

In the Privy Council

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

BETWEEN:

THE CORPORATION OF THE COUNTY OF LINCOLN

(Defendant) Appellant;

—and—

THE CORPORATION OF THE VILLAGE OF PORT DALHOUSIE

(Plaintiff) Respondent.

CASE FOR THE RESPONDENT

10 1. This is an appeal from the judgment of the Appellate Division of the Supreme Court of Ontario dated the 12th day of January, 1931, which allowed the appeal from the judgment of the Trial Judge Mr. Justice Wright dated the 24th of June, 1930, wherein the Appellant was Defendant and the Respondent was Plaintiff. P. 23, l. 1
P. 16, l. 7

20 2. The question for decision arising upon this appeal is whether the Respondent (Village), under the provisions of the Highway Improvement Act (R.S.O. 1927, c. 54) is entitled to recover from the Appellant (County) seventy-five per cent. of the moneys raised by the said Village and paid to the County on the annual general levy for County road purposes for the years 1926, 1927 and 1928, and irrespective of when the money was expended by the County. The facts are not in dispute and may be stated shortly as follows:

3. The Appellant and Respondent are Municipal Corporations and the Respondent Village is an urban municipality situate within the County of Lincoln and not separated therefrom for Municipal purposes. P. 2, l. 16

4. Under the authority of the Highway Improvement Act (R.S.O. 1927, c. 54, section 12) and of certain of its own by-laws the Appellant County, prior to the year 1926, established a County road system throughout the County of Lincoln. P. 2, l. 19

30 5. That apart from grants obtained from the Province of Ontario the cost of constructing, improving, maintaining and superintending the roads P. 2, l. 22

RESPONDENT'S CASE.

included in the said County road system are met and raised by the levy of an annual general rate upon all the Municipalities, including the Respondent Village of Port Dalhousie, in the said County of Lincoln.

P. 2, l. 28

6. For the purpose of meeting the cost of constructing and improving the roads included in the said system the Appellant County, under the authority of the Highway Improvement 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.

P. 6, ll. 24,
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7. In each of the years 1926, 1927 and 1928 the Appellant levied upon the said Respondent Village 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 Respondent Village paid over to the Appellant County the full amount so required to be raised by it the said Village. 10

P. 3, l. 19

P. 5, ll. 1, 2

8. It is admitted that the Appellant repaid to the Respondent certain monies in respect of the levies made in 1926, 1927 and 1928 but refused to pay any proportion of the rates raised for the purpose of paying the interest or sinking fund on or in respect of the debentures issued for the construction and maintenance of County roads prior to 1926 or to rebate any sum whatever in respect of suburban roads. 20

9. Prior to 1926 County Councils, while carrying out a plan of highway improvement under the Highway Improvement Act, were given power by by-law to 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. (R.S.O. 1914, c. 40, section 5 (1)).

10. This power by County Councils voluntary to make or withhold from Towns and Villages financial relief for monies which the said Towns and Villages were called upon to contribute to County roads under the County roads system was altered in the year 1926 so as to convert the claim of the said Towns and Villages upon the generosity of the County into statutory rights for relief. 30

11. Subsection 5 of section 28 (1926, c. 15, s. 29 (5)) of the Highway Improvement Act, (R.S.O. 1927, c. 54) which was first introduced in the year 1926, reads as follows:

“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 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 40

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 monies so received by the Town or Village shall be expended upon streets in the municipality designated by the Minister.

10 (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))."

12. It is admitted that there was no construction or rebuilding of any extension or connecting link in progress during any of the years 1926 to 1929 (both inclusive). ^{P. 6, ll. 16, 17}

13. The Highway Improvement Act section 28 sub-section 5 was amended in 1930 as follows:

20 (c) "In determining the amount of such rebate payable in the year 1931 and thereafter the amount raised by the Corporation of a Town or Village for the purpose of paying off its share of any debenture debt of the County shall not be considered." (Highway Improvement Act 1930, c. 10, sec. 5, sub-sec. 2 (c)).

14. The Trial Judge the Honourable Mr. Justice Wright was of the opinion that the Plaintiff Corporation was entitled to succeed in this action and to recover the rebate claimed from the defendant County but for the provisions of sub-section 6 of section 29 of The Highway Improvement Act 1926, now section 28 R.S.O. 1927, c. 54. ^{P. 13, ll. 27, 29}

30 (6) "Subject to the provisions of sub-section 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."

The Learned Trial Judge held that "this sub-section 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 statement 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." ^{P. 13, l. 34}

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- P. 13, l. 43 15. He held that 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, or in other words that the government would be required to make a second grant."
- P. 15, l. 41
P. 16, l. 1 16. In the result he held that the only relief to which the plaintiff was entitled in respect of the monies levied by it and remitted to the County was to pay its share of debentures issued in respect of suburban roads after the Act of 1926 came into force and to ascertain what, if any, monies were due in respect thereof, and directed a reference to the Local Master at St. Catharines. 10
- P. 23, l. 30 17. From this judgment the (Plaintiff) Respondent appealed and the Appellate Court (Mulock, C. J., Magee, Hodgins, Grant and Middleton, J. A.) allowed the appeal and granted the prayer of the Plaintiff and directed that there should be a reference to ascertain the amount of the rebate to which the plaintiff was entitled in the years 1927, 1928 and 1929.
- P. 20, l. 9 18. Mr. Justice Middleton in discussing the principle of the Act stated "The underlying principle of the Highway Improvement Act is that it is unjust and inexpedient to cast the whole burden of main highways upon the local municipalities through which they may run. These highways serve the community at large and an attempt is made to provide for an equitable distribution of the financial burden. The change made in 1926 was to give the local municipality a right to definite relief from the burden of taxation created by the undertaking. The financial relief was intended to be real and substantial." 20
- P. 21, ll. 8
to 17. 19. Mr. Justice Middleton in further discussing the Trial Judge's reasons for not granting full relief to the Appellant uses these words "The learned Judge rightly infers that this would mean that the county would receive more than one grant from the province in aid of the same work, the official grant when the work is undertaken and an additional grant when the county aids the local municipality and that this conclusively indicates that section 5 relied upon by the village cannot have its prima facie significance. I cannot in any way agree with this. I cannot understand why a right plainly conferred upon the village should be taken from it because the right conferred by the county with respect to a refund from the province is deemed to be unduly in ease of the county. The right of the village is not to be made in this way dependent upon the right of the county." 30
20. The Respondent humbly submits that the judgment of the Appellate Division hereinbefore referred to is right and that this appeal should be dismissed for the following among other

REASONS

1. Because the language of section 28 (5) of the Highway Improvement Act granting the rebate to the Respondent Village of 75 per centum is plain and unambiguous.
2. Because the Appellant County has a right to recover from the Province up to 50 per centum the amount so repaid to the Village as a rebate as part of its expenditure in carrying out the plan of highway improvement.
3. Because in any event the right to the rebate plainly conferred upon the Respondent Village should not be dependent upon the right of the County
10 to recover a refund from the Province.
4. Because the Appellant County issuing debentures for its own purposes payable over a series of years should not thereby deprive the Respondent Village of its plain rights under section 28 (5) to be recouped for its share of the entire cost.
5. Because no relief was granted to the Respondent Village prior to the year 1926 with reference to the construction, improvement or maintaining of County roads for which these debentures were issued by the Appellant County.
6. Because the rebate to the Village is to be made with respect to all monies which were paid by the Village for the construction, improvement and
20 maintaining of the County roads.
7. Because in granting the rebate to Villages there is no distinction made in the Highway Improvement Act, sub-section 5, section 28, as between payments which are made on account of debentures issued for work done prior to 1926 and payments that are made with respect to new work.
8. Because the annual general levy mentioned in sub-section 5, section 28 of the said Act made by the County is for County road purposes whether for present or future construction or to pay for past construction in the form of debentures or otherwise.
9. Because suburban roads are selected from roads forming part of the
30 County road system and continue to be under the jurisdiction and control of the County Council and the County is not relieved from paying the debt created by the debentures issued to defray the cost of construction.
10. Because suburban roads retain their character as County roads and as they are not expressly excluded from the operation of sub-section 5 of section 28 the rebate mentioned in that section includes a rebate of the rate levied for suburban roads as well as for County roads.
11. Because the amendment to the Highway Improvement Act made in 1930 declaring the law as to a rebate to Towns and Villages on monies raised by the County on its debenture debt in the year 1931 and thereafter thereby
40 alters and interprets the earlier Act of 1926 as contended for by the Respondent.

A. COURTNEY KINGSTONE.