

openly and fairly conducted) shall be final and binding upon the former owners of said lands, and upon all persons claiming through or under them—it being intended by this Act that all owners of land shall be required to pay the arrears of taxes due thereon within the period of 3 years, or redeem the same within one year after the treasurer's sale thereof."

[Reference to *Donovan v. Hogan*, 15 A. R. 432, 445.]

The defendant did not plead this section; neither did he offer any evidence to shew that the sale was openly and fairly conducted.

If untrammelled by authority, I should incline to hold that where a valid assessment has been admitted or proven, and taxes so imposed have been unpaid for over 3 years since they became due, a sale had for such taxes would fall within the curative operation of sec. 188, notwithstanding non-compliance with the requirements of secs. 140 et seq. This view appears to have commended itself to Osler, J.A., in *Kennan v. Turner*, 5 O. L. R. 560, 563, 2 O. W. R. 239, but is not tenable since the later decision of a Divisional Court in *Ruttan v. Burk*, 7 O. L. R. 56, 61, 3 O. W. R. 167. Though certainly open to the observation made upon them by Osler, J.A., in many earlier authorities the opinion is expressed that sec. 188 applies only to sales made in conformity with the requirements of the statute, and does not validate sales made in contravention of sec. 163 (sec. 176 of ch. 224, R. S. O. 1897): *Wildman v. Tait*, 32 O. R. 274, 283, 2 O. L. R. 307; *Love v. Webster*, 26 O. R. 453; *Deverill v. Coe*, 11 O. R. 222, 241; *Haisley v. Somers*, 13 O. R. 600. See also *Carter v. Hunter*, 13 O. L. R. 310, 319, 9 O. W. R. 58.

The defendant also relies upon the special Acts 63 Vict. ch. 86, sec. 4, and 1 Edw. VII. ch. 65, sec. 2. The former statute was in *Ruttan v. Burk* held insufficient to cure such defects as have been shewn in this case. The action was begun before the latter statute was enacted, and it expressly excepts from its operation sales questioned in pending litigation.

No claim is made on behalf of the defendants Neelin and Campbell for a declaration of lien under sec. 198 of 55 Vict. ch. 48.

The impugned sale and deed must, therefore, be set aside as prayed, with costs to be paid to the plaintiff by the defendants Neelin and Campbell.