for the collection of the taxes before they can be sued for as a debt." It is in effect admitted from the statement in the declaration, that these taxes could not have been recovered by distress of the defendant's goods before this action was brought, there not having been any goods on the lands on which the taxes were due from which a distress could have been made.

I do not think it is the intention of the act to give to the county treasurer any power to collect or receive any taxes but those due on *lands*—whatever taxes are due from personal property or income may, I think, after the special remedy provided by the act for their collection (that is, want of personal property out of which to make a distress) has failed, be sued for as a debt due the municipality, and collected with interest. The section provides that all taxes accrued or to accrue on *any land*, shall be a special lien on such land. It does not say that taxes due on personal property shall create such a lien. The ten per cent annually to be added to the arrears of taxes on each piece of land, seems to be in lieu of interest, and to cover the expenses attendant on keeping the accounts and other charges incident to managing these matters, which seem to relate only to taxes due *on land* throughout the whole statute; and section 69, which relates to all arrears of rates chargeable on lands, requires each municipality, in paying over any school or local rate, or its share of the Lunatic Asylum tax, or of any county rate, to supply any deficiency arising *from the non-payment of any tax on land* out of the general funds of the municipality; and it is further provided that the several municipalities shall not be answerable for any deficiency arising from abatements or inability to collect any tax on personal property. After going carefully through the statute and considering its scope and tendency, I come to the conclusion that with regard to taxes on lands they cannot be collected by action, until it is ascertained that the amount cannot be recovered by sale of the land, which I conceive to be *a special manner* pointed out by the act for such recovery. On the whole, then I think—1st. That a non-resident owner of land can only be properly rated on the assessment roll of the municipality in his own name, when he requests to have his name entered on the roll: 2nd. That when the name of a non-resident appears on the roll, it must be presumed that it has been entered there at his request; 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. It is scarcely probable that five years of arrears of taxes, with the expenses, &c., on land in this country, would fail to be recovered by a sale of the land itself. It is provided by section 70 that the whole of the debentures to be issued on the credit of the non-resident land fund shall not exceed two-thirds of all the arrears then due upon the lands in the county and other sums at the credit of the fund. At the end of four years 40 per cent at least would be added to the amount of the taxes, and debentures might be issued based on that data. At that time, if, instead of pursuing the remedy against the land whereby the increased amount above the interest could be collected, the party named on the roll could be sued, then all that would be recovered from him would be the taxes with 6 per cent thereon, and the non-resident land fund would be diminished by at least 16 per cent of the amount due by such party. If it be admitted that the municipality of a village or township may at any time sue for taxes as a debt due the municipality, then this anomaly may take place—the sheriff may be required to seize the property of the defendant in the suit under an execution in favor of the municipality, and at the same time the county treasurer, under the 54th section of the act, may issue his warrant to levy the arrears, (including the 10 per cent annual increase) by distress on the land; these two remedies may be pursued at the same time. If the amount is levied under the executions (and that is to be considered as satisfying the claim) then the municipal loan fund loses the additional 4 per cent per annum above the 6 per cent interest. Then how is the sheriff of the county where the land lies to know if the amount has been made under an execution against the owner of the land, or how is he to know that the taxes have been sued for? In whatever light it is presented, taking this view of the matter, it seems to me we are involved in difficulties from which we cannot escape. But, taking the statute as I have already said I thought it should be construed, we avoid all these difficulties and make the different sections of the act and the remedies thereunder given, harmonize.

Per Cur.—Rule absolute.

REGINA EX RELATIONE DILLON v. MCNEIL.

(Easter Term, 18 Vic.)

Elector—Refusal to take oath.

The refusal of an elector to take the oaths required by the returning officer is a good ground for setting aside an election, if the relator would otherwise have had the majority.

[5 C. P. R., 127.]

This is an application to reverse the decision of the Judge of the County Court of Kent, on the grounds that the votes on which the defendant was elected were duly qualified votes; that the returning officer should have been made a party, or that defendant should be relieved from the costs, &c.

It appeared that at the last election for ward No. 3, township of Raleigh, fifty-two votes were polled for the defendant, and seventeen for the relator. Of the defendant's voters thirty-eight were objected to as being aliens, and who had either refused to take the oath of qualification according to the statute, or to, or from whom, the returning officer had declined to administer, or exact it.

The relator in his affidavit states that the returning officer received and recorded the votes of certain aliens (not saying for whom) against the remonstrances of the relator—that he required the returning officer to administer to the said parties, as aliens as aforesaid, the oath or oaths required by law, and that the returning officer, in some instances, requested the said parties, as aliens, to take the requisite oath, and in others he did not so request the said parties to take such oath or oaths.

That the said aliens refused to take such oath or oaths; but the returning officer, nevertheless, received and recorded the votes of the said parties, aliens as aforesaid, contrary to law and against the protest, &c., of the relator; that by receiving such votes, some thirty in number, the defendant was made to appear with the greater number of votes, while in fact the relator had the larger number of legal votes, and ought to have been returned.

It was agreed by the counsel on both sides, in writing, that the poll-book should be produced, and the votes objected to be indicated by a note opposite the names thus—"refused to take the oath," except in two additional instances; and that the production of such book should decide finally the question as to whether the parties whose names so appeared as objected to refused to take the oaths, and thereby became disqualified as voters.

The Judge decided in the relator's favor, not on the ground of alienage, but because thirty-eight of defendant's voters had refused to take the oath of being natural-born or naturalized subjects of her Majesty; and, striking off the votes of those who so refused, there was a majority of three in the relator's favor. Reference was made to the statutes 12 Vic., cap. 81, secs. 121, 122, 124, 151, 152; 16 Vic., cap. 181.