

took place on the 9th October, 1858. On the 30th of September, 1859, Thomas Crowe redeemed the east half, and it was entered as redeemed. He paid the money, which was garnished as the money of Greenwood, the purchaser, on a judgment in favor of an execution creditor.

The lot had been assessed and sold as one entire lot. The redemption money was paid by Crowe only on the east half, but the other half was redeemed by Mr. Prince on the 8th of October, 1859, who paid the money to the Treasurer. These two payments each included the ten per cent. Sometime afterwards it was represented to the council that Mr. Prince's payment was a mistake, and the Treasurer was ordered to refund, and he, by Mr. Prince's authority, applied the payment to another lot. This lot had been returned as vacant in 1851, and was assessed to one Vosburgh in 1857, and a warrant issued to levy, the taxes from him was returned *nulla bona*.

The Treasurer's return of lands redeemed within twelve months from the day of sale was proved. It stated that on the 30th of September, 1859, Thomas Crowe redeemed the east half by paying \$11 86; and on the 8th of October, 1859, Albert Prince redeemed the west half by paying a like sum. The Treasurer afterwards notified the Sheriff of the mistake about the redemption by Mr. Prince, and then the Sheriff conveyed the whole lot to Greenwood, but this he explained was a mistake, that it should only have been for the west half.

On the defence it was objected that the lot was redeemed within the year in fact, and the subsequent disposition of the money could not undo it.

It was answered that the redemption of one half was nugatory, and that a payment made in error and mistake as to the other half was no redemption.

Leave was reserved to move on this objection.

Thomas Crowe proved the payment on the east half, and that afterwards, and within the year, he went to inquire if he had a right to pay the whole, and was informed that Mr. Prince had paid the other half. He said he did not know whether he was not liable to pay the whole.

A verdict was entered for the defendants, with leave reserved to the plaintiff to move to enter a verdict for \$10 against all the defendants except Goodyear.

In Michaelmas Term *Atkinson* obtained a rule calling on the defendants, except Goodyear, to shew cause why the verdict as to them should not be set aside, and a verdict entered for the plaintiff on all the issues, with \$10 damages, pursuant to leave reserved, on the ground that the plaintiff shewed a good title to the land, and that there was no redemption properly proved.

In this Term *Robt. A. Harrison* shewed cause, citing *Consol. Stat. U. C.*, ch 155, secs. 140, 141, 142, 148, 149, 150; *Buchanan v. Poppleton*, 4 Jur. N. S. 414, S. C. 27 L. J. C. P. 210; *Boulton v. Kuttan*, 2 O. S. 362; *Mair v. Holton*, 4 U. C. R. 505; *Allan v. Hamilton*, 23 U. C. R. 109. *Atkinson* supported the rule.

DRAPER, C. J., delivered the judgment of the Court.

There seems no doubt that the redemption money was actually paid on the east half of this lot number thirteen, within a year from the sale; that the Treasurer received it expressly on account of the sum charged upon that part of the

lot, and that the money so paid, though not paid over to the purchaser, was taken through legal process, and received by an execution creditor of the purchaser, and *pro tanto* discharged a debt due by him. If this payment to the Treasurer was a legal discharge of the taxes due on the east half, then the plaintiff has no right to recover, for his title and ownership, and consequently his claim to damages for trespass on that piece of land, are dependent on the sale for taxes (which is not disputed), and on the non-redemption of that land in the manner authorized by the statute.

It appears to us that under the 113th section of the Assessment Act, whenever satisfactory proof is adduced to the Treasurer that an entire lot has been sub-divided, that officer must adjudge the question of sub-division, and finding the fact established he has a right to receive the proportionate sum of the taxes due on the whole in discharge of the particular sub-division so ascertained. When he has in good faith determined that the lot has been sub-divided, and then receives the due proportion of the taxes, the sub-division is as much discharged from the incumbrance as if the taxes on the entire lot had been paid.

But the 113th section refers only to *taxes*, and is not in its express terms applicable to redemption money with regard to which there are the rights of the purchaser to be considered, as well as those of the owner of the land or of the municipality entitled to the tax.

The contention of the defendants is, that the power of the Treasurer under the 113th section extends to lands sold for taxes so long as the right to redeem remains in the owner, and after the best consideration we can give, we have adopted that conclusion.

The primary, it may be said the sole, object of the Legislature in authorizing the sale of land for arrears of taxes, was the collection of the tax. The Statutes were not passed to take away lands from their legal owners, but to compel those owners who neglected to pay their taxes, and from whom payment could not be enforced by the other methods authorized, to pay by a sale of a sufficient portion of their lands.

All lands which had been described as granted by the Crown were subject to a tax for local purposes, and when unoccupied, and no distress to be found upon them, the lands themselves, after the taxes had been in arrear a fixed number of years, were liable to sale. Primarily each lot as granted by the Crown was charged, but as the grantees might in various ways have parted with their rights in severally to different persons who acquired portions less than the whole, the 113th section was passed for the relief of such persons, to enable them by the payment of the tax due on the part they owed to acquit themselves and their estate, leaving the remainder of the lot chargeable with its due proportion also. The power to sell land was created in order to collect the tax, and the same reason that influenced the Legislature to enable the true owner of a part to pay his proper part of the taxes on the whole lot, would exist in his favour to permit him to redeem.

Now, in treating the 113th section as extending to the later case, no violence whatever is done to its language. The Treasurer is, under the 148th section, the officer to receive the re-