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*Oct. 6.
*Dec. 14.

THE CORPORATION OF THE TOWNSHIP OF ASCOT (PLAINTIFF) ..... APPELLANT;

AND

THE CORPORATION OF THE COUNTY OF COMPTON (DEFENDANT) ..... RESPONDENT.

THE CORPORATION OF THE VILLAGE OF LENNOXVILLE (PLAINTIFF) ..... APPELLANT;

AND

THE CORPORATION OF THE COUNTY OF COMPTON (DEFENDANT) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA, APPEAL SIDE.

Municipal corporation—By-law—Railway aid—Subscription for shares—Debentures—Division of county—Erection of new separate municipalities—34 V. c. 30 (Que.)—Arts. 78, 164, 939 Que. Mun. Code—39 V. c. 50 (Que.)—Assessment—Sale of shares at discount—Action en redition de comptes—Trustee—Debtor and creditor.

An action *en redition de comptes* does not lie against a trustee invested with the administration of a fund until such administration is complete and has terminated.

The relation existing between a county corporation and the local municipalities of which it is composed, in relation to money by-laws, is not that of an agent or trustee, but the county corporation is the creditor and the several local corporations are its debtors for the amount of taxes to be assessed upon their ratepayers respectively.

Where several local municipalities formerly constituting part of a county municipality have been detached therefrom and erected into separate corporations they remain in the same position in

*PRESENT :—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

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regard to subsisting money by-laws as they were before the division having no further rights or obligations than if they had never been separated and they cannot, either conjointly or individually institute actions against such county corporation to compel the rendering of special accounts of the administration of funds realized upon the sale of county debentures issued before the separation, their proper method of obtaining necessary information being that provided by article 164 of the Municipal Code and through the other facilities afforded local municipalities by the Code.

APPEALS from the judgments of the Court of Queen's Bench for Lower Canada, (appeal side), affirming the judgments of the Superior Court, District of Saint Francis (1), which dismissed both actions with costs.

A statement of the cases and of the issues raised on these appeals appears in the judgment reported.

Lafleur and *Hurd* (*W. Morris* with them,) for the appellants. The actions were well founded, for the following among other reasons: 1. Appellants had a proprietary interest in the stock and funds obtained under by-law 37, and the respondents acted as their agents, trustees or managers; 2. Respondents so acted for the purpose of paying the debenture holders, who were the real creditors; 3. In this administration expenses have been incurred for a share of which appellants are liable, and in that respect they are entitled to an account.

The prime object of the by-law was to authorize the county to subscribe for shares in the capital stock of the St. Francis & Megantic International Railway Co., and to provide the means of paying for that stock. The appellants and other municipalities which separated from the county retained a proprietary interest in that stock, and in the dividends and proceeds thereof. (Arts. 80 and 81 Mun. Code, Que.) When municipalities separate the assets and liabilities

(1) 3 Rev. de Jur. 557.

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are divided on the basis of their respective valuations of taxable property, and Ascot's share would represent its interest in the stock subscribed. In 1880 the Village of Lennoxville separated from the Township of Ascot and the respondents consented to divide the indebtedness, and to deal thenceforward separately with Lennoxville, on the basis of a division assented to by all the parties interested. They, therefore, each have a separate share and proprietary interest in the stock and funds which entitles each of them to an account of the management of the stock and of its earnings, if any, and proceeds. 3 Rolland de Villargues "Compte" No. 1; Bioche, Dict. de Procedure, "Compte" Art. 1; 4 Carré & Chauveau, p. 438, tit. IV.; 27 Laurent, No. 495; Pothier Proc. Civ. (Bugnet Ed.), No. 274; 8 De Lorimier, Code Civil, pp. 99, 114-115.

If the stock had been sold at a premium the appellants would have been entitled to their share of any surplus, and their remedy against respondents clearly would have been an action *en redition de compte*. The fact alleged that the stock sold for less than par would not relieve them of the duty of accounting; nor could they successfully defend such an action on the plea that the proceeds were insufficient to pay the debt and expenses of administration.

The real creditors are the debenture holders, and the debtors are the County of Compton, as presently constituted, and those municipalities which separated from it owing a joint debt to the debenture holders. The Municipal Code, arts. 79, 80, 81, 82, 83 providing for the levy and collection of the joint debts govern these municipalities, as between themselves. The municipality from which the territory has been separated is alone authorized and bound to settle with the creditors; but it does not follow that the recourse of the creditors, the debenture holders, is limited to that

municipality. There is nothing to prevent the appellants from settling their own share of that joint debt with the debenture holders, and there are cases in which they might be bound to do so. *Eastern Townships Bank* v. *County of Compton* (1). They, therefore, have an interest in the proper administration of the funds collected and might be held responsible for maladministration.

The appellants are also entitled to an account of the expenses of administration. Under C. S. L. C. ch. 25, sec. 6, sub-sec. 2, they would be liable only for such expenses as could reasonably and legitimately be attributed to the by-law. They are entitled to these accounts in a formal way, so that if necessary they may contest by *debats de compte*.

H. B. Brown Q.C. for the respondent. Actions *en redition de compte* lie only against those who have administered the affairs of others; 3 Rolland de Villargues, vo. "Compte," no. 1; 10 Pothier (ed. Bugnet) no. 274; arts. 1043, 1713 C. C. In these matters the County of Compton has merely administered its own affairs and is not liable to such an action.

There is no distinction between the taxes imposed under this by-law and other municipal taxes. C. S. L. C. ch. 25, s. 6. The tax imposed by a county council is levied on all the local municipal corporations of the county, in accordance with the value of the taxable proderty in each. Mun. Code, Que., art. 938. The portion imposed on each local corporation constitutes a debt payable by such local corporation to the county corporation. Mun. Code, Que., arts. 939, 941, 946, 951; *Simard* v. *Corporation of Montmorency* (2); *Corporation of Missisquoi* v. *Corporation of St. George de Clarenceville* (3); *Corporation of St. Guillaume* v. *County of*

(1) 7 R. L. 446.

(2) 4 Q. L. R. 208.

(3) 15 R. L. 315.

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Drummond (1). The legal position of the parties therefore is clearly that of creditor and debtor simply.

When a local municipality is separated from a county, the position of one towards the other does not become changed in so far as regards the liability for taxes already imposed. There is nothing in the law to support the opinion that by such a separation the relation of creditor and debtor is converted into one of *mandataire* and *mandant*. Mun. Code, Que., arts. 78, 79, 82, 83, 84, 85, 88, 95. Cooley, Taxation, (2 ed.) p. 239, "Taxes apportioned by Benefits."

It would certainly be anomalous if the various separated local corporations, with their subsequent sub-divisions, should each have a right to *debats de compte*, with appointment of *practiciens*, *etc.*, as to the administration of the funds of the county under this by-law, and this before the completion of its administration.

The account asked for by the plaintiffs is not an account of their affairs alone, and it would be impossible for the county council to account to any one of the local municipalities for its own particular interest or share in the by-law so administered.

The judgment of the court was delive ed by:

GIROUARD J.—The present appeal is from a judgment of the Court of Queen's Bench sitting in appeal in Montreal, rendered on the 20th January, 1898, and confirming two judgments of the Superior Court (Sherbrooke), 12th January, 1897, dismissing plaintiffs' actions. They are two actions *en rédition de comptes* brought by two local municipalities against the county corporation of which they formerly formed part, praying that the latter be condemned to account for its

(1) 7 R. L. 562.

administration of a railway by-law, known as by-law no. 37, and in default of their doing so, to pay $10,000 and $5,000 respectively as *reliquats de comptes.*

This by-law was passed on the 14th September, 1870, under the provisions of chapter 25 of the Consolidated Statutes of Lower Canada, an "Act respecting Municipalities taking stock in Railways and other Works"; and by its terms authorizes the warden to take shares in the "St. Francis, Megantic & International Railway Company," generally known as the "Pope Road," to the amount of $225,540, and to raise the money to buy the stock by an issue of debentures to the same amount payable in 25 years.

The by-law was submitted to the vote of the ratepayers in the various local municipalities, and approved by a majority thereof, and on the 26th December, 1870, it received the approval of the Lieutenant-Governor in Council.

From the outset, this railway by-law has been a fruitful source of litigation between the county corporation and divers local corporations. In the first place its validity was contested by the present appellants and others, but the by-law was declared valid on the 7th January, 1876.

Pending this litigation, a bill was introduced in the legislature at Quebec (which became law 24th Dec., 1870,) separating the Town of Sherbrooke and the Townships of Orford, Ascot and Compton from the County of Compton for municipal purposes, and forming them into the County of Sherbrooke. (34 Vict. cap. 30.)

A special provision was inserted in the Act that

nothing in this Act contained shall affect or shall prevent the operation of a certain by-law, &c., &c., and that if the said by-law [To wit, By-law 37] is finally declared valid by the Courts of Justice, it shall have full force and effect, &c.

See also art. 78 of the Municipal Code.

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Lennoxville was afterwards separated from the Township of Ascot as a village corporation, and Sherbrooke since its incorporation as a city, (1876), [39 Vict. cap. 50] has ceased to form part of either county corporation.

In consequence of this litigation, no levy of rates was attempted till 1876. As is usual in such cases, in order to pay the interest on the debentures and to create a sinking fund for their redemption, a tax of five mills in the dollar had been imposed by the by-law on all the real estate in the County of Compton; but in 1886, the county corporation sold all their shares to Sir George Stephen at 50 per cent discount, and realized $112,500 and in consequence reduced their rates to two mills.

The same local corporations refused to pay any assessment, and an action was brought in 1875 by the Eastern Townships Bank, (1), holders of 190 debentures of $1,000 each for overdue interest. This action was contested by the local corporations of Ascot, Compton and others, and the validity of the by-law again raised unsuccessfully.

The judgment of the Superior Court gives a *resumé* of the whole difficulty, and in the concluding part of the judge's note we find the following:

> Then it was submitted to the Lieutenant Governor in Council for consideration and approved; and lastly, and it is to be hoped finally, it has been brought again before this court, &c., &c.

This was in 1876, but the contest continues, and the Township of Ascot and the Village of Lennoxville have remained in rebellion to this by-law to the present day. History repeats itself, especially in railway matters. Ratepayers are generally very anxious to get railway facilities and they readily tell the promoters: "Build your railway, we will take shares in it," but,

(1) *Eastern Townships Bank* v. *County of Compton*, 7 R. L. 446.

in practice they too often mean "don't call for any money."

Suits have been instituted by the respondent against the appellants and others, wherein the county is seeking to recover assessments amounting to several thousands of dollars. In *Compton* v. *Bury* Mr. Justice Lynch condemned the Township of Bury to pay to the County of Compton $9,080.11 with interest and costs. In *Compton* v. *Orford*, the sum of $3,509 was ordered to be paid. On the 4th day of May, 1898, in *Compton* v. *Ascot*, the latter was condemned by Mr. Justice White to pay $6,494.81, interest and costs for rates up to the 1st January, 1892, the court reserving

> the rights of the defendants on a final adjustment of the rates, which may be made for the years 1893, 1894, 1895 and 1896, to establish if it be so, that the said rate of two mills during the nine years subsequent to 1886, is more than sufficient to pay their just proportion of said debt and interest.

The appellants did not wait for this judgment to demand a revision of the rates. On being sued in 1895, they sought to obtain relief by means of an action to account, taken in 1896, the object of which is well defined by Mr. Justice Würtele in these few words:

> They claimed they were entitled to obtain an account because they wished to ascertain their exact position. They alleged several grievances; in the first place that they were not allowed a sufficient amount of rebate for the proceeds of the sale of the stock in the railway to Sir George Stephen. They also alleged that the sinking fund had not been properly administered. They also alleged that the county council had paid large sums of money to cover up a defalcation in their accounts which had been made by their former secretary-treasurer; that the sum of twelve thousand dollars had been paid to that treasurer, and that he was not entitled to anything like that amount; that he might have been entitled under the by-law to a certain amount of salary for the work he had done in administering the by-law, but that he was not entitled to this amount, and they claimed, therefore, they had a right to obtain an account from the county council before they could be called upon to pay any amount of the tax.

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The defendant denied that in law they were bound to render any account to the plaintiffs for its administration of the funds collected under by-law no. 37; that they do not occupy the position of agents or trustees, but that of creditors.

Art. 939 of the Municipal Code says:

The portion imposed on each local corporation constitutes *a debt* payable by such corporation to the county council, according to the conditions and on the terms fixed by such council.

The amount of such portion or debt is levied in the local municipality in the same manner as local taxes, on all the taxable property subject to such tax, without its being necessary to make other by-laws or orders for that purpose.

In the case of refusal or neglect on the part of the local corporation to pay the portion which has been imposed upon it, such portion may be recovered from it in the manner set forth in article 951.

The Superior Court adopted the contentions of the defendants and dismissed the two actions with costs. This judgment was confirmed in appeal by Lacoste C.J., Bossé and Würtele JJ., Blanchet and Hall JJ. dissenting.

We entirely agree with the two courts below, and we think we cannot do better than reproduce the following remarks of Mr. Justice Würtele, in which we concur:

The first question is whether these municipalities possess the right to bring an action of account.

In the first place we must recollect that the administration with which the county council was invested with respect to the by-law, and with respect to the collecting of the funds for the purpose of paying off their debentures, has not yet terminated. There are still a great many debentures outstanding which have to be provided for, and if an action of account could be brought, it is certain it cannot be brought until the administration is terminated. They cannot pretend, if they have such a right, that they would have a right to bring on actions of account from time to time every year, or any other period. They certainly would have to wait until the administration is completed. Have they the right, however, to bring that action? In the first place, the corporation of a county is composed of all the ratepayers living within that county. They are the corporators, the county council is merely

the administrator, the body who administers the interests of the ratepayers in the county, irrespective of the local municipalities. Then with respect to the levies in the interest of the whole county it is provided that amount shall be levied by a certain equal levy over the whole county, but that the amount due by the ratepayers in each individual municipality shall be collected and paid over to the county council by the local council administering the affairs of that municipality, and it is ordered by the Municipal Code that the amount thus payable is to be dealt with as if it was an ordinary debt, and is to be recovered by an action of debt, to be instituted by the county council against the local council.

The relations which exist between the two corporations are, therefore, that of creditor and debtor. The county council is the creditor and the local council is the debtor for the amount of the taxes payable or leviable by the ratepayers....., and even the local council has the power to levy that without passing any other by-law, to levy it under the original by-law, and they are the collectors for the amount due by the ratepayers within their limits, but does that give a right to any municipality or to any ratepayer of bringing an action of account against the county council? Would any ratepayer in any municipality, whether it be local or county, have the right to bring against the county council an action for account? Clearly not. The affairs administered by a county council are its own affairs, that is to say, the affairs of the corporators. They do not administer the affairs of another. The action of account, both by English and French law, is given against a person who administers the property of another, and who may be called upon to pay a certain amount on the accounts being stated and rendered.

In the present case, all the action of account asks for is that an account be rendered in order that these two municipalities may see the exact position in which they stand. They claim they have that right because they have been separated. Would any municipality which has not yet been separated from the County of Compton have that right? Clearly not. The county council administers their affairs. The affair for which they could ask for an action of account is not an affair of theirs independent of the affairs of the county. The county council only administers the affairs of its corporators, and therefore no corporator can have the right to bring an action of account against it. Because they have been separated, have they a right to bring this action, merely because they have been separated? The statute and the Code say that they shall remain in the same position *quoad* the by-law as they were in before the division. They have no more rights and are charged with no more obligations than if they had never been

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separated. It seems to the majority of the court, therefore, that th action of account does not exist; it may be a matter of inconvenience; but still the municipalities interested, who wish an account, have every facility to obtain the information which they require. Under article 164 of the Municipal Code, it is provided that any mayor, or any municipal officer, or any ratepayer has the right at any time to go to the office of the county council or the local council and exact that all the books and papers of the municipal council be exhibited to him. He is authorised to take extracts, and the secretary-treasurer is ordered to give him every facility in the examination of the accounts and state of the affairs of the municipality. Then, in the beginning of January of each year, the secretary-treasurer is bound to make a complete statement of all the affairs of the municipality and to render an account to the council under which he acts, either county or local, of all the money transactions that have taken place. In the event of a by-law being passed to issue debentures he is also bound to submit to the county council a clear and distinct statement of the state of the sinking fund on the first of January of each year. Therefore, every municipality, and in the present case the municipalities that remain in the County of Compton, and those detached, have every facility in order to obtain the information they require, without it being necessary to bring an action of account. They have the annual statement made by the treasurer; if they doubt the correctness of that statement, their officers and any ratepayer have the right to examine all the papers and documents of the council in order to ascertain if the statement is correct or not. We think that these local councils do not possess the right to bring an action of account, and we think if they have not that right, that all that results from their being deprived of that right is a certain amount of inconvenience in being obliged, instead of having a document furnished to them, to go to the office of the council in order to obtain for themselves the information they require.

For the same reasons, we are of opinion that the two appeals should be dismissed, and they are dismissed with costs.

Appeals dismissed with costs.

Solicitors for the appellant, the Township of Ascot: *Lawrence & Morris.*

Solicitors for the appellant, the Village of Lennoxville: *Hurd & Fraser.*

Solicitors for the respondent: *Brown & Macdonald.*