1919
*Oct. 23, 24.
*Dec. 22.

C. & E. TOWNSITES LIMITED (DEFENDANT) ..... } APPELLANT;

AND

CITY OF WETASKIWIN (PLAINTIFF) . RESPONDENT.

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

Assessment and taxation—Designation of owner—Description of land—Sufficiency—Estoppel by conduct—Appeal to the Court of Revision—Decision as to defect or error in the assessment roll—"Municipal Ordinance of the N.W.T.," Consolidated Ordinances of 1898, ch. 70, secs. 122, 123, 126, 134, 135, 136, 144, 147, 152, 182 et seq.—"Wetaskiwin Charter," Alta. S. 1906, ch. 41, sec. 8.

The action is for arrears of taxes upon lands owned by the appellant and situate within the municipality-respondent. When the property was assessed, the name "Townsite Trustees" was given in the column with the heading "name" opposite the first parcel, and a blank was left in that column opposite the other parcels, without any sign indicating the ownership of these parcels until another name appeared in the column. A general assessment was also made for "179.60 acres unsubdivided," which was the aggregate area of several separate and distinct parcels. The appellant appealed from the assessment "on grounds of excessive valuation," to the Court of Revision which made some reduction, Section 134 of "The Municipal Ordinance" gives to that court jurisdiction to correct the roll in respect of any failure to observe the "provisions and requirements of" the statute; and section 136 provides that the roll, "as finally passed by the court and certified * * * shall * * * be valid and binding on all parties concerned notwithstanding any defect or error committed in or with regard to such roll."

Held, Idington J. dissenting, that, in the circumstances of the case, the assessments were sufficient to render the appellant liable for the payment of the taxes.

Per Davies C.J., Duff and Anglin JJ.:—Inasmuch as there was jurisdiction to make the assessments in question, the essential constituents of an assessment, though defective and erroneous, were present in each case and the appellant had notice of them as assessments in respect of which it was intended to demand taxes from it, and since the matters now urged were all proper subjects of "complaints in regard to persons wrongfully placed on the

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*PRESENT: Sir Louis Davies C.J. and Idington, Duff, Anglin and Mignault JJ.

roll or omitted therefrom or * * * in regard to property * * * which has been misdescribed" to the Court of Revision, where they might have been easily rectified (sec. 134), section 136 of "The Municipal Ordinance" precludes the appellant urging them in this action as objections to the validity of its assessments; and the appellant, being "one of the parties concerned," is bound by the assessment rolls "notwithstanding (these) defect (s) or error (s) committed in, or with regard to such rolls."

Per Davies C.J. and Mignault J.:—Upon the evidence, the appellant, by its conduct and actions, estopped itself from urging the points raised by it before this court.

Judgment of the Appellate Division (14 Alta. L.R. 307, 45 D.L.R. 482, [1919] 1 W.W.R. 515), affirmed.

APPEAL from a decision of the Appellate Division of the Supreme Court of Alberta(1), affirming the judgment of the trial(2), in favour of the respondent. The material facts of the case and the questions in issue are fully stated in the above head-note and in the judgments now reported.

F. H. Chrysler K.C. and *S. B. Woods K.C.* for the appellant.

Frank Ford K.C. for the respondent.

THE CHIEF JUSTICE.—In concurring, as I fully do, in the reasons stated by my brother Duff for dismissing this appeal, I desire to emphasize how greatly the conduct and actions of the appellants have operated on my mind not only as shewing that no possible injustice has been done them in the judgment appealed from but that they have by their conduct and actions estopped themselves from raising in this court the points on which Mr. Chrysler relied.

That learned counsel based his argument for the allowance of the appeal upon the contention, as I understood him, that the lands of the appellants had never been legally assessed for the years for which the

(1) 14 Alta. L.R. 307; 45 D.L.R. 482; [1919] 1 W.W.R. 515.

(2) [1918] 3 W.W.R. 145.

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taxes were sued, first because the proper name of the appellants had not been entered upon the assessment roll, as required by the statute, opposite each lot of land assessed, and secondly because the unsubdivided lands assessed had not been described so as to be identified or capable of being identified. His contention, therefore, was that their assessment was utterly void and that the correspondence, negotiations, appeals to the Court of Revision and District Court judge and general conduct and actions of the appellant could not be invoked to sustain such assessments.

I cannot accept or accede to this argument and desire to add a few lines to my brother Duff's reasons to shew that in my judgment at least the conduct and actions of the appellants have been such, and the judicial action to which they appealed such, as to preclude them from raising these points in this court at this stage of the controversy.

These appeals to the Court of Revision and District Court judge stand on an entirely different footing from the negotiations for time for payment of the taxes and for release from the statutory penalties their non-payment involved and any admissions which might be drawn from the correspondence.

The appeals, limited as they were specifically to the one point of "excessive valuation of the lands," necessarily involved a decision by the judge appealed to, having full jurisdiction over the subject matter, of the location and description of the lands he was called upon to value. How else, indeed, could he have reached a decision as to whether and to what extent they had been overvalued?

The appeal to the District Court judge succeeded to the extent that the assessment was reduced from $500 per acre to $300 per acre, or from $89,800 to $53,880.

The slightest reflection must, therefore, satisfy one that in making such a substantial reduction in the assessment the learned District Court judge must, either from the evidence brought before him or from the admissions of the parties, have been informed of and have adjudicated upon, the location and description of the unsubdivided lands assessed and now in question.

This adjudication not having been further appealed from seems to me conclusive against the appellants not only as to the value of the lands as found by the District Court judge, but as to all the essential questions necessary for him to have determined before making that valuation and reduction in the assessment, one of them being the fact that the lands had been properly and legally assessed as against the now appellants, defendants.

No question was raised at the trial or here of the ownership at all material times by the appellant company of the lands in question and the strictly limited appeal of the appellants to the District Court judge on the one question of overvaluation and their acquiescence in the judgment of that court precludes appellants from now raising any questions as to the validity of the assessments which were necessarily involved in the adjudication of the District Court judge, as I submit the questions raised by Mr. Chrysler were.

IDINGTON J. (dissenting).—The respondent got judgment at the trial before Mr. Justice Scott for taxes alleged to be due by appellant by virtue of assessments made for the years 1916 and 1917 and that has been maintained by the Appellate Division for Alberta from which this appeal is made.

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The chief items in question are founded upon an alleged assessment in each of said years for "179.60 acres unsubdivided."

These are spoken of by the learned trial judge as follows:—

> The form of assessment roll given by "The Municipal Ordinance" requires that it shall describe the lands in full and the extent thereof shewing the section, township and range or lot or block or other local description. It is shewn that the 179.60 acres intended to be assessed is not one parcel alone but is the aggregate area of several separate and distinct parcels, I may here point out that it would require about thirty folios to give such a description of the several parcels as would enable a surveyor to locate the boundaries thereof.

The question raised in respect of them is that this is not such an efficient description as required by "The Municipal Ordinance" providing for the assessment of lands in sec. 122, as follows:—

> 122. The assessor or assessors shall prepare an assessment roll after revision by the assessment committee as in form F in the schedule to this Ordinance setting down in each column as accurately as may be after diligent inquiry the information called for by the heading thereof, No. 8 of 1897, sec. 159.

The only heading in the assessment roll to which this item of the assessment can be attributed is "Lot" or "Lot, Block, Plan."

How, I submit with respect, such a description embracing several parcels of undivided lands, as the learned trial judge states it is, can be held to be anything approaching the requirements of the section just quoted, passes my understanding.

And when we pursue the inquiry of what uses the assessment roll and assessments so made are intended to lay the foundation for, we find, as is usual in such cases, a provision by sec. 147 for distress being made, not only upon the goods of the party assessed, but also the goods, if found on the premises, the property of or in the possession of any other occupant of the premises.

How could there be by any possibility a legal distress made upon the goods of such occupant when each lot or parcel might be occupied by a different person? Then how could the provisions of sec. 182 and following sections for proceedings to sell the lands for the taxes be complied with?

Each section relevant to the definition or description of the land provides for a specification of each lot and the arrears of taxes due in respect thereof to be set out.

Under this group assessment, of many parcels, that would be simply impossible.

Are we to hold the assessment roll good for one purpose or mode of recovery and absolutely null for another?

Can the curative sec. 136, to which we are referred, be, by any mode of interpretation and construction, extended so far? I think not.

We are referred to a number of cases wherein the curative sections in or supplementary to the "Assessment Act," have been held to furnish an effective validating remedy, but not one of them has gone so far as we are asked to go herein.

We are also referred to the recent case of *Hagman* v. *The Merchants Bank*(1), upheld on appeal here. It is sufficient to say that was under "The Town Act" which is differently worded and left it open to say that what was described therein was ascertainable by the facts the description presented, and in other aspects of the case it is easily distinguishable from this.

I fail to ee what *The Municipality of the Town of MacLeod* v. *Campbell*(2), has in it to support any such contention as set up herein.

(1) [1918] 2 W.W.R. 377.

(2) 57 Can. S.C.R. 517: 44 D.L.R. 210.

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The gross overvaluation against which the party assessed appealed to the Court of Revision and failed, and then failed to pursue her appropriate statutory remedy of appeal to the district judge against such an assessment was all that was involved therein.

If it could be applied at all, it would be against respondent according to my reasoning. It certainly was open for the municipal authorities and the appropriate remedy on the appeal to the district judge in 1917 by present appellants either to have asked on that appeal being heard to rectify the roll or to have directed an appeal by the assessor or any one else qualified to do so, to rectify the same and cure a blunder. Indeed, I incline to think, it was not only the right but also the duty of those representing the respondent on the appeal so taken, to have asked the judge to rectify in respect of the blunder now complained of and set down opposite to each parcel the assessment settled by the learned judge.

I cannot find any legal duty resting upon the appellant to have done so against its own interest.

I must conclude that the assessments in question of the "179.60 acres unsubdivided" were null.

City of Toronto v. *Russell*(1), in the Privy Council, decided the neat point of whether or not the respondent could waive the notice which the statute in question required to be personally given him. He having been one of the governing body directing the proceedings and knowing his lands were involved, was held not entitled thereafter to complain.

All else in that case is mere dicta.

Coming to the collector's roll, I cannot see how the secretary-treasurer was at all justified in adopting a

(1) [1908] A.C. 493.

novel plan of framing such a roll without the slightest authority in law.

As the learned Chief Justice points out in the Appellate Division (1), the amendment of "The Town Act" permitting such a novel experiment did not apply to respondent city.

The duty imposed by the statute here in question in sec. 144 was very plain.

It reads as follows:—

144. The secretary-treasurer shall on or before the first day of September in each year prepare a tax roll containing columns for all information required by this Ordinance to be entered therein in which he shall set down in full the name of every person assessed, his post office address and the assessed value of his real and personal property and taxable income as ascertained from the assessment roll as finally revised; he shall calculate and set down opposite each such entry in columns headed "General Fund," "Debenture Fund," "School Fund," "Statute Labour Fund," as the case may be, the sum for which such person or property is chargeable on account of each rate and under the column headed, "Arrears of Taxes" the sum which may appear on the books of the municipality as arrears on such parcel of land at that date; and in the column headed "Total" the total amount of taxes for which each parcel of land is liable.

Such a collector's roll as he made omitting all names of those liable and the description of each parcel of land and its liability, ought not to be held a compliance with the Act. Yet it is on a certified copy of this nullity that the action rests in virtue of sec. 152 of the Act.

Town of Trenton v. *Dyer*(2), cited by appellant, is worth looking at in this aspect of the case.

That, to my mind, disposes of the other items in the claim made herein.

Had there been a proper collector's roll I should, under the authorities and curative section coupled with the response of the appellant's agent to the notice of

(1) 14 Alta. L.R. 307. (2) 24 Can. S.C.R. 474.

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its assessment indicating a recognition of the name, have been inclined to examine more closely than I have done the question of whether the mere mistake of name was not overcome so far as other items were concerned. In the view I have expressed, it does not seem to me necessary to do so.

The taxes are imposed by a by-law striking the rate and thereby a valid debt is created, if and so far as, founded upon a valid assessment roll. It is not the collector's roll that constitutes the debt. Sec. 152 declares the taxes to be a debt and proceeds to declare that as a piece of evidence which entitles to recover, a certified copy of the collector's roll will suffice. I submit proof of a valid assessment and valid by-law fixing and imposing the rate, would be equally efficient. Hence if that proof had been properly adduced the respondent should, perhaps, have succeeded as to the minor items if as fairly arguable on the decided cases the name could be held sufficient. I would reserve that right if worth pursuing.

Nor need I enter at length upon the question of the doubtful possibility hinted at the argument of holding independently of the roll that a debt was created by means of the imposition of rates by by-law and conduct of the parties, for that was not attempted below or seriously here, though I imagine had the case been so directed at the trial as to establish such a proposition, possibly something more arguable might have been produced than the support of this assessment roll as to the main items.

I think the appeal should be allowed with costs throughout without prejudice to a recovery hereafter in respect of minor items.

DUFF J.—This appeal arises out of an action brought by the respondent municipality against the

appellant company for the recovery of taxes alleged to be payable for the years 1916 and 1917 in respect of certain real property owned by the company.

The defence is that owing to non-compliance by the municipality with the procedure laid down in the statutes of Alberta in relation to the assessment of property and the levying of taxes, the taxes demanded never became lawfully collectable.

1. It is alleged that there was no lawful assessment of the company's property and 2nd, there was no collector's roll within the meaning of the law, and 3rd, the by-law levying the taxes was invalid because the rate was in excess of that which the corporation was entitled by law to exact.

As to the last mentioned point, the by-law was not produced and I concur with the learned Chief Justice of the court below in the view that in the absence of the by-law it cannot be assumed that no part of the rate levied was for defraying the cost of local improvements.

The assessor in assessing the property of the company did not enter the name of the company in the column provided for the name of the owner but used the name "Townsite Trustees," which has been accepted as sufficiently descriptive. In the case of the great majority of parcels, moreover, the assessor did not—and this is one of the points relied upon as vitiating the assessment—actually write the name "Townsite Trustees" in the owner column opposite the number of the parcel, his practice being where there was a sequence of parcels assessed to the company to write down the name "Townsite Trustees" in the "owner" column for the first member of the sequence leaving blank the space provided in that column for each of the other parcels. The law, it is said, specifically requires that the name of the owner shall be

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actually written in the "owner" column in a space assigned for that purpose for each parcel.

A special objection relates to the assessment of parcel 1562, sheet No. 63; and summarily stated, the objection is that the entries in the roll in relation of that parcel do not include what is alleged to be an essential element of a valid assessment, a description of the property conforming to the provisions hereafter quoted.

The law governing the decisions of the questions raised is to be found in "The Municipal Ordinance of the N.W.T." (ch. 70 of the Consolidated Ordinances of 1898). By the provisions upon which the appellant relies, the assessor is required to prepare an assessment roll as in form "F,"

> setting down in each column as accurately as may be after diligent inquiry the information called for by the heading thereof,

the heading of the second column in form "F" being in these words:—

> The name in full if the same can be ascertained, of all taxable persons who have taxable property or income within the municipality, and the name of the owner when the occupant is not the owner;

and that of the 5th column being this:—

> The description in full or extent and amount of property against each taxable person or any interest which is liable to assessment, township and range, or lot and block, or other local description.

The word "taxable person" in the heading of the second column is defined by sub-sec. 12 of the interpretation section as:—

> (a) any person receiving an annual income or the owner of any personal property not exempted from taxation;
>
> (b) the owner of lands not exempted from taxation where the same are occupied by the owner or unoccupied, otherwise the occupant.

The appellant company contends that as regards those parcels in relation to which the entries do not include some actually written name or description in the second column professing to designate the owner, there is therein a departure from the directions of form

"F" that invalidates the assessment of those parcels. As regards parcel No. 1562 there is, it is said, no description of property in compliance with the requirements of form "F," and that this again is a fatal defect nullifying the assessment of that parcel.

Before entering upon the discussion of the points raised by these contentions it will be necessary to refer briefly to other provisions of the statute.

By sec. 126 every person assessable is required to give all information to the assessor and it is provided that he may deliver to the assessor a statement in writing setting forth the particulars of the property for which he should be assessed. Sec. 123 provides for the appointment of an assessment committee whose duty it is, on completion of the assessment roll, to check over the roll and to make such corrections as they may decide upon, and then a right of appeal is given to a Court of Revision. The right of appeal may be exercised not only by the person assessed but also by any ratepayer as well as by the municipality. The jurisdiction of this court is defined by sec. 134, which is in the following words:—

> The court shall try all complaints in regard to persons wrongfully placed upon the roll or omitted therefrom or assessed too high or too low in regard to any property of any person which has been misdescribed or omitted from the roll or in regard to any assessment which has not been performed in accordance with the provisions and requirements of this Ordinance as the case may be.

And by sec. 136:—

> The roll as finally passed by the court and certified by the secretary-treasurer as passed shall, except insofar as the same may be further amended on appeal to a judge, be valid and binding on all parties concerned notwithstanding any defect or error committed in or with regard to such roll or any defect or error or mis-statement in the notice required by sub-sections 4 and 5 of the foregoing section of this Ordinance or the omission to deliver or transmit such notice.

The enactments of the statute prescribing the method of preparing the assessment roll and the duties

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of the assessor in relation to the preparation of it must be read, of course, and applied in the light of secs. 134-5-6. The first of these sections we have seen gives to the Court of Revision jurisdiction to correct the roll in respect of overvaluation or undervaluation, the omission of property from the roll or misdescription of property entered in the roll; and further in respect of any failure to observe in the assessment the "provisions and requirements" of the statute; by sec. 135 this jurisdiction may be invoked by the person assessed or by the municipality, and then there is sec. 136 which, as appears above, enacts that after the roll has passed the Court of Revision and been certified as prescribed, it shall be

> valid and binding on all persons concerned notwithstanding any defect or error committed in or with regard to such roll.

Now, I do not at all dissent from the argument forcibly presented by Mr. Chrysler, that it is a "roll" which by virtue of sec. 136 is to be "valid and binding upon all parties" and that it is an "assessment" which is the subject of appeal by virtue of sec. 134; and that in order to bring these two sections into play, you must have something which, within the intendment of them, is an "assessment" and a "roll."

But it is one thing to say as regards a given state of facts: Here is no assessment—here is no roll. It is another thing to say: Here are a roll *de facto* and an assessment *de facto*, but a roll and an assessment which because some essential requirement of the law has been neglected in preparing and effecting them are, from the point of view of the law, invalid.

Secs. 134 and 136 both contemplate such departure from the provisions of the Act as would but for these sections make the assessment invalid. On this point, the meaning of the language is unmistakable and the

combined effect of these sections is that if the property is assessable and if the person is a taxable person, then an assessment which contains the elements of a *de facto* "assessment" within the meaning of sec. 134, may be appealed against and corrected by the Court of Revision and that notwithstanding the departures from the requirements of the statute "in or with regard to the roll" such an assessment once the roll has passed the Court of Revision and been certified in the manner provided for, shall be valid.

The lurking fallacy in the argument presented in support of the appeal resides in the confusion between an assessment inoperative in law because of the failure to observe some legal requirement and something which cannot be described as an "assessment" in fact, within the contemplation of sec. 134.

The questions before us in this appeal must be distinguished from the questions which arose in *Toronto Railway Co.* v. *City of Toronto*(1), and in other cases in the Ontario courts which preceded that decision. In the *Toronto Rly. Co.'s Case*(1), the assessor had professed to assess property which by law was exempt from assessment. In *Nickle* v. *Douglas* (2), the property that the municipality was endeavoring to tax was held to fall within the scope of an exemption clause. In the *City of London* v. *Watt & Son* (3), a similar question arose and the Supreme Court of Canada held that the assessor having professed to assess property which was not subject to taxation in the municipality where it was assessed, the validity of the assessment was not a question cognizable by the Court of Revision, and the assessment roll in consequence not binding upon the defendant.

(1) [1904] A. C. 809. (2) 37 U.C.Q.B. 51.
(3) 22 Can. S.C.R. 300.

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It is, of course, not disputed in the case before us that the lands assessed were subject to taxation and it was accordingly the duty of the assessor to assess them and if through neglect of the assessor the owners were to escape taxation in respect of these lands, it would, of course, be manifestly unjust to the taxpaying community as a whole. Where property is taxable, justice and convenience seem to require that mere errors or deficiencies in procedure shall, so long at all events, as no substantial injustice arises, not have the effect of conferring an exemption contrary to law. This is the principle of secs. 134, 135 and 136, and the scope of 136 is indicated by the last sentence which makes the roll valid and binding notwithstanding the failure to give notice under sub-secs. 4 and 5 of sec. 135.

The argument pressed upon us by the appellant is that sec. 136 has no application where some requirement of the statutory procedure has been omitted or departed from and the requirement and omission or departure are of such a character that in the absence of secs. 134, 135 and 136 the assessment must have been held to be of no legal validity. The argument proves too much. The result of its rigorous application would be to deprive of all effect the declaration in sec. 136 which makes the roll "valid" notwithstanding defects in it. Sec. 136 obviously contemplates proceedings which otherwise would be invalid; indeed all the enactments of the statute prescribing what is to be done in respect of the assessment roll, including those provisions which are alleged to have been disregarded in the assessments now in question, must be read subject to and qualified by the provisions of secs. 134, 135 and 136.

Coming now to the question whether in the years 1916 and 1917 this property was in fact assessed so that

in those years there was something which could properly be described as an assessment within the language of secs. 134, 135 and 136, and 1st, as to those cases in which the name or description of the owner is not actually written in the "owner" column opposite the number of the parcel, I have no doubt that for the present purpose one is not obliged to treat each parcel as a water-tight compartment; one must look at this assessment roll and consider it as a whole. When that is done, one finds abundant evidence that the assessor has done what people frequently do, that is to say, instead of repeating the same name or the same description through a long list of items he has simply written the description at the head of the list and left spaces blank where a more meticulous or more fussy person would have rewritten the entry. No person looking at the document and forming a practical judgment upon it could doubt the intention or the meaning of these entries and blank spaces.

Then as to the description of the property included in item 1562. It is difficult to suppose that anybody reading this could have any doubt that a parcel of acres of unsubdivided land was intended to be assessed and when the roll is looked at as a whole and it is seen that all the other property assessed in the names of the same owners is subdivided land it seems to be reasonably clear from the roll itself that this parcel included all the assessable unsubdivided property of these owners in the municipality and I think this is not seriously disputed. But the description "all the unsubdivided land" owned by a given person within a named area is a good description, even for the purposes of formal conveyancing. The citation of authorities in such a point should be superfluous but *Miller* v. *Travers*(1), may be referred to; see also Halsbury,

(1) 8 Bing. 244.

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Laws of England, "Deeds," vol. 10, at page 465. We have therefore as regards all these impeached assessments abundant evidence of an attempt on the part of the assessor to make an assessment, an attempt carried out in conformity with his practice and an attempt which has at least resulted in this, that he has, for the purposes of the assessment, identified the owners and that he has also identified the property.

And continuing the history of the assessment roll we have an examination by an assessment committee and the acceptance of these entries as sufficient. We have, moreover, the notice sent to the company, we have in one year, 1917, an appeal to the Court of Revision by the appellants on the ground of overvaluation in the case of item 1562 and a reduction of the valuation by the Court of Revision. This appeal to the Court of Revision I shall refer to again in another aspect; in the meantime I mention it as one of the facts bearing upon the question whether or not there is here something which can fairly be described as an "assessment" *de facto* within the meaning of these sections. But in this connection the acts of the appellants themselves are not without significance. *Russell* v. *City of Toronto* (1).

In the year 1915 communications took place between the company and the assessor and the company furnished the assessor with some information. The letter written by the appellant to the assessor was excluded by the learned trial judge, upon what principle I do not quite understand, but there is plenty of ground for the inference that what the company furnished was the aggregate number of acres comprised in all the "unsubdivided" land in respect of which it was taxable. The assessor purporting to assess this property made the

(1) [1908] A.C. 493.

entry quoted above (the entry relating to parcel 1562) and this entry was copied first in the roll for 1916 and then in the roll for 1917.

The demand for taxes addressed to the appellants in 1916 is in evidence and through that the appellants were informed that this land was described in the roll in the manner mentioned. The notice of assessment for 1916 is in precisely the same form and so also as regards the notices and demands for 1917. The appellants, moreover, in prosecuting their appeal from the assessment of 1917 described this property as "our unsubdivided property." I have already called attention to the fact that in 1917 not only was the appeal prosecuted but a reduction of the assessment, that is to say, a reduction of the valuation was obtained. It might very plausibly be argued on the principle of *Roe* v. *Mutual Loan Fund Limited*(1), and *Smith* v. *Baker*(2) that as this appeal proceeded on the basis of there being at least a real assessment within the meaning of sec. 134 and that on this basis they got a judgment of the Court of Revision reducing the assessment the appellants are now precluded from setting up the contention now relied upon.

But I prefer to treat this proceeding as very important in the light it throws upon the question of fact, whether there was or was not a *de facto* assessment of the property and in this view the proceeding is just as significant in its bearing upon the question raised with regard to the assessment of 1916 as with reference to that of 1917.

I conclude that the impeached assessments were real assessments, assessments within the purview of secs. 134, 135 and 136.

(1) 19 Q.B.D. 347. (2) L.R. 8 C.P. 350.

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The last question is whether the tax roll was fatally defective. I concur with the Chief Justice of Alberta in the view that there is nothing in the Act prohibiting the course taken by the assessor, who also is the collector and the treasurer, in making use of the assessment roll so far as it went for the purpose of compiling his tax roll. I think "The Towns Act" and the practice under "The Towns Act" affords sufficient evidence that there is nothing in this procedure inconsistent with legislative policy.

Of course it does not necessarily follow that the defects in the assessment cured by secs. 134, 135 and 136 might not be fatal in the case of a tax roll to which these last mentioned sections do not apply. But when the roll is looked at as a whole, I think there is a substantial and sufficient compliance. The statute does not require literal conformity with the directions of form "F" in the case of a tax roll.

ANGLIN J.—The material facts of this case and most of the statutory provisions bearing upon them appear in the judgments delivered in the courts below (1) and in the opinions of my learned brothers.

The exigibility as debts of the taxes sought to be recovered from the defendants is attacked on several grounds which can best be dealt with separately.

(1) It is urged that the name of the defendants does not appear in the assessment rolls and collector's rolls at all—that some of the parcels on which taxes are demanded from them are entered on the rolls in the name of "Townsite Trustees" and that as to others no name whatever appears in the column of the roll headed "Owner or Occupant."

Upon the evidence I am satisfied that "Townsite Trustees" was, under the circumstances of this case, a

(1) 14 Alta. L.R. 307.

sufficient designation of the defendant company. It is clear that it had notice of all the assessments and it saw fit to allow them to stand in that name, which it might readily have had changed on appeal to the Court of Revision (sec. 134). On this point I desire to add nothing further to what has been said by the learned Chief Justice of Alberta.

In most instances the parcels in question, in respect of which no name appears in the "Owners," column of the assessment roll, immediately follow in sequence other parcels assessed to the "Townsite Trustees." A more painstaking and exact assessor would, no doubt, have entered the name of the owner opposite each of the succeeding parcels in the several groups or would at least have placed the word "ditto," or its abbreviation "do," or dots commonly used as signifying that word, in the owners' column, or would have bracketed the numbers of the separate assessments or the descriptions of the parcels comprised in each group.

But I have no doubt that the blanks left in the rolls before us would be readily understood by any person reading them as implying the assessment of the lots opposite which they occur to the persons whose names respectively appear in the owners' column opposite the first member of each group or sequence of assessments.

As put by Mr. Justice Scott:—

> An inspection of the rolls shews that the practice followed by the assessor was that where a number of lots of the defendant in the same locality were entered the name "Townsite Trustees" would be entered in the owner column opposite the first one only. The plain inference is that the name was intended to apply to all subsequent lots until the name of another person appeared in that column in the same manner as if the word "ditto" had been entered opposite each lot.

The extracts from the rolls in evidence shew, however, that the application of this method of dealing with a consecutive series of assessments of properties

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belonging to the same owner was not confined to properties owned by the appellant. It extended to other ratepayers as well. In fact it appears to have been general. This objection is thus disposed of except as to the assessment numbers 1535, 1536 and 1537 on the roll of 1916, and No. 1212 on the roll of 1917, which upon the facts cannot be so dealt with. I shall reserve them for special consideration towards the close of this opinion.

(2) The sufficiency of the description of the property included in assessments numbered 1562 of 1916 and No. 1251 of 1917—"179.60 acres unsubdivided"—is challenged. I strongly incline to the view that this description is *in se* inadequate. *Re Jenkins and Township of Enniskillen*(1); *Blakey* v. *Smith*(2), *Wildman* v. *Tait*(3); *Carter* v. *Hunter*(4); *Whitemouth* v. *Robinson*(5); *Clive School District* v. *Northern Crown Bank*(6); *Rural Municipality of Minto* v. *Morrice*(7). It is certainly not the "accurate and sufficient" description which the "Assessment Acts" require; *Toronto* v. *Russell*(8). When it is borne in mind that these two assessments covered several parcels of land scattered over the town area, its insufficiency becomes more obvious. It is argued that taking the assessment roll as a whole the description was equivalent to

all the taxable unsubdivided property held by the Townsite Trustees,

and that such a description would be good. But this argument, if sound, would justify an assessment (embracing numerous scattered parcels owned by one

(1) 25 O. R. 399.
(2) 20 Ont. L.R. 279 at p. 283.
(3) 32 Ont. R. 274 at p. 280; 2 Ont. L.R. 307.
(4) 13 Ont. L.R. 310 at pp. 319-20.
(5) 26 Man. R. 139 at pp. 144, 154.
(6) 34 D.L.R. 16; [1917] 2 W.W.R. 549 at p. 552.
(7) 22 Man. R. 391 at p. 393; 4 D.L.R. 435.
(8) [1908] A.C. 493 at p. 500.

person not named elsewhere in the roll) in which the owner's name is followed merely by the words

all (his) assessable real property in the municipality.

I cannot accept the view that this would be a sufficient description to render such an assessment valid.

It may be that such a description would suffice to enable the owner to identify his property. But others than the owner are interested. Every taxpayer is entitled to find in the assessment roll information by which he can identify any other owner's property in order to satisfy himself that it is fairly assessed. He has a right of appeal if he thinks it is not. As Mr. Justice Beck says in *Clive School District* v. *Northern Crown Bank*(1), at page 552, the provision of the "Assessment Act" requiring that the roll shall contain a description of the property assessed is one of those

intended for the security of the citizen, or to ensure equality of taxation, or for certainty as to the nature and amount of each person's taxes.

Here again, however, the appellant had notice that all its unsubdivided land in the municipality was assessed under the description "179.60 acres unsubdivided" and it did not see fit to avail itself of its right of appeal to have it rectified and made more accurate and precise.

As remedial of all "defects and errors" in the assessment rolls the respondent invokes sec. 136 of the "Assessment Act," which reads as follows:—

136. The roll as finally passed by the court and certified by the secretary-treasurer as passed shall, except in so far as the same may be further amended on appeal to a judge, be valid and bind all parties concerned notwithstanding any error committed in or with regard to such roll or any defect or error or misstatement in the notice required by subsections 4 and 5 of the foregoing section of this Ordinance or the omission to deliver or transmit such notice.

After some hesitation I have reached the conclusion that, inasmuch as there was jurisdiction to make the

(1) 34 D.L.R. 16; [1917] 2 W.W.R. 549.

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assessments in question, the essential constituents of an assessment, though defective and erroneous, were present in each case and the appellant had notice of them as assessments in respect of which it was intended to demand taxes from it, and since the matters now urged were all proper subjects of

> complaints in regard to persons wrongfully placed on the roll or omitted therefrom or * * * in regard to property * * * which has been misdescribed

to the Court of Revision, where they might have been easily rectified (sec. 134); sec. 136 precludes the appellant urging them elsewhere as objections to the validity of its assessments. As "one of the parties concerned" it is bound by the assessment rolls,

> notwithstanding (these) defect (s) or error (s) committed in, or with regard to such rolls.

I agree with Mr. Chrysler's contention that sec. 136 cannot be invoked to validate and give efficacy as an assessment to that which can in no sense be said to be an assessment. But we are here dealing with what purport to be assessments and they contain the essential constituents of assessments—designation of owners and descriptions of properties—imperfect no doubt, and perhaps so much so as to invalidate the assessments. But sec. 136 was not needed to remedy mere irregularities. It must have been to rectify and overcome the consequences of defects otherwise fatal that it was enacted, and we have before us in this case, in my opinion, just such defective assessments as it was designed to cure and render unexceptionable.

The appellant's conduct in seeking a remission of penalties for default added to the 1916 taxes and its appeal to the Court of Revision against the valuation of its unsubdivided property in 1917, if they fall short of what would be necessary to raise an estoppel against

it, at least cast grave suspicion on the good faith of its present attempt to escape payment of these taxes.

(3) I agree with the disposition made by Harvey C.J. of the objection taken to the collector's roll or tax roll.

(4) I also agree with the learned Chief Justice that the constitution of the assessment committee is not open to the objection taken.

(5) If the appellant meant seriously to contest the legality of the rate for 1917, under sec. 8 of the "Wetaskiwin Charter" (statutes of 1906, ch. 41), because in excess of 20 mills, it should have shewn that no part of the rate was levied

for the purposes of meeting the cost of any public work, or works under the provisions of an "Act to incorporate the City of Wetaskiwin."

In the absence of such evidence it cannot be presumed that the rate of 21¼ mills did not include such costs.

(6) As already stated, assessments Nos. 1535, 1536 and 1537 of 1916, and No. 1212 of 1917, call for special attention. No name appears in the owner's column in these assessments. Assessments Nos. 1535, 1536 and 1537 immediately follow 1533 and 1534, which are assessments of properties in the name of Alex. Hinchburger, in the roll of 1916; in that of 1917, No. 1212 follows No. 1211, which is an assessment in the name of the City of Wetaskiwin itself. Taking the same view of these assessments as indicated above in regard to others where blanks occur in the owners' column, the lots covered by them, although belonging to the appellant, were wrongfully assessed to Alex. Hinchburger and the City of Wetaskiwin respectively. It is said, however, that these errors were manifestly proper subjects of

complaints in regard to persons wrongfully placed on the roll or omitted therefrom,

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for the correction of which the Court of Revision had appellate jurisdiction, and since the appellant had notice of the intention to assess it for the properties covered by these assessments and failed to avail itself of its right of appeal, the rolls are valid and binding upon it as one of the parties concerned (sec. 136). But as to what are they valid and binding? The assessments stand as to numbers 1535, 1536 and 1537 of 1916 as assessments to Alex. Hinchburger, and as to No. 1212 of 1917 to the City of Wetaskiwin; and the appellant and "all (other) parties concerned" are bound, as to all matters dependent on those assessments, to treat them as rightfully so made. There is not—there never was—an assessment in Nos. 1535, 1536 and 1537 of 1916 and in No. 1212 of 1917 of the appellant, and making the rolls valid and binding upon it cannot convert the Hinchburger and Wetaskiwin assessments into assessments of C. & E. Townsites Limited. The effect of sec. 136 in this view of the matter is merely to preclude the appellant and the respondent alike from averring that the properties covered by these assessments were not rightly made to Alex. Hinchburger and the City of Wetaskiwin respectively.

On the other hand, if the blank in the "owners'" column in each of the three assessments for 1916 should not be treated as filled in with the name "Alex. Hinchburger" and that in assessment No. 1212 for 1917 with the name "City of Wetaskiwin," they must all be dealt with as omissions of the name of a known owner in contravention of sec. 122. From each an essential constituent of an assessment is entirely lacking—with the result that there was not merely a defective or erroneous assessment which might be cured by sec. 136, but no assessment at all and therefore no subject matter for the remedial operation of that section.

Now taxes are recoverable as debts only by virtue of statutory authority. *Lynch* v. *The Canada North West Land Co.*(1), at pages 208 *et seq.*, *per* Ritchie C.J. and *Pipestone* v. *Hunter*(2). Sec. 152 of the Municipal Ordinance (ch. 70 Con. Ord. N.W.T., 1898) reads as follows:—

> 152. Taxes may be recovered with interest and costs as a debt due to the municipality in which case the production of a copy of so much of the tax roll as relates to the taxes payable by such person purporting to be certified as a true copy by the secretary-treasurer of the municipality shall be *primâ facie* evidence of the debt.

The certified extracts from the tax rolls on their production afford *primâ facie* evidence either that Alex. Hinchburger is the person liable to pay the taxes levied under assessments Nos. 1535, 1536 and 1537 of 1916, and of the like liability of the City of Wetaskiwin as to the assessment of No. 1212 of 1917, or that no person was assessed for any of the properties covered by these four alleged assessments. The debts, if any, evidenced by the rolls in respect of these assessments, are those of Hinchburger and the city respectively and not of the appellant. Sec. 152 does not make the taxes in respect of these assessments recoverable as debts from a person or body not in any way named in respect of them in the tax rolls. The appellant is in this position. As to these assessments therefore, were it not for what I am about to say, I would have inclined to the view that the appeal should succeed and that the judgment should accordingly be modified by reducing the amount recoverable for 1916 taxes by $18.04, and that for 1917 by $6.99, with corresponding reductions in interest.

But there is no plea specially directed to these items, and the points in regard to them, which I have been

(1) 19 Can. S.C.R. 204.

(2) 28 Man. R. 570 at p. 572; 28 D.L.R. 776.

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considering, though made in this court, do not seem to have been discussed at the trial or in the Appellate Divisional Court. At least, I find nothing in the record to indicate that they were. Moreover, they would seem almost to fall within the ancient maxim *de minimis non curat lex*. I am therefore not disposed to dissent in respect of these comparatively trifling items from the judgment of the majority of my learned brothers, especially since, even had I done so, my inclination would have been, subject to a modification of the judgment as indicated, to dismiss the appeal, and with costs because, in view of the comparative triviality of the variation effected, it would have substantially failed.

MIGNAULT J.—The question here is as to the validity of the assessment made by the respondent against different parcels of land belonging to the appellant for the years 1916 and 1917, the amount of which is claimed in this action by the respondent from the appellant. Many objections to the validity of the assessment were made by the latter in its plea, but I propose to discuss only two objections, which appeared to be the only ones really insisted on, being content as to the others to rely upon the reasons given by the learned judges in the courts below for deeming them unfounded.

These two objections are serious if they are true in fact and if, in the circumstances of this case, it is open to the appellant to urge them as a reason for escaping liability for the taxes claimed from it in this action. I will consider these objections only in connection with the assessment of the unsubdivided property belonging to the appellant.

The first objection is that there is no name of owner on the assessment roll in connection with these proper-

ties (as well as in connection with many other parcels bearing subdivision numbers), and the second, as I understand it, is that no properties are indicated as being assessed. If these objections are well founded there would be no assessment, and the question would not be of an informality or irregularity covered by the curative provisions of the Municipal Ordinance, but of the total absence of any assessment whatever.

That the proceedings of the assessor in preparing the assessment rolls were very informal cannot be denied. The appellant was a large property owner, and its name appears frequently in the assessment rolls. But when several properties of the appellant were assessed, its name as "Townsite Trustees" was given in the column with the heading "name" opposite the first parcel, and a blank was left in that column opposite the other parcels, without a "ditto" or any sign indicating that the appellant was the owner of the following parcels, until another name appeared in this column. With regard to the unsubdivided property, which is under number 1562 of the roll for 1916, there is a blank in the "name" column opposite that number, and opposite the preceding numbers up to No. 1558, where the name "Townsite Trustees" is inserted. Similarly in the roll for 1917, also in connection with the unsubdivided property, under No. 1251, there is a blank in the "name" column at that number and opposite Nos. 1250, 1249, and 1248, while at No. 1247 we find the name Townsite Trustees.

The 1916 and 1917 rolls are even more informal in so far as any description of the unsubdivided property to be assessed is concerned. Both rolls, as required by the statute, have a column for "description of the property," and in the case of subdivided property belonging to the appellant the subdivision number is

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given, but in both rolls, as regards the unsubdivided property, there is a blank in the column for description of the property. In each roll, however, in the "address" column, there is the entry "179.60 acres unsubdivided," and further on, on the same line in the 1917 roll, covering the four columns entitled respectively "description of personalty or business floor space," "No. of acres assessed," "No. of acres under cultivation," "remarks and court of revision notes," is the entry; "reduced on appeal to $53,880 being $300 per acre" and below the signature "W. A. D. Lees, J.D.C.", being the signature of Judge W. A. D. Lees of the District Court. I may add, always with regard to this unsubdivided property, that the assessed value is $89,800 in the 1916 roll and $53,880 in the 1917 roll, being the correction made after the reduction above referred to.

The secretary-treasurer of the respondent, Mr, Roberts, who also acted as assessor on appointment by the latter, was the only witness examined. He filed some correspondence to which I shall refer, and stated that the description "179.60 acres unsubdivided" was taken from the 1915 assessment roll, adding, however, that the city had come to an agreement with the Townsite (meaning, I presume, the appellant), as to the acreage, this agreement being on the occasion of an appeal taken in 1917 against the valuation of the subdivided property.

It appears by the statement of Mr. Knox, counsel for the respondent before the trial court, that the unsubdivided land described as "179.60 acres unsubdivided" is made up of several parcels, one portion in one part of the city and another portion in another part of the city, and so on. Certificates of title of the unsubdivided land belonging to the appellant were

filed, but the total acreage is not given, but I presume could be calculated, although it would be no doubt a complicated process. But Mr. Roberts testified that the acreage had been adjusted between the appellant and the city, and no contradiction of this statement was made by the former.

The correspondence filed is important. On February 8th, 1917, Mr. Roberts wrote to Messrs. Osler, Hammond & Nanton, agents of the appellant, calling their attention to the fact that two years' taxes were then due and threatening action if the same were not paid. To this letter, Messrs. Osler, Hammond & Nanton replied on March 3rd, 1917, enclosing a cheque for $600 on account of the 1915 taxes, and asking for time to make financial arrangements in order that they might pay the taxes of 1915 in full and at least pay something on account of the 1916 taxes. On April 2nd, 1917, they wrote to Mr. Roberts that they had a limited amount of funds on hand for paying taxes and would like very much to know if the city council would deduct all penalties charged against their property provided all arrears were paid in three instalments, say on the 30th April, May and June. The request for deduction of penalties was not granted and the secretary-treasurer again wrote demanding payment. It appears that the balance of the 1915 taxes, however, was paid and this action is only for the 1916 and 1917 taxes.

It is to be observed, and this was brought out by the learned counsel for the appellant in his cross-examination of Mr. Roberts, that the description of the unsubdivided land as "179.60 acres unsubdivided" was taken from the 1915 roll, taxes under which were paid by the appellant without it appearing that it objected to this description. The same description was repeated in the 1916 roll and the appellant's agents applied for

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time to pay the 1916 taxes without complaining of the description. When the 1917 roll with the same description was made and an assessment notice was sent to the appellant, the latter appealed to the Court of Revision, composed, I understand, of the city council, which rejected its appeal, and then the appellant, on the 14th July, 1917 (the notice of appeal is dated the 14th June, but this is an obvious error), appealed from the Court of Revision to the district judge against

> the assessment of their unsubdivided property within the City of Wetaskiwin in so far as the same refers to the land therein without buildings or improvements, and in particular against the lands mentioned in assessment notice as number 1251.
>
> The grounds of said appeal are that said assessment is excessive, and on other grounds sufficient in law to support this appeal.

It is on this appeal that Mr. Roberts testifies that the acreage of the unsubdivided property was fixed by an agreement between the parties, and this must be so because the district judge reduced the valuation of the unsubdivided property to $300 per acre, which, for the 179.60 acres, would give the total valuation of $53,880 certified by the signature of the district judge on the 1917 assessment roll.

It is under these circumstances that when sued for the 1916 and 1917 taxes, the appellant complains of the insufficient description of the unsubdivided property and of the fact that no name is inserted in the two rolls as owner of the same.

I am of opinion that the appellant cannot now be heard to urge these two objections. Although no name was inserted in the roll opposite the assessment of the unsubdivided property, the appellant received the assessment notice containing the entry of the unsubdivided land, and it never complained that this assessment was not against it, but on the contrary asked for delay to pay the 1916 taxes, and appealed from the 1917

assessment on the ground of excessive valuation and actually succeeded in having the valuation reduced. The appellant clearly understood that it was the party assessed and had no doubt as to the identity of the unsubdivided land referred to, and this being so, how can it now pretend that no name of owner was given in the roll and that the description of the unsubdivided land was insufficient? If insufficient, to transpose the words of Lord Atkinson in the case of *Toronto Corporation* v. *Russell*(1), at page 499, its alleged insufficiency was not shewn to have misled anybody, least of all the appellant.

In the case just referred to the description was: $8\frac{57}{100}$ acres 1240 x 300 east side Carlaw Avenue, north of Queen street. I am free to admit that this might have been better as a local description than "179.60 acres unsubdivided," referring as it did to parcels situated in different parts of the city, and if no question of acquiescence in this description arose I would have great difficulty in coming to the conclusion that it satisfied the statute, but the appellant, in its notice of appeal against the 1917 assessment, adopted this description as referring to its unsubdivided property within the City of Wetaskiwin, and actually claimed and obtained a reduction in its valuation. On that ground my opinion is that the appellant cannot now attack the assessment roll of 1917 for misdescription or rather want of description of its unsubdivided property, and the objection, however serious it appears at first sight, cannot now be entertained.

As to the assessment of 1916, there is the fact that the description was taken from the 1915 roll, and the appellant paid the 1915 taxes. Moreover, by their

(1) [1908] A.C. 493.

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letter of March 3, 1917, the appellant's agents asked for delay in order that they might pay the 1915 taxes in full and at least something on account of 1916 taxes. There was here no complaint against the assessment of the unsubdivided property, and more, there was an unquestioned assumption of liability for the assessment as made. So in my opinion the objection also fails as to the 1916 roll.

I base my decision on this ground of complete acquiescence and assumption of liability, and do not require to consider whether the curative provisions of the municipal ordinance dispose of the appellant's objections. I may perhaps add that municipal authorities place themselves in a rather perilous position when they proceed in the loose manner which characterized the preparation of these rolls. The assessment is here sustained but it owes its success to the conduct of the appellant rather than to its own merits.

In my opinion the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *E. D. H. Wilkins.*
Solicitor for the respondent: *Alexander Knox.*