

“HIS LORDSHIP: Subject to objection.

“WITNESS: They had been returned from that address, 136 Liberty Street, New York, so all we could do was to send them according to what information was there.”

His Lordship in his reasons for judgment summarises the conversation. “Jackson told Fleming what was the truth, as I find—that he had sent on notices (the letters) himself to Mr. Gast at this address, 136 Liberty Street, New York, and that they had been returned to the post-office, not having been called for. That being so the address of the owner was not known to the treasurer.”

With great respect, I am of a different opinion. It seems clear to me Fleming was informed that, (1) the owner’s address was 136 Liberty Street; (2) that letters so addressed to him were received back by the sender.

Mr. Fleming had knowledge that certain letters addressed to the plaintiff at 136 Liberty Street, New York, had not reached the plaintiff; but he also had knowledge that 136 Liberty Street, New York, was the address of the plaintiff. With that knowledge in his mind, he chose not to transmit to the plaintiff at that address the notice required to be sent under sec. 165, and addressed it instead to Toronto—a course he could properly pursue only when the address was not known to him.

The whole salutary purposes of sec. 165—the last opportunity for redemption “betwixt the stirrup and the ground,” “inter pontem et fontem,” would, in my opinion, be rendered nugatory if municipal treasurers were permitted in cases like this to disregard the unrevoked address of a non-resident owner of record under the statute upon the books of the municipality—merely because they have information that letters or notices so addressed have failed to reach their destination.

The notice addressed to the plaintiff at Toronto was not in my humble judgment a compliance with the requirements of section 165. The plaintiff should be allowed in to redeem on the usual terms.

I would allow his appeal with costs here and below.

BOYD, C., and KELLY, J., concurred in allowing the appeal with costs, giving reasons in writing.