

1928
*Feb. 21. EMILE PERRON AND OTHERS (PLAIN- } APPELLANTS;
TIFFS) }

AND

LA CORPORATION DU VILLAGE DU }
SACRE-COEUR DE JESUS (DEFEND- } RESPONDENT.
ANT) }

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

Municipal corporation—Mandamus—Refusal by a municipality to accept payment of money—Debt claimed not to be due—Art. 1141 C.C.

The appellants seek a mandamus to compel the respondent municipality to accept payment by a third party of an alleged debt of its secretary-treasurer.

Held that the appellants cannot succeed, as they have failed to bring their case within the terms of article 1141 C.C. or to establish agency of such third party in making the payment for the alleged debtor.—On the first point, the debt of the secretary-treasurer was not admitted by the respondent and was even contested by the former: it cannot then be said that the payment was “for the advantage of the debtor.” On the second point, the evidence shows that the payment by the third party was not made by him as agent of the debtor but on his own behalf.

Judgment of the Court of King's Bench (Q.R. 44 K.B. 400) aff.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1); affirming the judgment of the Superior Court, Letellier J., and dismissing the appellants' action.

On the 3rd of July, 1925, one Bouffard, a ratepayer of the municipality respondent, took action against its former secretary Lafrance who, he claimed, was short in his accounts as such; and he wanted to force him to reimburse to the respondent the sum of \$2,980.85. On the day the action was to be returned, the secretary's brother, Father Lafrance, former parish priest of the respondent, without his brother's knowledge, so as to stop the action and allow a full settlement at a more opportune moment, came to see Bouffard's lawyer, Mr. Morin, and deposited with him the sum of \$3,000. The matter remained thus until the month

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of April, 1926. Then Bouffard's lawyer remitted to the corporation respondent his cheque to the amount of \$2,544.49, having deducted his costs. This cheque was returned to the lawyer by the corporation, with a letter saying that the corporation had no such claim against the former secretary Lafrance. Then Mr. Morin remitted another cheque to the amount of \$2,980.85, said cheque remaining in the respondent's secretary Delisle's possession without being cashed. Former secretary Lafrance being present at the meeting of the counsel when the first cheque of \$2,544.49 was refused, protested against the acceptance of the cheque, saying he owed nothing to the corporation. The matter remained thus and the second cheque was not accepted. On the 7th of April, 1927, therefore a year after, the appellants, of whom Bouffard was the agent, took the present mandamus as ratepayers, in order to force the corporation to receive, cash and collect the cheque of \$2,980.85.

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Louis Morin K.C. for the appellants.

P. H. Bouffard K.C. for the respondent.

The judgment of the court was delivered orally by the Chief Justice, after hearing counsel as well for the respondent as for the appellants.

ANGLIN C.J.C.—The plaintiffs appellants seek a mandamus to compel the defendant municipality to accept payment by a third party of an alleged debt of its secretary-treasurer. In order to succeed they must make out a case within article 1141 C.C., or establish agency of such third party in making the payment for the alleged debtor.

Two essential elements appear to be lacking in the proof necessary to bring the case within article 1141 C.C. The debt of the secretary-treasurer is not admitted by the defendant and it is contested by himself. Unless such debt is established it cannot be said that the payment is for the benefit of the alleged debtor.

The payment by the third party was not made by him as representative or as agent of the debtor. He had no authority to represent the debtor. This is clearly established by the evidence. And the only possible inference from the proof before us is that the third party did not pro-

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fess to act in the capacity of agent for the alleged debtor but, on the contrary, made the payment avowedly on his own behalf, whether intending it to be taken in satisfaction of any claim against the debtor or, as seems more probable, to be held as a deposit, or guarantee, for the eventual settlement of any such claim by the debtor himself. It is urged that this payment was subsequently ratified by the debtor and, therefore, is as binding upon him and the respondent as if made by his authority. The alleged act of ratification, however, is quite consistent with the debtor's position denying the existence of the debt and with the payment itself having been made not on his behalf but by the third party for his own account. Moreover, it is trite law that liability by virtue of ratification can arise only when in doing the act to be ratified the agent purported to act as such and on behalf of the principal.

Upon these grounds we think it quite clear that neither under article 1141 C.C., nor by virtue of the alleged agency of the third party for the debtor, is any liability established.

The appeal fails and is dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellants: *Louis Morin.*

Solicitors for the respondent: *Bouffard & Bouffard.*
