

Sup. C.]

CHRYSLER V. MCKAY ET AL.

[Sup. C.]

The plaintiff claimed title under a deed bearing date the 28th May, 1857, executed by the Sheriff of the United Counties of Stormont, Dundas and Glengarry, in pursuance of a sale made by the sheriff on 1st March, 1856, for arrears of taxes alleged to have been due in respect of the piece of land sold up to 31st December, 1854. The years for which these arrears were charged to have become due, were the years 1846, 1847, 1848, 1849, 1850, 1852, 1853, and 1854. The contention of the defendant was, that there was no evidence of any rate having been imposed upon the land in question (which was wild unoccupied land), for the years 1846 to 1850 inclusive, under 59 Geo. 3, ch. 7.

It was also contended by the defendant that certain matters appearing in a book produced by the treasurer of the counties raised a presumption that in the year 1851, all taxes charged for the preceding years were paid, and that no sufficient evidence rebutting that presumption was offered. The effect of this contention, if well founded, would be that the sale in 1856 was illegal, for the reason that no part of the taxes in respect of which the sale took place was due for five years.

The learned counsel for the appellant contended that the judgment in *Cotter v. Sutherland*, upon the construction of 59th Geo. III., ch. 7, and the wild land rate thereby authorized, was erroneous, and desired to bring that judgment in review before us in this case; but it is unnecessary to express any opinion upon that point, for the reason that, as was conceded in argument, and as appears by the Statute 59 Geo. III. ch. 8, sec. 3, the road tax therein mentioned was, by the Statute itself, without doubt, rated and charged upon the land, and the question we have to determine is whether or not there was sufficient evidence of that tax, or of any part thereof, remaining unpaid for five years when the sale took place, for the 16 Vict. ch. 182, sec. 55, and subsequent sections, authorized the sale of land for arrears of taxes whenever a portion of the tax upon any land has been due for five years.

Now that the tax imposed by 59 Geo. III. ch. 8, sec. 3, for road tax became and was a statutory charge upon the lot in question for the years from 1846 to 1850, inclusive, I think there can be no doubt; but, in order to understand the point raised by the defendant, viz., that the evidence offered by the plaintiff raised a presumption of payment in 1851 of all previous charges, it is necessary to refer to the 13 & 14 Vict. c. 67, which came into operation upon the 1st of January, 1851.

The 46th section of this Act directed the

treasurers of the several counties in Upper Canada, on or before the 1st of January, 1851, to make out and submit to the municipal council of the county a true list of the lands in their counties, respectively, on which any taxes shall then remain unpaid, and the amount of taxes due on each lot or part of lot, both for taxes chargeable under the wild land assessment law and for assessments imposed under by-laws of the municipal councils, and that the said arrears should be certified to the clerk of the proper locality by the county clerk, and should be added to the Assessment Roll for the year 1851, and collected in like manner; and, by the 33rd section, it was enacted that it should be the duty of the clerk making out any collector's roll to forward immediately to the county treasurer a copy of so much of the said roll as should relate to taxes on the lands of non-residents. The same 33rd section enacted that every collector, upon receiving his collection roll, should proceed to collect the taxes therein mentioned, and, for that purpose, should call at least once on the party taxed, or at the place of his usual residence, if within the township, and should demand payment of the taxes charged on the property of such person. Provided always that the taxes upon lands of non-residents in any township might be paid to the county treasurer, who, on being thereunto required, should receive the same and give a receipt therefor, and that such county treasurer should keep an exact account of all sums so received by him, and should pay over the same to the treasurer of the township to which they should respectively belong. Then the 34th section enacted that, in case any party should refuse or neglect to pay the taxes imposed upon him for the space of fourteen days after demand, the collector might levy the same by distress and sale of the goods and chattels of the party who ought to pay the same. Then the 38th section enacted that the collector should receive the tax on any lot of land separately assessed, or upon any undivided part of any such lot, provided the person paying such tax should furnish in writing a statement of such undivided part, showing who is the owner thereof. Then, by the 42nd section, it was enacted that, if any of the taxes mentioned in the collector's roll should remain unpaid and the collector should not be able to collect the same, he should deliver to the township treasurer and to the county treasurer an account of all the taxes remaining due on the said roll, shewing opposite to each separate assessment the reason why he could not collect the same, by inserting the words "non-resident" or "no property to distrain," as the case might be.