

The defendant's summons to revise the taxation must be discharged with costs.

M. C. Cameron for pl'ff; John B. Read for def't.

U. C. COUNTY COURTS.

(County of Frontenac.—Kenneth Mackenzie, Judge.)

TEPPLE v. CARSON—*Replevin*.

(Reported by W. G. Draper, Esq., Barrister-at-Law.)

A Collector of taxes has no power to distrain for taxes after the period fixed by law, or extended by the County Council, for return of the Roll has expired. 12 Vic. ch. 81, sec. 28.—13 & 14 Vic. ch. 67, sec. 42.—16 Vic. c. 151, sec. 46. [July, 1851.]

The declaration stated that on the first day of January, 1853, the defendant took the cattle of the plaintiff, to wit, one yoke of oxen, of the value of £20, and unjustly detained same against sureties and pledges, until &c.

The defendant pleads first *Non Detinct*.

And second that he the defendant was at the time when &c., the collector of taxes for the township of Storrington for the year 1852. That a Collector's Roll for the township of Storrington for that year was placed in his hands by the township clerk, on which Roll was set down the name of the plaintiff as being a resident of the township of Storrington, and as being assessed on the Roll for the sum of £8 7s. 4d. for taxes due and in arrear on lot No. 7, in the 14th concession of Storrington. That the defendant called at the usual residence of the plaintiff within the township of Storrington, and duly demanded payment of the said taxes on the Collector's Roll. That fourteen days had elapsed since the taxes were duly demanded, still that the plaintiff neglected to pay the taxes, and that he the defendant as such collector, after fourteen days had elapsed since the making of the demand, proceeded to levy the taxes by distraining the yoke of oxen in the declaration mentioned, and that he detained them, as such collector, to satisfy the said taxes as he lawfully might.

The plaintiff replied *De Injuriâ* and issue.

The cause came on for trial at the January sitting of the Court. The taking and detention of the cattle were clearly proved. The cattle were taken by the defendant on the 16th or 17th of January, 1853, and were sold on the 25th of the same month.

The defendant on his part proved that he was the collector of taxes for the township of Storrington for 1852. That the plaintiff's name was entered on the Collectors Roll as in the plea alleged by the name of William "Tepple." That the taxes were in arrear, and the jury found specially that a personal demand of payment of the taxes was made on the plaintiff fourteen days before the seizure of the cattle.

I directed the jury to say whether a demand was made in person or at the place of residence of the plaintiff of the payment of the taxes fourteen days before the seizure of the cattle. And I charged the jury that if the service was made after the 14th December, 1852, that their verdict would be for the plaintiff, as the Statute 13 and 14 Victoria, chap. 67, and sect. 41, made it the duty of the defendant as such collector of taxes to return his Collector's Roll to the treasurer of the township of Storrington, and to pay over the amount payable to such treasurer, on or before the 14th day of December in each year, or on such other day in each year as the Municipal Council of the county shall have appointed, and if it did not appear that the Municipal Council of these counties had appointed another day to return the Collector's Roll of 1852, the defendant had a right to seize the cattle on the 14th of December. The jury found for the plaintiff on the ground that the seizure of the cattle was made by the defendant after the

14th of December, 1852, that is to say on the 16th or 17th of January, 1853. They also found that the defendant demanded payment fourteen days before the seizure, which disposed of that point in favour of the defendant. In March term last the defendant obtained a rule nisi, calling upon the defendant to show cause why the verdict should not be set aside, and a new trial had, the verdict being contrary to law and evidence, and for misdirection.

The only question for the Court to decide is, whether the defendant as such collector of taxes for the township of Storrington had a right to seize the cattle of the plaintiff, or to levy the taxes by distress and sale of the cattle of the plaintiff after the 14th of December, 1852, the County Council having appointed no other day for the return of the Collector's Roll.

The Statute 12 Victoria, chap. 81, and section 28, authorizes the Municipal Council of each township to appoint a collector of taxes who shall hold his office until the third Monday of January of the year next after the appointment. The defendant was the collector of Storrington at the time of the wrong complained of.

And by 13 & 14 Vic. ch. 67, sec. 42, it is enacted, "That if any of the taxes mentioned in the Collector's Roll shall remain unpaid and the collector shall not be able to collect the same, he shall deliver to the township treasurer and to the county treasurer, an account of all the taxes remaining due on the said Rolls; and in such account the collector shall show opposite to each separate assessment the reason why he could not collect the same, by inserting in each case the words 'Non-resident,' or 'No property to distrain,' as the case may be; and upon making oath before the treasurer that the sums mentioned in such account remain unpaid, and that he has not, upon diligent enquiry, been able to discover any goods or chattels belonging to or in possession of the parties charged with or liable to pay such sums whereon he could levy the same, he shall be credited with the amount thereof; and the said account shall be sufficient authority to the County Treasurer to proceed to sell the lands on which such taxes remain unpaid."

It is obvious, I think, from the above enactments, as well as from the whole tenor of the statute, that the collector derives his authority to collect the taxes mentioned in the collection Roll, and his power to levy taxes in arrear by distress and sale of the goods and chattels of parties in default, from the Roll itself, from delivery of a proper legal Collector's Roll to him by the clerk of the municipal council; and it is equally obvious, I think, that the power to levy taxes in arrear by distress continues in him so long as he can lawfully continue to hold the Collector's Roll in his possession, and no longer.

The Legislature in making the Collector's Roll returnable on or before the 14th of December, each year, must have done so to place a definite legal limit to the exercise of the great and active powers with which they have invested him, as well as to compel him by legal obligations to execute the duties of his office promptly, and in no case to extend beyond the limit of the period prescribed by law. When the collector receives his Roll from the township clerk, he receives it with the knowledge that unless he executes his duties on or before the 14th day of December, unless otherwise ordered by the County Council, he cannot execute them at all. He receives the Roll on condition that he will collect the taxes and make a proper return on or before the return day. The important fact that the statute confers the power on the County Council only to extend the time for returning the Roll, shews that the Legislature did not intend to leave it in the power of the Collector or the township council to extend, enlarge or vary the time for returning the Roll. The Roll must be looked upon in the nature of a warrant or writ delivered to the collector, and returnable on a day certain. Upon what recognised principles of law can it be said that the collector has the power of extending the time limited by law? The statute unequivocally