

and 1898 by the respective collectors for those years respectively, but they neglected their duty in this respect, and the special rate for those years has thus become lost to the defendants: *Caston v. City of Toronto*, 30 O. R. 16, 26 A. R. 259, 30 S. C. R. 397.

The collector's rolls for the years 1896 and 1897 were in the collector's hands, although the time at which they should have been returned had expired, and the seizure by him of the plaintiff's goods for the special rate for those years was, therefore, justifiable: *Newberry v. Stephens*, 16 U. C. R. 65; *Lewis v. Brady*, 17 O. R. 377.

Upon payment, therefore, by the plaintiff of the special rate for the years 1896 and 1897 and the costs of the distress, her bond will be delivered up to be cancelled, and the said by-law and assessment, and the statute validating and confirming the same, will be declared to form no lien or charge upon her real estate.

And as to the costs, there should be no costs of the action to either party, but the plaintiff should have the costs of the appeal.

OSLER and MOSS, J.J.A., wrote opinions to the same effect.

MACLENNAN, J.A., dissenting, gave his reasons in writing.

LISTER, J.A., died while the appeal was *sub judice*.