

# In the Privy Council

No. ~~4~~9. of 1931.

On Appeal from the Appellate Division of the  
Supreme Court of Ontario.

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BETWEEN:

THE CORPORATION OF THE COUNTY OF LINCOLN,  
(Defendant) Appellant,

—AND—

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE,  
(Plaintiff) Respondent.

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## CASE FOR THE APPELLANT

1. This is an appeal from the Judgment of the Appellate Division of the Supreme Court of Ontario, bearing date the 12th day of January, 1931, which reversed the Judgment of the Trial Judge, dated the 24th day of June, 1930, in favor of the Appellant Corporation, hereinafter called the County Corporation, in an action brought by the Respondent Corporation, hereinafter called the Village Corporation. P. 23, L. 1  
P. 16, L. 8

2. The question involved in this appeal is whether the Village Corporation is entitled to recover from the County Corporation under Section 28 of The Highway Improvement Act, Chapter 54 of the Revised Statutes of Ontario, p. 657, 75% of the amount raised by the Village Corporation in the years, 1926, 1927 and 1928, respectively, less the cost of repairs, if any performed by the County Corporation upon any County Road extension or connecting link or upon any road in the Village Corporation, included in the said system during such previous year. P. 2, L. 19

3. By its Statement of Claim, the Plaintiff says:

(2) Under the authority of the Highway Improvement Act and of certain of its own by-laws, the Defendant, prior to the year 1926, established a County Road System throughout the County of Lincoln.

30 (3) That, apart from grants obtained from the Province of Ontario, the cost of constructing, improving, maintaining and superintending the roads included in the said County Road System and other expenditures properly chargeable to the said system are met and raised by the levy of an annual general rate upon all the municipalities, including the Village of Port Dalhousie, in the said County of Lincoln.

(4) For the purpose of meeting the cost of constructing and improving the roads included in the said system the defendant, under the authority of the said Act, has from time to time issued its debentures and the annual debt charges for principal and interest upon such debentures are included in and form part of the said annual general rate levied as aforesaid.

(5) In each of the years 1926, 1927 and 1928, the defendants levied upon the said Village of Port Dalhousie, a general rate for the purposes aforesaid, and each of such rates included amounts for debt charges upon debentures issued as aforesaid and in and for each of the said years the Plaintiff paid over to the defendant the full amount so required to be and raised by it. 10

(6) According to the provisions of the said Act it became the duty of the defendant on or before the 1st day of April in each of the years 1927, 1928 and 1929 to remit to the plaintiff seventy-five per centum of the amount so raised by the Plaintiff in the previous year, namely, in the years 1926, 1927 and 1928, less the cost of repairs, if any, done by the defendant upon any County Road extension or connecting link or upon any road in the said Village included in the said system during such previous year.

P. 6, L. 15

4. The action was tried on an agreed Statement of Facts, the substance of which is as follows:

That the road constructed through the Village Corporation is part of the County Road System and is not an extension or connecting link within the meaning of clause b, subsection 5 of Section 28 of Chapter 54 above referred to. That the agreement dated the 30th of January, 1923, as well as the fact that the payments called for under the Agreement of 1923, were commuted in 1924 by the payment by the County of \$3,296.00. That the payments mentioned in the pleadings stated in Paragraph 10 of the Statement of Claim were duly paid. It was also admitted that the County Corporation in 1926, 1927, 1928 and 1929 made a general levy for maintenance of roads included in the County Road System and for sinking fund and interest on outstanding debentures, which debentures had been issued to raise money for constructing and improving said roads, and for constructing and improving roads embraced under the name of suburban roads. That all levies made by the County Corporation had been paid by the Village Corporation, and that no levy had been made for sinking fund or interest on debentures which may have been issued since 1925, except for suburban roads. 20 30

R.S.O.(1927)  
Ch. 233

5. Under the Municipal Act, Chapter 233, Revised Statutes of Ontario, 1927, Section 45, it is provided that the Council of a County shall be composed of the Reeves and Deputy-Reeves of the Towns, not being separated Towns, and of the Villages and Townships of the County. The Council of a County has in addition to other powers, jurisdiction over all County Roads in the County. 40

R.S.O.(1914)  
Ch. 40

6. Under The Highway Improvement Act, Chapter 40 of the Revised Statutes of Ontario, 1914, by sub-section 1 of Section 4, it is provided that "The Council of any County may by By-law adopt a plan for the improvement "of highways throughout the County, by assuming highways in any municipal-

“ity in the County in order to form or extend the system of County Highways, “and designate the highways to be assumed and improved or extended to form “or to be added to such system.”

7. Under the provisions of this Act, the County Corporation adopted a system of County Highways. (See Schedule to By-law No. 600 passed on the 3rd day of February, 1917); the road leading through the Village Corporation being one of them. This road was constructed in the year 1923. Exhibit  
No. 6  
P. 42, L. 1

8. Under the Act of 1914, the County Corporation “may from time to time while carrying on a plan of highway improvement under this Act, by By-  
10 “law, make grants to Villages or Towns not separated from the County, for the “purpose of improving such highways or portions of highways in such Villages “or Towns as may be designated in such By-law and which are extensions of, or “form connections between different portions of County Roads, but no such “highway shall by reason of such By-law or of the expenditure of any such “grant thereon, be deemed to have been assumed by the County or to form part “of the system of County Highways.” In 1926, the whole of the Act of 1914 and subsequent Highway Acts and amendments were repealed and the Act of 1926 was re-enacted as Chapter 54, Revised Statutes of Ontario, 1927. c. 40.  
R.S.O.  
1914.  
  
c. 54  
R.S.O.  
1927

9. Section 28, of the said Act reads as follows:

- 20 (1) Where a street in any urban municipality not separated from the County is not a part of the County Road System but is an extension of or connects different portions of roads included in the County Road System, the County shall construct or improve the roadway on such street to the extent of twenty feet in width and shall assume the cost thereof, and the expenditure thereon, to the extent approved by the Minister, shall form part of the expenditure in carrying out the plan of highway improvement in the County for the purpose of ascertaining the amount of aid which may be granted to the County under this Act, but no such work shall be performed by the County, unless and until an agreement has been entered into with such urban municipality. S. (1) S. 28
- 30 (2) Where the roadway on such street exceeds twenty feet in width all expenditure thereon rendered necessary by such excess width and all other special work on the street shall be borne by the urban municipality. S. (2) S. 28
- (3) The Corporation of the urban municipality shall not proceed with the work until an agreement with the County has been entered into in such form as the Minister may prescribe or approve. 1926, c. 15, s. 29 (1-3). S. (3) S. 28
- 40 (4) Where any street described in subsection 1, is part of the County Road System, the Council of the County shall undertake the work as agreed upon with the Council of the municipality and the urban municipality shall pay its proportion of the cost of the work to the County upon the report of the County Road Superintendent and the requisition of the County Road Committee. 1926, c. 15, s. 29 (4); 1927, c. 22, s. 6 (1). S. (4) S. 28
- (5) An urban municipality situate within a County, but not separated therefrom for municipal purposes whether there is or is not any such County Road extension or connection in such urban municipality, shall be subject S. (5) S. 28

S. (5) S. 28 to the annual general levy for County Road purposes under the By-law mentioned in section 12, but the Council of the County shall on or before the 1st day of April in each year, remit in the case of a Town, fifty per centum, and in the case of a Village seventy-five per centum of the amount raised by such rate in the Town or Village in the previous year less the cost of the repairs, if any, done by the County upon any such County Road extension or connecting link or upon any road in such urban municipality included in the County Road System during the previous year.

(a) Any moneys so received by the Town or Village shall be expended under the supervision of the County Road Superintendent upon 10 streets in the municipality designated by the Minister.

(b) No such rebate shall be made for any year during which the construction or rebuilding of any such extension or connecting link has been in progress. 1926, c. 15, s. 29 (5); 1927, c. 22, s. 6 (2); 1928, c. 18, s. 3.

S. (6) S. 28 (6) Subject to the provisions of subsection 5, the amount so repaid by the County shall be deemed to form part of the expenditure in carrying out a plan of highway improvement in the County for the purpose of ascertaining the amount of aid which may be granted to the County under this Act.

S. (7) S. 28 (7) The provisions of subsection 5 shall not apply to an urban municipality which is receiving, or has heretofore received under an agreement with the County Council special grants for the purpose of road improvement in the urban municipality until the calendar year following that in which such agreement expires. 1926, c. 15, s. 29 (6-7). 20

P. 17 (1) c.  
54 R.S.O.  
1927

10. Under section 17, subsection 1 of Chapter 54 of the said Revised Statutes of Ontario, the Minister, that is, the Minister of Public Works and Highways, may direct payment to the County Corporation of a sum equal to fifty per centum of the amount of such expenditure or such other proportion as may be authorized by this Act, or any other Statute. Upon all work or highway construction in the said County prior to 1926, and for which debentures have been issued, the Minister has paid fifty per centum of such expenditure and therefore would have no authority under the Act to pay fifty per centum of the rebate mentioned in subsection 6 of section 28. 30

11. The property of the ratepayers of each municipality comprising the County Corporation is assessed for that municipality, and an equalization is made by the County Council of the assessment for all municipalities in the County Corporation and upon this equalized assessment the County Corporation levies its rates for County purposes including the expenditure on County and suburban roads.

P. 25, L. 21

12. Under and by virtue of an agreement made the 30th day of January, 1923, between the County Corporation and the Village Corporation, the County Corporation agreed to pay the Village Corporation \$284.70, annually, for a period of twenty years, from the 1st day of January, 1923, in connection with the construction of certain sewers in the said Village. Subsequently this amount was commuted by a cash payment of \$3,296.00. 40

13. Under the interpretation clause of the said Highway Improvement Act, c. 54. R.S.O.; 1927, subsection "h" of Section 1, a "roadway shall mean "and include the paved, metalled or travelled portion of the highway, together with any ditches, drainage or other constructions incidental thereto."

14. The Trial Judge, Mr. Justice Wright, referring to Subsection 6 of Section 28, says,—“In my view however, the provisions of the last cited subsection raise an insuperable obstacle to the plaintiff's claim so far as relates to County Highways. P. 13, L. 31

10 “This subsection provides that the amount so repaid by the County shall “be deemed to form part of the expenditure in carrying out a plan of highway “improvement for the purpose of ascertaining the amount of aid which the “County should receive from the Province. Section 17 of the Revised Act “requires that the County Council should annually or oftener submit a state- “ment showing the expenditures including payments made to Towns and “Villages—and that the Minister may direct the payment to the County of a “percentage of such expenditures.

20 “This contemplates the payment upon construction of a share of the cost “by the Province, and it would seem unreasonable that the County would be “entitled to receive from the Province a proportion of the original cost, and “also a proportion of the annual levy to meet the debentures issued for the “purpose of paying the balance of the original cost—in other words the govern- “ment would be required to make a second grant.

“This would be the effect if the County of Lincoln is entitled to include “in its claim from the Province a rebate granted by it to the Plaintiff municipal- “ity in respect of the rate levied to meet the maturing debentures issued to “defray the original cost. This would seem an unreasonable result, and if “possible, to be avoided.

30 “If the contentions of the plaintiff were given effect to, it would change “the financial scheme or arrangement under which the highways were con- “structed and give the legislation a retroactive effect as to the rights of the “respective municipalities. Such a construction should only be given effect “to, unless it could not be avoided without doing violence to the language of “the enactment. See Craies on Statute Law, 3rd ed. p. 326 and cases there “cited. Here it is possible to construe the provisions of the Act without giving “it a retrospective effect.”

15. The County Corporation humbly submits that the Judgment of the Trial Judge was correct and prays that its appeal be allowed or that the Judgment of the Appellate Division of the Province of Ontario, be varied, upon the following among other reasons. P. 16, L. 7 P. 23, L. 1

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## REASONS

1. Because the levies to raise the interest and sinking fund to pay the debentures for the construction of the roads in question were not made “under the By-law mentioned in Section 12,” all such levies were made under the Municipal Act as authorized by Section 14, R.S.O., 1927, Chapter 54.

2. Because under Section 28, before any rebate can be returned or remitted, a road must be constructed under an agreement between the County Corporation and the Village Corporation and this road was constructed before this section was enacted.

3. Because the legislation R.S.O., 1927, c. 54, is prospective and not retrospective, it applies only to roads constructed after it was enacted.

4. Because the Judgment of the Appellate Division would change and alter the financial structure of the County under which the debentures for road construction purposes were issued.

5. Because the meaning placed on the said section by the Appellate 10 Division would impair the obligation of a contract.

6. Because it is a taxing Act and a taxing Act is never retrospective unless expressly so stated by the Legislature.

7. Because a Statute dealing with civil rights is never retrospective unless there is "some declared intention of the Legislature, clear and unequivocal" or unless some circumstances rendering inevitable that we should take the "other view."

8. Because sub-section 6 of Section 28 shows that the rebate only applies to roads constructed after 1926, because to allow 50% of the rebate returned or remitted on the amount levied for debentures would be exceeding the total 20 amount of 50% allowed by Section 17 of the Act.

9. Because the Government has already paid 50% of the cost of construction of the roads constructed prior to 1926.

10. Because it would change and alter the entire financial structure of the County finances and would be unworkable.

11. Because the ratepayers of other municipalities who have been assessed and paid their rates or taxes for roads constructed prior to 1926, would be called upon to bear an extra burden.

12. Because the Agreement of 30th of January, 1923, is still in force and comes within the provisions of subsection 7 of Section 28 and this action is 30 therefore premature.

GEORGE LYNCH-STANTON,

A. W. MARQUIS,

Of Counsel for the Appellant.