Plaintiff will have judgment for the amount claimed, $2668.- 55, less the 1915 taxes assessed to Mackenzie Mann & Co. $63.29, namely $2605.26, and costs of the action.

The costs of two motions in this action were reserved. The application to examine Nichol I think was reasonable, and the plaintiff will have these costs. The plaintiff's application to examine O'Connor in my opinion was not necessary. The evidence sought to be obtained from him was proved by certified copies of documents. Before plaintiff would be justified in taking out an order to examine O'Connor in Ottawa it should prove that it is unable to get the certified copies of the documents, or where the evidence is a matter of proving records that could not be proved by certified copies, the proper practice is to give notice to admit; then, if admissions are not made, plaintiff would be justified in applying for the order. The defendant will have the costs of this application to be set off against the plaintiff's costs.

Either party may remove from the file any documents filed as evidence 30 days after this judgment if there is no appeal. If there is an appeal, then after the appeal or appeals are finally determined.

Judgment for plaintiff

and I cannot find any irregularity in this assessment.

I am of the opinion that all of these irregularities are covered by the curative sections of the Town Act. Section 411 *supra* and sec. 441, which reads as follows:--"The production of a copy of so much of the roll as relates to the taxes payable by any person in the town certified as a true copy by the treasurer shall be conclusive evidence of the debt." Section 411 would not cover the years when the roll was not passed by the council, but sec. 441 would. In *C. & E. Townsites Ltd. v. City of Wetaskiwin* (1919), 51 D.L.R. 252, at p. 261, (59 Can. S.C.R. 578) Duff J., said:--

"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."

See also *Hislop v. City of Stratford* (1917), 34 D.L.R. 31, 38 O.L.R. 470, Meredith, C.J.C.P., said (34 D.L.R. at p. 37):--

"[The objections] are not the proper subject of an action in this Court, as they might be if the case were one in which there was no power in the municipality to tax; or one with which the Courts of Revision have not power to deal properly."

See also *Confederation Life Ass'n. v. City of Toronto* (1895), 22 A.R. (Ont.) 166, 24 O.R. 643; *Toronto v. G. W. Railway Co.* (1866), 25 U.C.Q.B. 570; *City of Coquitlam v. Langan* (1917), 33 D.L.R. 175.

Objection was also taken by the defendant to the 1915 taxes on lots 19 and 20 Block 4, and lots 17 and 18 Block 8. These lots were assessed in 1915 to Mackenzie Mann & Co. Mackenzie Mann & Co. may be liable for these taxes, but I cannot see how defendant can be. These taxes amount to $63.29 to be deducted from the amount claimed. I cannot find that any penalties are chargeable on these amounts.

The defendant also claims that the Statute of Limitations bars part of the claim. I suppose this applies only to the 1915 taxes. Section 2 of the Limitations Act R.S.S. 1920, ch. 47 provides:--

"All actions for recovery of merchants' accounts, bills, notes and all actions of debt grounded upon any lending or other contract without specialty shall be commenced within 6 years after the cause of such action arose."

But the action being in respect of a liability created by statute the period of limitation is that applicable to an action upon a specialty. *McLean v. Town of Macleod*(1919), 49 D.L. R. 146, 15 Alta. L.R. 186; *In re Cornwall Minerals R. Co.*, [1897] 2 Ch. 74, 66 L.J. (Ch.) 561.

the name of some other person joined with his own in the assessment, his proper course is to appeal to the Court of Revision, and, if he fails to avail himself of that remedy, the roll, as finally passed, will be binding on him."

See also *Canadian Northern Express Co. v. Town of Rosthern* (1915), 23 D.L.R. 64, 8 S.L.R. 285. Lamont, J., in giving the judgment of the Court said (23 D.L.R. at p. 67):--

"Where the town has, under the Act, the right to impose the tax, which, in fact, it did impose, and the person assessed in respect thereof does not appeal against the *quantum* of the assessment, he cannot in an action to recover the taxes which he was compelled to pay, be heard to say that he was overassessed."

I think it is desirable, however, as a guidance for future taxation of this land to decide what the interest of the defendant is in said lands. The evidence shews that defendant was assessed as if it owned all the land. I am of the opinion that the interest of defendant is only a half interest, the other one half being held by the Crown in trust for the Indians.

The defendant complains of the following irregularities in the assessment and contends that the plaintiff cannot succeed on that account. (1) That there was no by-law appointing an assessor. An assessor was appointed every year by resolution of the council except in 1918. There is no record of an appointment for that year, but an assessor acted in all of the years in question. (2) That no Assessment Committee of the council was appointed as required by sec. 388 of the Act. I find as a fact that this is so except in the years 1919 and 1920 when an Assessment Committee was duly appointed by resolution of the council. (3) That no rate by-law was passed by the council.

Sec. 428 of the Town Act R.S.S. 1920, ch. 87, provides: "One by-law or several by-laws for assessing and levying the rates may be passed as the council may deem expedient." In 1915 the rate was fixed by a resolution of the council. In 1916 and 1917 the council purported to pass a by-law but it was not certified or sealed. In 1918, 1919 and 1920 there was a regular by-law signed and sealed. (4) That the council never adopted the roll as passed by the Court of Revision. This may have some effect when the plaintiff claims the benefit of sec. 411 of the Town Act which reads:--"The roll as finally passed by the council and certified by the assessor as so passed shall be valid and bind all parties concerned notwithstanding any defect or error committed in or with regard to such roll

or any defect, error or misstatement in the notice required by sec. 399 or any omission to deliver or to transmit such notice." There is no record of adoption in 1915 or 1916 but it was adopted in 1917, 1918, 1919 and 1920 by resolution of the council.

(5) Defendant also complains about the assessment of the fractional north half of 34--39--32. Notice of assessment of this land was given in November, 1919, under sec. 413 of the Act and the land was assessed and added to the roll, appealed from by the defendant, and adopted by the council. The notice of assessment seems to me to comply with the Act and particularly sec. 413,

Several letters from R. R. Nichol were offered in evidence by the plaintiff, and I reserved the question of their admissibility. Nichol wrote as Assistant Tax Commissioner for the defendant.

I now decide that these letters are admissible against the defendant. The affidavit for documents made on behalf of defendant was made by Nichol; all correspondence concerning this assessment is signed by Nichol; letters about the assessment and tax notices were sent by plaintiff to defendant and answered by Nichol; appeals against the assessment were lodged by Nichol, and Nichol attended meetings of the town council about the assessment. I think that all of these things are sufficient to shew that Nichol had authority from defendant to act for it in the matter of this assessment.

These letters shew that the holdings of Mackenzie Mann & Co. were transferred to defendant and in several notices of appeal to the Court of Revision reference is made to the assessment of property *owned* by the defendant. This would indicate to me that defendant considered itself as the owner of the land in question and not a sales agent as now contended.

A lease was also put in evidence from the defendant to George Moore dated March 20, 1918, whereby defendant leased 100 acres of the land in question for 5 years for $100 a year. This is not consistent with defendant's present claim that it was only a sales agent and had no interest in the land.

On behalf of the defendant there was offered in evidence a transfer of Lot 7, Block 7, part of the land in question, from the Superintendent of Indian Affairs to one Joseph Schneider for the purpose of shewing the system of the Crown in issuing transfers. This transfer was objected to and I reserved the question of its admissibility. I do not think this is admissible. The question whether this land belongs to the Crown or whether it is assessable must be determined by the original agreement with the Crown with the assistance of any actions or admissions by the defendant against its own interest. Even if this document were admissible I do not think it would affect the question in this action.

I do not think it is material in this action to decide what the interest of the defendant in the land in question was, whether it was a whole interest or a half interest. If the defendant had any interest in the land I do not think it can complain here that its interest was over-assessed. That was a question for the Court of Revision or a Judge of Appeal from the Court of Revision. See Lamont, J.A., in *Brehaut v. North Battleford*, 51 D.L.R. at p. 613:--

"But where a person has a taxable interest in the property assessed, but is assessed for an interest greater than, or different from, his real interest, or where he is entitled to have

"Extract from a report of a Committee of the Honourable the Privy Council, approved by his Excellency on September 28, 1904.

On a Memorandum dated September 14, 1904, from the Superintendent General of Indian Affairs stating that Messrs. MacKenzie, Mann & Co. representing the Canadian Northern Railway Co., are purchasers from the Department of Indian Affairs of what is known as the Kamsack townsite comprising an area of 241.94 acres, in Cote's Indian Reserve in

the Pelly Agency, Assiniboia. An advance of ten dollars per acre has been paid by the Company, and the Indians are to share equally in the proceeds of the sales of lots after the Company has recouped itself $5000.00 made up of the $2419.40 advance, and the cost of laying out the townsite, dedicating streets, etc.

The Minister further states that the Company has applied for patent for the land in the townsite; but as owing to the circumstances that the Indians are to share with the Company in the proceeds of the sales and that the sale of the townsite is necessarily incomplete, patent cannot issue therefor, it is considered that it would be well to provide for the issue of a patent to each purchaser from the Company of land in the townsite on report of the sales agent.

The Minister recommends that the above arrangement be sanctioned so that the plan of subdivision of the townsite may be placed on record in the local Land Titles Office.

The Committee submit the same for approval.

John J. M. Gee,

Clerk of the Privy Council."

The main question in this case depends on the construction to be placed on this document, the plaintiff claiming it shews a sale of the land, and the defendant claiming that the defendant is only a sales agent. I am of the opinion that the document shews a sale. It is not free from ambiguity. The word "purchaser" is used in one place, and the word "sales agent" in another. An advance of $10 an acre was paid by the company. This seems to me consistent only with the previous clause of the document that the company was a purchaser. There is the further statement in the document that the company has applied for a patent. The company would not apply for patent to land for which it was only a sales agent.

Whether there is a sufficient memorandum in writing to satisfy the Statute of Frauds, or whether specific performance could be ordered I think is not in question here. I do not think that the defendant could raise that question against the plaintiff, and even if so the contract has been partly performed.

I hold then that the document in question shews that the Crown agreed to sell an interest in the lands in question to the defendant.

interest other than that of a mere occupant."

I shall refer throughout to the sections of ch. 87, R.S.S. 1920, as these sections are the same as were in force at the times in question, although not numbered the same in the previous Acts.

If the land belonged to the Crown it is quite clear that it is not assessable. Section 125, B.N.A. Act 1867; sec. 390, subsec. 1 of the Town Act.

And I think it is beyond dispute that no act of the town in assessing the land would make a valid and binding assessment if the land were not assessable, notwithstanding the provisions of secs. 411 and 441 of the Town Act. See *Brehaut v. City of North Battleford* (1920), 51 D.L.R. 609, 13 S.L.R. 202. Lamont, J.A., in 51 D.L.R. at pp. 612-613 says:--

"Section 406 (City Act, 1915 (Sask.) ch. 16), which is relied upon by the city, reads as follows: '406. The roll, as finally passed by the Court of Revision and certified by the assessor as so passed, shall be valid and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, or any defect, error or misstatement

in the notice required by sec. 393 or any omission to deliver or to transmit any notice.' A Section similar to our sec. 406 came before the Supreme Court of Canada in *City of London v. Watt & Sons* (1893), 22 Can. S.C.R. 300. In that case Strong, C.J., at p. 302 said: 'I agree with the Court of Appeal (19 A.R. (Ont.) 675), in holding that the 65th section of the Ontario Assessment Act, R.S.O. 1887, ch. 193, does not make the roll, as finally passed by the Court of Revision, conclusive as regards question of jurisdiction. If there is no power conferred by the statute to make the assessment it must be wholly illegal and void *ab initio* and confirmation by the Court of Revision cannot validate it.' And this statement as to the effect of the section was approved by the Privy Council in *Toronto R. Co v. Toronto Corporation*, [1904] A.C. 809 at p. 816. If therefore the defendant had no taxable interest in the property for which he was assessed, sec. 406 would not avail to render him liable for the tax, although he took no appeal against the assessment to the Court of Revision. The city cannot by assessing property to a person who has no interest therein make it obligatory on that person to appeal to the Court of Revision, on pain of being liable for the tax if he fails so to do." See also *City of Victoria v. The Bishop of Vancouver Island*, 59 D.L.R. 399, [1921] 2 A.C. 384.

On the other hand it is equally well settled that if the defendants have any interest in this land that interest is subject to taxation. *The Calgary and Edmonton Land Co. v. Att'y-Gen'l. of Alberta* (1911), 45 Can. S.C.R. 170; *Smith v. Rural Municipality of Vermilion Hills* (1914), 20 D.L.R. 114, 49 Can. S.C.R. 563; affirmed, 30 D.L.R. 83, [1916] 2 A.C. 569.

The lands in question were part of an Indian Reserve and were surrendered to the Crown, and an agreement was afterwards made between the Crown and Mackenzie Mann & Co. (whose interests afterwards passed to the defendant), proved by the following document:--

TOWN OF KAMSACK v. CANADIAN NORTHERN TOWN PROPERTIES COMPANY LIMITED

(1922), 68 D.L.R. 660

Saskatchewan King's Bench, Bigelow J., 5 July 1922

TAXES (§IE--45)--"OWNER"--INTEREST IN CROWN LANDS--INDIAN RE- SERVE--AGREEMENT OF SALE.

An agreement by the Crown purporting to sell to a company part of an Indian Reserve for townsite purposes, whereby half of the profits derived from the sale of the lots were to go to the Crown for the benefit of the Indians and a patent for the land

to issue when the lots are sold, the company being referred to as "purchaser" and also as "sales agent," is a sufficient agreement of sale under which the company, or an assignee of the agreement, has an interest as "owner," within the meaning of sec. 2 (16) of the Town Act R.S.S. 1920, ch. 87 taxable under the statute to the extent of the company's moiety therein.

TAXES (§III D--135)--IRREGULARITIES IN ASSEEEMENT--COURT OF REVISION.

Irregularities in assessment are matters to be corrected by the Court of Revision.

LIMITATIONS (§III H--140)--SPECIALTY DEBTS--STATUTORY LIABILITY-- TAXES.

Taxes being a liability created by statute, the period of limitations is that applicable to a specialty debt, not that prescribed by sec. 2 of the Limitations Act (R.S.S. 1920, ch. 47) as to action on simple debt.

ACTION for taxes. Judgment for plaintiff.

G. H. Barr, K.C., *J. G. Banks*, and *W. B. Carss*, for plaintiff.

W. A. Doherty and *D. H. Laird*, for defendant.

BIGELOW, J.:--The main question is whether the land is liable for taxes, *i.e.*, whether the defendant has any interest in the land, or whether it belongs to the Crown.

The defendant was assessed as an owner. "Owner" is defined in the Town Act, R.S.S. 1920, ch. 87, sec. 2, sub-sec 16, as follows:--"Owner includes any person who has any right, title, estate or