GEORGE WHELAN (CAVEATEE).....APPELLANT; 1891

AND *Mar. 13, 16.
*Nov. 17.

MARY RYAN (CAVEATOR).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, MANITOBA.

Assessment and taxes—Tax sale—Irregularities—Validating acts—Crown lands—45 V. c. 16 s. 7 (Man.)—51 V. c. 101 s. 58 (Man.)

Lands in Manitoba assessed for the years 1880–1, were sold in 1882 for unpaid taxes. The statute authorising the assessment required the municipal council, after the final revision of the assessment roll in each year, to pass a by-law for levying a rate on all real and personal property mentioned in said roll, but no such by-law was passed in either of the years 1880 or 1881. The lands so assessed and sold were formerly Dominion lands which were sold and paid for in 1879, but the patent did not issue until April, 1881. The patentee sold the lands, and after the tax sale a mortgage thereon was given to R. who sought to have the tax sale set aside as invalid.

45 V. c. 16, s. 7 (Man.) provides that every deed made pursuant to a sale for taxes shall be valid, notwithstanding any informality in or preceding the sale, unless questioned within one year from its execution, and 51 V. c. 101 s. 58 (Man.) provides that "all assessments heretofore made and rates struck by the municipalities are hereby confirmed and declared valid and binding upon all persons and corporations affected thereby."

Held, affirming the judgment of the court below, Patterson J. dissenting, that the assessments for the years 1880–1 were illegal for want of a by-law and the sale for taxes thereunder was void. If the lands could be taxed the defect in the assessments was not cured by 45 V. c. 16 s. 7, or by 51 V. c. 101 s. 58, which would cure irregularities but could not make good a deed that was a nullity as was the deed here.

Held, per Gwynne J., Patterson J. *contra*, that the patents for the lands not having issued until April, 1881, the said taxes accrued due

*PRESENT:—Sir W. J. Ritchie C.J., and Strong, Fournier, Gwynne and Patterson JJ.

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while the lands vested in the Crown, and so were exempt from taxation.

Held per Strong J., following *McKay* v. *Crysler* (3 Can. S. C. R. 436), and *O'Brien* v. *Cogswell* (17 Can. S.C.R. 420), that the operation of 45 V. c. 16 s. 7 is restricted to curing the defects in the proceedings for the sale itself as distinguished from the proceedings in assessing and levying the taxes which led to the sale.

APPEAL from a decision of the Court of Queen's Bench, Man. (1) reversing the judgment at the trial in favour of the caveatee.

This was an issue under the Real Property Act of Manitoba under the following circumstances. The land originally belonged to the Dominion Government and was sold in 1879 to one Graham, who paid the purchase money in full but did not obtain a patent until April, 1881. Graham, in 1882, conveyed the land to one Casey, who, in May, 1882, gave a mortgage to Mary Ryan, the respondent.

The lands were assessed by the municipality of Lorne, where they were situate, for the years 1880 and 1881, and in March, 1882, they were sold for the two years' taxes. The appellant, Whelan, claims title from the purchaser at this tax sale. He applied to the district registrar for a certificate of title, whereupon the said Mary Ryan filed a caveat against the granting of such certificate claiming that the said lands were exempt from taxation in 1880–1 as being Crown lands, or, if they were liable to be taxed, that the proceedings therefor were so irregular that there was no real assessment for those years.

The statutes of the province under which the assessments were made in the said years require each municipal council, after the final revision of the assessment roll in each year, to pass a by-law for levying a rate on all the real and personal property mentioned in said

(1) 6 Man. L. R. 565.

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roll. No such by-law was passed by the municipality of Lorne in either of the years 1880 or 1881. It was claimed, however, that this defect was cured by the provisions of the following later statutes, namely, 45 Vic. ch. 16 sec. 7 which makes valid any deed given in pursuance of a tax sale, notwithstanding any informality in or preceding such sale, unless questioned within one year from its execution, and 51 Vic. ch. 101 sec. 58 which provides that "all assessments heretofore made and rates struck by the municipality are hereby confirmed and declared valid and binding upon all persons and corporations affected thereby." The Chief Justice of Manitoba, who tried the case, gave effect to this contention, but his decision was overruled by the full court.

S. H. Blake Q.C. for the appellant cited *Rorke* v. *Errington* (1); *Claxton* v. *Shibley* (2); *Fitzgerald* v. *Wilson* (3); *Church* v. *Fenton* (4).

Gormully Q.C. for the respondent referred to *McKay* v. *Crysler* (5) and *O'Brien* v. *Cogswell* (6).

Sir W. J. RITCHIE C.J.—I think this appeal should be dismissed. There never was a legal assessment of the lands in question in this case in the years 1880 and 1881, the lands never having been assessed in the manner prescribed by law, and no by-law having been passed for levying a rate after the final revision of the roll in either of the years 1880 or 1881 for the alleged taxes for which the land was sold, the law requiring such a by-law to be passed, and consequently there can be no assessment of taxes for those years when there have been no taxes legally imposed; and if no taxes legally levied and no assess-

(1) 7 H. L. Cas. 617.
(2) 9 O. R. 451; 10 O. R. 295.
(3) 8 O. R. 559.
(4) 5 Can. S. C. R. 239.
(5) 3 Can. S. C. R. 436.
(6) 17 Can. S. C. R. 420.

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ment, there was, in my opinion, no authority to sell and any such sale was void.

STRONG J.—I am of opinion that the tax sale under which the appellant claims was void and that the deed made in pursuance of it was a nullity.

The title and the facts are concisely stated at the beginning of the judgment given by the learned Chief Justice by whom the issue was tried.

The taxes for which the land was ostensibly sold were those claimed for the years 1880 and 1881.

The original contract for purchase from the Dominion Government was entered into by Adam Wilson Graham, under whom the respondent claims title, on the 4th of September, 1879. The patent was issued to Graham on the 27th September, 1881, at which date the purchase money was paid in full. On the 6th of March, 1882, the lands were sold for taxes by the municipality of Lorne, and on the 12th March, 1883, a deed was executed by the municipality purporting to convey them to John D. MacIntosh, the purchaser at the tax sale, under whom the appellant claims title. Therefore the taxes for which the municipal authorities assumed to sell were taxes claimed to have accrued due whilst the legal title to the lands was vested in the Dominion Government.

The lands of the Dominion are by the British North America Act expressly exempted from provincial taxation.

A question has been raised as to the liability to taxation of lands which the Dominion Government have contracted to sell to a purchaser whose contract is a subsisting one. It was argued before this court, and also in the courts below, that so long as the Dominion retains, in addition to the legal title, a beneficial interest, as it undoubtedly does in the case of lands agreed to be

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sold but which have not been fully paid for, the interest of the purchaser of such lands cannot be made the subject of taxation by provincial legislation. In the present case, as I have before stated, the purchase money was not paid until after the alleged assessment of the taxes for 1881. The legislature of Manitoba has made provision for the assessment and sale of the interests of purchasers of Dominion lands, expressly reserving the rights and interest of the Crown as represented by the Dominion. The 11th subsection of the 39th section of 43 Vic. ch. 1, which was passed on the 4th February, 1880, clearly implies that the interest of a purchaser of Crown lands, or his pre-emption right, should be liable to taxation and sale saving the rights of the Crown. The learned Chief Justice was of opinion that the legislature of Manitoba had the power thus to impose taxation on the interests of purchasers in unpatented Dominion lands, saving the interest of the Crown, and that by the section referred to they exercised this power, or rather indicated that the general provision for taxing lands included such interests. I am not at present prepared to say that this was not a correct conclusion, but as this appeal can be decided upon other grounds I refrain from expressing any opinion on the point.

The next inquiry, however, which is as to the legality and sufficiency of the assessment of the taxes for which the lands were sold, must be answered adversely to the appellant. As regards the taxes claimed for both the years 1880 and 1881 it appears to me to be very clear that there was no imposition of rates such as the law required, and consequently the land was sold for taxes not legally due. The legality of the taxes claimed for those two years depends on different statutes, that for 1880 being regulated by 43 Vic. ch. 1 and that for 1881 by 44 Vic. ch. 3, but they each contain a clause, iden-

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tical in terms, providing that the council shall in each year after the revision of the roll pass a by-law "for levying a rate on all the real and personal property in the said roll to provide for all the necessary expenses of the said municipality." Then not only did the appellant fail to prove that there was any such by-law for either of these two years, but the respondent, so far as it was possible to do so, established that there was none. Mr. Crawford, the clerk and treasurer of the municipality and the custodian of its records, being called upon to produce the by-law under which the rate was levied in 1880, answers: "I cannot. I don't think there ever was one. I cannot find one." And being asked as to a by-law in 1881, he says he cannot produce that for the same reason. He adds: "The minutes do not show that there was one passed and I cannot find that there was any such by-law." And to the question: "You would know if there was one passed?" He answers: "Yes, certainly." The same witness also produced the minute book and no trace of any by-law for either year was found in it.

After this evidence it is useless to talk of presumptions; the fact is established that there never was a by-law in either year. It is true that it does appear that on the 2nd August, 1880, a resolution was passed that a rate of five mills on the dollar be struck on the total of the assessment roll and a similar resolution was passed on the 11th July, 1881. But these resolutions are not the equivalents of by-laws, not being passed with the same solemnities and being wanting moreover in the seal of the municipality and the signature of its head officer which are required to be affixed to every by-law. Therefore there was no valid or legal rate for these two years 1880 and 1881 and the imposi-

tion of the taxes for which the land was sold was wholly illegal and void.

Then sec. 58 of 51 Vic. cap. 101 is invoked. This statute was not passed until 18th May, 1888, more than five years after the deed was executed. It is as follows: "All assessments made and rates heretofore struck by the municipality are hereby confirmed and declared valid and binding upon all persons and corporations affected thereby." Against giving this the *ex post facto* effect contended for the most rigid construction must be adopted, and I think the plain answer to it is that given by Mr. Justice Bain that it is to be restricted to defective proceedings in the nature of irregularities and not to absolute nullities such as we have here. And further that, as Mr. Justice Killam points out, it is to be read as applying only to validate existing rates and assessments for the purpose of subsequent proceedings to be afterwards taken for their enforcement, and not as making good sales made on the basis of absolutely void proceedings. The legislation appears to have been passed in the interest of municipalities and not in aid of purchasers. The rates being satisfied by the sale the municipality has no longer any interest inasmuch as no rates or assessments any longer exist to which the clause can apply. Lastly the 45 Vic. ch. 16 sec. 7 is insisted upon as an enactment curing all defects as well in the assessment as in the sale and giving to the deed by itself the effect of conferring an indefeasible title without regard to the validity of the assessment.

In *O'Brien* v. *Cogswell* (1) I rested my judgment upon a construction which restricted a section, similar in its terms to this, to irregularities and defects in the proceedings for sale as distinguished from the proceedings for the assessment and levying of the tax. The

(1) 17 Can. S.C.R. 420.

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latter procedure I considered to be analogous to an adjudication whilst the sale is in the nature of an execution.

In the Ontario statute in question in *McKay* v. *Crysler* (1) the language did not admit of this so easily. I say this, however, not by way of questioning the decision of the court in that case by which I am of course bound; I merely wish to point out that *McKay* v. *Crysler* (1) was a stronger case for the absolute construction contended for by the appellant than either *O'Brien* v. *Cogswell* (2) or the present case. Here the words are "notwithstanding any informality or defect in or preceding such sale." These words I construe, as I did similar words in *O'Brien* v. *Cogswell* (2), as applying only to informalities and defects in the sale or in the proceedings relating to the sale. I think I am entitled so to confine the words "preceding such sale," and to read them as referring to the preliminaries of the sale as distinguished from the levying of the assessment and the imposition of the tax, for the reason that in so doing I am carrying out the principle laid down by the court in *McKay* v. *Crysler* (1) (in which at the time I certainly did not concur) that the courts are bound to place on such enactments as these the most restricted construction possible in order to prevent the gross violation of common right and justice which would follow if a comprehensive construction were adopted. At all events *McKay* v. *Crysler* (1) and *O'Brien* v. *Cogswell* (2) have settled, so far as this court is concerned, a principle of construction applicable to this section which makes it impossible to construe it as the appellant contends. If it is asked what scope or application can then be given to this clause I answer that there is abundant room for its application since it shuts out all

(1) 3 Can. S.C.R. 436. (2) 17 Can. S.C.R. 420.

objections on the ground of irregularity in the preliminaries of the sale such as irregular advertisements and other defects of a similar kind.

I am of opinion that the appeal should be dismissed with costs.

FOURNIER J. concurred in the judgment of the Chief Justice.

GWYNNE J.—Upon a true construction of the British North America Act in connection with the Manitoba Act, Dominion statute 33 Vic. ch. 3, lands in the province of Manitoba do not, in my opinion, become subject to municipal taxation until the issue of letters patent therefor, and consequently the land in question was not liable to taxation prior to the 8th day of April, 1881. I am of opinion further that, assuming the land in question to have been liable to taxation in 1880 and 1881, the matter relied upon as evidencing the assessment of the land and the imposition of a tax thereon in those years did not operate as an assessment of the land and the imposition of any tax thereon in those years. What was done appears to have been done in open and wilful disregard of the law relating to the assessment of and levying a tax upon land in the province; and I am of opinion further that the statutes of the province of Manitoba relied upon as making valid deeds executed to give effect to sales of land for taxes have no application to deeds executed by the heads of municipalities purporting to convey lands as sold for arrears of taxes in cases where in point of law the land so purported to be sold was not liable to be assessed and taxed by the municipality; nor to cases where, although liable to be assessed, no assessment was in point of fact made as required by law, but on the contrary, as in

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the present case, the essential steps required by law to be taken to effect a valid assessment and a valid imposition of a rate never were taken, and the law in that respect was utterly disregarded and as it were set at defiance. It would, in my opinion, be a monstrous perversion of justice to construe those statutes either as enabling the head of the municipal institutions in the province to confiscate at their pleasure the lands of individuals by executing deeds as upon a sale for arrears of taxes during a period when the lands were not liable to be assessed, or when the land so purported to be sold had not been assessed as required by the law in order to subject lands to taxation by municipalities, or to make valid deeds which had been executed under such circumstances. The appeal therefore, in my opinion, must be dismissed with costs.

PATTERSON J.—The lands in question were sold for taxes on the 6th of March, 1882, under a warrant under the hand of the warden and seal of the municipality bearing date the 21st of January, 1882, and the deed was made to the purchaser by the warden and treasurer on the 12th of March, 1883. The sale had been duly advertised according to statute, except that the notice omitted to state that the sale was to begin at noon.

Under the law of Manitoba lands are liable to be sold for taxes when the taxes are two years in arrear. The two years' alleged arrears in this case were for 1880 and 1881.

It is objected that the land was not taxable in 1880 because the patent from the Crown did not issue until April, 1881. But the patentee, Wilson, had bought and paid for the land in December, 1879, and the patent, though not issued until 1881, merely carried out the sale of 1879. It has been argued that no

interest in the land was created by the purchase and payment, and in effect that the title remained so absolutely in the Crown that it was still a matter of mere bounty to grant the land. The patent does not so treat the matter, but on the contrary states that the land was granted because the grantee was found to be "duly entitled thereto—the said lands being part and parcel of those known as 'Dominion Lands' and mentioned in the Dominion Land Act of 1879." The rights of purchasers are recognised in that act in various ways. Section 31, which declares that payments for lands purchased in the ordinary manner shall be made in cash, except in the case of payments in scrip or in military bounty warrants, refers to lands of the class of those now in question. These lands were purchased in the ordinary manner and paid for in scrip. By section 82 the entry, receipt or certificate of the agent who sold the lands entitled Wilson to maintain suits at law or in equity against any wrongdoer or trespasser on the lands as effectually as he could do under a patent of the land from the Crown. A person who obtained a homestead entry had a right given in nearly the same terms to maintain actions, but there are several provisions relating to free grant lands which, under the principle *expressio unius est exclusio alterius*, rather go to emphasise the right of a purchaser in the ordinary way. Such *e.g.* is subsection 13 of section 34 which declares that the title shall remain in the Crown until the issue of the patent, and that such lands shall not be liable to be taken in execution before the issue of the patent; and such also is subsection 17 which forbids assignments of homestead rights before the issue of the patent except as elsewhere mentioned in the act. There is no restriction upon assignments by a purchaser in the ordinary way. If it should happen that, either innocently or fraudu-

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lently, another person purchased the same land and obtained a patent for it the first purchaser could, under section 78, have the patent annulled—as was done in several cases to be found in the Upper Canada and Ontario reports under a similar jurisdiction, in one of which cases, *Stevens* v. *Cook* (1), land bought and paid for by one man had, through an oversight, been sold again and patented to another man.

Nor must we hastily concede the law to be, as urged in argument, that the purchaser would be without legal remedy in the event, if such a thing were supposable, of being refused his patent. It is not necessary, however, to discuss that hypothetical position, and it is therefore unadvisable to do so.

It is, in my opinion, manifest from the provisions of the Manitoba Municipal Corporations Act 1880, under which the assessment was made, that every interest in land, except the interest of the Crown and some others specially exempted, was made taxable. There was no difference of opinion on that point in the court below, and I shall adopt what was said upon it by the learned Chief Justice of Manitoba in place of making an independent examination of the statute :

> It was only by sec. 271 of 46 & 47 Vic. c. 1 that provision was made in express terms for unpatented lands being under certain circumstances liable to taxation. By sec. 20 of 43 Vic. c. 1 the council was to assess and levy on the whole real and personal property within its jurisdiction except as hereafter provided, &c., the first exception from taxation mentioned, sec. 23, being real estate vested in or held in trust for Her Majesty, but the legislature plainly intended that lands occupied, though unpatented, should be included among the property liable to taxation, because sec. 39 subsec. 11 makes express provisions for the effect of a sale in the case of land sold for taxes before the issuing of letters patent from the Crown, so that such cases should in no way affect the rights of Her Majesty in the land but only transfer to the purchaser such rights of pre-emption, or other claim, as the holder of the land or any other person had acquired ; the previous municipal

(1) 10 Gr. 410.

acts 36 Vic. c. 24, 38 Vic. c. 41 and 40 Vic. c. 6, all contain similar provisions. There can, I think, be no doubt that even before the passing of 46 & 47 Vic. c. 1. s. 271, lands purchased from the Crown were liable to taxation before the issuing of the patent, and on default in payment could be sold so as at all events to transfer the interest of the holder though leaving the rights of Her Majesty intact, and imposing on the Crown no obligation to recognise the purchaser or tax sale.

The policy of the law and the obligations of ownership in a new country, where the improvements resulting from municipal expenditure enure to the common benefit of all the owners of land, concur with the provisions of the statute which aim at making all who enjoy the benefits bear their share of the burdens.

There is an Upper Canada case of *Ryckman* v. *Van Voltenburg* (1), in which the contest was between a tax title and the patent which was issued, many years after the tax sale, to the representative of the original nominee of the Crown. The case would appear, if time were taken to examine it which I do not propose to do, to be more like the present case in principle than at first sight it would seem to be, and the concluding passage of the judgment of Draper C.J. would be seen to be, *mutatis mutandis*, appropriate to the Manitoba law. He said:

> I do not see how proper effect can be given to the provision of the assessment laws without holding that the sheriff has power to convey away the present right and future acquired title of the party in whose favour the description for grant issued.

The "description for grant" indicated that the person named was entitled to the patent, and all lands "described as granted," were taxable.

The circumstances that the lands in this case were Dominion lands, while in Upper Canada they belonged to the province under whose legislation they were taxed and sold, is not a distinction that affects the question. No right of the Dominion is touched by the

(1) 6 U. C. C. P. 395.

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tax sale. What is assessed and sold, either before or after the patent, is the interest of the purchaser.

But it is further objected that these lands, if liable in 1880 to taxation, have not been legally sold. It is said that the rates were not imposed as the statute directed by by-law passed after the final revision of the roll, but only by resolution passed before the roll was finally revised. It is also said that the assessment itself was irregular because the council passed a resolution in each of the years 1880 and 1881 that the lands in the municipality should be assessed or taxed at the uniform rate of $3 an acre. The municipal law in force in each of those years (1),—not the same statute in 1881 as in 1880, for among the annual crops in that fertile country, one that never fails is a statute re-enacting or changing the municipal law—required the assessors to prepare an asessment roll in conformity with a schedule, in which after diligent inquiry they were to set down all the information therein contained, and were to notify each person assessed, if known, of the amount of his assessment. One item, for which the schedule provides three columns, is headed "assessment," the three sub-heads being "Real," "Personal" and "Total" —but what "Assessment" means in relation to the supposed or the actual value of land is not explained. Provision is made for the person assessed furnishing information to the assessors, and the notice given him, if he is known, enables him to appeal to the Court of Revision if dissatisfied with what the assessors do. It happens in this case that the rolls when looked at show that the land in question was assessed at $3 an acre, the same amount mentioned in the resolution of the council, but there is not a word in evidence to discredit the work of the assessors as being strictly what the

(1) 43 V. c. 1, s. 21 ; 44 V. c. 3, s. 24.

statutes required. I see nothing whatever in the objection.

Another complaint is that the notice of sale failed to state, as according to the statute it ought to have stated, that the sale of the lands on the list would begin at 12 o'clock noon. There is no pretense that the omission did any harm. The sale took place before an audience which no one says would have been larger if the hour had been named. I should gathe from what a witness wh was at the sale says that it began some time after noon, and this particular land was not the first sold. The treasurer, who conducted the sale, was a witness at the trial but he does not appear to have been asked at what time of day he began the sale. The defect in the notice was certainly an irregularity, but it cannot be used, as was attempted, as evidence that the sale was not fairly and openly and properly conducted. It does not touch the conduct of the sale, and some other evidence which seems to have been expected to show improper conduct among the bidders, or a combination not to bid against each other, failed to show any such thing. The conduct of the sale is unimpeached.

The policy of the legislation in Manitoba seems to be, as it has been for many years in Ontario, to make tax titles unimpeachable after a reasonable time has been allowed for questioning the regularity of the proceedings under which the land has been assessed and sold. With this object various enactments have from year to year been included in the municipal statutes. These enactments are not all identical in their wording. It would be unwise to attempt an exposition of any of them beyond what the present case calls for. The sale, it will be remembered, was in 1882, and the deed was made by the treasurer on the 12th of March, 1883. On

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the 29th of April, 1884, was passed the act 47 Vic. ch. 11, which declared in section 340, that:

> All lands heretofore sold for school, municipal or other taxes, for which deeds have been given to purchasers, shall become absolutely vested in such purchasers, their heirs or assigns, unless the validity thereof has been questioned in the manner above mentioned before th first day of January, 1885.

The manner above mentioned was "before some court of competent jurisdiction, by some person interested in the land sold," by section 338 which referred to prospective sales.

This section 340 appears to me to conclude the contest. The argument to the contrary is that the land cannot be held to have been sold for taxes unless there were taxes due and in arrear for two years, and the two learned judges who, in the court below, held against this tax title adopted that reading of the section, and moreover held that, by reason principally of the want of a by-law striking the rate in 1880 and 1881, and the striking of it in the former year before the roll was finally revised, no taxes were due. That is an extreme view of the law which would render these curative provisions of little use, and by perpetuating the uncertainty of the validity of any tax title discourage all persons except speculators from buying at a tax sale, and ensure the sacrifice of the land. I think, with deference to those learned judges, that they have misunderstood the Ontario decisions on which they found their opinions. There has been some difference of opinion as to whether a cognate provision of the Ontario statutes was satisfied if any taxes remained in arrears at the time of the sale or whether it was not essential that some taxes had been due for the specified time which was once five and afterwards three years. I myself held the latter opinion. It had been held that sales were void if made for more

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—sometimes a very little more—than the amount of taxes strictly demandable. The curative provision was apparently intended to correct that construction of the law, and prevent a man who let his taxes go unpaid for the five or three years from escaping the consequence of his default by pointing to some error in the figures.

But whatever may have been the views taken on that point the question has usually been whether the taxes were not paid, as in *Hamilton* v. *Eggleton* (1) and in *Donovan* v. *Hogan* (2), or had not been shown to have been *de facto* assessed, as was held in this court in *McKay* v. *Crysler* (3). Where, as expressed by Wilson J. in *Jones* v. *Cowden* (4),

there is no reason to doubt that the land was actually though perhaps not formally taxed

the deed was held valid, as it was in *Jones* v. *Cowden* (4), though that case was ultimately decided on the registry laws. I may refer, also, to the language of my brother Gwynne in *Hamilton* v. *Eggleton* (1) and in *McKay* v. *Crysler* (3) as to the cure of all defects and irregularities when the taxes had been allowed to go unpaid for the full period of five or three years.

But all this discussion seems futile in the face of the sweeping clause contained in an act passed in 1888 (5).

All assessments made and rates struck by the municipalities are hereby confirmed and declared valid and binding upon all persons and corporations affected thereby; but this section shall not in any way affect any appeal or cases pending at the time of the coming into force of this act, when the validity of any such assessment is brought in question.

The present case does not come within the saving proviso, and I am unable to see how we can give effect to the language of the clause, which is to my appre-

(1) 22 U. C. C. P. 536.
(2) 15 Ont. App. R. 432.
(3) 3 Can. S. C. R. 436.
(4) 34 U. C. Q. B. 345, 361.
(5) 51 Vic. ch. 27 s. 58 (Man.).

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hension very plain and unambiguous, unless we hold the assessments and rates now in question to be valid and binding.

In my opinion we should allow the appeal and restore the judgment pronounced by the Chief Justice at the trial.

Appeal dismissed with costs.

Solicitors for appellant: *Mulock & Robarts.*

Solicitors for respondent: *Martin, Curtis, Anderson & Bearisto.*