stated, to have been for taxes claimed for 1865, 1866, 1867, and 1868; that proper advertisements had been made; that the whole lot, 200 acres, had been assessed in 1865 and 1866 on the non-resident roll; that in 1867 and 1868 the west-half had been assessed to plaintiff, as owner, but that he was not residing on the lot, but lived about one and a-half miles distant, in the next township; that the collector had returned the taxes for 1867 and 1868 as unpaid; that the collector made no demand for these taxes; that in the return made by the treasurer to the township clerk, in 1869, the lot was described thus: "S. or E. ½ of 14, and N. or W. ½ 14," and no amount was stated as due; and for 1869 this west half was assessed on the non-resident roll.

The treasurer was called, and proved the sale and non-redemption. At the sale his entry was: "W. ½ 14, 9th con., 100 acres, $54.59. Nov. 30, Mr. Stewart, 89 acres, $54.59." He had not before, or at the sale, ascertained or determined what portion should be sold as most advantageous; but it was some days after the sale that he did so, according to the best of his judgment. He did not know of any clearing or improvement on the land sold. On the 30th of January, he mailed the list to the township clerk in Wawanosh. This clerk had subsequently died, and he could not say whether it would reach that day. In 1867, the treasurer divided the taxes of preceding years between the east and west halves. The west half was returned in 1867, with taxes not collected, the reason given being "non-resident." In 1868 the same was the entry in the resident roll.

For the defence, the defendant swore that he had been living on the west half for four years, to May, 1871, and had improved it; that he had built a house in 1867; and that there was ample property out of which the arrears could have been made; that no taxes had ever been demanded of him; that in 1870 he had his name put on the lot; that part of his house might be on the road; that he was a squatter without title.

There was other evidence on this.

It was also shewn that, in course of mail, a letter posted January 30th would be at the post-office in Wawanosh about 7 p m, 1st February

For the defence it was objected, 1st, that the lot should not have been divided in 1867, and the taxes of that year were not sufficiently in arrear; 2nd, that there was a distress in 1868 sufficient to cover the taxes; 3rd, that no demand had been made for the taxes; 4th, that no proper list had been furnished to the township clerk, nor proper half designated, and no amount stated; 5th, list not proved to have been forwarded by 1st February; 6th, the sale was void, because the treasurer did not select the land actually sold, *i.e.*, there were no particular 89 acres sold; 7th, that plaintiff, being assessed as owner, could not purchase, and arrears should have been collected out of his property in Ashfield, being within the county; that there was no proper return under sec. 111 of the Act.

There was a verdict rendered for plaintiff, subject to the opinion of the Court on these objections.

In Michaelmas Term, *Harrison*, Q C., obtained a rule on these grounds, to which

A. Richards, Q C., shewed cause, citing 29 and 30 Vic., ch. 53, secs. 95, 96, 112, 131; *Laughtenborough* v. *McLean*, 14 C. P. 175; *Payne* v. *Goodyear*, 26 U. C. 448; *Allan* v. *Fisher*, 13 C. P. 63: *Raynes* v. *Crowder*, 14 C. P. 111; *Hall* v *Hill*, 22 U C 578; *Cotter* v. *Sutherland*, 18 C. P. 395; 32 Vic., ch. 36, sec. 120 (O.)

Harrison, contra, cited *Knaggs* v. *Ledyard*, 12 Grant, 320; *Harbourne* v. *Bushey*, 7 C. P. 46; *Munro* v. *Gray*, 12 U. C 647; *Mills* v. *McKay*, 15 Grant, 192; *Warne* v. *Coulter*, 25 U. C. 177; *Townsend* v. *Elliott*, 12 C. P. 217; *Doe Upper* v. *Edwards*, 5 U. C. 594; *Quackenbush* v. *Snider*, 13 C. P. 196; *Grant* v. *Gilmour*, 21 C. P. 18; *Charlesworth* v. *Ward*, 31 U. C. 94.

HAGARTY, C.J., delivered the judgment of the court.

We do not see how the treasurer could have done otherwise than divide the lot in 1867. It is not for him to examine critically each man's claim to land. The claim of plaintiff in 1867 was made to this west half, and, without reference to the goodness or badness of such claim, the division was made in good faith. Under secs. 24, 25, and 27, in the Act of 1866, we think no objection can be urged to the course taken. The assessments for 1865 and 1866 were equally divided between the halves, and from thenceforward they were assessed separately. No injustice was done to any one by this proceeding.

Then, as to the existing distress. These proceedings were under the Act of 1866, and with this point we may conveniently consider the other objections as to the absence of any demand of the taxes.

Sec 95 directs the collector to call at least once on the party taxed, if within the local municipality, and if the person (sec. 96) whose name is on the roll reside outside the municipality, he shall notify by post. These are preliminary requirements to a distress.

By sec. 98, where a non-resident has required his name to be put on the roll, the collector shall notify by post, and may distrain anything on the land

Here the name on the roll was that of Stewart, who lived in another township, and the defendant, in 1867, had nothing to do with it, and in 1868, when he alleges he had the property there, was still not on the roll. The collector might, on taking the proper steps, have levied the arrears by distress on the lot.

When the treasurer (sec. 127) knows there is distress, he may levy it. The Act of 1868–9, 32 Vic cap. 36, sec. 130, directs that the treasurer need not make enquiry as to distress before selling; and if any tax shall have been due for the third year preceding the sale, and no redemption within the year, the sale, if openly and fairly conducted, shall be final and binding, "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 three years, or redeem the same within one year after the treasurer's sale thereof."

I am of opinion that if the land was assessed, and the taxes in fact unpaid, an omission by the collector to levy the amount from property which, by due diligence, he might have found liable