favor, the court could not interfere to give the plaintiff relief; and (2nd) That though the laches and acquiescence of the defendant for so long a period, might be a reason for refusing him relief were he in court as a plaintiff, still they did not constitute a ground for granting the plaintiffs the relief sought, and under the circumstances, the court dismissed the bill with costs.—*Livingstone* v. *Acre*—*Wallace* v. *Acre*, 15 C. R. 610.

ONTARIO REPORTS.

IN THE COURT OF ERROR AND APPEAL.

SCRAGG v. THE CORPORATION OF THE CITY OF LONDON.

Assessment—Property belonging to corporation.

Held, affirming the judgment of the Queen's Bench, that land owned by a city, but leased by them to a tenant, for his own private purposes, was liable to taxation, and that the corporation might distrain for such taxes.

Morrison, J., dissented, on the ground that the land was not liable; Van Koughnet, C., and Spragge, V.C., on the ground that, though the corporation might sue on the covenant to pay, they could not distrain.

[28 U. C. Q. B. 457.]

Error from the judgment on demurrer in this case in favor of the plaintiff, reported in 26 U. C. R. 263, where the pleadings are set out at length.

The question in substance was, whether land belonging to a municipal corporation, and leased by them to a tenant for his own private use, was liable to taxation under the Assessment Act, Consol. Stat. U. C. ch. 55, and whether the corporation could distrain, the tenant having by the lease covenanted to pay taxes. The court below held that the land was liable, and that the corporation might distrain, Morrison, J., dissenting.

Crombie, for the plaintiff in error, the plaintiff also in the court below.* All land, the statute declares, shall be liable to taxation: Consol. Stat. U. C. ch. 55, sec 9. Before any individual therefore can be liable for taxes on the land, the land itself must be liable to sale; but here the corporation would be selling their own property. The clause of the statute in question—sec. 9 subsec. 7—exempts "the property belonging to any county, city, town, township, or village, whether occupied for the purpose thereof or unoccupied." It is argued for defendants that if the section had stopped at the word "village," this property clearly would have been exempt, but that the subsequent words restrict such exemption to the two kinds of property specified. These words do not, however, restrict, but amplify or illustrate the previous part of the section, or certainly do not limit it. Many instances might be put of sentences framed in the same manner, where the word "whether," following words intended to be general, is clearly intended not to be restrictive. In the first epistle to the Corinthians, ch. xii. v. 13, it is said, "For by one spirit are we all baptized unto one body, whether we be Jews or Gentiles, whether we be bond or free," &c. In the same epistle, ch. iii. v. 21-22, "All things are yours; whether Paul, or Apollos, or Cephas, or life, or death, or things present, or things so come: all are your's." In the epistle to the Ephesians, ch. vi. v. 8, "Knowing that whatsoever good thing any man doeth, the same shall he receive of the Lord, whether he be bond or free"—all these are illustrations.

If the Legislature had intended to assess the occupant in respect of the land, without the land itself being made liable, it would have been specially provided for, as in the case of lands vested in her Majesty: sec. 9, sub sec. 2. The provisions and machinery of the act are inconsistent with the idea of subjecting such land to taxation. Under sec. 22, it should be assessed against both the owner and the occupant, and sec. 24, provides, that in such case the taxes may be recovered from either. This cannot apply where the owner in the party to receive the taxes and the body by whom their payment is to be enforced. Sec. 26 provides, that any occupant may deduct from his rent any taxes paid by him if they could have been recovered from the owner. Suppose the city should rent without taking any covenant to pay taxes, they would have then to impose, collect, and repay them; a useless form, which could never have been intended. Moreover, the corporation have had no power to lease. Sec. 243, sub-sec. 1, of the Municipal Act, Consol. Stat. U. C., ch. 54, enables them to obtain property and dispose of it, which means only to sell; and they have no other power.

Harrison, Q. C., for defendant in error. This property is assessable. In England the occupant of Crown property for his own benefit has always been held liable in respect of his occupation, and it is just that it should be: *Lord Bute* v. *Grindall*, 1 T. R. 338; *Mersea Docks* v. *Cameron*, 11 H. L Cas. 443; *Regina* v. *St. Martin's Leicester*, L. R., 2 Q. B. 493. The corporation had power to lease, and the plaintiff, their tenant, is not in a position to dispute it. A corporation may hold land subject to the interference of the Crown: *Becher* v. *Woods*, 16 C. P. 29-32; *Municipality of Oxford* v. *Bailey*, 12 Grant, 276.

As to the meaning of the word "whether," when used as in this clause, no general rule can be laid down. It may be used either to amplify or to restrain previous words, according to the context, and its effect in each case must be determined by the context and the consideration of the whole statutes. If what precedes it includes every thing, as here, it cannot amplify; it must restrain therefore, or mean nothing; and many cases may he put in which it would clearly have a restrictive effect—"All judges, whether Chief Justices or Puisne Judges," would not include County Court Judges. "All courts, whether the Common Pleas, Queen's Bench, or Exchequer," would not necessarily include the courts of Oyer and Terminer; it would depend on the whole scope and object of the act. The rule is to give a men to all words used in a statute, if possible, and there are obvious reasons why the legislature may have intended to limit the exemption as the defendants contended for.

[It was contended also that the decision of the Court of Revision was final, as determined by the court below, but the argument on this point

*Argued 27th August, 1868, before Draper, C. J. of Appeal, Van Koughnet, C., Richards, C. J., Spragge, V. C., Morrison, J., Adam Wilson, J., Mowat, V. C.