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*Oct. 23, 26.
*Nov. 10.

THE DISTRICT OF NORTH VANCOUVER (DEFENDANT)..... } APPELLANT;

AND

THOMAS HENRY TRACY (PLAINTIFF)..... } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.

Contract—Resolution by municipal corporation—Acceptance of offer to purchase—Evidence—Written instruments—Statute of frauds.—Estoppel.

T. offered to purchase lands which the municipality had bid in at a tax sale, and to pay therefor the amount of the arrears of taxes and costs. The council resolved to accept "the amount of taxes, costs and interest" against the lands and authorized the reeve and clerk to issue a deed at that price.

Held, reversing the judgment appealed from, that, even if communicated to T. as an acceptance of his offer, this resolution would have raised no contract, on account of the variation made by the addition of interest.

An instrument, which was never delivered to T, was executed by the reeve and clerk of the municipality, in the statutory form of conveyance upon a sale for taxes, reciting the above resolution but without a reference to any contract in pursuance of the resolution, and about two months after the passing of the resolution, upon receipt of another offer for the same lands, the council resolved to intimate to the person making the second offer "that the lot had been sold to T."

Held, that these circumstances could not be relied upon as an admission of a prior contract of sale.

Held, also, that, even if it could be inferred that contractual relations had been established between T. and the municipality, it did not appear that there had been any written communications in respect thereto made on behalf of the municipality and, consequently, the alleged admissions of a contract did not satisfy the Statute of Frauds and could have no effect.

*PRESENT:—Sir Elzéar Taschereau C. J. and Sedgewick, Davies Nesbitt and Killam JJ.

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APPEAL from the judgment of the Supreme Court of British Columbia, *en banc*, reversing the judgment of the Honourable the Chief Justice of British Columbia, at the trial, and awarding the plaintiff such damages as should be settled, on a reference, by the registrar of the court.

The lands in question were advertised for sale for delinquent taxes under R. S. B. C. ch. 144, as amended by 61 Vict. ch. 35, sec. 6 (B.C.) and were bid in by the municipality, under the provisions of the statute. The Act permits the municipality to sell property so bid in and not redeemed within the prescribed time, by a resolution sanctioned by a two-thirds vote of the council, for such price as the resolution may specify. An order was obtained confirming the sale under the provisions of sec. 14 of the last mentioned statute, and by the 15th section, the owner was entitled within a year from the date of the order, *i. e.*, from 3rd January, 1900, to redeem his land. There was no deed of the land executed to the municipality, nor was there any demand for such a deed made under secs. 15 and 16 of the Act. While affairs were in this position, the plaintiff wrote the following letter to the defendants: "I understand that lot No. 1483 was sold for taxes at the last sale and is now held by the municipality. I would like to know the lowest cash price for it or, if you will accept the taxes and costs to date, I will pay that amount for the property."

On receipt of the letter the council passed a resolution, on 3rd September, 1902, as follows: "Letter from Col. T. H. Tracy offering to purchase dist. lot number 1483, was received, and on motion of Councillor May, seconded by Councillor Erwin, it was resolved to accept for this property the amount of taxes, costs and interest to this date against it, amounting to $88, and the reeve and clerk were authorized to

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issue a deed for that price." About 15th November, 1902, the reeve and clerk signed and sealed an instrument dated 14th November, 1902, in the form of a conveyance at a tax sale to the plaintiff, but the instrument was never delivered and was indorsed "not delivered." On the day of the execution of the instrument, the clerk received a letter from Tracy, dated 13th November, 1902, inclosing a certified cheque for $88, and asking for a deed of the land. On 14th November, 1902, the owner's agent wrote to the council stating that he wished to redeem the property and asking to be advised of the amount due. Thereupon the plaintiff's cheque was returned to him, on 17th November, 1902, and on the 20th of the same month the land was redeemed by the owner. On the 5th November, 1902, another offer had been received from another person proposing to purchase the land, and the council, on considering it, resolved "to intimate to him that the lot had been sold to Col. Tracy."

At the trial the plaintiff's action was dismissed, and on appeal to the full court the trial court judgment was reversed, Irving J. dissenting, and judgment ordered to be entered for the plaintiff, the amount of damages to be settled before the registrar. The present appeal is taken by the defendant from the latter judgment.

Riddell K.C. and *Rose* for the appellant. For want of a deed and of the demand required by the statute, the land, at the date of the resolutions, remained vested in the owner and the municipality had no power to make a sale of it. The resolution was not under seal (Municipal Clauses Act, R. S. B. C. ch. 144, sec. 26), and it does not purport to sell; it merely expresses a willingness to sell on terms differing from those on which the offer was made. No estoppel can arise in consequence of the resolution subsequently passed in

regard to the second offer; it merely shews that the council were in error as to the legal position of the matter Nor is any estoppel worked by the instrument executed by the reeve and clerk, more particularly as, in that document, the reeve and clerk are grantors, not the corporation. It had no validity outside of the statute and, it could not operate under the statute as the provisions of the statute had not been complied with and it was never delivered. *McLaughlin* v. *Mayhew* (1); *Phillips* v. *Edwards* (2), and authorities there cited. The receipt of the cheque was not made known to the council till 3rd December, 1902.

The resolution is not a contract but merely an expression of opinion of the council; *Jennett* v. *Sinclair* (3); and it is not equivalent to a contract under the seal of the company. Resolutions of a council will not bind the corporation. Lindley on Companies (6 ed.) vol. 1, p. 426 c.; *Dunston* v. *Imperial Gas Light & Coke Co.* (4). A corporation will not be compelled to execute a contract which it has been resolved shall be entered into by it,as it is only bound by contract under seal. Lindley on Companies, p. 270 (*c*), (*d*) and (*e*); *Mayor of Ludlow* v. *Charlton* (5), at p. 823; *Wilmot* v. *Corporation of Coventry* (6); *Taylor* v. *Dulwich Hospital* (7); *Carter* v. *Dean of Ely* (8), at pp. 222 and 229; *Mayor of Oxford* v. *Crow* (9); *Houck* v. *Town of Whitby* (10); *Silsby* v. *Village of Dunnville* (11).

A contract of sale is not effective unless the name of the vendee be therein inserted as vendee, and none appears in this resolution. *White* v. *Tomalin* (12); *McIntosh* v. *Moynihan* (13), and cases therein cited.

(1) 2 Ont. W. R. 590.
(2) 33 Beav. 440.
(3) 10 N. S. Rep. 392.
(4) 3 B. & Ad. 125.
(5) 6 M. & W. 815.
(6) 1 Y. & C. Ex. 518.
(7) 1 P. Wm's 655.
(8) 7 Sim. 211.
(9) [1893] 3 Chy. 535.
(10) 14 Gr. 671.
(11) 8 Ont. App. R. 524.
(12) 19 O. R. 513.
(13) 18 Ont. App. R. 237.

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As no demand in writing was made the period of redemption had not elapsed and the resolution was *ultra vires* of the council: consequently the defendants are not liable. Dillon on Corporations (4 ed.) sec. 447; Brice on Ultra Vires (3 ed.) p. 145; *The British Mutual Banking Co.* v. *Charnwood Forest Railway Co.* (1), at p. 719. No corporate body can be bound by estoppel to do something beyond its corporate powers. See also *Mayor of Kidderminster* v. *Hardwick* (2), and the cases there considered, and *Mayor of Oxford* v. *Crow* (3).

Davis K.C. for the respondent. The view taken by the Chief Justice at the trial, dismissing the action on the ground that an ordinary tax deed should have been given by the municipality, is entirely erroneous. The plaintiff was not entitled to a tax deed but to a deed of property owned by the municipality.

The municipality had authority to sell or to agree to sell the land in question to the plaintiff, because it was "not redeemed within the specified time," the year referred to in section 15, which had elapsed. Even if "specified time" includes not only the year but the time up to and until a demand in writing, then the latter provision was not intended to and does not apply in a case where the municipality has itself purchased at its own tax sale. This provision is merely to give the municipality notice that the purchaser at the tax sale intends to insist upon his purchase instead of abandoning it. The provision is not in any way for the benefit of the purchaser; it is simply for the information of the municipality and to prevent conveyances to purchasers who may possibly have decided to abandon purchases. There is no particular form of demand in writing required, anything is sufficient which clearly

(1) 18 Q. B D. 714. (2) L. R. 9 Ex. 13.
(3) [1893] 3 Ch. 535.

intimates that the purchaser intends to insist upon his purchase and to acquire title. No notice could be clearer in this direction than the notice that the municipality has actually sold the land to a third person and has instructed the clerk to perfect the title.

The resolution of 3rd September was passed by virtue, not only of the statute, but also of the by-law passed authorizing the tax sale, which was under seal, and, as the council may act by resolution, this resolution has the same effect as if it was also under seal.

The offer of the plaintiff was, it is true, the amount of the taxes and costs, and the resolution refers to taxes, costs and interest, but interest is really part of the taxes and there can be no doubt that the resolution was intended as an acceptance of the offer. All parties understood taxes and costs to be the same as taxes, interest and costs. This is put beyond all question by the entry in the minute book of 5th November, which shews that the parties were *ad idem* and that the sale was made to the plaintiff.

But if this is not so, then the contract consists, on the part of the council, in the resolution of the 3rd September, which is in writing signed by the reeve and having the same effect by virtue of the by-law as if it were itself under seal. The offer contained in this resolution was at once communicated to the plaintiff and accepted by him orally, and subsequently in writing by his letter of the 13th November containing a marked cheque for the amount of the purchase price. The deed drawn up by the clerk, though in a wrong form, has the corporate seal of the municipality attached. The effect of the resolution was to close the whole matter as if it were a by-law duly passed and voted on by the people for the purpose of conveying land and instructing the reeve and clerk to carry out the deal by executing the deed;

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it put it beyond the power of the municipality to further deal with this land, and all that remained for it to do was to see that the reeve and clerk did as they were instructed and executed the deed.

This being so, there has clearly been on the part of the municipality a breach of contract, and one for which they must be responsible in damages. The vendor could have obtained a title but neglected or refused to do so, and by its own action was prevented from being able to carry out the contract; consequently ordinary damages should be given. *Simons* v. *Patchett* (1); *Engell* v. *Fitch* (2); *Bain* v. *Fothergill* (3); *Rowe* v. *School Board for London* (4). The municipality are in the position of an individual who, having obtained the option, has entered into an agreement to sell property to a third person, but who, although perfectly able to acquire a good title and transmit same to his vendee, deliberately choose to refrain from taking advantage of the option and obtaining a title to the property. Under these circumstances damages should be awarded.

The judgment of the court was delivered by:

KILLAM J.—We are all of opinion that there was not sufficient proof of a contract of sale of the land in question by the defendant municipality.

The plaintiff made an offer to purchase the land for the taxes and costs.

Upon that offer being laid before it, the council passed the following resolution:

Letter from Col. T. H. Tracy offering to purchase district lot No. 1483, was received, and on motion of Councillor May, seconded by Councillor Erwin, it was resolved to accept for this property the amount of taxes, costs and interest to this date against it, amounting to $88, and the reeve and clerk were authorized to issue a deed for that price.

(1) 7 E. & B. 568 at 572.
(2) L. R. 4 Q. B. 659.
(3) L. R. 7 H. L. 158.
(4) 36 Ch. D. 619.

Even if communicated as an acceptance of the offer made, this would have raised no contract on account of the addition of interest. It is not shown that, under this resolution, a counter offer in its terms was made to the plaintiff. So far as the evidence goes, it was a mere expression of the willingness of the council to accept the sum it named and an authority to the officers of the municipality to make the conveyance.

The provisions of the statutes and the by-law authorizing the municipal council to sell such property "by a resolution sanctioned by a vote of two-thirds of the council" can only be interpreted as specifying the method by which the enactment of the governing body giving authority for such a sale should be made. Until acted on the plaintiff acquired no rights under it. So far as he was concerned it could have been rescinded or modified at the pleasure of the council. It did not constitute an agreement, or even an offer the acceptance of which could create an agreement.

About two months after the passing of the resolution just mentioned, upon receipt of an offer from a Mr. Diploch for the land, the council "resolved to intimate to him that lot had been sold to Col. Tracy." This is relied on as an admission of a prior contract of sale. While it is impossible to say that it is not evidence which might be more or less cogent, according to circumstances, it does not appear to us that it should be relied on as sufficient proof that, as a matter of fact, the parties had really contracted with each other in the terms of the previous resolution. It seems difficult to believe that any communications constituting a contract would not have been formally proved if they had existed, and it would be unsafe to rely on the latter resolution as proving such communications as a court of law would have held to constitute a contract.

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The instrument executed by the reeve and clerk of the municipality recited the resolution authorizing a sale, but not a contract in pursuance of the resolution. It was in the statutory form of conveyance by the officers upon a sale for taxes. It did not purport to be the act or grant of the municipality. Admittedly it was not delivered. It was, no doubt, intended to take effect, upon payment of the purchase money, as the conveyance authorized by the resolution. But as a memorandum in the hands of the municipal officers, it did not evidence the existence of a prior binding contract between the municipality and the plaintiff

There is a further point which appears to me to be, if possible, even stronger against the plaintiff's right to enforce his alleged contract. Even if we could feel justified in inferring that, as a matter of fact, the contractual relation had been entered into, it is not shown that this was done by any written communication on behalf of the municipality, and the alleged admissions of a contract do not satisfy the requirements of the Statute of Frauds. The deed of the officers, as already stated, contains no admission of a prior existing contract, written or verbal, and the resolution to inform Mr. Diplock that the land had been sold to the plaintiff made no reference to the prior resolution or to the terms of sale and is not sufficiently connected with the previous resolution to involve an admission of a sale on those terms.

It is unnecessary to refer to any of the other points argued before us.

The appeal should be allowed and the order dismissing the action restored, with costs here and in the court below.

Appeal allowed with costs.

Solicitors for the appellant: *McPhillips & Williams.*

Solicitors for the respondent: *Davis, Marshall & Macneill.*