

Chan. Rep.]

IN RE HAMILTON, ETC.—JONES V. HOLDEN.

[Asst. Cases.]

tion here that the executors were threatened with suit; nor is there anything to show that the executors could not have divided rateably the assets, in their hands, to the satisfaction of the creditors. Acting on this principle I have on two occasions recently declined to grant orders for the administration of estates at the instance of the personal representatives. As, however, it appears that the defendant, who, as residuary legatee, is entitled to the balance of the estate, consented to the order for administration, and had obtained the benefit of the proceedings, the executors, under these exceptional circumstances, are allowed their costs.

ASSESSMENT CASES.

IN THE MATTER OF THE APPEAL OF JAMES HAMILTON FROM THE DECISION OF THE COURT OF REVISION OF THE TOWNSHIP OF BIDDULPH.

(Reported for the *Law Journal*).

Assessment—Road Company—Highway—Exemption—
32 Vict., cap. 36, sec. 9, ss. 6.

The Proof Line Gravel Road company was incorporated under the Joint Stock Company's Act, (C. S. U. C. cap. 49) and constructed their road on a public highway or road allowance in the Township of Biddulph. The Township assessor assessed the property in the road against James Hamilton as Secretary of the Company.

Held, 1. That the assessment was illegal, because although the road was vested in the company by sec. 60 of the Joint Stock Companies Act, it was, nevertheless, a public highway, and therefore exempt from taxation by 32 Vict., cap. 36, sec. 9, subsec. 6.

2. That in any event the assessment should have been in the name of the company, and not in that of one of its officers.

The assessor for the Township of Biddulph assessed the property in the Proof Line Gravel Road company as real estate, in the name of James Hamilton as Secretary of the Company, so describing him. From this assessment Mr. Hamilton appealed to the Court of Revision, on the grounds (1) that property in a Road company is not assessable as real estate against the company, but (2) even if so the name of the company and not that of an officer of the company should appear on the roll. The Court of Revision confirmed the assessment, whereupon Mr. Hamilton appealed to the County Judge of Middlesex, but as he was absent the case was heard before His Honour Judge Hughes of St. Thomas.

H. Becher for the appellant.

Meredith, Q.C. for the respondent.

HUGHES, Co. J.—I think there can be no question that the individual name of the appellant must be altogether erased from the assessment roll. It is conceded by the respondent's counsel that his name should not have been at all inserted therein, that the Court of Revision should have ordered his name to have been erased and the corporate name of the persons intended to be assessed inserted, that is if the property intended to have been assessed is assessable, as he contends it is.

The question then arises—is the property of that corporation of whom the appellant is secretary, and in whose name it was inserted in the roll, assessable under the Ontario statute, 32 Vict. (1868-9) cap. 36? By the 5th sec. the term "property" includes both real and personal property. The terms "personal property" and "personal estate" includes shares in incorporated companies and all other property, except land and real estate, which includes all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty and also excepting property in the act expressly exempted (see the first five sections of the Assessment Act). By sub-section 6 of section 9, "Every public road and way" * * is expressly exempted from taxation. By section 22, "Land is to be assessed in the municipality in which the same lies, and includes the land of incorporated companies as well as property, and personal property is to be assessed in the municipality in which the personal property is situated." By section 36, "The property of an incorporated company is not to be assessed against the corporation, but each shareholder is to be assessed for the value of the shares or stock held by him as part of his personal property; but in companies (such as the Proof Line Road company) who invest the whole of their means or the principal part of their stock in real estate already assessed for the purpose of carrying on such business, the shareholders are to be only assessed on the income derived from such investment."

The property which is the subject of this assessment is that part of "the Proof Line Gravel Road which passes through the Township of Biddulph" which was constructed on the public highway or road allowance formerly existing in that Township. It is contended on the one hand that it is real estate assessable as such; it is contended on the other, that it is a public road or highway and not assessable as real estate in that Township—but only as personal property—not against the corporation but