

CANADA REPORTS.

ONTARIO.

QUEEN'S BENCH.

CHARLESWORTH V. WARD.

Collection of Taxes—Extension of Time—C. S. U. C., ch. 55, secs. 103, 104, 177—27 Vic. ch. 19—Neglect to pay over—Issue of Warrant under sec. 177—Computation of time—“Within twenty days after.”

One M. was collector of a township for 1864 and 1865. By the C. S. U. C., ch. 55, as amended by 27 Vic., ch. 19, sec. 12, the roll was to be returned to the township treasurer by the 14th December in every year, or on such day in the next year, not later than the 1st May, as the County Council might appoint; and in case of his neglect to collect by the day so appointed, the County Council might, by resolution, authorize him to continue the collection; but this was not to affect his duty to return the roll, or the liability of his sureties. It was also enacted that on his neglect to pay over or account, the treasurer should, “within twenty days after the time when the payment ought to have been made,” issue a warrant to the Sheriff to levy the sum not paid or accounted for, on his goods or lands.

In January, 1865, he was authorized to continue the collection of the taxes for 1864, until the 1st May then next; and in January, 1866, to continue the collection of taxes for the township “so long as he should be recognised by the municipality of said township.” He did not return the rolls until April, 1867, when a large sum of the taxes for each year appeared not to be accounted for. On the 2nd of that month, the treasurer, under a resolution of the Council, demanded payment, and on the 6th he issued his warrant, under which the sheriff, in May, sold the land in question.

Held, that the sale was unauthorised, and that the sheriff's deed conveyed no title.

Per Richards, C. J.—The extraordinary remedy given by the issue of a warrant applies only when the collector neglects to pay over by some time fixed within the period allowed by law; but if the municipality authorize him to continue the collection beyond that period, his liability, and that of his sureties, must be enforced by the ordinary means.

Per Wilson, J.—The demand on the 2nd of April made that the day on which the payment ought to have been made, but under the Statute the warrant could not be issued until the expiration of twenty days from that time, and was therefore premature.

On the 1st January, 1867, the Acts above mentioned were repealed, “saving any rights, proceedings, or things legally had, acquired, or done under them.” *Quære*, whether the right to issue the warrant still existed?

[31 U.C. Q.B. 34.]

Ejectment for lot No. 18, in the first concession north-east of the Toronto and Sydenham Road, in the township of Artemisia in the county of Grey.

The following case was stated for the opinion of the Court:

One Thomas Moore was the owner of the said lot, in fee simple, as grantee of the Crown.

The said Thomas Moore, by three several mortgages, made and executed respectively on the 12th of April, the 8th of May, and the 21st of August, 1867, conveyed the said lot of land to the plaintiff, who, it is admitted, is entitled to the possession thereof, unless under the following facts a better title to the said land became and is vested in one John W. Armstrong, through whom the defendant claims as tenant, and on whose title the said defendant has a right to rely to maintain his possession.

The said Thomas Moore was collector of taxes for the said township of Artemisia for the years 1864 and 1865. He, as such collector, did not return the collector's rolls of the said township for the years 1864 and 1865 until the beginning of April, 1867, when the same were returned in compliance with a resolution of the municipal

council of the said township, dated 5th of March, 1867. When the said rolls were returned, it was found on examination thereof, that the said Thomas Moore had collected and not accounted for, and neglected to pay over to the treasurer of the said township for the year 1864, the sum of \$1,764.04, and for the year 1865 the sum of \$3,857.94.

The Assessment Act, Consol. Stat. U.C., ch. 55, as amended by 27 Vic., ch. 19, was in force until the 1st of January, 1867, when the Assessment Act 29-30 Vic., ch. 53, came into force. By sec. 103 of said Consol. Stat. U.C. ch. 55, as amended by sec. 12 of 27 vic., ch. 19, it is provided that on or before the 14th of December in every year, or on such day in the next year, not later than the 1st of May, as the council of the county may appoint, every collector shall return his roll to the treasurer of the township, and shall pay over the amount payable to such treasurer.

On the 28th of January, 1865, the County Council of the said county of Grey passed a resolution, that the said Thomas Moore “be authorised to continue until the 1st day of May next (1865) the levy and collection of rates and taxes for the year 1864, of the township of Artemisia.”

On the 26th of January, 1866, the said county council passed a resolution, that “the said Thomas Moore be authorized to continue the levy and collection of taxes for the said township of Artemisia so long as he should be recognized by the municipality of the said township.”

On the 5th of March, 1867, the township council of the said township passed the resolution above referred to, in the words following: “Resolved, that Mr. Thomas Moore, collector, be notified if he have not his rolls of 1864 and 1865 duly returned in accordance with the 106th and 107th sections of the Assessment of Property Act of Upper Canada of 1866, by not later date than the 11th day of the present month, the council will take immediate steps to enforce the return; and in such case it be an instruction to the treasurer to demand the said rolls from the said collector on the 12th instant, and on receiving the same he shall examine them, and find out what amount is collected and what uncollected, and submit the same to the auditors, and report to the reeve at the earliest possible date all the information in the premises.”

On the 16th March, 1867, the collector promised in writing that if permitted to continue the collection of rates yet unpaid on the rolls for 1864 and 1865, he would immediately and continuously proceed with the collection thereof, and would, on or before the 5th April, 1867, collect and duly pay over to the treasurer of the corporation, the whole and every part of the rates of the said years that were collectable, and which he had collected, and return the rolls, duly verified, with schedule, as directed by the Assessment Act.

On the 1st of April, 1867, the said township council passed the following resolution: “That, according to the report of the audit of the collectors of 1864 and 1865 by the township treasurer, there appears to be a large amount collected on the said rolls and not paid over; but in view of the possibility of some error in the premises, it be our instruction to the treasurer to take his books down to the residence of the said collector,