

cally declares that the collector shall execute the active powers conferred upon him by the delivery of the Roll within a certain limited period. Has he a right to execute that part of his power which relates to the levying of taxes by distress and sale of goods beyond the limited period, without being a trespasser? I think not. When a writ is placed in the hands of a sheriff or a bailiff against the goods and chattels of an individual returnable on a day certain, it is clear the sheriff would be a trespasser by making a seizure under it after its return day, because his power to seize is derived from a writ returnable on a day certain, and after that day has passed over the power conferred on him by the writ passed away. Can the township collector claim more than this under the power conferred upon him by the Roll? The Collector's Roll, which operates by force of an act of parliament, as a warrant or a writ against the goods and chattels of every individual named in the Roll liable to pay taxes, is placed in the hands of the collector by the proper source, and the same act of parliament requires him to return his Roll on or before the 14th day of December, or on a day to be named by the County Council.—The defendant thinks he can return his Roll and execute its powers when he thinks proper, if done before the expiration of his term of office, thereby placing his right to levy by distress on his appointment to office instead of the delivery of the Roll. The words in section 42, already quoted, "That if any of the taxes mentioned in the Roll shall remain unpaid, and the collector shall not be able to collect the same, he the collector shall show opposite to each separate assessment the reason why he could not collect the same," and that the collector's return would be a sufficient authority to the treasurer to proceed to sell the lands, so strongly to shew that the powers and functions of the collector come on the return day to an end, and the remaining powers of collection are on that day, and after it, transferred into other hands, namely, the County Treasurer. I look upon the Roll in the nature of a writ, and on the collector's return in the nature of the sheriff's return to the Court, "I have made the money," or "No goods." This preceptory obligation to return the writ need not operate against the collector, and in the event of his not being able by want of time or other circumstances to collect the taxes by the 14th day of December, an application should be made to the County Council for an extension of time. This is the course pointed out by law. The defendant however, by his conduct, seems to think he can extend it himself without the intervention of the council. In this he erred. Section 63 of the act will show strongly that all the power of the collector under the Roll terminates on the return day of the same. By section 63 it is enacted "That if any collector shall refuse or neglect to pay to the treasurer or such person as shall be legally authorised to receive the sums contained on his Roll, or duly to account for the same as uncollected, the county treasurer shall within 20 days after the time when such payment ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid and unaccounted for, with costs of the goods and chattels, lands and tenements of the collector, and to return the same within 40 days." From this provision of the statute, it seems clear that the collector will be in default after the return day of the Roll, unless he has paid the money collected by him to the treasurer, and accounted properly for the sums uncollected. I think it is equally clear that he cannot relieve himself from the consequence of his neglect by making a seizure of the goods of the parties refusing or neglecting to pay the taxes, after the return day of the Roll. The sheriff is liable to an action on the case if he refuse or neglect to levy according to the exigency of the writ placed into his hand for execution within the return day of the writ, and he will not be allowed to relieve himself by making a seizure after the return day of the writ; and so the collector is liable, by statutory enactment, to have his goods and chattels, lands and tenements, sold, in the event of his refusing or neglecting to pay the sums collected, or to account for the uncollected sums

on the Roll. Is the collector in a better position in this respect than the sheriff? Can he make a seizure after he is in default, and after the return day of his authority, to relieve himself from the consequences of his neglect? I think not. The statute of the last session of parliament, 16th Victoria, chap. 181, and section 46, restricts the County Council in the appointment of a day to return the Roll on the first day of March in each year. (a) This provision of course, cannot affect the present judgment, although it may tend to interpret the mind of the Legislature, shewing the Legislature did not intend any power of extending the time in a person or council, but the one pointed out in the statute, namely, the County Council, and that the County Council itself could only exercise that power within circumscribed bounds. A different construction of the statute from that given now, would in my opinion defeat the clear intention the Legislature had in view by compelling the Roll to be returned, the money to be paid, and the sums uncollected to be accounted for by the collector on a given day, namely, to do away with the practice which has prevailed so long in Upper Canada and so injuriously to the best interests of the public, by collectors taking their own time, sometimes years, to collect the taxes imposed on the inhabitants for the immediate benefit of the country. If the collector of taxes shall be allowed, of his own mere motion, to extend the time for levying the taxes of defaulters by distress and sale of goods until the 16th day of January, what is to prevent him to extend it to the 16th of July, or for years, if he should happen to be continued collector? The learned counsel for the defendant at the trial and argument, contended, though not as I thought with an over certainty, that the right to collect the taxes and to make levies for non-payment, remained in the collector until the third Monday in January in each year, the day upon which his time of office expires. If this view of the matter be the correct one, the right to collect the taxes and to levy by distress for non-payment, would depend not upon the Roll and its delivery to the collector and its continuance in his possession, but upon his appointment and continuance in office. This argument amounts to this, that the collector by virtue of his appointment to and continuance in office, can collect taxes and make levies for non-payment thereof, and that the right so to do continues until the legal expiration of his term of office, notwithstanding that the day for returning the Roll and for accounting to the municipality for what he did under the authority of the Roll has passed away. I cannot bring my mind to this view of the case. I think the collector derives his authority to collect the taxes on the Roll and his power to make levies for non-payment of the same, from the Roll itself, and its delivery to him by the clerk of the municipality, and that the right to collect the taxes, and to make levies for non-payment of taxes, become vested in the collector the very instant at which the Roll is delivered to him by the clerk of the municipality, and not before: and that the right to collect the taxes

(a) Since the above case was in type, we have received the Act of last Session (18th Vic. chap. 21) amending the Assessment law, whereof Section III is subjoined. In the absence of any such "Resolution" of the Council of the Municipality as is there spoken of, the above case would apply. The wording of this section appears, indeed, to be open to objection on the practical grounds suggested by Judge Mackenzie, whilst it is not perhaps unreasonable to anticipate that the period of the continuance, under any such "Resolution," of the Collector's right to enforce payment, as also the effect of Sales of Land for Taxes by the Sheriff, may hereafter afford subject of discussion in our Courts.—[Ed. I. J.]

III. In any case when a Collector of any Municipality may have heretofore failed or omitted, or may hereafter fail or omit to collect the taxes mentioned in his Collection Roll, or any portion thereof, by the fourteenth day of December, or by such other day in the year for which he may have been or may hereafter be Collector, as may have been or may hereafter be appointed by the Municipal Council of the County, it shall and may be lawful for the Council of such Municipality to authorize and empower by Resolution the said Collector, or any other person in his stead, to continue the levy and collection of such unpaid taxes in the manner and with the powers provided for by law for the general levy and collection of taxes. Provided, always, that nothing herein contained shall be held to alter or affect the duty of the Collector to return his Collection Roll, or to invalidate or otherwise affect the liability of the said Collector or his sureties in any manner whatsoever.