laches as disentitled the plaintiffs to recover the same back.

Anderson shewed cause, referring to *Marriot* v. *Hampton*, 2 Sm. L. C. 256; *Bell* v. *Gardiner* 4 M. & Gr. 11.

The Court differing in opinion delivered their judgments *seriatim*.

HAGARTY, J.—The Court of Revision did hear the plaintiffs' complaint against the assessment. They did not, it is said, expressly make any decision of the appeal. The statute says they shall determine the matter and confirm or amend the roll accordingly. The roll, as a matter of fact, was finally passed by them and certified by the clerk, under sec. 61, the plaintiffs' assessment remaining unchanged. The doubt I feel is whether this final passing and certifying of the roll must not be held to have been, as it was in effect, a decision adverse to the plaintiffs' appeal. Then the section says the roll so passed shall bind all concerned, notwithstanding any default or error committed in or with regard to such roll, except in so far as the same may be further amended on appeal to the county judge. Sec. 59 provides that all the duties of the Court of Revision shall be completed and the rolls finally revised by them before the 1st of June. Sec. 63 allows an appeal to the county judge, a notice being given within three days after the decision. Then, under sec. 64, the clerk produces the roll "passed by the Court of Revision."

It seems to me that when the Court of Revision, after hearing a complaint, finally pass the roll, leaving the assessment complained of unaltered, they decide against the complaint. When they decide on finally passing the roll, leaving the plaintiffs' assessment unaltered, do they not decide against him? His being thrown off his guard and rendered less watchful in consequence of something said to him, is another matter.

In the case before us all damage to the plaintiffs could be easily avoided. The complaint was heard on the 25th of May. Complainants knew that by law the roll must be finally revised by the 1st June, a few days after the hearing. They could have appealed to the county judge within three days from passing the roll. There is also a power given by sec. 62 to the Court of Revision, before or after the 1st of June, and with or without any notice, to receive and decide on any petition from any person who, by reason of gross and manifest error in the roll as finally passed, has been overcharged more than twenty-five per cent.

Whatever may be the practice of these courts of revision as to making lists of particular complaints and entering a special adjudication in each, the statute does not seem to require it. The direction is merely that after hearing the complaint the court shall determine the matter, and *confirm* or *amend* the roll accordingly. They need not decide it in complainant's presence. If they accept his complaint of overcharge, they must of course alter and amend the roll; if their view be adverse to him, they leave the roll unaltered, and finally pass it in that state. I feel great difficulty in saying that the latter course is not a determining of his complaint. It may be very inconvenient, but is it unlawful?

If the appeal to the county judge should take place whilst the roll is still before the Court of Revision as each case is decided, then I at once concede that there must be an independent adjudication on each case. But it is not so.

A number of persons come before the court complaining of overcharge, and asking to have the amount stated in the roll reduced. Out of, say, fifty appeals the court accede to the cases made by twenty applicants, and then, under the statute, the amount in the roll is altered accordingly. As to the remaining thirty persons they are heard, and nothing is then decided. The court may remark to some parties that they will further consider it, to others that they will consult their solicitor. They may do so or may not, as they please. The same day, next day, or at some subsequent day, they direct the clerk to certify the roll as finally passed, and he so certifies it, leaving the thirty applicants' assessment unaltered. This seems to me a statutable rejection of the appeals.

Nor do I see how the fact of the clerk swearing that in fact no particular consideration was given to any one or more of the appeals after the day of hearing can affect the act. The whole point seems to me to be, has the roll been altered, or has it been confirmed in its original state. I have no right to prescribe any particular form of confirmation, when the very act of passing and certifying the roll to all intents and purposes necessarily leaves the first amount unaltered and confirmed; in other words, unless the court, after hearing the appellants, alter the roll before finally passing it the appeal fails, and the first assessment stands. The alteration is the active result of the appeal: the non-alteration or passing the roll without alteration, is the opposite result, equally indicative of the judgment or decision of the appeal.

The plaintiffs then are aware, or we must assume them to be aware, that the roll must be finally passed by a specified day. When passed, their assessment, reduced or left unreduced, must be in it. They must know that all appeals therefrom are heard by the county judge, who must do all his part by the 15th of July. It was just as easy for them to enquire from the clerk if the roll were finally passed and certified, as to ask if their claim was disposed of. After all appeals to the county judge are heard and known to be finally disposed of, and the general assesment of the city, necessarily including this case, reduced or confirmed, and when I think the plaintiffs should be held bound to understand their position, in the month of October, they are shewn by the collector the usual schedule of their taxes, headed "as settled finally by Court of Revision," and then pay the amount. I have been unable to bring myself to the conclusion that money so paid can be recovered back.

DRAPER, C. J.—The only question requiring consideration is whether by the Assessment Law the plaintiffs are concluded from denying the finality of the assessment roll as to their liability to the amount and value of their property, liable to taxation for the year 1864.

The right to recover back the money paid is, I think, clear, if this difficulty be surmounted. In *Townsend* v. *Crowdy* 8 C. B., N. S. 493. Williams, J., observes, that at one time the rule that money paid under a mistake of facts might be recovered back was subject to the limitation that it must be shewn that the party seeking to recover it back has been guilty of no laches.