R. A. ANDERSON (PLAINTIFF) .....APPELLANT; 1911

AND *Oct. 20, 23. *Dec. 22.

THE MUNICIPALITY OF SOUTH VANCOUVER, SARAH RALSTON, AND MARY C. FLEMING (DEFENDANTS) .....RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Municipal corporation—Assessment and taxation—Meetings of council—Court of Revision—Transacting business outside limits of municipality—Place of meeting—Revision of assessment rolls—By-laws—Sale for arrears of taxes—Construction of statute—55 V. c. 33, s. 83 (a) (B.C.)—R.S.B.C., 1897, c. 144—Statutory relief—Estoppel—Acquiescence—Laches—Limitation of Action.

Per Fitzpatrick C.J. and Idington and Anglin JJ.—Prior to the amendment of the British Columbia "Municipal Act, 1892," by the "Municipal Amendment Act, 1894," 57 Vict. (B.C.) ch. 34, sec. 15, municipal councils subject to those statutes had no power to hold meetings for the transaction of any administrative, legislative or judicial business of the municipal corporation at a place outside of the territorial boundaries of the municipality.

Per Fitzpatrick C.J. and Idington, Duff and Anglin JJ.—Courts of revision organized under the British Columbia municipal statutes, have no power to exercise their functions as such except at meetings held within the territorial limits of the municipality where the property, described in the assessment rolls to be revised by them, is situate.

Section 15 of the "Municipal Amendment Act, 1894," inserted in the "Municipal Act, 1892" (B.C.), a new provision, section 83 (a), as follows: "All meetings of a municipal council shall take place within the limits of the municipality, except when the council have unanimously resolved that it would be more convenient to

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

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hold such meetings, or some of them, outside of the limits of the municipality."

Held, Brodeur J. dissenting, that there was no proof of such a unanimous resolution as the statute requires.

The council of the respondent municipality, without any formal resolution as provided by the amended statute, held its meetings during several years at a place outside the limits of the municipality, and organized courts of revision there. These courts held all their meetings at the same place as the council and assumed to revise the municipal assessment rolls at those meetings. The council approved the rolls so revised and enacted by-laws, from year to year, levying rates and authorizing the collection of taxes on the lands mentioned in the rolls, and, after notice as provided by the statutes, sold lands so assessed and alleged to be in arrear for the taxes so imposed.

Held, Brodeur J. dissenting, that the assessment rolls were invalid, that the by-laws levying the rates and authorizing the collection of taxes on the lands mentioned therein were null and void, and that the sales of the lands so made for alleged arrears of taxes were illegal and of no effect.

Per Duff and Anglin JJ., Brodeur J. *contra*.—The default in payment of taxes, by the appellant, and his subsequent inaction and silence, while aware of the fact that his lands had been sold for alleged arrears of taxes, did not disentitle him from taking advantage of the statutory procedure respecting the contestation of sales for arrears of taxes either by estoppel, acquiescence or laches. The provisions of section 126(3) of the "Municipal Act, 1892," (now R.S.B.C. 1897, ch. 144, sec. 86(2),) have no application to invalid by-laws enacted by municipal councils on occasions when they could not perform legislative functions.

The judgment appealed from was reversed, Brodeur J. dissenting, on the ground that, as the council had held its first meeting in each year within the limits of the municipality and adjourned for the purpose of holding its next meetings at the place outside of the municipality where all other meetings were held, the by-laws approving of the assessment rolls and those levying rates and authorizing the collection of taxes were valid and the sale of the lands in question for arrears of such taxes was legal and effective.

APPEAL from the judgment of the Court of Appeal for British Columbia affirming the judgment of Clement J., at the trial, by which the plaintiff's action was dismissed with costs.

The plaintiff impeached the sale of certain lands,

in which he claimed an interest, purporting to have been made by the municipality for alleged arrears of taxes: the other defendants claimed the lands through the tax-sale purchaser, to whom the alleged tax-sale deed had been delivered in due course.

The questions in issue on the present appeal are stated in the judgments now reported.

A. H. MacNeill K.C. for the appellant.

Ewart K.C., for the respondent, Ralston.

W. H. D. Ladner for the respondent, Fleming.

THE CHIEF JUSTICE.—I entirely agree in the conclusion reached by my brother Idington.

IDINGTON J.—The appellant rightly claims that respondents, setting up a tax title, must shew that each step taken to impose the taxes in question and to sell the land in question, has been in conformity with the statutory powers given for such purposes. Indeed, this does not seem to be denied. Nor does it seem to be seriously denied that in several instances there exist departures from the mode pointed out by statute for doing what was done, but the respondents excuse them either by claiming they were in respect of unimportant matters or merely directory provisions, or that they have been cured by statutory provisions applicable thereto, or that the appellant, by reason of his failure to assert his claim earlier, cannot now be heard to complain, and that in any event these errors were each and all merely irregularities and did not result in producing nullities.

The gravest of all these infractions of law is the entire disregard during the years in question, being

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1893, 1894, 1895, 1896 and 1897, for which the taxes were claimed, by the courts of revision, of the proper place to hold their sittings, and almost equal disregard during the same time by the council of the proper place to hold its sittings.

The usual necessary proceedings, by way of by-law or resolution of the council, or resolution or other act of the courts of revision, upon the respective validity of which must rest the imposition of these taxes and of the council's acts founding and authorizing the sale of the land to enforce same, were each and all transacted at meetings held outside the limits of the municipality.

If these proceedings, or any one of them, were null, then I think the sale must be held void.

The municipality was incorporated in 1892, and derived its powers from, and was thenceforward subject to, the provisions of the "Municipal Act" of 1892, of which section 103, defining the jurisdiction of municipal councils, is as follows:—

> 103. The jurisdiction of every council shall be confined to the municipality the council represents, except where authority beyond the same is expressly given.

It has been said this is merely objective. In a sense that is true, but it does not cover the whole truth. If nothing else had been enacted and the council had bought (as an exercise of a power clearly given to erect or procure a town-hall for corporate use) a hall outside the municipality's limits and sought to constitute that the municipal town-hall and seat of the corporation's business, does any one suppose they could have levied a rate to pay therefor? Or from the strictly objective point of view, could the council have acquired title to this land outside the limits of the municipality?

I had always supposed such councils could not, except where expressly authorized by statute, buy a foot of land outside the municipal limits, for a graveyard, or a sand-pit, or a toll-bar, or anything else, no matter how urgently needed.

If the councillors, or reeve and councillors, of such a municipality had done so I have no doubt they could have been personally made to return into the municipal treasury its funds so used.

If they could not buy, no more could they rent.

Indeed, the power of acquisition, outside the municipal limits, was actually given later for some of these specified purposes, but none to acquire town-hall or seat or home for the council to use.

The discharge of their duties at home, in some chosen seat there, is implied in the legal history of such corporations; and in reading the language of statutory enactments creating them or empowering them, such history must be duly regarded. Thus read both sense and colour or a shade of meaning are given to the language of restriction just quoted. And along with that there must never be disregarded the oft-repeated legal principle that corporations being but the creatures of statute have no power but what the statute has given and much less has the council or other body the statute gives and directs as a means of corporate activity.

The presumption is entirely in favour of the legislative or administrative acts of such a corporation being confined within its territorial limits unless where, by reason of some necessary implication requiring it in order to enable it effectually to discharge the duties its constituent Act has cast upon it to do, something must be done beyond such limits.

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On the 7th of May, in the year 1892, the council then in office held a meeting within the municipality's limits at which a resolution was carried

that the next meeting be held at the office of Shannon and McLaughlin on the 21st inst. at 1 p.m.

This place was on Hastings Street in an adjoining municipality.

It thus began a long course of illegal conduct. Of that I have not a shadow of doubt. The only doubt I have in that regard is whether illegal acts so done were nullities or mere irregularities.

The council had to appoint the assessor, and, when he had done his work, had to constitute a court of revision, by naming five of its members, if more than five, to be the court of revision.

This council consisted of a reeve and five councillors.

The language of the Act then in force is not as clear as it might be. It provides apparently for the council revising the roll, but that, being read in connection with other sections, I think merely means it shall see that duty is discharged by the methods given in the Act which consist of the council constituting a proper court and, as provided by section 157, appointing a time and place for the hearing of all complaints against the assessment.

It will be observed this power seems to indicate a power to name a place. Does that enable it to name a place outside the municipality for holding a court of revision ? I think not. The nature of the court, the duties it has to discharge, the nature of the complaints to be heard and means of hearing and adjudicating upon them properly, as well as facilities furnished for the members of the court and for those concerned

being in attendance with witnesses for whom no conduct money was to be allowed but only a *per diem* allowance, all seem to forbid the thought of the court being held outside of the limits of the municipality for if it could go a mile beyond it could go twenty or more. And when the council is given power to name the place of which notice has to be published it must be held to be bound to name a place within said limits.

But, in each year in question, these appointments of persons to form the court and of naming a place and time for their doing so were all directed by a council sitting outside its jurisdiction. Until the statute was changed such meetings could have no authority, and then only on complying with the conditions precedent to such authority, as given in later years of the period in question, to enable them to hold such sittings. This condition never was complied with. Hence their appointment of the members to hold the court and their selection of a time and place for its sitting were all illegal.

The next duty falling upon the council was to receive the roll and see that it had been duly revised and certified. Anything done in this regard was done in the same illegal fashion. And the rate by-laws all seem to have been passed in the like disregard of the law at sittings outside the municipality's limits; unless in the later years when the Act was changed, to which I will presently refer, we can presume authority.

In 1897 the council, from a resolution I accidentally notice, seems merely to have directed the clerk to advertise the time, and possibly did so in other years.

An attempt was made in argument to shew that, as the council and court of revision consisted of same

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members, the power given by legislation to the council on so resolving to fix meetings outside it, impliedly rested thereby in the court of revision. But this is an error of fact as well as law, for the council consisted of six members and this court of only five of them.

The courts of revision in question all sat outside the municipality. They are supposed to be courts of justice, but to try thus to enable the members thereof to sit outside the jurisdiction given them seems to be something very like constituting courts of injustice.

I know not how it operated in the peculiar circumstances of this municipality, nor do I, as a matter of law, here need to care. But I am quite sure that to sanction as legal, such a proceeding as the constitution of these courts by such methods, and the giving of directions involved in the councils fixing a place outside their jurisdiction as the only one for them to sit, would be fraught with danger to our municipal systems which are nearly all, in their main features, and especially in this regard, after the same pattern.

To hold such a thing legal would be, in the results, intolerable. To hold it a mere irregularity would be to open the door to reckless spirits of whom there exist only too many willing to take the risk. Indeed, our admirable municipal systems depend on all such men being sharply taught law and order.

In this connection I may say that if any one who had made a study of our whole frame of government were asked to point out in what single feature it is most distinguishable from all forms that have gone before he would put his finger on the distribution and decentralization of its powers and the localization thereof so as to bring each part, in such measure as may be practicable, as near to the people to be served as it is possible to do.

Such is the spirit of our frame of government and of the municipal part thereof especially. It would be grossly violating it to enable any bare quorum of five or six busy or lazy men to throw aside the law.

Courts of revision framed after this pattern were, from experience in Ontario, found possible of improvement.

The weaknesses of the pattern need not be intensified by countenancing such a departure from law and custom as respondents try to maintain here.

Let us look at the powers given for summoning witnesses and getting documentary and other evidence before such a court sitting where it never was intended to sit. How could it be enforced or he suffering from disobedience of the witness get relief ?

On the 11th of April, 1894, the council was given a power it had not hitherto possessed by the enactment of the following:—

> The "Municipal Act, 1892," is hereby amended by inserting the following as section 83*a*:—
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> 83*a*. All meetings of a municipal council shall take place within the limits of the municipality, except when the council have unanimously resolved that it would be more convenient to hold such meetings, or some of them, outside the limits of the municipality.

This, in 1897, by chapter 30, section 2, was substituted by the following:—

> 28. All meetings of a municipal council shall take place within the limits of the municipality, except when the council have resolved that it would be more convenient to hold such meetings, or some of them, outside the limits of the municipality.

The council of the municipality in question never acted on either of these provisions. Legislators might doubt, but this council was undaunted. Their then clerk improperly seeks in his evidence to say they did resolve but when challenged in cross-examination, he

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is forced to admit the minute book contains all the resolutions, yet no such resolution exists but the one of 1892 above quoted, and which could have no relation to this new power.

We are asked to presume they did, though it nowhere appears on the record which they were bound by statute to keep and permit any one to inspect.

Then we are asked to presume it existed in the procedure by-law, which is not produced.

I find, since argument, in each of the first three successive years a procedure by-law was passed, but none of them have been produced.

A curiously worded provision exists in section 137, prohibiting a resolution or by-law of council from being in force for more than a year. I suspect this (which was no doubt intended to restrain councillors, for a year, from trying improperly to bind their successors) gave rise to the succession of procedure by-laws, but why are none of them produced, or if lost, why is the loss not proven and contents not shewn by secondary evidence? It was incumbent on respondent if possible to have proved thereby acts done in such an unusual way had at least the sanction of such a by-law. Good faith if nothing else in this regard made it desirable.

An inspection of the minute book, in order to see if it could give rise to a right to act on legal presumption, so far from helping me in that regard destroys any possibility of my doing so. The book is, on the whole, well kept and shews the minutes of each previous meeting were read and confirmed or corrected, except in the case of minutes of special meetings which were read along with those of the preceding regular meeting.

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The provisions for the council's meeting outside the limits of the municipality were not intended to create or sanction such an abuse as the court of revision also doing so, but to meet emergencies which are easily conceivable. Indeed, I observe that in England the power of some councils meeting within or without its seat of jurisdiction has been given by the "Municipal Corporations Act."

That sort of legislation tends to shew the supposed need of special enactment in that regard and, if we can conceive of such an irregularity being tolerated there, possibly it prevents us from having judicial authority directly bearing on the point.

The courts of revision, however, are, when duly constituted, courts of an inferior and essentially local jurisdiction confined to that jurisdiction.

We are thus driven to answer the inquiry of whether or not the acts of these councils, and especially of these courts, done whilst sitting beyond their territorial limits must be held null.

Except the case of *The Queen* v. *Inhabitants of Totness*(1), and the general principles laid down in Paley, we are not referred to authority. Relying thereon it seems clear the courts of revision could not act out of their jurisdiction and acts so done must be held invalid.

The council had no authority to direct them to act elsewhere, though they may have presumed to do so, and hence I think, their acts null, and, consequently, all that rested upon same also null.

The assessment rolls never were duly completed. The act of ratifying them and constituting them legal when once passed by the court of revision has never

(1) 11 Q.B. 80.

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operated. It only ratifies that supposed to have been done in the course of a due exercise of power.

All the other curative provisions are of no effect, for it was not competent for the council to do what followed.

The competency of the council is a condition precedent to the application of the curative Acts invoked.

And if we try to suppose there was a *de facto* court of revision its acts beyond its jurisdiction are still null.

The analogy to be drawn from acts of a council improperly or imperfectly constituted, yet to be held valid because a council *de facto*, does not apply here. The court of revision although constituted of some of the members of the council is essentially another body acting within its own rights and powers which it can neither limit nor extend, and over which when constituted, the council has no power save naming place for its sitting which I have already dealt with and shewn must be a place where by law it could sit.

The council could, after the Act was amended, resolve to sit outside, but was never given power to direct its courts of revision to so sit.

The council never attempted even when the law permitted it to exercise a power, to sit elsewhere. It is quite clear it did not try to do so on the few occasions it sat within the municipal limits. And when sitting outside, without such authority, it could not give itself authority for sitting there.

The case in many features is so curious I tried to find light from many sources. I found the acts of corporators when not all summoned and that in due form (and place being impliedly in question) as in the cases

of *Rex* v. *May*(1); *Smyth* v. *Darley*(2); *Musgrave* v. *Nevinson*(3); *Rex* v. *Hill*(4); *Rex* v. *Langhorn*(5); *Rex* v. *Mayor of Liverpool*(6), and others cited in these, were held null.

Incidentally the meeting place is only referred to as the proper or usual place and seemingly essential part of the foundation on which to rest acts of a corporation as such. But in the *Musgrave Case*(3) above, a case of meeting in a tavern instead of the moothall was held bad.

In the American municipal cases there seems a dearth of precedent as to the place of meeting, and I have found only one case where the revising court outside the municipal limits was the direct cause of holding taxes imposed void. The Supreme Court of Kansas, in the *Board of Commissioners of Marion County* v. *Baker*(7), had the very point presented to it and held the sale void.

Dillon, in section 264, or 505 of 5th edition, refers to cases that imply the doing so would be void, and Elliott on Public Corporations, 2nd ed., page 171, cites substantially the same cases.

But in the larger field of private corporations there is abundant authority to shew the corporation must not sit or attempt to act as such, outside its parent State, which is looked upon as its home and limit of jurisdiction, and acts done elsewhere are void.

See the cases of *Miller* v. *Ewer*(8); *Ormsby* v. *Vermont Copper Mining Co.*(9); (11 Sickels Reports)

(1) 5 Burr. 2681.
(2) 2 H.L. Cas. 789.
(3) 2 Lord Raymond 1358.
(4) 4 B. & C. 426.
(5) 4 A. & E. 538.
(6) 2 Burr. 723.
(7) 25 Kan. 258.
(8) 27 Me. 509.
(9) (1874) 56 N.Y. 623.

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in appeal at 625, and numerous like cases where other authorities are cited, and the curious can trace out the law there in such regard.

Of course some cases exist of directors being upheld in acting beyond the state, but that is put upon the ground that they are only agents of the corporation and so within the leading case of *The Bank of Augusta* v. *Earle*(1), entitling corporations to act abroad in the sense there in question.

Of course the analogy between the private and the public corporation is not close, but there is much less to be said or implied in favour of a local representative body going beyond its jurisdiction than for a business concern.

I think the appeal should be allowed with costs throughout.

DUFF J.—The validity of the respondent's tax sale deed is impugned on the grounds (1) that the conditions had not arisen under which alone the defendant municipality had lawful authority to sell the lands in question and (2) that in professing to sell them the municipal officers acted without the sanction of a legally effectual by-law by which alone they could acquire authority to make such a sale on behalf of the municipality.

The authority of the municipality to sell lands for the recovery of unpaid taxes at the time of the sale which is here in question was derived from section 50 (135) of the "Municipal Clauses Act," R.S.B.C. 1897, ch. 144; which enactment is in these words:—

50. In every municipality the council may, from time to time, make, alter and repeal by-laws for any of the following purposes,

(1) 13 Peters 519.

or in relation to matters coming within the classes of subjects next hereinafter mentioned, that is to say:—

* * * * *

(135) For the sale at public auction of land, or improvements, or real property, for all municipal taxes remaining unpaid at the date of the passing of such by-law: Provided there shall be taxes in arrears in respect of the said land, or improvements, or real property, for two years prior to the passing of the said by-law, and for providing for the municipality purchasing the real property when the price offered at such sale is less than the amount of arrears.

The sale was made ostensibly under the authority of a by-law alleged to have been passed by the municipal council in July, 1898. This instrument purporting to be a by-law passed in exercise of the power conferred by the enactment quoted, professed to direct the collector of the municipality to prepare a list of "the lands or improvements, or real property," upon which or in respect of which municipal taxes had been unpaid and in arrears for the space of three years prior to the passage of the by-law; and provided that upon the list being duly authenticated by the reeve and the reeve's warrant being issued in that behalf the collector should sell the properties included in it in the manner therein prescribed. It is quite clear, therefore, that the authority of the collector to sell the property in question as well as the authority of the council to authorize the sale, both rested upon the condition that there should be at the time of the passing of the by-law "taxes in arrear in respect of" it for a period of two years. The contention of the appellant is that there were no taxes in arrear for such period because the taxes due in respect of this property for the years 1891 and 1892 were paid and no taxes were validly levied in respect of it in the years 1893, 1894, 1895 and 1896. It is not denied that, in form, such taxes were levied; but it is said that the meetings of the municipal council at which the pro-

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ceedings essential to the validity of such levies took place, were held outside the territorial limits of the municipality and it is contended that such meetings were not permitted at all or only under conditions which had not been complied with and that anything done at them could not take effect as having been done in exercise of the legal powers of the council.

Under the statute referred to two requirements are essential to the lawful imposition of a tax in respect of land, first, an assessment of the property which is finally consummated only when the assessment roll prepared by the assessor has been passed upon by the council, sitting as a court of revision; and secondly, the passing of a by-law fixing the rate according to which the tax is to be levied. The assessment made in exercise of the statutory powers conferred upon the municipality, and the rate fixed by a by-law passed in exercise of those powers, are both elements which enter into and are essential to the constitution of a valid tax on real property.

I postpone for the moment the question whether it is now open to the appellant to impugn the validity of the various proceedings in which the council or the members of the council professed to effect such assessments and to prescribe such rates for the years mentioned, the first point to consider being whether, assuming these proceedings to be open to attack in this action, the appellant's property was or was not, by virtue of them, lawfully subjected to the burden of the taxes alleged to have been thereby imposed. It is not disputed that the meetings at which these proceedings took place were held outside the boundaries of the municipality, and the first point to be determined is what is the effect of that circumstance upon

the legal validity of those proceedings. It is convenient to consider the proceedings in the years 1893 and 1894 separately from those which took the place in the years 1895 and 1896. The statutory provisions under which the municipal council derived its powers for the first two years are to be found in the "Municipal Act" of 1892, which is chapter 33 of the statutes of that year. There is in that statute no enactment expressly dealing with the matter of the locality where the sittings of the council are to be held; and it does not appear to me to be necessary to decide whether or not it is a proper implication from the provisions of the Act that no sitting of the council for the effectual transaction of municipal business could be held except within the municipality; it appears to me to be clear that at least when acting as a court of revision it could not sit elsewhere. Section 103 enacts as follows:—

> 103. The jurisdiction of every council shall be confined to the municipality the council represents, except where authority beyond the same is expressly given.

I think it is indisputable that these words when applied to the sittings of a court of inferior jurisdiction deriving all its powers from statute, must be read as limiting the area in which it can act in the exercise of its jurisdiction. One of the powers, for example, of the council, when sitting as a court of revision (section 165) as one would expect, is the power to summon witnesses and to take their evidence under oath. With reference to such a jurisdiction, what is the meaning of the words "the jurisdiction * * * shall be confined to the municipality?" I think the fair construction of this language is that the jurisdiction is to be exercised not only for, but within

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the municipality. The Act was amended in 1894 by an Act passed on the 11th of April of that year, and in respect of subsequent sittings of the council it will be necessary to consider the effect of that amendment; but in the years 1893 and 1894 (the sitting of the court of revision, in 1894, was held in February) the members of the council while professing to perform the duty of passing upon the assessments for those years were governed by the Act of 1892 and they were, I think, not exercising the powers in that behalf derived from that Act, for the simple reason that, in professing to do so, they were sitting outside the limits within which alone they could lawfully exercise those powers. For those years, therefore, no tax became lawfully leviable in respect of real estate because there had been no valid assessment. In respect of the years 1895 and 1896 we must ascertain the effect of the amendment of 1894, which was as follows:—

> The "Municipal Act, 1892," is hereby amended by inserting the following as section 83*a*:—
>
> 83*a*. All meetings of a municipal council shall take place within the limits of the municipality, except when the council have unanimously resolved that it would be more convenient to hold such meetings, or some of them, outside of the limits of the municipality.

Before referring to the evidence bearing on the question whether the holding of the meetings of the council outside the municipality in the years under consideration can be justified by this enactment, it will be convenient to discuss what the enactment means by prescribing, as a condition of the legality of meetings so held that the council shall have "unanimously resolved that it would be more convenient, etc." Mr. Justice Clement thinks this provision does not require any act on the part of the council beyond the act of holding the meetings coupled with "unani-

mity of sentiment" on the part of the members of the council that such a course is convenient; and that the existence of this "unanimity of sentiment" could be inferred from the fact that the meetings, as in this case, uniformly took place outside the municipality. The Chief Justice of the Court of Appeal seems to take the same view. I think that view cannot be sustained. It is to be observed that what the statute requires is not that the members of the council as individuals shall unanimously "resolve," but that the council shall "resolve." A "resolve"—to adhere to the words of the Act—by the council as a body is necessary. I do not think a representative body in the exercise of legislative powers whether plenary or subordinate, can "resolve" in a practical sense upon a matter such as that which the section deals with without giving collective expression in some form to a decision upon it. I think it is clear that, before they can take advantage of this provision, they must, as a council, express a judgment that it is more convenient to hold their meetings outside the municipality and they must express that judgment while professing to act as the council of the municipality and in circumstances in which the law permits them as the organ of the municipality to transact business.

It is beyond dispute that if the council had, in that sense, passed upon the question of holding meetings outside the municipality some record of their determination upon it ought to have appeared in the minute book in which their proceedings were recorded ("Municipal Act, 1892," ch. 33, sec. 97); and I have not the slightest doubt that it would have appeared there. There is no record of any action having been taken in that direction in 1895 or 1896 except the

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record of the adjournment of the initial meeting in each year. At each of those meetings the council adjourned to meet in Vancouver; but in either case nothing was said about subsequent meetings. These were held at regular intervals of a month without a thought, apparently, of the provisions of the "Municipal Act." I am not able to escape the conclusion that the proceedings which took place at these meetings could not in law take effect as the proceedings of the municipal council.

It is said in one of the judgments of the court below that the consequences of this construction condemn it. Now, when considering a legislative provision of doubtful meaning, the respective consequences of rival constructions as these consequences may be supposed to have presented themselves to the legislature in passing the enactment may, of course, properly be looked at; but that is a very different thing from saying that the actual consequences of a given construction in a particular case are necessarily conclusive or even relevant. The enactment in question was not framed with reference to the special circumstances of South Vancouver, but applied generally to the municipalities of British Columbia. If preponderance of convenience is to be a governing ingredient in passing upon the construction of the provision, then it is the general convenience we must consider. In this provision be it observed the legislature was prescribing a condition which, when complied with, was intended to have legal and practical consequences that might in some cases be of considerable importance; and if considerations of general convenience are to be weighed I should have thought the balance to be clearly in favour of the view that the legislation re-

quired not an unexpressed concurrence of "sentiment" merely, the existence of which might be incapable of direct proof, but some pronouncement or proceeding which, at least, should be susceptible of being ascribed to a definite occasion and of being noted in the public records of the council. The construction, indeed, for which the respondents contend must come to this in its practical operation; that the legislative requirement is satisfied if the members of the council as individuals consent expressly or tacitly to holding meetings outside the municipality. If that was what the legislature intended it is not easy to see how the legislature could have avoided saying so. I do not think anybody wishing to enact a provision having that effect would have used the language we have to construe.

I may add that I do not see any good reason for thinking section 83*a* does not apply to the sittings of the court of revision. As I read the Act, it is the council which exercises the judicial or quasi-judicial functions of the court of revision. When the number of the council for ordinary purposes exceeds five, then those who are to exercise those functions are to be nominated by the council as a whole and, for the purposes of passing on the assessment roll, the council consists of the members so nominated. It appears to me to be clear that a sitting of the court of revision is properly described as a sitting of the council; and that all sittings of the council, whether for the exercise of legislative, administrative or judicial functions are within the purview of the provision in question. It is clear, however, if I am right in views above expressed, that not only the assessment but the "rate by-laws" (so called) of the years 1895 and 1896 were

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never in operation; and it also follows that the by-law professing to authorize the sale in question (which was passed at a meeting held outside the municipality and in the absence of any resolution, within the meaning of the statute sanctioning such a course) was on that ground alone apart from other grounds already mentioned wholly without legal effect.

The next point is whether, notwithstanding the absence of legal validity in the proceedings referred to, the appellant is precluded, by reason of certain statutory provisions, from relying on the objections he raises. Clement J. thinks he is precluded by section 126(3) of chapter 33, "Municipal Act, 1892;" R.S.B.C. (1897), ch. 144, sec. 86(2); which continued in force until 1899. That section reads as follows:—

> In case no application to quash a by-law is made within one month next after the publication thereof in the British Columbia Gazette, and notice as provided in section 125 of this Act, the by-law, or so much thereof as is not the subject of any such application, or not quashed upon such application, so far as the same ordains, prescribes, or directs anything within the proper competence of the council to ordain, prescribe, or direct, shall, notwithstanding any want of substance or form, either in the by-law itself, or in the time or manner of passing the same, be a valid by-law.

In my judgment this enactment applies only to by-laws passed by the council as a council on an occasion when it could lawfully transact business as the legislative organ of the municipality. It has, I think, nothing whatever to do with proceedings so fundamentally defective as those we have to consider in this appeal.

There remains the question whether the appellant has precluded himself by his own conduct from impeaching the proceedings and transactions in question. In considering that question the character of the action and the circumstances out of which it arose

are important. The sale took place on the 6th October, 1908. On the 21st June, 1901, a deed was delivered to the purchaser. In October, 1906, an application was made for the registration of the purchaser's title which remained in abeyance until 1908 owing to the fact that the purchaser's deed had not been acknowledged as required by the "Land Registry Act." In 1908, the appellant received a notice from the registrar under chapter 31, section 3, statutes 1901, requiring him to contest the claim to register the purchaser's title within the time prescribed by the statute. Within the prescribed time a caveat was filed by the appellant and an action commenced. This action was not proceeded with, but a second action (out of which this appeal arises) was begun some months later: the first action not being dismissed, but apparently remaining technically on foot until the present time. I shall deal later with a point raised for the first time on the argument before this court that the second action was barred by the provisions of the statute last mentioned. That enactment is as follows:—

> In case of applications under tax sales, the registrar shall not take notice of any irregularity in the tax sale or in any of the proceedings relating thereto, or inquire into the regularity of the tax sale proceedings, or any proceedings prior to or having relation to the assessment of the land, but a certificate from the proper officer of the Government, or the municipality, shall be furnished, shewing the years for which there were taxes due and in arrear for which the land was sold at such sale, and the registrar shall satisfy himself that the sale was fairly and openly conducted, and he shall also cause to be served upon all persons appearing by the assessment roll of the district in which the lands are situate, or by the records of the land registry office, to be the persons who, other than the tax purchaser or his assigns, are interested in such land, a notice requiring them within the time limited by such notice, to contest the claim of the tax purchaser, and in default of a caveat or certificate of *lis pendens* being filed or in default of redemption, before the registration as owner of the person entitled under such

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tax-sale, all persons so served with notice, * * * shall be forever estopped and debarred from setting up any claim to or in respect of the land so sold for taxes, and the registrar shall register the person entitled under such tax sale as owner of the land so sold for taxes.

There is no provision here for the determination of the question in dispute by the Registrar of Titles and it seems quite clear that either party, the applicant for registration under the tax sale or the contestant, could take proceedings to submit the question of title for judicial decision. I entertain no doubt that the Supreme Court would have jurisdiction to and would entertain a claim on part of either for a declaration of his or her legal rights without any demand for specific relief. In this case it was the contestant who invoked the decision of the court. He prayed for an injunction, but the substance of his claim was to have a declaration that his title ought to prevail over that of the applicant. His own title had not been registered and the result of the action would determine whether the applicant or himself was to be registered as owner. I emphasize this for the purpose of pointing out that the appellant's action is not in substance a claim for equitable relief. It is an action occasioned and justified by reason of the situation created by the Act of 1901 and the substantial relief claimed is the special statutory relief of a declaration of rights. This latter is not equitable relief and not subject to the peculiar incidents of such relief. *Chapman* v. *Michaelson* (1).

The rights, moreover, which the appellant asserts are legal and not equitable rights. Prior to the tax-sale, October, 1898, he was the undisputed owner of a

(1) (1909) 1 Ch. 238, at pp. 242 and 243.

legal estate in fee simple, as tenant in common with another, of the land in question. If the sale — by reason of the proceedings essential to its validity being ineffectual in law — was in itself inoperative his title could not be affected by it. The sole question in the action is whether the pretended sale had or had not any legal effect and that question could have been raised in an action for the recovery of possession of the land as well as in the present proceedings. Something was made of section 153 of chapter 37, "Municipal Act," 1896, which is as follows:—

> The deed to the purchaser of any land or real property sold under the provisions of any by-law passed under the authority of this Act, shall have the effect of vesting such land or real property in the purchaser, his heirs or assigns; in fee simple or otherwise, according to the nature of the estate or interest sold; and no such deed shall be invalid for *any error or miscalculation in the amount of taxes or interest thereon in arrear*, or on account of the property having been assessed as land. And the *registrar-general, or any district registrar of titles, as the case may be, upon production of the deed and application in the usual form, and upon payment of the usual fees, shall register or record the same in the usual manner.*

This section, however, applies only where the sale has been made under a "by-law passed under the authority" of the "Municipal Act." It can have no effect where in point of law there has been no by-law and so we are again thrown back upon the question of the competence of the council to pass legally effectual by-laws while sitting outside the municipality. The appellant is, therefore, not a suitor seeking to enforce equitable rights or claiming equitable relief and consequently laches in itself would not disentitle him from maintaining his action. *Garden Gully United Quartz Mining Co.* v. *McLister*(1); *Clarke* v. *Hart*(2).

(1) 1 App. Cas. 39, at p. 57. (2) 6 H.L. Cas. 633.

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Has the appellant then by anything he has done or refrained from doing precluded himself from alleging that the sale was in law ineffectual to deprive him of his property? In considering this point it is, of course, to be presumed that, disregarding the statute of 1901, the sale in itself under which the respondent, Mrs. Fleming, claims was inoperative to affect the appellant's title. I shall assume also that the appellant knew of the sale in fact; and that he deliberately refrained from taking advantage of the provisions of the "Municipal Act" entitling him to redeem the property.

The reasoning on which the learned judges in the courts below proceeded appears to be this: The appellant paid no taxes from 1893 to 1898, he had notice of the proposed sale in 1898 and at that time he stated to the collector that he did not know whether the property was worth the taxes: that he came forward to dispute the purchaser's title only when the value of the property had become very much increased. Referring to these circumstances the Chief Justice says:

> Where there is, as I think there is here, conduct from which an abandonment of his property rights can with reasonable certainty be inferred a court of equity ought not to assist the plaintiff at the expense of innocent persons who have been guilty of no laches.

I have pointed out that the appellant's action is not based upon equitable grounds nor is the substantial relief claimed equitable relief and we, consequently, have nothing to do with laches or with the principles upon which a court of equity deals with suitors who are compelled to seek assistance of a kind which equity alone can give.

It is perhaps a little confusing to speak of a process by which the beneficial owner of a legal estate in

fee simple in land becomes divested of his property as "abandonment." Certainly the intention, however deliberately formed, not to pay taxes and to permit his property to be sold for the payment of taxes followed by the most absolute knowledge that it has been sold, will not of themselves suffice to vest it in a supposed purchaser at a tax sale if no taxes have in law become exigible in respect of it and the sale itself is in law inoperative. The circumstances mentioned may be of great importance in shewing that the owner has by his conduct precluded himself from impeaching the proceedings resulting in the supposed sale, but in themselves they could never deprive the owner of his title.

The principle applicable to this branch of the case appears to be this: An owner of land in fee simple may be precluded by his silence or inaction from denying the authority of a third person to deal with his property, although this latter is a mere stranger and has no interest in the property and in law and in fact no authority whatever in respect of it; but in such a case inaction and silence in themselves are not sufficient to deprive the owner of his property unless, at all events, his conduct in the circumstances amounted to a representation to those dealing with the property that he would not assert his rights, and they have acted on that representation, or his subsequent assertion of his rights would constitute a fraud on his part. That such is the principle is, I think, clear from the authorities. In 1723 in *Savage* v. *Foster*(1), the owner was held to be estopped from setting up his rights, "for it was apparent fraud in him not to give notice of his

(1) 9 Mod. Rep. 35.

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title to the intended purchaser." Another illustration of the method in which the court deals with such cases is afforded by the judgment of Fry L.J. in *Willmott* v. *Barber*(1), at pages 105 and 106. He says:—

> It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do.

Tried by these tests the respondent's case on this branch utterly fails. Nobody suggests that the appellant knew or suspected that the taxes for the years mentioned had not been lawfully levied and were not exigible. Where, then, was the fraud? Emphasis is placed on the fact that the appellant appears to have known the meeting of the court of revision was held in Vancouver in 1894. But it is obvious that the appellant never suspected that this circumstance vitiated the assessment of his property; and the muni-

(1) 15 Ch. D. 96.

cipal officers certainly knew and for all that appears in evidence the purchaser (who seems in the purchase to have acted on behalf of the mortgagee) may have known much more about the affairs of the municipality than the appellant. The contention really comes to this, that the owner of real estate having failed to pay taxes demanded of him and having had his property sold to pay them is acting fraudulently if after having discovered that no taxes were ever lawfully levied he resists a claim of the purchaser to register his title. Does the failure to pay taxes alone disentitle an owner of land from insisting that he can only be deprived of his property according to law? That appears to me to be an extreme view and a novel view as well. The purchaser at a tax sale has the same opportunities of examining the validity of the proceedings prior to the sale as the owner of the property sold. Why should the owner suppose that the proposed purchaser, still less the municipality, is acting upon the assumption that he will not take advantage of his legal position whatever it may be? If there is a fatal defect in the proceedings of which both purchaser and owner are ignorant how can the purchaser complain if the owner (who has been no party to the proceedings and has done nothing calculated to throw him off his guard) discovering the defect later takes his stand on his strict legal rights? If the purchaser cannot complain still less can the municipality. I should make a reference to *Jones* v. *North Vancouver Land and Improvement Co.*(1) and *Prendergast* v. *Turton*(2), which appear to have influenced the opinion of the court below. The principle of these

(1) 14 B.C. Rep. 285; [1910] A.C. 317.

(2) 13 L.J. Ch. 268.

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decisions is thus stated in *Clarke* v. *Hart*(1), by Lord Wensleydale:—

> Now, it appears to me that the principle to be deduced from *Prendergast* v. *Turton*(2) and *Norway* v. *Rowe*(3), is, that if a party lies by, and by his conduct intimates to the other partners in the concern that he has abandoned his share, they may deal with it as they please; if his conduct amounts to a representation of that sort, he is estopped by it and cannot afterwards complain. Then the question is, whether upon the facts stated in this case the respondent is in that situation. * * * In that case the interpretation put upon the conduct of the parties, * * * was that they had laid by and pursued a course which was tantamount to saying, "You may go on with the concern at your own risk and for your own benefit; I will have nothing more to do with it." If the conduct of the party has amounted to that, it is, no doubt, a perfectly just principle that he shall be held estopped, and not afterwards be entitled to claim a share of the profit made by those persons to whom he has made that representation.

In all these cases it will be observed that the fact that the parties were co-adventurers had no small influence in determining the decision of the court that the conduct of the plaintiff had had the effect thus described by Lord Wensleydale. Conduct which would be most unfair and even dishonest as between persons thus associated may be unimpeachable where the parties concerned stand in no business relation to one another and have always been at arms' length. I do not think any good purpose would be served by going minutely over the facts of those cases. The question is whether the facts of this case bring it within the principle upon which those cases proceeded. In *Colls* v. *Home and Colonial Stores, Limited*(4), at pages 191 and 192, Lord Macnaghten said:—

> Speaking for myself, I doubt very much whether it is a profitable task to re-try actions which depend simply on questions of fact, or to

(1) 6 H.L. Cas. 633, at p. 670.
(2) 13 L.J. Ch. 268.
(3) 19 Ves. 143.
(4) [1904] A.C. 179.

review an endeavour to reconcile or distinguish a number of cases that naturally enough contain some statements which, taken by themselves and apart from the context, may seem to be contradictory, but which must all proceed upon the same principle. It would only be another link in the embarrassing chain of authority, or, if I may venture to say so, only another handful of dust to be cast into one scale or the other when the claims of opposing litigants come to be weighed in the balance. I think there is much more sense in the observations of Brett L.J. in *Ecclesiastical Commissioners* v. *Kino* (1): "To my mind," said his Lordship, "the taking of some expression of a judge used in deciding a question of fact as to his own view of some one fact being material on a particular occasion as laying down a rule of conduct for other judges in considering a similar state of facts in another case, is a false mode of treating authority. It appears to me that the view of a learned judge in a particular case as to the value of a particular piece of evidence is of no use to other judges who have to determine a similar question of fact in other cases where there may be many different circumstances to be taken into consideration."

It is possible, no doubt, to present some aspects of this case in such a way as to cause them to assume a superficial resemblance to the most striking features in the cases referred to. But examining it fairly as a question of fact, in light of all the facts disclosed by the evidence, it seems to me to be a very extravagant view that there was anything fraudulent in the appellant's conduct or that his silence or inaction was calculated to lead or did in fact lead anybody into shaping his course of action upon the belief that the appellant would refrain from asserting any right of which he had not been deprived by due process of law.

It was argued also that the action was too late. This defence is not pleaded and was not raised at the trial or in the Court of Appeal, and on that ground, I think, it ought not to be considered. Admittedly a writ was issued within the time prescribed by the Act of 1901 and the action so commenced for all that ap-

(1) (1880) 14 Ch. Div. 213.

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pears was on foot at the time of the trial. The object of commencing the second action appears to have been to avoid the expense of amending the first writ by adding some necessary parties. If the defence now put forward had been raised in the statement of defence the actions might have been consolidated or the second action discontinued and the first proceeded with and if the point had been taken at the trial the learned trial judge would probably, if he had thought it necessary, have made an order to consolidate the actions, or adjourned the trial to enable such an order to be made. In these circumstances it is clearly too late now to give effect to the point.

ANGLIN J.—The plaintiff seeks a judgment declaratory of the nullity of proceedings taken by the defendant municipality for the sale for arrears of taxes of certain lands, in which he had a half interest, and consequential relief, alleging that the taxes said to be in arrear had not been validly imposed and also irregularities in the sale proceedings.

The learned trial judge dismissed the action. He held that the taxes were valid and that there had been no fatal irregularity in the sale proceedings. He was further of the opinion that, if there was irregularity in the imposition of the taxes, the plaintiff was debarred from relief because proceedings to quash the taxation by-laws had not been taken within one month after each of them was promulgated. (B.C. "Municipal Act," 1892, sec. 126.) Any irregularity in the sale proceedings he thought would be covered by certain curative provisions of the same statute. Moreover, in his opinion, the defendants had established laches and acquiescence on the part of the plaintiff sufficient to defeat the action.

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On appeal Macdonald C.J. agreed with the trial judge that no fatal irregularity in the sale proceedings had been shewn and that the objections to the validity of the taxes themselves, based on the facts that the meetings of the municipal council, at which the by-laws imposing the rates were adopted, and of the court of revision at which the assessment rolls were passed, had been held outside the territorial limits of the municipality, failed, because, in his opinion, "the so-called court is merely a sitting of the council" and there was sufficient proof that the council had "unanimously resolved that it would be more convenient to hold (its) meetings * * * outside of the limits of the municipality," as it was authorized to do by 57 Vict. ch. 34, sec. 15. He also thought a case of laches and acquiescence had been made out. Galliher J.A. concurred, but upon the last mentioned ground only.

Irving J.A. would have allowed the plaintiff's appeal on the grounds that no resolution providing for the holding of council meetings outside the municipality had been proved; that no authority existed for holding meetings of the court of revision without the municipal limits; that notice of the sale to the plaintiff had not been established; and that the curative sections invoked were inapplicable. Acquiescence in his opinion was not established. Martin J.A. found no evidence of any resolution authorizing meetings of council outside the municipal limits and no proof of acquiescence on the part of the plaintiff.

From this affirmance, by an equal division in the Court of Appeal, of the judgment dismissing his action the plaintiff appeals to this court.

For the meetings of council held outside the limits

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of the municipality prior to the amendment of 1894 (57 Vict. ch. 34, sec. 15) there was no statutory authority whatever. As to the meetings held after that amendment became law, I agree with Irving and Martin, JJ.A., that the evidence is insufficient to support a finding that the municipal council unanimously adopted a resolution, formal or informal, giving the authority requisite under 57 Vict. ch. 34, sec. 15, for the holding of its meetings outside the municipality. I think the onus was on the defendants to prove such a resolution or to establish facts from which it might be fairly inferred. But, if the burden was upon the plaintiff to shew that such a resolution had not in fact been passed, the evidence, in my opinion, warrants that conclusion.

The "Municipal Act" (section 97) requires that

> the minutes of the proceedings of all meetings of the council shall be drawn up and fairly entered into a book to be kept for that purpose and shall be signed by the mayor, etc.

The minute book was produced. It contains no entry of any such resolution. This would probably suffice to establish its non-existence. Taylor on Evidence (10 ed.), par. 1781. But, if not, the evidence of the municipal clerk, Martin, to the effect that all resolutions of the council passed during his term of office appear in the minute book and that a resolution fixing Vancouver as the place of meeting would, if passed, appear in the minutes, makes complete the proof that there was no such resolution. In the face of this evidence it seems to me impossible to infer, merely from the fact that the council held practically all its meetings outside the municipality, that the requisite resolution had been passed. It would be still more difficult to infer that it had been passed unanimously.

Notwithstanding the dearth of authority on the point, due probably to the rarity of such a departure from normal and eminently reasonable practice as would be the holding of meetings of municipal councils outside the limits of the municipality without special statutory authority, I entertain no doubt that the meetings held in the City of Vancouver, because not specially authorized by statute (*e.g., vide* "Ont. Mun. Act, 1903," sec. 265), were illegal and that the taxation by-laws enacted at them were not merely irregular, but were null and void. There appears to be no English or Canadian authority. *Paffard* v. *County of Lincoln*(1) may be referred to. But *Board of Commissioners of Marion County* v. *Barker*(2) seems to be the only case directly in point. See, too, *Harris* v. *State*(3); *Re Hill and Township of Walsingham*(4), at page 312.

But if an inference that such a resolution had been passed might be drawn from the course pursued by the council subsequently to the Act of 1894, that would not, in my opinion, authorize the holding of sessions of the court of revision outside the limits of the municipality. I am, with respect, unable to accept the view that "this so-called court is merely a sitting of the council." In many, perhaps in most cases, the personnel of the municipal council and that of the court of revision may be the same. (B.C. "Municipal Act, 1892, sec. 160.) But, notwithstanding the form of the opening paragraph of section 157 of the statute, they must be deemed distinct entities, at least to this extent—that the statutory provision authorizing the holding in certain circumstances of meetings of the

(1) 24 U.C.Q.B. 16.
(2) 25 Kan. 258.
(3) 72 Miss. 960.
(4) 9 U.C.Q.B. 310.

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council outside the limits of the municipality is inapplicable to the sessions of the court of revision. The complainants against the work of the assessor are obliged to attend these sessions either in person or by agent and nothing short of a direct and explicit statutory enactment would suffice to take away their right to have them held within the limits of the municipality. That the court of revision and the municipal council are not the same body is, I think, made abundantly clear by section 161 of the "Municipal Act":—

> 161. If the council consists of more than five members, such council shall by resolution appoint five of its members to be the Court of Revision.

The body discharging the functions of the Court of Revision might have a personnel entirely different from the council. Of this the cities of Ontario afford examples. (Ont. "Assessment Act," 4 Edw. VII. ch. 23, sec. 57.) That councillors act as members of the court is due mainly to considerations of convenience, or it may be of economy. When sitting *quâ* court of revision the members of it, although it should have the same personnel as the council, can exercise none of the legislative or administrative powers of the latter body: neither can the council, when sitting as such, discharge any of the judicial functions of the court of revision. The notice prescribed by section 157 of the Act leads to this conclusion. The procedure provided by section 158 is consistent with it.

That the Court of Revision is a court of limited jurisdiction constituted to discharge judicial functions is, I think, the proper conclusion from the provisions of sections 162, 164, 165 and 166 of the B. C. "Municipal Act" and from such authorities as

Toronto Railway Co. v. *City of Toronto*(1); *Re Crow's Nest Pass Coal Co.'s Assessment*(2); *Sisters of Charity of Providence* v. *City of Vancouver*(3), at page 37; and *Re Rosbach and Carlyle*(4); that its jurisdiction is territorially restricted by the limits of the municipality is undoubted. In the absence of express statutory authority permitting it to hold its sessions beyond the territorial limits over which it holds jurisdiction, such a court can validly exercise its powers only when sitting within that territory. *The Queen* v. *Inhabitants of Totness*(5); *Ex parte Graves* (6); *Phillips* v. *Thralls*(7). But if the sittings of the Court of Revision should be deemed meetings of the council, for reasons already given, they could not lawfully be held outside the municipality.

The "passing" of the assessment rolls at legal sessions of a duly constituted court of revision was, I think, essential to their validity. In the absence of rolls so "passed" there was no power in the municipal council to enact the by-laws imposing the rates complained of. It follows that the taxes in question were not legally or validly imposed or levied.

There is no curative provision in the statute which overcomes such an objection. The section invoked by the learned trial judge, which declares the validity of every by-law not moved against within one month after its publication, is restricted in its application to by-laws "within the competence of the council." The taxation by-laws impugned in this action were not within the competence of the council. Without

(1) [1904] A.C. 809.
(2) 13 B.C.R. 55.
(3) 44 Can. S.C.R. 29.
(4) 23 O.R. 37.
(5) 11 Q.B. 80.
(6) 35 N.B. Rep. 587, 593.
(7) 26 Kan. 780.

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valid assessment rolls duly "passed" by the Court of Revision it was not competent for the council to enact them. They were nullities. Proceedings to quash them were unnecessary.

Unless debarred by estoppel, acquiescence or laches, the plaintiff is, in my opinion, entitled to the relief he seeks.

The plaintiff is asserting a legal, not an equitable right. Mere laches, as distinguished from acquiescence or estoppel, will not preclude his recovery. *De Bussche* v. *Alt*(1); *In re Madever*(2).

There is no evidence of any actual representation or of any voluntary act on his part calculated to induce a belief that the defendant municipality was in a position to make a valid sale of the property in question for arrears of taxes, or that the plaintiff assented to or acquiesced in the sale. This case is, therefore, clearly distinguishable from *Toronto* v. *Russell*(3), much relied upon at bar. Neither was there any conduct of the plaintiff from which a purchaser could reasonably infer an intention on his part not to enforce his rights — if, indeed, that would suffice. *Chadwick* v. *Manning*(4) — or that he had no rights. The defendant municipality certainly had all the knowledge which the plaintiff could have had of the facts now relied upon to render the assessment invalid; its co-defendants, the purchasers, for aught that appears, had the same means of knowledge; and there is nothing to shew that they had not quite as much actual knowledge of these facts as the plaintiff had. The plaintiff's own knowledge of them is very doubtful; and that he was aware of their effect on the

(1) 8 Ch. D. 286, at p. 314.
(2) 27 Ch. D. 523.
(3) [1908] A.C. 493.
(4) [1896] A.C. 231.

validity of the taxes there is not a tittle of evidence. Although misleading action in ignorance of rights may in some circumstances give rise to an estoppel, *Sarat Chunder Dey* v. *Gopal Chunder Laha*(1), a party cannot, because of mere silence or inaction, be held to have acquiesced unless he was fully cognizant of his adverse right. *Earl Beauchamp* v. *Winn*(2); *Willmott* v. *Barber*(3). If he be ignorant of his right, the duty to speak, upon the failure to discharge which the equitable estoppel is based, does not arise. "Silence is innocent and safe where there is no duty to speak." *Chadwick* v. *Manning*(4). The evidence that the plaintiff knew of the intended sale is somewhat dubious. But, if he did, and if he was fully cognizant of his own rights, his duty to intervene is by no means clear having regard to the vendor-corporation's actual knowledge of the facts on which objection to the validity of the taxes for which the lands were to be sold is based and its public character — and to the means of knowledge available to the defendant purchasers and the absence of any evidence that they were, or that the plaintiff had reason to believe they were ignorant of such facts, or that he knew that his land would be purchased under a mistaken belief as to his rights. *Willmott* v. *Barber*(3); *Proctor* v. *Bennis*(5). I am unable to see how the plaintiff's inaction can be said to have been culpable, or to have induced the defendant municipality to sell or its co-defendant to purchase. That was the case which the defendants undertook to make out under their defence

(1) 19 Ind. App. 203, at pp. 214-5.
(2) L.R. 6 H.L. 223, at p. 225.
(3) 15 Ch. D. 96, at p. 105.
(4) [1896] A.C. 231, at p. 238.
(5) 36 Ch. D. 740, at p. 760.

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of acquiescence or estoppel. They have, in my opinion, failed to establish it.

It follows that this appeal should be allowed and that judgment should be entered for the plaintiff with costs throughout.

BRODEUR J. (dissenting).—By his action the appellant wants to set aside a tax sale that had taken place more than ten years before.

It was dismissed by the Superior Court of British Columbia, and, the Court of Appeal of that province being equally divided, the judgment of the Superior Court was not disturbed.

Several questions have been raised before this court, but they can be reduced to the two following:—

1st. Did the municipal council of South Vancouver impose a valid taxation and was the tax-sale valid although the council sat outside of the municipality ?

2nd. Did the appellant acquiesce in the validity of the proceedings of the council and of the tax sale ?

I will state the facts as briefly as possible.

In 1892 the municipality of South Vancouver was created by proclamation of the Lieutenant-Governor in Council under the provisions of the general municipal Act (55 Vict. B.C. ch. 33).

It was a rural municipality covering a large territy around the City of Vancouver.

It was sparsely settled, just a few houses here and there. Most of the residents had their business in the adjoining city and a large number of property owners were living and residing also in that city.

The communications between those different settlements were rather difficult, though all of them had an easy access to Vancouver.

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One of the first questions that the municipal council had to decide was the selection of the locality where they would hold their meetings.

They had met for the purpose of organization on the 7th May, 1892, at a school house in the municipality. That school house was not, however, their property nor under their control.

They unanimously decided "that the next meeting be held" at 623 Hastings Street, in the adjoining City of Vancouver.

From that date the clerk of the municipality had his office at that place, the council sat there for their ordinary meetings and for their meetings as a court of revision. All the by-laws, including assessment, rate or tax sale by-laws were passed there and published in newspapers in Vancouver (since none were published in the municipality itself) and in the official Gazette; and those advertisements generally contained the above address, 623 Hastings Street, as being the place of business of the municipality and the place where the council had its meetings.

If notices had to be given to individuals they contained the same information.

It was then notoriously known that the council was sitting in the city.

The appellant himself, one day in 1894, appeared before council sitting as the Court of Revision, at that place, to appeal against assessment put on the property in dispute in this case.

He never raised the objection that the council, or the Court of Revision, was not holding its meetings at a proper place, though a decision adverse to his request was then rendered.

Neither the Attorney-General nor the provincial

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authorities ever objected as to their holding their meetings outside of the municipalities. Until 1894 no provision was inserted in the "Municipal Act" as to the places where the councils should sit. In that year an amendment was made which should be interpreted in favour of the validity of the councils' action. It declared that the meetings of the council should be held in the municipality unless the councillors unanimously resolved to hold them outside. We have in the municipal code in Quebec a similar provision (art. 106).

That amendment was interpreted by the clerk as meaning that the council of South Vancouver should hold its first meeting in January each year in the municipality and we see that in the next years they used to meet at a railway station in the municipality and pass a resolution to hold their meetings in Vancouver, always at the same place, 623 Hastings Street.

It is true that the resolutions are not as formal as should be desired, but we must not expect that the minutes of proceedings of those rural municipalities should be absolutely regular and formal.

Those proceedings were carried in good faith. They were notorious and known to the appellant.

It would be contrary to the welfare of our municipal institutions to allow a person to come after sixteen years and say that those proceedings were null and void.

The appellant knew his property was assessed for the payment of the municipal taxes. He was supposed to see in the official Gazette and in the local newspapers that the meetings of the council were held in Vancouver.

He never paid his taxes and even after the property was sold he never inquired for the payment of

the taxes. He received, until the property was sold for taxes, from the assessor and from the collector, notices shewing the assessment and the amount due for taxes. He claims that when the tax sale was made he did not receive the notice that the law provided.

It is one of the disputed facts of this case. The appellant relies a great deal upon the absence of such notice to maintain his appeal.

The evidence may be conflicting; but it is one of those cases where the trial judge, who had the opportunity of seeing and hearing the witnesses, is in a better position to express his opinion than by the mere reading of the evidence. I may add, however, that the hesitations of the appellant, in his evidence, convinced me that he received in due time that notice and I concur heartily in the finding of the trial judge that the appellant knew that the lot in which he was interested was advertised for sale to satisfy the taxes against it, and that he duly received a notice to that effect. In spite of his denial of the knowledge of an actual sale, he must be taken to have known that the advertised sale was duly carried out and that his land was sold.

Why then did he not move? The explanation of his silence is given to us by the clerk of the municipality who happened to meet him at the time and the appellant told him

> that he did not think the property was worth very much at the time. He did not know whether it was worth the taxes or not.

It may be added that the lot was then in the bush and that there was no access to it whatever. The appellant admits that he visited that lot only once. The property was sold for the amount of the taxes and

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purchased practically by the mortgagee of the property who, I suppose, wanted to protect his interests.

The appellant, who knew of the existence of that mortgage and the depression of the land market in the locality, was satisfied to let the lot be sold.

Ten years later, when the property had largely increased in value, and was worth perhaps $20,000, he comes and asks the courts to declare the tax-sale null and void because the council sat in the City of Vancouver, in the city where he was himself living. I think that the proceedings of the council should be held valid and that the appellant, by his actions, his declarations and his conduct generally in what has been done, is estopped by such acquiescence from setting up any title to the property.

I would not feel disposed to maintain his action.

In declaring all the proceedings of the council null and void we would simply create a state of chaos and confusion and cause the ruin of many innocent persons.

The appeal should be dismissed.

Appeal allowed with costs.

Solicitors for the appellant: *MacNeill, Bird, MacDonald & Bayfield.*

Solicitors for the respondent, Ralston: *Russell, Russell & Hannington.*

Solicitor for the respondent, Fleming: *W. H. D. Ladner.*