

First Division Court, County of Lambton.—C. Armstrong, Judge.

STOCKDALE V. WADE AND BRADY.

Levyng Taxes—duration of Collector's authority—whose goods liable to seizure.

The defendant was collector of taxes for the city of Ottawa for 1854. The house occupied by the plaintiff was assessed against A. Barks as owner, and Connolly as occupant. The latter, after the assessment roll was made out and returned, removed from the premises to another house in the vicinity, leaving the taxes unpaid. The plaintiff entered, and the collector Wade directed Brady, his bailiff, to seize and sell a sleigh, the property of the plaintiff, on the 23rd of February last, which was accordingly sold.

HIS HONOUR.—The plaintiff contends that his property was not liable, as his name is not on the roll, and as the owner and occupant against whom the property was assessed, were both resident within the city, and that even if his property was liable, the collector's authority had expired on the 14th December, and was not extended.

As to the last objection, I shall first dispose of it—as if it were sufficient there would be little use in examining into the other points.

The Assessment Act of 1853 requires the collector to return their rolls by the 14th of December, but provides that the County Council may extend the time to the 1st of March, so that if there were no other Act I should hold that the collector's authority in this case had expired at the time of the seizure, as it does not appear that the County Council took any action with regard to the return of the rolls. But 3rd sec. of the Act of 1854, 18th Vic., cap. 21, enacts that in any case where a collector of any municipality may have heretofore failed or omitted, or may hereafter fail or omit to collect, the taxes mentioned in his collector's roll, or any portion thereof, by the 14th of December, or by such other day in the year for which he may have been, or may heretofore be appointed by the Municipal Council of the County, it shall and may be lawful for the Council of such municipality to authorize and empower by resolution the said collector, or any other person in his stead, to continue the levy and collection of such unpaid taxes in the manner and with the powers provided for by law for the general levy and collection of taxes. Provided always that nothing herein contained shall be held to alter or affect the duty of the collector to return his collection roll, or to invalidate or otherwise affect the liability of the said collector or his sureties in any manner whatsoever.

It appears that on the 5th of February last, a resolution of the city in the following words was passed:—“Moved by Alderman McGillivray, seconded by Alderman Mairs, ‘That the several collectors for the past year for the late town of Bytown, be, and are hereby authorized and empowered to continue the levy and collection of all unpaid taxes for the year 1854, in the manner and with the powers provided by law for the general levy and collection of taxes.’”

I think the Act referred to gave the Municipal Council of the city more authority as to their collectors than the Act of 1853 gave to the County Councils, for they could not extend the time for collectors to return their rolls beyond the 1st of March. Whereas the Act of 1854 empowers the council of a municipality to continue the authority of their collectors indefinitely. And so long as Wade was a collector for the city, he possessed the power to act under the resolution above mentioned, although I think the resolution would have been more correct had a limit or particular day been fixed upon which the collector should return his roll. It was argued that the proviso to the 3rd sec. of the Act of 1854, contemplates that the collector should still return his roll by the 14th of December or 1st of March at the furthest, but that construction of the proviso would be in opposition to the apparent meaning of the clause, which clearly refers to collectors who may have failed, or may hereafter fail, to return their rolls either on the 14th December or on any other day fixed by the County Council; in fact, the Act gives to the City Council entire control over their collectors as to the time of making their returns and paying over monies collected, but nothing more. The duties of collectors, that is upon whose property they may levy taxes, and what steps they shall take when the same have levied, are regulated by Statutes, and chiefly by the Act of 1853, 18th Vic., cap. 182.

The collector's roll is founded upon the assessment roll. Now the 7th sec. of the Assessment Act of 1853 directs assessors how to proceed, and says that when the owner of land, occupied by another, is resident in the municipality, and known, (to the assessor, I suppose,) it shall be assessed in the name of and against both owner and occupier, and the taxes thereon may be recovered against such owner or occupier, or from any future owner or occupant, saving his recourse against any other party.

The 14th sec. directs the collector how he is to proceed on receiving his collection roll, and the next clause, his duty and authority in case a party's taxes be unpaid for 14 days after proper demand made, and says that in such case he may levy the same with costs by distress and sale of the goods and chattels of the party who ought to pay the same, or of any goods and chattels in his possession, wherever found, in the township, village, town, or city in which he is the collector, and at any time after one month from the date of the delivery of the roll to him, he may make distress of the goods and chattels which he may find on the lands of non-residents, and no claim of property, lien or privilege therefrom, shall be available to prevent the sale or the payment of taxes and costs out of the proceeds thereof. It may be said that the party who ought to pay is either the owner or occupant assessed; but then the Statute says they may be recovered against any future owner or occupant. It is true, the collector may follow the owner or occupant assessed into any township or place within the county to which the party may have removed after being assessed.

The most ample powers are given to collectors by these clauses of the Statute, and the 45th sec. even goes so far as to say that the taxes accrued or to accrue upon any land, shall be a special lien on such land, having preference over any claim, lien, privilege, or encumbrances of any party except the Crown, and shall not require registration to preserve it. It must be observed that the word land means houses as well as lands on which there are no houses.

If the future owner or occupant of a house means any party who may be found in possession of it after assessment, and during the existence of a collector's authority, then I think the plaintiff was such occupant, and his property or goods and chattels therefore liable to seizure and sale for the taxes assessed against the land occupied by him, and that the collector being authorized by the resolution of the council was not a trespasser or guilty of any wrong in seizing and selling the sleigh in question.

I accordingly non suit the plaintiff, and order him to pay the defendants their costs in 16 days.

APPOINTMENTS TO OFFICE, & C.

The Honourable WILLIAM HENRY DRAPER, C. B., one of the Justices of Her Majesty's Court of Queen's Bench, to be Chief Justice of Her Majesty's Court of Common Pleas in Upper Canada.—[Gazetted 7th February, 1856.]
The Honourable ARCHIBALD McLEAN, one of the Justices of Her Majesty's Court of Common Pleas, to be one of the Justices of Her Majesty's Court of Queen's Bench in Upper Canada, with precedence from the 23rd December, 1837.—[Gazetted 7th February, 1856.]

JOHN HAWKINS HAGARTY, Esquire, one of Her Majesty's Counsel in Upper Canada, to be one of the Justices of Her Majesty's Court of Common Pleas in Upper Canada.—[Gazetted 7th February, 1856.]

SHERIFFS.

JAMES HALL, Esquire, to be Sheriff of the United Counties of Peterborough and Victoria.—[Gazetted 9th February, 1856.]

NOTARIES PUBLIC IN U.C.

RICHARD HUTCHISON GARDINER, of Bayfield, Gentleman, to be a Notary Public in Upper Canada.—[Gazetted 26th January, 1856.]

ANTHONY LA COURSE, of Lindsay, Esquire, to be a Notary Public in Upper Canada.—[Gazetted 16th February, 1856.]

ASSOCIATE CORONERS.

WILLIAM C. SHAW, Esquire, M. D., to be an Associate Coroner for the County of Wentworth.—[Gazetted 9th February, 1856.]

JAMES A. PARK, Esquire, M. D.; GEORGE BINGHAM, Esquire, M. D.; and JAMES CARROLL, Esquire, to be Associate Coroners for the County of Oxford.—[Gazetted 15th February, 1856.]

FRANCIS OWENS, Esquire, Surgeon, to be an Associate Coroner for the County of Wentworth.—[Gazetted 15th February, 1856.]

WILLIAM P. OSBORNE, Esquire, to be an Associate Coroner for the County of Norfolk.—[Gazetted 10th February, 1856.]

HOTCHKIN HAYNES, Esquire, M. D., and FRANCIS W. IRWIN, Esquire, to be Associate Coroners for the United Counties of Huron and Bruce.—[Gazetted 10th February, 1856.]

THE DIVISION COURT DIRECTORY.

Intended to show the number, limits and extent, of the several Division Courts of Upper Canada, with the names and addresses of the Officers—Clerk and Bailiff,—of each Division Court.†

COUNTY OF ELGIN.

Judge of the County and Division Courts. D. J. HUGHES, St. Thomas.

First Division Court—Clerk. Simon Newcombe, Vienna; *Bailiffs,* Fordyce W. Atkins, and Allan Marr, Vienna; *Limits—*The Township of Bayham.

Second Division Court—Clerk. William Campbell, Aylmer; *Bailiff,* Peter Springsted, Aylmer; *Limits—*The Townships of Malahide and South Dorchester.

Third Division Court—Clerk. James Farley, St. Thomas; *Bailiff,* Peter L. Spana, St. Thomas; *Limits—*The Township of Yarmouth, and greater portion of the Township of Southwold.

Fourth Division Court—Clerk. William Harris, Iona; *Bailiffs,* James McBride, Aldborough; and James Philpott, Iona; *Limits—*The Township of Aldborough, and a small portion of the West part of the Township of Southwold.

COUNTY OF OXFORD.

Judge of the County and Division Courts.—McQUEEN, Woodstock.

First Division Court—Clerk. George W. Whitebread, Woodstock; *Bailiff,* Hugh McKay, Woodstock;—*Limits.* Town of Woodstock, Townships of Blandford, East Oxford, East Zena, and that part of North Oxford East of Lot 16, and so much of West Oxford as lies East of Lot 7, to the Stage Road, then on the North side of said Road to whence it intersects the Township of East Oxford.

Second Division Court—Clerk. Jeremiah Cowan, Princeton; *Bailiff,* Thomas Cowan, Princeton; *Limits—*The Township of Blenheim.

Third Division Court—Clerk. Donald Matheson, Embro; *West Zena; Bailiff,* Asa Hullock, Embro; *West Zena; Limits—*The Townships of West Zena and East Nissouri.

Fourth Division Court—Clerk. James Burr, Norwichville; *Bailiffs,* William B. Searls and Solomon Veunings, Norwichville; *Limits—*The Township of Norwich.

Fifth Division Court—Clerk. David Caulfield, Ingersoll; *Bailiffs,* Moses Tripp and Reuben Carroll, Ingersoll; *Limits—*So much of North and West Oxford not included in First Division, Village of Ingersoll, and that part of the First Concession of Dereham West of Middle Town Line.

Sixth Division Court—Clerk. Charles Hawkins, Dereham; *Bailiff,* David Elliott, Dereham; *Limits—*That part of the Township of Dereham not included in the Fifth Division.

COUNTY OF NORFOLK.

Judge of the County and Division Courts.—SALMON, Norfolk.

First Division Court—Clerk. Abraham P. Rapelle, Norfolk; *Bailiffs,* Aaron S. Barber, and Nathan Pegg, Norfolk; *Limits—*Town of Norfolk and Township of Woodhouse.

Second Division Court—Clerk. Oliver Blake, Waterford; *Bailiffs,* Philip Beemer, and John Mascar, Waterford; *Limits—*The Township of Townsend.

Third Division Court—Clerk. John H. Dodge, Windham Centre; *Bailiff,* Thomas Tate, Windham Centre; *Limits—*The Township of Windham.

Fourth Division Court—Clerk. Thomas Jenkins, Delhi; *Bailiff,* L. Cook, Delhi; *Limits—*The Township of Middleton.

Fifth Division Court—Clerk. William Hewitt, Victoria; *Bailiff,* Daniel Shearer, Victoria; *Limits—*The Township of Charlottesville.

Sixth Division Court—Clerk. Andrew McLennan, Port Rowan; *Bailiff,* John Smith, Port Rowan; *Limits—*The Township of Walsingham.

Seventh Division Court—Clerk. Thomas Chamberlin, Houghton Centre; *Bailiff,* Frederick H. Fick, Houghton Centre; *Limits—*The Township of Houghton.

† Vide observations ante page 196, Vol. I. on the utility and necessity for this Directory.