

of sale" means "two years from the time of making the tax deed," not from the time of the auction sale of the land. While the legislature has in the Act of 1904, inserted the words "the sale" in the first part of the section, and it may be contended that this must mean the auction sale—and that the word "sale" at the end of sec. 173 must be read as meaning the same thing, I do not think it open to a Judge of first instance to question the applicability of a decision on the word by the Court of Appeal on mere inference except of the strongest kind. If a change is to be made, it should be made by the Appellate Court. Section 173 then does not here avail the defendants, and they must rely upon sec. 172. That only protects "provided the sale was openly and fairly conducted"—these words are considered in *Donovan v. Hogan*, and Patterson, J.A., says, p. 446: "I have a strong feeling that something more must be required than easy-going uninquiring honesty on the part of the official who sells . . . what is aimed at is that these sales shall be conducted as ordinary business transactions are where property is sold by auction with a view to obtain its fair market value . . . Fairness is required on the part of the vendee as well as the vendor."

Here there was no local advertisement, but a bill posted at the court-house and a single insertion in two papers of the skeleton advertisement authorized by the Act; there were only three or four attending the sale, and but one bid for the property, and that the exact amount of the charge against the property—this bid was made by the brother of the plaintiff who had been anxious to get the property although it is true it was not proved that the county officials were aware of that fact. It is true too, that the agent of the owner was at the sale, but he was not in funds. But can it be said that this sale was "conducted as ordinary business transactions are where property is sold by auction with a view to obtain its fair market value?"

I think the defence fails and sale should be declared invalid—it is not a case for costs—the defendant Sutherland will have, of course, the benefit of the provision of 4 Edw. VII. ch. 23, sec. 176; the amount of damages to be assessed to him for purchase money, interest, improvements, etc., under this section and the value of the land, etc., will be determined by the Master (unless the parties agree) the costs of reference, etc., and F. D. reserved.