

A summons was obtained on behalf of the Township of Walsingham calling upon the Long Point Company, and the judge of the County Court of the County of Norfolk, to shew cause why a writ of prohibition should not issue, prohibiting and restraining the said judge and the said company from proceeding before the said judge in the matter of an appeal by the said company from the Court of Revision for the Township of Walsingham, so far as the said appeal relates to statute labour, and the liability of said company to perform statute labour in road division No. 4 in said township: on the ground that the said judge had not and has not any jurisdiction to entertain such appeal, so far as the same relates to statute labour.

By a resolution passed by the Municipal Council of Walsingham, on the 21st February, 1870, it was resolved that road division No. 4 should be held to include the whole of Long Point, and that all persons, either resident or non-resident on said Long Point, liable to perform statute labor, should perform the same in said road division No. 4 unless commuted for in money, in which case the proceeds thereof should be expended in the said division No. 4, until otherwise ordered by the Council. The Long Point herein mentioned was the property of the Long Point Company, and it appeared from the papers filed on this application that this was the first time that the property in question was included in any road division or assessed for statute labour. In making up the assessment roll for this year, the assessors served a notice of assessment, stating the number of acres to be 14,800, the value to be \$8,500, and the number of days of statute labour 30, in accordance with the rate established by sec. 83 of 32 Vic., ch. 36.

From this assessment the company appealed to the Court of Revision, who dismissed the appeal, and thereupon the company appealed against the decision of the Court of Revision to the judge of the County Court on the following grounds:—

1. That the property of the said Long Point Company is not liable for the performance of statute labour on the grounds that it is in no road division in the said township, and that no roads are within a reasonable distance thereof, upon which statute labour can be performed, and that the assessment of the same for statute labour is contrary to law.
2. That the property of the said Long Point Company is over-assessed, and at a higher proportionate rate than other property in the said township of Walsingham.
3. That the assessment of the said company's property is excessive, and improper, and unlawful.

4. That the proceedings of the said Court of Revision were unlawful and imperfect.

This appeal was heard by the learned Judge on the 20th of June, and on the 9th of July he gave judgment reducing the assessed value of the lands of the company to \$7,000, and directing that the statute labour assessed against the lands of the company should be struck out, and the assessment roll of the said township amended accordingly. This judgment was as follows:—

The matter of appeal may be substantially divided into two heads.

1st. Our assessment on the value of the property.

2nd. The liability of the property of the company as situated to be assessed for statute labour.

As to the first point, it appears from the evidence that the property of the company was assessed for \$5,200 in 1868, that being the first year of their ownership. In the following year it was raised to \$7,000, when a general increase was made in the assessed value of all the property in the township. This year, (1870), it is again sought to be raised to \$8,500, although the evidence shows that no general increase has been made in the assessed value of the property in the municipality, but if anything, rather a decrease. It seems that the ground is kept as a shooting and trapping preserve, where game and fur are protected, and that it is unremunerative to the proprietors in a pecuniary point of view, costing them more yearly than the revenue derived from it.

From the evidence of value and other matters proved, I am satisfied that \$7,000 is the full assessable value of the said property, and I therefore reverse the decision of the Court of Revision upon that point, and decide, and direct, that the said property shall be assessed for the sum of \$7,000, and no more, and that the assessment roll of the township be amended accordingly.

As to the second point, I find that the property of the Company consists of an island composed of land and marshes, the nearest part of which is three or four miles, and the farthest part twenty-five miles from the road division in which the council has placed it. I find that no roads built over the main land would be of any service, value or benefit to the property of the company. It does not, therefore, seem reasonable or just that the property should be laid under a burthen, which will, under no circumstances, produce a benefit to them; and upon examining the Assessment Act, and the Municipal Institutions Act, while I find that power is given to municipal councils to divide the municipality into road divisions, I also find that every resident shall have the right to perform his whole "statute labour, in the statute labour division in which his residence is situated, unless otherwise ordered by the municipal council," (see sec. 89), and also, "in all cases, when the statute labour of a non-resident is paid in money, the municipal council shall order the same to be expended in the statute labour division, where the property is situated, or where the said statute labour tax is levied," (see sec. 88). It seems to me, therefore, that the council, though they have the power to regulate and make the road divisions, must exercise such power in a reasonable manner, and that it would be unjust and absurd to contend that they have the power to order a man to come twenty-five miles to perform his statute labour, or that they can so make road divisions, that property can be taxed for roads which cannot by any possibility be of any service, value or benefit to the property. Such contention is certainly unreasonable, and it appears to me totally at variance with the spirit and intention of the Assessment Act.

I therefore reverse the decision of the Court of Revision on the second point also, and direct