

*Held*, that the sale of the northwest quarter was void because the land was not subject to be taxed in the year 1888, but that the tax sale in question might have been good as to the southwest quarter but for the other objections, following *Schultz v. Alloway*, noted *ante* page 365.

The learned judge, however, held that the sale was void on the following grounds:

(1) That there was no record in the proceedings of the municipal council of any report to the council by the Court of Revision, as required by s. 586 of the Municipal Act then in force. The minutes showed that the council had resolved itself into a Court of Revision, that the Court of Revision had dealt with the appeals brought before it, and that a motion had been carried "that the Court of Revision do now adjourn," followed immediately by a motion "that the council now take up the general business," but there was no mention of any report to council by the court.

(2) That the rate by-law passed by the council for the levying of taxes in 1888 was ambiguous, providing merely "that a rate of six mills be struck for general purposes," and other rates of so many mills and fractions of a mill for other purposes, not saying whether these mills were to be levied on each section or quarter section, or upon each inhabitant, or upon every dollar in value of property.

Although by s. 603 of the said Act taxes were required to be levied equally on all the taxable property in the proportion of its value as determined by the assessment roll in force, the learned judge, following the principle laid down in the case of *O'Brien v. Cogswell*, 17 S.C.R. 420,

*Held*, that he could not assume that the rate was intended to be struck upon every dollar of value, and that enactments imposing and regulating the collection of taxes are to be construed strictly, and in all cases of ambiguity which may arise that construction is to be adopted which is most favourable to the subject.

The defendant, by his answer, set up that the plaintiff was not the absolute owner of the land in question, but that the deed to him from the former owner, one Litton, although absolute in form, was intended to be only a security for moneys advanced to Litton, and, further, that the plaintiff had been repaid all the moneys advanced by him, and that Litton had conveyed the land to the defendant, who prayed that the plaintiff might be ordered to convey the property to him. Defendant's counsel accordingly asked, at the hearing, that, if a sale for taxes should be set aside, there should be a reference to take an account to ascertain whether anything was due to the plaintiff from Litton, and whether the plaintiff really had any interest in the land, but no evidence was offered to support the defendant's contention in this respect. The learned judge refused to order such reference, and made a decree declaring the tax sale void. The court, however, allowed a clause to be inserted that this should be without prejudice to any proceedings the defendant might wish to take to redeem the land.

Tax sale deed set aside with costs.

*Howell*, Q.C., for the plaintiff.

*Ewart*, Q.C., and *Ellicott* for the defendant.