

and fairly conducted." Moreover, in *Hall v. Farquharson* it was considered that only sec. 155 was or could be relied upon—the two years' time had not run. See p. 467.

This state of the law continued down through R.S.O. 1887 ch. 193, secs. 188, 189; 55 Vict. ch. 48, secs. 188, 189; R.S.O. 1897 ch. 224, secs. 208, 209; but the new Act 4 Edw. VII., while not substantially changing the earlier section by sec. 172, made a great change in the latter by sec. 173: "Wherever land is sold for taxes and a tax deed thereof has been executed, *the sale* and the tax deeds shall be valid and binding, to all intents and purposes, except as against the Crown, unless questioned before some Court of competent jurisdiction within two years from the time of sale." In the present state of the law, there is no need of calling in the aid of sec. 172 to validate a sale—if the sale have been two years before the issue of the writ, that is enough when a tax deed has been executed.

But it has been authoritatively decided in *Donovan v. Hogan*, 15 A.R. 432, that "two years from the time of sale" means "two years from the time of making the tax deed," not from the time of the auction sale of the land. While the Legislature has, in the Act of 1904, inserted the words "the sale" in the first part of the section, and it may be contended that this must mean the auction sale—and that the word "sale" at the end of sec. 173 must be read as meaning the same thing—I do not think it open to a Judge of first instance to question the applicability of a decision on the word by the Court of Appeal, on mere inference, except of the strongest kind. If a change is to be made, it should be made by the appellate Court. Section 173, then, does not here avail the defendants; and they must rely upon sec. 172. That protects only "provided the sale was openly and fairly conducted." These words are considered in *Donovan v. Hogan*; and Patterson, J.A., says (p. 446): "I have a strong feeling that something more must be required than easy-going, uninquiring honesty on the part of the official who sells . . . . What is aimed at is, that these sales shall be conducted as ordinary business transactions are, where property is sold by auction with a view to obtain its fair market value . . . . Fairness is required on the part of the vendee as well as the vendor."

Here there was no local advertisement, but a bill posted at the court house, and a single insertion in two papers of the skeleton advertisement authorised by the Act. There were only three or four attending the sale, and but one bid for the prop-