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CHRYSLER V. MCKAY ET AL

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should proceed to evict him? To my mind, I must confess that this statute appears to involve a legislative recognition that the Assessment Act of 1866 is not open to the construction contended for.

What a state of society would ours be—what a reproach would it be, not upon our system of jurisprudence only, but upon our state of civilization, if we should be obliged judicially to declare that such is the frail tenure upon which property and civil rights are held in the Province of Ontario? Let us consider for a moment longer the proposition contended for, that we may be thoroughly familiar with the aspect of the proposition which is asserted in the name of an Act of the Legislature. Lands are liable to assessment whether they are resided upon or not. Those not resided upon, when the owner is not resident within the municipality (or is unknown if residing within the municipality) are assessed upon a separate roll called the "Non-resident Land Roll." Those upon which the owners reside are assessed against the resident owners personally. Now as to the latter class, first. He may pay his taxes regularly to the proper officer every year—may carefully preserve all his receipts. He may never have been in default at all, and yet, as in *Hamilton v. Eggleton*, his land may be sold behind his back without his knowing anything about it; he may continue in possession after the sale, paying his taxes regularly as before, until after a number of years he finds he is no longer the owner of his own land, the fee simple estate therein having, as is contended, passed to a stranger by the mere lapse of two years now—formerly it was four years—from the committal by a municipal officer of an unwarranted act which is called "a Sale under a Power." This may be done without any notice whatever to the owner, for as advertisement of the sale is part of the procedure only, and as the clause (according to the contention and as conceded) cures all defects in procedure, the sale may have taken place without having ever been advertised and without the owner, who was in no default, having ever had any notice whatever that his land was about to be or had been offered for sale. Then the owner of lands assessed upon the Non-resident Land Roll knows that the law permits him to suffer the taxes upon his land to fall in arrear now for three years, formerly it was for five years, subject merely to the payment by him for that accommodation of compound interest at ten per cent. per annum. Knowing this to be the law, and in perfect confidence in its integrity he makes his arrangements accordingly—his business takes him abroad for three years. He returns before the expiration of the third year, in time to pay

up all arrears with the accumulated interest within the period prescribed by the law, and he finds that immediately after he left the Province his whole property consisting of a valuable estate had been offered for sale without any authority of law by a municipal officer as for one year's taxes due before he left, when in fact none was in arrear, and that a deed had been executed by the municipal officer to a stranger, and that more than two years have elapsed since the sale and he is told by the courts of law where he seeks redress that his case is helpless—that notwithstanding he was never in default, and that the act of the municipal officer was inexcusable and unwarranted, still the lapse of two years from the committal of that unwarranted act has had the effect of divesting him of his estate and of vesting it in the person to whom the municipal officer so wrongfully, and without any legal authority, had executed a deed purporting to convey it. Surely if ever there was a case in which judicial astuteness should, if necessary, be called into action to avoid such a construction, it is this; but, in my opinion, no astuteness is necessary, for the proposition seems to my mind to be so shocking that I never could feel myself to be justified in imputing to the Legislature an intent so arbitrary—so subversive of civil liberty and of the right of the subject to the full enjoyment of his property, as such a construction would imply, unless I should find the intent expressed in language which admits of no other possible construction, and from which there is no possibility of escape. But it is said that unless this construction be given to the Act the maxim of law "*omnia presumuntur rite esse acta*" would be disregarded. The clause relied upon and other similar clauses in other Assessment Acts, form the best commentary upon the inapplicability of such a maxim; for it was the repeated illegal acts committed by the public officers in the conduct of those sales which formed the sole excuse for the enactment of those clauses. However, the rights of property are too sacred to be left to the mercy of this maxim, which never claimed to apply to the giving jurisdiction to deprive a man of his estate. Even in the case of a sale under an execution issued out of the Superior Courts it is necessary that there should be a judgment obtained against the owner of the land in order to support a transfer of his estate under the execution. Here the contention is that neither a judgment nor anything analogous to it is necessary. The maxim, too, only purports to operate "*donec probetur in contrarium*," whereas the construction sought to be put upon the Act, in which the clause in question is found, asserts the right to pass an estate by the mere lapse of two