and receipt given. When Curtis went from home, he was in the habit of leaving with Mr. Rogers his book of blank receipts with several receipts signed, and if any one paid his taxes to Rogers, he would fill up one of the receipts and give it to the person paying, and write the name, etc., on the stub.

Curtis said that Murphy had charge of the wharf, and that he served demands of payment on Murphy for the Milloy Estate; that he never mailed any notices, but delivered some to Murphy and some to defendant, McMillan. He did not specify any particular notices beyond demands of payment and did not specify any year in which he gave them. The note given by Murphy, no doubt, had the discount added in. It was discounted but not paid when due on 23rd March, 1880. New note for $120 was given by Murphy, as agent for the Milloy Estate, at two months payable in the same way as the other. This was also discounted and protested for non-payment. It had not been paid, and was still held by the corporation.

In February, 1880, Murphy had a settlement with the Milloy Estate, on which he charged them with $114.76, paid taxes and produced the receipts given him as a voucher, and they allowed him as for a cash payment.

Nicol Kingsmill, for the defendant, contended:

1. That the defendants were not assessed by name, and that an assessment to the Milloy Estate, or the Estate of D. Milloy, is in fact a void assessment.

2. That the defendants being non-residents of Niagara could only be assessed in respect of unoccupied property upon their written request to be so assessed, which request is not shown to have been ever made, and the principal property, *i.e.*, the car shops and wharf, are unoccupied.

3. That no proper notices of the assessment were given.

4. The proper modes of collecting the taxes were not shown to have been exhausted, and no action can be brought except when the taxes cannot be collected by the special modes given by the Act.

5. That the taxes were paid by Murphy's note.

Rykert, contra.

SENKLER, Co.J.—It is declared by section 6 of the Assessment Act that all land and personal property in the Province shall be liable to taxation subject to certain exceptions which do not affect the present case.

By section 14 land occupied by the owner shall be assessed in his name.

By section 15 land not occupied by the owner, but of which the owner is known, and at the time of assessment being made resides or has a local domicile or place of business in the municipality or has given the notice mentioned in section 3, shall be assessed against such owner alone if the land is unoccupied, or against the owner and occupant if such occupant is any other person than the owner.

By section 16, if the owner of the land is not resident within the municipality, but resident within the Province, then if the land is occupied it should be assessed in the name of and against the occupant and owner; but if the land is not occupied and the owner has not requested to be assessed therefor, then it shall be assessed as land of a non-resident. Section 17 refers to the case of land owned by a person not resident within the Province.

By section 12 it is enacted that the assessor shall prepare an assessment roll, in which, after diligent enquiry, he shall set down according to the best information to be had

(1) The names and surnames in full, if the same can be ascertained, of all taxable persons resident in the municipality who have taxable property therein, and

(2) And of all non-resident owners who have given the notice in writing mentioned in section 3, and required their names to be entered on the roll.

It is evident that it was intended that the name in full of each owner who is assessed should appear on the assessment, if, after diligent enquiry, the same can be ascertained. The question is whether this direction is imperative or whether it is merely directory. I have not been referred to, nor have I been able to find, any decision in our own Courts on the subject.

In Cooley on Taxation, 278, note (i.) I find a reference to two American cases. Listing of land belonging to an estate to "widow and heirs" of the deceased person was held sufficient: *Wheeler* v. *Anthony*, 10 Wend. 346. A listing to "Estate of J. B. Coles" was held good: *State* v. *Jersey City*, 24 N. J. 108. Not having the American statute to refer to I cannot say how far these decisions are applicable. Considering the words of the sub-section 1 of section 12, the assessor is to put down the name and surname in full, if the same can be ascertained, of all taxable persons, etc. I cannot think it was intended that the names should be an absolutely essential part of the roll; the words seem to me to imply the possibility of the names not being obtained, and if so, it can hardly have been intended that the assessment should fail for want of the name. If the name can be dispensed with in any event is the Court to enter upon a consideration in each case of the degree of diligence that has been exerted in making inquiry about the same?

No doubt the cases are rare in which inquiry in the proper quarters would not discover the name, but an assessor's means of inquiry are limited. I