

3 A. C. 473. The making of a valid assessment is an imperative requirement.

In *Love v. Webster* (1895), 26 O. R. 453, Armour, C.J., held a tax sale to be invalid when an imperative requirement of the Act had not been complied with; and the decision of the Divisional Court in *Waechter v. Pinkerton* (1903), 6 O. L. R. 241, is to the same effect.

Section 89 of The Assessment Act, presupposes that taxes exist and are due upon the lands, and in order to shew that taxes have been properly imposed and do exist and are due, there must have been a valid assessment and the fixing of a tax. It cannot be said that a tax exists or is due unless it is shewn that in making the assessment the imperative requirements of the Act have been complied with.

I, therefore, dismiss the action with costs. This, however, is not to be taken as affecting whatever rights plaintiffs may have to recover upon the notes given for the taxes of 1906 and 1907, or the judgments which they have obtained on any of these notes.

The defendants, the Trusts and Guarantee Company, Limited, claim payment to them of such rents as the plaintiffs may have received from tenants of any of the properties, under the order of Mr. Justice Middleton, of 17th May, 1911. If any such rents have been received, they will be paid over to such of the defendants as the Official Referee, before whom the proceedings for liquidation of the defendants, The Imperial Land Company Limited, are pending finds entitled thereto. He will also ascertain the amount to be so paid, if the parties fail to agree.

HON. MR. JUSTICE MIDDLETON.

OCTOBER 29TH, 1912.

CAMPBELL v. VERRAL.

4 O. W. N. 177.

*Solicitor — Cross-examination on Affidavit — Made in Cause —
Right of Solicitor to Professional Fee — Item 119 — Tariff of
Disbursements.*

MIDDLETON, J., held, that a barrister or solicitor when subpoenaed to give evidence by cross-examination on his affidavit filed on a motion is entitled to the full professional fee of \$4.

Semble, that where the proper fee is not tendered, a witness can refuse to be sworn.