CANADA REPORTS.

SUPREME COURT OF CANADA.

CRYSLER V. MCKAY ET AL.

This was an appeal, by the defendants, from the judgment of the Court of Appeal for Ontario, dismissing an appeal from a decree of the Court of Chancery. The bill was filed to recover possession of certain lands in the Township of Winchester, the plaintiff claiming title under a tax sale in 1855. The defendants set up that the tax sale was invalid, owing to five years' arrears of taxes not being due when the sale took place; in which view they were sustained by the majority of the court, who allowed the appeal. Several important questions with regard to the validity of tax sales were discussed in the course of the argument, and in the judgments of the learned judges, amongst whom there existed considerable diversity of opinion. We print below the judgment of Mr. Justice Gwynne *in extenso;* it will be found to give an able and exhaustive discussion of a point of great interest and difficulty, viz.: the interpretation of the various statutes passed with a view to remedying defects and irregularities in the proceedings connected with the tax sales. The main scope of the judgment (which was delivered in June last) is to enforce the view held by the learned judge and concurred in by a majority of his colleagues, that the 156th section of the Assessment Act of 1866, corresponding to the 155th section of 32 Vict., cap. 36, Ont., does not make, by lapse of time, a deed upon a tax sale good, when there were no taxes in arrear for the period prescribed by statute before a sale is authorised.

GWYNNE, J.—One of the points pressed upon us by the learned counsel for the respondent was, that the 156th section of the Assessment Act of 1866, made the deed under which the plaintiff claims, which was executed by the sheriff upon the 23rd of May, 1857, in pursuance of a sale had in March, 1856, wholly unimpeachable, even though no portion of the taxes for the alleged arrears of which the sale took place, had been due for five years, or even though there was no amount of tax whatever due at all in respect of the land sold. As some of my learned brothers adopt this view, it may be convenient that I should express my opinion upon this point first, before adverting to the ground upon which the court below has based its judgment.

The fair and legitimate conclusion resulting from the judgments of all the Courts in Ontario, upon the construction of the Assessment Acts, both before and since the first enactment of the section referred to, according to my understanding of the reported decisions, is that the section can only be construed to remedy all irregularities and defects existing, when the event, the happening of which the statute has made an essential condition precedent to the creation of the power to sell, has occurred, namely, when some portion of the taxes imposed has been suffered to remain in arrear and unpaid for the prescribed period, which was formerly five years but now three; and that it cannot be construed as supplying the want of that condition precedent to the creation of the power to sell. Sitting as we do here as a Court of Appeal from the Courts in Ontario, speaking for myself, I must say that if I should find a judgment of any of those Courts affirming the position contended for, I should feel it to be my bounden duty to raise my voice for reversal of such a judgment; as one which would be, in my opinion, subversive of all security for property—at variance with the plainest principles of justice—contrary to the whole scope, object and tenor of the Act in which the clause is found, and one which can only be arrived at by disregarding the elementary rule for the construction of all statutes, namely, that the construction is to be made of all parts together, and not of one part only by itself.

In *Hall* v. *Hill*, in the Court of Error and Appeal in 1865, 2 Er. Ap. Rep. p. 374, Richards, C. J. delivering the judgment of the court says: "The Courts in this country have always held that the imposition of taxes on wild lands, and the selling those lands for the arrears of such taxes with the additions and accumulations to the amount of taxes which the Acts require, in effect work a forfeiture of the property of the owner of the lands. In relation to statutes of this class, Turner, L. J., in *Hughes* v. *Chester & Holyhead Railway*, says: this is an Act which interferes with private rights and private interests, and ought therefore, according to all the decisions on the subject, to receive a strict construction so far as these rights and interests are concerned. This is so clearly the doctrine of the court that it is unnecessary to refer to cases upon the subject; they might be cited almost without end."