levied, and such action is vested in the municipality by the 45th section of the act 16 Vic., cap. 182.

Then, as to rates due upon lands of non-residents: I see no good reason why an action is not maintainable by the treasurer of the county in the name of the village municipality, after the collector's return has been made, or by the collector in the same name during the existence of his authority, if the non-resident party requested his name to be inserted on the assessors' roll. In the present case the action may have been instituted by the collector before his authority ceased—that is, if it was extended to the 1st of March, or continued under the statute 18 Vic., cap. 21, or by the county treasurer afterwards; but in either event the proceeds would, I suppose, go to the county "non-resident land owners' fund," and be paid to the county treasurer; but that is a question not necessarily calling for discussion at present. But it is not alleged that the defendant's name was inserted on the collector's roll at his request; if a non-resident, and he did not request it, a question arises whether he could be assessed personally at all. That his name was entered in the assessors' and collector's roll is averred, and it must be intended that it was so entered either at his request or because he was known to be the owner, and therefore entered as a non-resident; and if he was such owner, and his name appears to have been legally entered, I think the taxes became a debt under the 45th section, and that a right of action vested in the plaintiffs whenever it turned out that the rates could not be realized by any of the special modes pointed out in the statute in that behalf; the special modes were, I think, prompt remedies by distress and sale of goods, &c., if found within the municipality, in some cases, as of non-residents, or within the county in others. That special manner in the 45th section is equivalent to a summary manner, and that the power to the county treasurer and sheriff to sell the lands at the end of five years is not included; if it were so, no action could be brought during the collector's time for taxes rated against lands, nor afterwards, until the land had been sold, and a deficiency still remained. It is contended no action like the present can be brought in the plaintiff's name after the collector's roll has been returned or his powers have ceased; and if not, it proves that a sale five years afterwards is not included in the special manner provided by the act; but the statute shows that the taxes as a debt might accrue against the owner of lands whenever the special manner failed. A remedy by distress would not necessarily fail during the collector's time—see sec. 54; and a lien upon the lands is expressly declared at the end of the 45th section. The language of that portion creating the debt is very comprehensive; it says, if in any case the taxes payable by any party cannot be recovered in any special manner provided by the act, they may be recovered, with interest and costs, as a debt due to the township, &c., in a competent court in this province. It seems to me reduced then to the consideration whether it sufficiently appears that the defendant was by name duly rated for these lands as a non-resident; section 7 authorizes such entry if the owner is known, or (secs. 8, 17 & 38) required by him in person or in writing. If it could be intended that the entry was at defendant's request, there would be an end of all question on this head; still, if known to the assessor, and entered and notified accordingly, and the roll containing such entry became final in the absence of an appeal (and none appears to have been made) under sections 26 and 28. There is a want of consistency in the statute unless the word *or* in section 7 be read *and*; one section speaking of owners known, and others of non-residents requesting the insertion of their names, and in some instances it is said the word *or* may be read *and*, to fulfil the obvious intention of the Legislature.

When a rule is moved to arrest judgment after a judgment by default, the intendments are not made as after verdict, but as upon general demurrer; but the declaration states, and the default admits, that the defendant was in fact entered on the roll and rated for the lands mentioned, and according to the maxim, *omnia præsumuntur, rite et solenniter esse acta, donec probetur in contrarium*—everything is presumed to be right and duly performed until the contrary is shown. It is clear, on the face of the declaration, that the defendant was not resident within the village of Berlin, and it is alleged under a videlicet that he was resident in Guelph in another county; as a non-resident he may have in fact resided in the county of Waterloo, or elsewhere in Canada, or in any other part of the world, than Guelph; the substance of the averment is, that he was not resident within the Municipality of Berlin, in which the lands in question are situate, but being known to be the freehold owner, he was entered and rated therefor, as such non-resident, either at his own request or because known; whichever way it was, I think that after notice of being so rated by the assessor, and demand of rates by the collector, his acquiescence, if not his previous request, must be presumed, else the roll is not final in the absence of any appeal. According to sec. 26, if defendant was improperly assessed, he ought to have appealed, and not silently acquiesced therein until this action was brought, and then to suffer judgment by *nil dicit* to be entered against him. In my opinion the action well lies, and the money when recovered should be paid by the plaintiff to the county treasurer, or if paid to the plaintiffs, they can only recover it to the use of the county, and will be bound to pay it over to such treasurer, or to account to the county accordingly. The plaintiffs' name is only used to enforce payment for the benefit of the county treasury, which in its turn is bound to account to the village municipality, (see secs. 68, 69, 81) unless the late statute 18 Vic., cap. 21, varies the effect of the former statutes on this head, which is not at present material to be considered. The objection that the by-laws referred to in the declaration were not sufficiently stated or set out, was not supported by authority; and the collector's roll being made *prima facie* evidence of the debt by sec. 45, I do not suppose any objection on that head can be sustained.

McLean, J.—By the 16th Vic., cap. 182, the former acts, 13 & 14 Vic., cap. 67, and 14 & 15 Vic. cap. 110, are repealed, except in so far as the same may affect any rates or taxes of the then present year, or any rates or taxes which had accrued and were then actually due, or any remedy for the enforcement or recovery of such rates or taxes not otherwise provided for by that act. And it provides that all taxes of the then present year and all arrears of other taxes remaining due after that act shall come into force, (1st January, 1854) shall be collected and recovered according to the provisions of that act.

The rates for which this action is brought were for the year 1854, some of them payable under by-laws of previous years, and some for municipal purposes of the county of Waterloo, or the village of Berlin, under by-laws of that year. The remedy for the collection of such rates must be under the act 16 Vic., cap. 182; and unless the 45th section of that act confers upon the plaintiffs the right to sue the defendant for such rates, this action on the first count cannot be sustained. By the 7th section of that act it is provided that all lands, to whomsoever belonging, shall be assessed in the township, village or ward in which they lie, *and in the name of and against the owner thereof if known*, or if resident or having a legal domicile or place of business when the assessment shall be made, within such township, village or ward, or if such lands be occupied by such owner, or wholly unoccupied, but if the owner *be not so resident* or *be unknown*, or the lands be occupied, it shall be assessed in the name of and against the occupant; and *occupied land owned by a party known or residing or having a* legal domicile or place of business in the township, &c., where the same is situate, but occupied by another party, shall be assessed in the name of both the owner and the occupant, and the taxes thereon may be recovered from either.