

Ont. Rep.]

TOWN OF NIAGARA V. MILLOY ET AL.

[Asst. Case.]

REPORTS.

Referred to.
McGowan v. **ONTARIO.**
Hudson's Bay
Co., 5 Terr.
L.R. 15-3.

ASSESSMENT CASE.

IN THE COUNTY COURT OF THE COUNTY
OF LINCOLN.TOWN OF NIAGARA V. DONALD MILLOY AND
J. McMILLAN.

*Assessment—Name of owner—Non-resident—Pay-
 ment of taxes by note—Recovery in special manner
 —Principal and agent.*

In an action brought by the Corporation of the town of N. to recover \$114.76 taxes against defendants as executors of the estate of D. M.,

Held, (1) that, the plaintiff's statement of claim not showing or alleging that the taxes could not be recovered in any of the special manners provided by the Assessment Act, the action could not be maintained.

Held, (2) that the legal effect of a note given by M. for taxes, and signed "J. M., agent for the M. estate," is that it is the personal note of M., and under the circumstances of this case it could not be treated as a payment of the taxes.

Held, (3) that real estate assessed to "M. estate" or "Estate of D. M." sufficiently designates the owner within the meaning of the Assessment Act, and that it was not necessary to give the names of the executors in whom the legal estate was vested.

Held, (4) that the defendants, who carried on business, but did not live in "N." were "residents" within the meaning of the Assessment Act, and that the land was properly assessed as "resident."

[St. Catharines, Oct. 10.—Senkler, Co.J.]

The action was commenced 18th Feb., 1882, and was brought to recover the amount of certain taxes appearing on the Assessment Roll for the Town of Niagara for the year 1879 as follows:—

East Ward.

No. 12. Isaac Addison (tenant), Milloy Estate (owner), Dock property.....	\$300 00
No. 13. Wm. H. Dobson (occupant), Milloy Estate (owner), Dock property	900 00
No. 16. Patrick Henney (occupant), Milloy Estate (owner), dock property.....	300 00
No. 17. Estate of D. Milloy (owner), old car buildings.....	4000 00
No. 18. Estate of D. Milloy (owner), wharf.	4000 00

Western Ward.

No. 1. John Goodman (tenant), Milloy Estate (owner), Victoria St., No. 9... \$400 00

There was appended to each of the first five assessments a memorandum, "Notice dated 25th March, 1879," and to the last assessment, "Notice dated 24th March, 1879."

A by-law was passed by the Town Council of Niagara on 8th July, 1879, directing that certain rates should be raised for certain purposes amounting in all to eleven mills on the dollar on the assessed property in the town. A collectors roll was regularly prepared and given to the collector in which the several properties above mentioned, and the values and the amounts to be collected were shown.

It was admitted that the defendants were the executors of the late Duncan Milloy. They were in fact not only his executors but also the devisees and trustees of his real and personal estates under his will, and it was assumed for purposes of the argument that this was admitted. Neither of the defendants resided in Niagara, but both resided in Toronto.

Mr. Rogers, who was clerk of the Town of Niagara for 1879, and continued in that office until his death, died about a year ago.

It appeared from the evidence of John Murphy who was in the employ of defendant in 1879, and for some time before and after that year, looking after the wharf at Niagara for them, that on or about the 19th December, 1879, he had a conversation with Mr. Rogers, who told him he was short of money to make some payments. Murphy said he had no money, but would give his note if that was any use. Rogers said, very well, and Murphy accordingly gave Rogers a promissory note for \$117.10, dated 20th December, 1879, at three months, payable at the Quebec Bank, St. Catharines, to the order of John Rogers, Town Treasurer. This note was signed John Murphy, agent for the Milloy estate, and Rogers gave Milloy a receipt signed by William Curtis, collector for \$114.76. The receipt read as follows:—

\$109.30	NIAGARA,
\$5.46 p ct.	19th December, 1879.
\$114.17	

Received of estate late D. Milloy, by J. Murphy, the sum of one hundred and fourteen dollars and seventy-six cents, being the amount of his taxes for the use of the Town of Niagara for the year 1879.
 (Signed) WILLIAM CURTIS,

Collector.

It appeared from the evidence of Curtis, that he was not at Niagara on the day this note was taken