

name is in the collector's roll or not: R. S. O. 1887 ch. 224, sec. 135, sub-sec. 1 (3).

[Re Flett and United Counties of Prescott and Russell, 18 A. R. 1, distinguished.]

Here the inquiry is, who, in the circumstances which exist, is the taxable owner? There must always be such a person somewhere after grant from the Crown. No other property interests are involved, and it, therefore, seems fair to look at the matter as if it were simply one between the vendor and the vendee under such an instrument, and, looking at it in that way, I think the proper conclusion is, that for the purposes of taxation the vendee who is in possession under such a contract as the one in question, is to be regarded as an owner and liable for the taxes. An additional reason for so holding in the present case is, that the plaintiff had agreed with his vendor to pay the taxes.

It was urged that there was no demand of payment, as required by sec. 134. The fair inference, however, is, upon the evidence, that such demand was duly made, as the learned Chancellor has found. Cogent evidence of the demand is, I think, to be found in the fact that plaintiff actually paid the first instalment. True, he now says this was paid in his absence by mistake; but it was paid with his money, and we find no evidence that he made any attempt upon his return to have the mistake rectified and the money refunded before this difficulty arose.

Then it is said the time for the return of the roll had expired, and the collector was therefore *functus officio*. The roll had not in fact been returned, and still at the time of the seizure was in the hands of the collector, who was still collector, and this was long ago determined, properly we think, to be all that is necessary to entitle him to proceed: *Newberry v. Stephens*, 16 U. C. R. 65; *Lewis v. Brady*, 17 O. R. 377; *McDonnell v. City of Toronto*, 1 O. W. R. 494.

Appeal dismissed with costs.

OCTOBER 9TH, 1902.

C. A.

HENNING v. MACLEAN.

*Will—Construction—Alternative Disposition—Death of Testator and Wife "at the Same Time"—Lapse of Sixteen Days between Deaths—Intestacy.*

Appeal by defendants Catherine Isabella Maclean, Minnie MacTavish, and the executors of the will of the deceased