

1921
 *Oct. 14. RURAL MUNICIPALITY OF } APPELLANT;
 STREAMSTOWN (DEFENDANT) }

1922
 *Feb. 7.

AND

A. L. REVENTLOW - CRIMINIL } RESPONDENT.
 (PLAINTIFF)..... }

ON APPEAL FROM THE APPELLATE DIVISION OF THE
 SUPREME COURT OF ALBERTA.

Municipal corporation—Non-payment of taxes—Proceedings for forfeiture—Notice to owner—Alien—State of war—Illegality—“Rural Municipality Act”, Alta. S. [1911-12] c. 3, ss. 309 to 319.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (1), affirming the judgment of Stuart J. at the trial (2) and maintaining the respondent's action.

The respondent, a subject of the Empire of Austria-Hungary residing at Fiume, then within that empire, was in 1914, the registered owner of land in the municipality appellant; and, at the time the European war supervened, she was indebted for the 1914 taxes. Under the “Rural Municipality Act”, the treasurer is required to prepare a statement known as “the tax enforcement return” containing the names and addresses of persons indebted for taxes. Application

*PRESENT:—Idington, Duff, Anglin and Mignault JJ. and Cassels J. *ad hoc*.

(1) [1920] 1 W.W. R. 577.

(2) [1919] 2 W.W.R. 478.

is then made to a judge for the appointment of a time and place for the holding of a court of confirmation of the return, notice of which must be sent by registered mail to each person interested at the post office address shewn by said return or by the records of the registry office for the land registration district, In this case, the notice was mailed to the respondent by registered letter addressed to Fiume, Austria-Hungary, which was her address as shewn in such records. The tax enforcement return was confirmed by the judge, no appearance having been entered on behalf of the respondent; and, after the statutory delay, the land was forfeited to the appellant and afterwards sold by it to a third party. Just before the sale a New York attorney advised the treasurer of the appellant that a sister of the respondent desired to pay the taxes and redeem the land, but the answer was that it was too late. The assessment roll was produced and, upon its face, non-resident owners were apparently assessed at higher figure than residents. After the above-mentioned sale the respondent, through her attorneys, offered to pay the taxes due, and, upon refusal, registered a *caveat*. The respondent, in her action, attacked the appellant's taxation as being based on a discriminatory and fraudulent assessment and also alleged that the required formalities for the forfeiture of the land were not carried out.

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Eug. Lafleur K.C. and *Woods K.C.* for the appellant.

Newell K.C. for the respondent.

The Supreme Court of Canada dismissed the appeal with costs.

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 Idington J.

MR. JUSTICE IDINGTON held that, upon the evidence and according to the roll produced at the trial, the assessment was fraudulent as showing discrimination between the valuation placed on the lands of resident and non-resident owners respectively; and he held, also, that the appellant, on which the onus rested, did not prove sufficiently the fulfilment of the statutory provisions as to the notices to be given in the newspapers and to the parties interested. But he did not agree with the principle that "the war had so precluded the possibility of respondent receiving notice that therefore the alleged notice was of no avail."

MR. JUSTICE DUFF was of opinion that "so long as the title remains in the municipality, there was a right of redemption vested in the taxpayer," and he held also, that, owing to irregularities in the proceedings under the statute no title had passed to the purchasers, who "not having acquired any vested interest in the lands (were) not entitled" to any claim as against the respondent.

MR. JUSTICE MIGNAULT, with whom Mr. Justice Anglin and Mr. Justice Cassels concurred, held that, as "the proceedings for the confirmation of a tax enforcement return are undoubtedly judicial proceedings" leading up to the forfeiture of the lands of the tax debtor, notification to her under the statute was "a condition precedent to the jurisdiction of the judge to confirm the tax enforcement return"; that since that condition could not be performed, *i.e.* because "notice could not be sent to the interested party on account of the war", the judge was without jurisdiction when he confirmed the return.

Appeal dismissed with costs.