

JOHN G. GRIMMER AND G. DUN-
 ELL GRIMMER, ADMINISTRATORS } APPELLANTS;
 OF THE ESTATE OF GEORGE S. }
 GRIMMER, DECEASED (PLAINTIFFS) }

1902
 *Feb. 20.
 *May 15.

AND

THE COUNTY OF GLOUCESTER } RESPONDENT.
 (DEFENDANT)..... }

ON APPEAL FROM THE SUPREME COURT OF NEW
 BRUNSWICK.

Municipal bond—Form—Statute authorizing—Construction.

An Act of the New Brunswick Legislature authorized the County Council of Gloucester County to appoint Almshouse Commissioners for the Parish of Bathurst, in said county, who might build or rent premises for an almshouse and workhouse the cost to be assessed on the parish. The municipality was empowered to issue bonds, to be wholly chargeable on said parish, under its corporate seal and signed by the warden and secretary-treasurer, the proceeds to be used by the commissioners for the purposes of the Act. G. purchased from the secretary-treasurer of the county a bond so signed and sealed and headed as follows: "Almshouse Bonds, Parish of Bathurst." It went on to state that "This certifies that the Parish of Bathurst, in the County of Gloucester, Province of New Brunswick, is indebted to George S. Grimmer," * * pursuant to an Act of Assembly (the above mentioned Act) etc. In an action by G. on said bond

Held, reversing the judgment of the Supreme Court of New Brunswick, that notwithstanding the above declaration that the parish was the debtor, the County of Gloucester was liable to pay the amount due on the bond.

APPEAL from a decision of the Supreme Court of New Brunswick setting aside a verdict for the plaintiff at the trial and ordering a judgment of nonsuit to be entered.

The sole question for decision on the appeal was whether or not the Municipality of the County of

* PRESENT:—Sir Henry Strong C.J. and Sedgewick, Girouard, Davies and Mills JJ.

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Gloucester was liable on a bond issued under An Act to provide an Almshouse for the Parish of Bathurst. The material provisions of the Act and the bond in full are set out in the judgment of the court.

The plaintiff had a verdict at the trial but the court *en banc* set it aside, the majority of the judges holding that the Act did not make the county liable and the remaining judge, while deciding that it did, being of opinion that the wording of the bond exempted it from liability.

Currey K.C. for the appellant.

Teed K.C. for the respondent.

The judgment of the court was delivered by :

SEDGEWICK J. — In 1878 the Legislature of New Brunswick passed a statute (1) authorising the establishment, operation and maintenance of an Almshouse in the Parish of Bathurst, one of the parishes of the defendant municipality. Its provisions so far as they affect this case are as follows :

1. The commissioners to be appointed as hereinafter mentioned are hereby authorised and empowered to lease or purchase a suitable building, farm and lands, situate in the vicinity of the Town of Bathurst, in some suitable place, the ownership, or title and property to which lands shall be vested in "The Almshouse Commissioners of the Parish of Bathurst," in trust, and to be used and occupied for the purposes of an almshouse and workhouse for the Parish of Bathurst, in the said county, and the said commissioners are also hereby authorised to agree for the erecting on the said farm a proper building or buildings for an almshouse and workhouse, and to fix on a certain sum of money for defraying the costs and expense of the purchase of the said farm, or for the annual rent to be paid therefor, and the erection thereon of the said building or buildings, the whole not to exceed, with the expense of assessing and collecting the same, the sum of three thousand dollars ; and the county council of the said municipality are hereby authorised and required, at any regular meeting or

(1) 41 V. c. 102 (N.B.)

at any special meeting called for that purpose, to order the said sum to be assessed on the said Parish of Bathurst, either extending over two years or more, but not to exceed ten years, as may be deemed most desirable; which amount so ordered to be assessed, shall be assessed, levied and collected on the Parish of Bathurst as other parish rates are assessed and collected.

2. The said County Council may cause bonds to be issued by the municipality, entitled "Almshouse Bonds," Parish of Bathurst, *which bonds shall be wholly chargeable* on the said parish and shall bear such interest, be in such form, and for such amount, and be payable at such time and places as the said commissioners may recommend, but within ten years from the first issue of the bonds of indebtedness, and shall be signed by the warden and secretary-treasurer, and have the corporate seal affixed thereto, and be placed in the hands of the secretary-treasurer of the municipality to be disposed of for the purpose of this Act; and the proceeds of such bonds shall be placed to the credit of the said commissioners and be paid out on their order for the purpose of this Act and for no other purpose.

3. The said County Council are hereby required and authorised to order, make and levy upon the inhabitants of the said Parish of Bathurst, liable to be rated or assessed, in any year a sum sufficient to pay the principal sum falling *due upon any bond issued under this Act* in that year, and also a sum sufficient to pay the interest due on the whole loan, until the whole sum and interest be paid off; the said sums, when collected to be held and paid by the secretary-treasurer for the purposes of this Act and no other purpose.

4. It shall be lawful for the County Council, and they are hereby required on the joint recommendation of the County Councillors for the Parish of Bathurst, to appoint three fit and proper persons, residents of the Parish of Bathurst, to be commissioners for purchasing or leasing a farm and lands in the Parish of Bathurst, and for erecting thereon a proper building or buildings for an alms and workhouse for the said Parish of Bathurst, and supporting and managing the same.

5. The commissioners shall at the meeting of the County Council in January in each year, lay before the said council an account, to be audited by a committee composed of the councillors of Bathurst Parish and the county auditor, of the expenses incurred by them for the support and maintenance of the poor in said almshouse and workhouse for the past year, together with an estimate of the sum or sums that may be needful for the maintenance and employment of the poor of the said house, including contingent expenses for the current year; and the amount of the said account, when audited and allowed

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by the said committee, shall be apportioned on the said Parish of Bathurst, and assessed, levied and collected from the inhabitants thereof in the manner provided by law for assessing, levying and collecting parish rates, and when received shall be paid by the collector of the said parish into the hands of the secretary-treasurer for the use of the said commissioners and for no other purpose.

Sections eight, nine, ten, eleven and twelve provide further details for the working out of the Act, and by section thirteen it is expressly provided that the commissioners may recover from the overseers of any parish in any other county, in an action at law, the amount expended in the support of any pauper belonging to any other parish.

Section fourteen provides that any vacancy in the board from death, resignation or otherwise, may be filled by the county councillors from Bathurst.

After the passing of the statute and at the annual meeting of the County Council of Gloucester, held in the month of January, A.D. 1879, a resolution was passed whereby, after referring to the statute in question and reciting that it was desirable to erect the almshouse, it was resolved that the county council should order that bonds be issued for the purposes of the Act, payable from time to time, as the commissioners might recommend, and for such sum or sums as they deemed necessary, not to exceed in the whole three thousand dollars, and the warden and secretary-treasurer of the municipality were ordered to sign such warrants and affix thereto the corporate seal; said bonds to be placed in the hands of the secretary-treasurer to be disposed of by him to the best advantage and the proceeds thereof to be placed to the credit of the commissioners and paid out on their order for the purposes of the Act and for no other purpose.

Three almshouse commissioners were also appointed by the county council at said January meeting.

At this time John Young was warden and John Sivewright secretary-treasurer of the defendant municipality. The almshouse commissioners, in pursuance of sec. 3 above set out, recommended to the municipal officers the amount to be borrowed (\$3,000), the rate of interest, the form of the bonds and the time and place of payment. Thereupon Sivewright, the secretary-treasurer, prepared the bonds in the form hereinafter set out, and sold the same to one George S. Grimmer (of whom the plaintiffs are the personal representatives), he paying into the hands of Sivewright \$3,000, the face value of the bonds. Two of these were paid. The one now in suit was not. It was signed by the warden and the secretary-treasurer and had affixed the corporate municipal seal and was in form as follows :

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\$1,000.

No. 1.

ALMSHOUSE BONDS, PARISH OF BATHURST.

This certifies that the Parish of Bathurst, in the County of Gloucester, Province of New Brunswick, is indebted to George S. Grimmer in the sum of one thousand dollars, current money of the Province of New Brunswick, which is payable to George S. Grimmer, or order, on or before the sixth day of April, one thousand eight hundred and eighty-four, together with interest at the rate of seven per centum per annum, payable half-yearly, at the Bank of New Brunswick, St. John, on presentation of the proper coupons for the same, as hereunto annexed, pursuant to an Act of Assembly made and passed in the forty-first year of the reign of Her Majesty Queen Victoria, entitled "An Act to provide for the erection of an Almshouse and Workhouse in the Parish of Bathurst, Gloucester County."

In witness whereof, the county council, at the instance of the almshouse commissioners of the Parish of Bathurst, have caused the seal of the Municipality of Gloucester to be affixed hereunto, under the hand of the warden and secretary-treasurer, this tenth day of April, one thousand eight hundred and seventy-nine.

JOHN SIVEWRIGHT,
Secretary-Treasurer.

JOHN YOUNG,
Warden.

Action having been brought on this instrument the case was tried before Mr. Justice Hanington and a

1902 jury and a verdict rendered for the plaintiff. Upon
 GRIMMER appeal to the court *en banc* the verdict was set aside.
 v. Hence this appeal.
 COUNTY OF
 GLOUCESTER The only inquiry we have to make here is as to the
 Sedgewick J. proper interpretation of the bond and statute in order
 to ascertain whether the municipality is directly and
 immediately liable to the bondholder for the amount
 of the loan.

The Parish of Bathurst is not a corporation; it cannot sue or be sued; it is a mere territorial area, one of the many into which the county is divided for the purposes specified in the various statutes relating to or affecting their respective ratepayers and inhabitants. The County of Gloucester on the other hand is a corporation having all necessary machinery for carrying on all municipal business including the assessment and collection of all municipal taxes whether for general or special purposes.

Let me now consider the true construction of the Act in question. Was it intended by the legislature that the municipality should give its corporate obligation to the tenderers of the money authorised to be borrowed?

Now I understand a bond to be a written instrument under seal whereby the person executing it makes a promise or incurs a personal liability to another. Now here, the statute referring to these bonds speaks of them as "bonds to be issued by the municipality" as "bonds of indebtedness," and instruments to be "signed by the warden and secretary-treasurer and have the corporate seal affixed thereto," as bonds which are to "be placed in the hands of the secretary-treasurer to be disposed off," (that is sold,) by him as bonds the proceeds of which, having first been received by the secretary-treasurer as an officer of the municipality, should be by him, as such officer, placed

to the credit of (*i. e.* paid over to) the body entitled to receive them. I can hardly conceive words stronger than these to express the intention of the legislature that the bonds issued under the Act were to be the immediate and direct obligations of the municipality to the bondholder. If that was not the intention, who was to be the sponsor of or liable for them? Not the Parish of Bathurst, it was incapable of making a promise; and certainly not the almshouse commissioners, whether corporate or not, inasmuch as that liability was not imposed on them. Can it be imagined that no one was to be responsible? Besides, this is the common way by which legislatures authorise municipalities to borrow money for the purpose of carrying out local improvements. The county having greater credit can borrow at a lesser rate of interest than the parish — the improvement though for the special benefit of the parish is as well for the general benefit of the county. But more important than all, if money is to be borrowed for the benefit of the parish, it has no machinery to collect money to refund it. No assessors or collectors or treasurers, and the county machinery is most appropriately used therefor. And even this too adds force to the view of corporate liability. It is upon the county council alone that the duty is cast of raising funds to pay interest and the bonds themselves as they mature. Section 3 particularly provides for this. The money necessary is to be assessed and collected by whom? By the same officers as assess and collect the general rates. And this money is to be paid by whom? By the secretary-treasurer. And to whom? To the persons entitled to the interest and principal. And this consideration appears to me conclusive. The secretary-treasurer (the money being collected) was bound to pay the interest and principal to the bondholders and to them alone. That is as

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clear and explicit a statement of the county's liability as words can make.

I entirely agree with so much of Mr. Justice Gregory's judgment, on this part of the case, as in my view it is an admirable exposition of the meaning and design of the Act.

I now turn to the bond itself. It is most certainly a clumsy, imperfect and obscure instrument. Its form is not a credit to the commissioners by whom it was, under the statute, drafted. But that is not the question. We have to determine whether in such a form there is an obligation on the part of the municipality to pay the bond.

Now as I view it, the most important statement in the instrument, executed as it was by the municipality, is that it is issued in pursuance of the Act. We therefore have to refer to the Act and construe them both together. We read the Act into the bond and then proceed to ascertain whether there is or is not a municipal promise or obligation. So that when we read in the certificate that the Parish of Bathurst is indebted to George S. Grimmer, (an extraordinary statement to make if the parish is not an entity capable of being indebted to anybody), we turn to the statute for relief and instruction and we there find that the parish is, in a certain sense, the debtor of Grimmer inasmuch as it will be from the ratepayers of the parish that the money to pay the present loan will eventually come, the bonds authorised by the statute to be issued by the municipality being "*wholly chargeable on the parish.*" And, inasmuch as we are bound to give some meaning to the words of a contract unless they are in fact meaningless, we conclude that it was in that sense the words were used. That granted, as there is no express statement as to *who* would pay Grimmer, only a statement that the thousand dollars "*is payable to Grim-*

mer," we look to the statute and we find that it is payable by the secretary-treasurer of the municipality out of the special fund to be raised from the Bathurst taxpayers. That is sufficient authority therefore, to read into the bond after the words "which is payable," the other words "by the Municipality of Gloucester." And thus we have an absolute covenant for payment on the part of the municipality.

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If the Act authorises the contract and is to be read into it, then there is presented to us such an instrument as the legislature, in my view, most certainly intended, as expressed in its language, an instrument, which otherwise would be a mockery and snare, converted into one of honest intent and legal force—its ambiguities removed and its obscurities made plain.

But suppose the interpretation, I have ventured with great deference to give the bond, is erroneous. There is another ground upon which the county's liability may be rested.

Take the abbreviated words of the bond:—"This certifies that the parish is indebted to Grimmer in the sum of \$1,000, payable to Grimmer with interest on April 6th, 1884."—What do these words "this certifies" mean? Give them any meaning at all and they are synonymous or equivalents of such phrases as these;—"we promise," or "we contract," or "we guarantee" or "we declare it to be the truth." In other words, "we, having borrowed from you \$1,000, promise that the Parish of Bathurst will repay you with interest." There is then a contract by the municipality that a third party will pay. It has not paid; the breach has happened, and the municipality must make good its promise.

It may be said that the statute does not authorise such a contract, but we must look to the substance rather than to the form. The statute authorised the

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municipal bond as security for the municipal loan. The form of this obligation was left to the municipality's appointees. Giving effect to this contract so formed gives effect likewise to the legislative intent and the bondholder gets his debt from the municipality.

I am of opinion that the appeal should be allowed and the verdict at the trial restored, the appellants to have their costs in all the courts.

Appeal allowed with costs.

Solicitor for the appellants : *W. C. H. Grimmer.*

Solicitor for the respondent : *N. A. Landry.*
