

The appeal was heard by FALCONBRIDGE, C.J.K.B., HODGINS, J.A., LATCHFORD and KELLY, JJ.

R. C. H. Cassels, for the defendant.

A. R. Clute, for the plaintiffs, respondents.

The judgment of the Court was delivered by KELLY, J.:— This appeal is against the judgment of the Senior Judge of the District Court of the District of Algoma, setting aside a tax sale, so far as it affects the easterly one foot and six inches of lot 30 in Leys' subdivision of the town of Sault Ste. Marie, plan 8454—the grounds of appeal being that (1) there were no irregularities invalidating the sale, and (2) if such irregularities existed the respondents are barred by the curative sections of the Assessment Act, 4 Edw. VII. ch. 23.

The taxes to realise which the sale was held were for the years 1904 and 1905, upon the easterly nine feet of lot 30, the sale of which took place on the 10th October, 1910, to one Davis, who assigned to the appellant the certificate of sale received from the Treasurer. At the time of the hearing, the tax deed had not been executed.

Adjoining lot 30 on the east is lot 29 in the same subdivision. The registrar's abstract of title shews a conveyance registered in October, 1903, of this one foot and six inches, to one Terry, from whom, through various instruments, the plaintiffs have derived title.

The trial Judge did not go into particulars in his reasons for judgment, the expression of his opinion being confined to the general statement that "many irregularities occurred in respect of the assessments of the one and a half feet in question." Reading this along with the ground on which, in the record, the plaintiffs rest their case, and keeping in mind the lines on which the evidence proceeded, a main ground of objection to the sale is invalidity of the assessment. It is important to determine in the first place whether there was a valid assessment on which any part of the taxes said to be in arrear was validly imposed. If there was not a valid assessment, there were no taxes legally imposed for which the lands could be sold, and the provisions of sec. 172 of the Assessment Act could not be invoked in aid of the party seeking to uphold the sale. That is the effect of the conclusions arrived at by a Divisional Court in *Blakey v. Smith* (1910), 20 O.L.R. 279—a judgment which meets with approval.

Section 22, sub-sec. (1) (d), of the Act requires that in making the assessment each subdivision shall be assessed separ-