thereto, cannot, in the present state of the law, avoid the sale.

It cannot be, in my judgment, that the validity of the sale is to depend on the diligence or want of diligence in a collector in some previous year. The want of a demand may be a good reason to avoid a distress, but one very insufficient for the purpose it is now used. The clause of the Act above cited seems to throw the onus on the owners or parties interested in lands "to pay the arrears of taxes due," and not to lie by, trusting to some irregularity or omission on the part of assessors or collectors.

We see no reason to doubt the fact of this land being assessed for and chargeable with these four years' arrears of taxes. I fully agree with the views expressed by Draper, C. J., in *Allan* v. *Fisher* (13 C. P. 70): "It appears to me impossible to hold that the collector's neglect to search for goods which, with diligence, he might have found, or to enquire with sufficient care for the address of the party assessed on his roll, in order to transmit a statement to him by post, can have that effect," viz, to avoid the sale. This is quoted approvingly by the present Chancellor, in *Bank of Toronto* v. *Fanning* (17 Grant, 517).

Allan v. *Fisher* certainly held that when the lot was occupied, and A. B. known and recognized as the owner, and full distress thereon, it was the duty of the assessor to enter A B.'s name as owner, and the name also of a known occupant. Instead of this, he inserted the lot on the roll as land of a non-resident, without any name. The result was, that during that year no officer but the treasurer could receive the rates; he would be the only officer who could distrain; and the court held the assessment for that year invalid, and the sale avoided. This decision was in 1863, under (apparently) 16 Vic. cap. 182.

The present case is very different. The assessments for 1865, 1866 and 1867 are, I think, regular, for reasons stated. In 1868, the first year that distress is alleged to have been on the lot, Stewart was the person assessed, and was on the resident roll, and returned as not collected on the absentee list. Therefore it seems to me to fall within the doctrine of *Allan* v. *Fisher*, as being merely a case of neglect to search for distress, or to notify the absent owner. The omission of duty did not, as in the case cited, cause the land to be placed on the non-resident roll, and thus take the collection out of the hands of the local officer. Several of the judges in the Court of Appeal, in *Bank of Toronto* v. *Fanning* (18 Grant, 391), consider everything cured if any part of the taxes be in arrear for the statutable period.

We hold this objection to fail without the aid of this view of the law.

As to the treasurer's list to be furnished to the clerk, section 110 (1869) directs him to send a list of all the lands in respect of which any taxes shall have been in arrear for three years preceding the first day of January in any year, such list to be furnished on or before the first day of February. Section 131 forbids the sale of any lands not included in the lists furnished to the clerk in the month of February preceding the sale.

Even if we found it clearly proved (which it is not) that the list here was not furnished till after 1st February, we should hold that its being furnished any time during February would be sufficient under these two sections. The section gives the heading that is to be on the list; it does not say in terms that the amount of taxes in arrear shall be stated in the list.

It is objected that the list sent 30th January, 1869, gave no amounts of arrears, but merely the list of the lands liable to be sold for arrears of taxes in the year 1869.

This land appears as "9th con., S. or E. ½ 14; N or W. ½ 14." The land probably lies north-west or south-east, and nothing was shown that the description would not sufficiently identify it.

The effect of sections 111, 112, 113 and 114 seems to be that the fact of the land being in arrear, and liable to be sold, shall be communicated by the treasurer to the township clerk, who shall give copy of the list to the assessors, who shall ascertain if any of the lots named are occupied, and notify the occupants, and the owners, if known, that the land is liable to be sold for arrears of taxes, and enter in a column, "occupied, and parties notified," or, "not occupied." The clerk is then to ascertain if any lot on the list is entered as occupied. He shall notify the treasurer thereof, and the latter, by the 1st July, shall return to the clerk an account of all arrears of taxes due in respect of such occupied lands, and the clerk shall then put the amounts in the collector's roll for the year, to be collected, &c.

The objection that the treasurer's list, filed at the trial, as sent in January, does not therefore avail.

I hardly understand the force of the objection that there was no proper return under section 111. The only return there spoken of is that by the assessor to the clerk.

No evidence was given or enquiry made respecting this matter when the witnesses were being examined, and we do not see how we are to assume anything to be wrong.

As to the objection that at the sale no particular 89 acres was sold, it is cured by the statute of 1868-9, section 138: "It shall not be necessary to describe particularly the portion of the lot which shall be sold, but it shall be sufficient to say that he will sell so much of the lot as shall be necessary to secure the payment of the taxes due." By section 141, after selling, the treasurer shall give a certificate stating distinctly what part of the land has been so sold, &c.

We see nothing in the objection that the plaintiff could not purchase, having been assessed for the land.

We think the rule should be discharged.

Rule discharged.

ASSESSMENT CASES.

(Before the Judge of the County Court of the County of Prince Edward.)

In the Matter of the Assessment of David Downey and others.

Assessment Act of 1869, (Ont.)—Time for service of notice of appeal.

The three days allowed for service of notice of appeal from assessment counts from the time of the decision of each case by the Court of Revision, and not from the day the court closes.

[Picton, June 13th, July 3rd, 1872.]