of the clerk and of the non-entry of a decision is decisive that this appeal of the plaintiffs never was determined. I did not understand their counsel on the argument to suggest even that he should succeed on this ground, though he argued strenuously that the circumstances under which the money was paid deprived the plaintiffs of any right to recover it back. I think in this case the whole weight of evidence establishes the negative proposition—namely, that the Court of Revision did not determine this appeal at all; or, put affirmatively, that, whether designedly or no, they withheld a decision. I cannot, in the face of the facts as I understand them, hold that by the pure force of the words of the statute the Court of Revision, by doing absolutely nothing, have confirmed the assessor's roll.

Morrison, J.—I entirely agree with the judgment of the learned Chief Justice. I have merely to add that, in my opinion, when a person assessed appeals against the assessment a duty is imposed upon the Court of Revision to try the complaint, and the appellant is entitled to the opinion and decision of the court on the matter appealed against before he can be made liable to any taxes arising from the assessment, and until it is determined one way or the other, the assessment against the appellant is in effect withdrawn from the roll. I cannot assent to the view urged by the defendants, that if a matter appealed has not been decided by the court in fact, it is nevertheless by implication of law decided and determined by the clerk certifying the roll as passed: in other words, that the Court of Revision has given its decision, although in truth the court after hearing the appeal refused or neglected to determine it. The whole tenor of the provisions relating to the Court of Revision and its proceedings is, in my opinion, against such a construction; and if such was the intention of the legis-