1884
*May 6.
1885
*Jan. 12.

THE QUEBEC WAREHOUSE COMPANY (PETITIONERS IN THE COURT BELOW) ..... APPELLANTS;

AND

THE CORPORATION OF THE TOWN OF LEVIS (APPELLANTS IN THE COURT BELOW) ..... RESPONDENTS.

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

Expropriation—Right of Way—Cost of—Guarantee—By-law—Ultra vires—Injunction—44 and 45 Vic. ch. 40 sec. 2—Construction of.

*PRESENT—Sir W. J. Ritchie C.J., and Strong, Fournier, Henry and Gwynne JJ.

1884

QUEBEC WAREHOUSE CO. v. LEVIS.

Under 44 and 45 Vic. ch. 40 sec. 2 (P.Q.), passed on a petition of the Quebec Central Railway Company, after notice given by them, asking for an amendment of their charter, the town of Levis passed a by-law guaranteeing to pay to the Quebec Central Railway Company the whole cost of expropriation for the right of way for the extension of the railway to the deep water of the St. Lawrence river, over and above $30,000. Appellants, being ratepayers of the town of Levis, applied for and obtained an injunction to stay further proceedings on this by-law, on the ground of its illegality. The proviso in section 2 of the Act, under which the corporation of the town of Levis contended that the by-law was authorized, is as follows: "Provided that within thirty days from the sanction of the present Act, the corporation of the town of Levis furnishes the said company with its said guarantee and obligation to pay all excess over $30,000 of the cost of expropriation for the right of way." By the act of incorporation of the town of Levis, no power or authority is given to the corporation to give such guarantee. The statute 44 and 45 Vic. ch. 40, was passed on the 30th June, 1881; and the by-law forming the guarantee was passed on the 27th July following

Held, reversing the judgment of the Court of Queen's Bench, L.C., appeal side, and restoring the judgment of the Superior Court, that the statute in question did not authorize the corporation of Levis to impose burdens upon the municipality which were not authorized by their acts of incorporation or other special legislative authority, and therefore the by-law was invalid, and the injunction must be sustained. (Ritchie C. J. *dubitante.*)

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing the judgment of the Superior Court in this case.

By the Quebec statute, 44-45 Vic. chap. 40, the Quebec Central Railway Company was authorized to construct a railway from certain wharves in the town of Levis to the frontier of the State of Maine, using for that purpose such portions as it might see fit of the Levis and Kennebec Railway, which it had acquired at sheriff's sale.

The second section of this statute enacts that in constructing the line of railway, the company shall be

1884

QUEBEC WAREHOUSE CO. v. LEVIS.

bound to continue from the present terminus of the Levis and Kennebec Railway into Notre Dame ward, and erect a station there, and thence through certain other wards and certain villages to arrive at deep water in Lauzon ward. This obligation, however, was only imposed upon the company "provided that, within "thirty days from the sanction of the present Act, the "corporation of the town of Levis furnishes the said com- "pany with its valid guarantee and obligation to pay all "excess over thirty thousand dollars of the cost of expro- "priation, for the right of way upon the said described "route, in so far as the said route traverses the parish of "Notre Dame de Levis, Notre Dame and Lauzon wards "in the town of Levis, and the villages of Bienville and "Lauzon, following the brown line shown on the plan "of the said company, to be deposited for reference in "the Public Works Department of this Province, to the "point of intersection with the red line upon said "plan."

The statute was sanctioned on the 30th of June, 1881.

On the 27th of July following, the corporation of the town of Levis passed a by-law (referred to at length in the judgments of this court) which purports to declare and enact that it "engages by these presents to pay, and guarantees to pay, to the said company" the said excess of cost of expropriation beyond $30,000, provided the line passes according to the brown line to the intersection with the red line on said plan. The by-law, so far, followed the wording of the statute, but it also added to its proviso a qualification which is not found in the statute, and says: "The whole such as shown in the "said plan at the time of the passage of the said Act, "and according to the breadth and depth at that time "estimated and reported on by the engineers of the "grounds to be expropriated on said survey."

The Quebec Warehouse Company the appellants, as

proprietors and ratepayers within the town of Levis, applied for a writ of injunction to restrain the corporation and the railway company from carrying out or acting upon this by-law, and on the 16th of August the writ issued returnable on the 1st September, 1881.

The grounds invoked in support of the injunction were:—

1. That the corporation had no power to enter into any such guarantee or contract.

2. That the by-law was not in conformity with the law which gives it the right to grant aid to railways, that it was not accompanied with the formalities prescribed by that law, and that it made no provision for any assessment or for a sinking fund to meet the liability to be incurred under it.

3. That the by-law was null because it fixed no amount and assumed an unlimited liability.

4. That the by-law referred to a guarantee for a line not mentioned in the statute, but mentioned in a certain report made by engineers.

5. That the by-law was illegal and null.

In answer to these pretentions the corporation pleaded:—

1. That at the time of the issuing of the writ of injunction, the by-law had been adopted and published as required by law and within the delay fixed by the statute, that the delay for giving the guarantee had also expired, that nothing more could be done to give the guarantee or to proceed further upon or in virtue of the by-law, that the powers of the corporation were at an end in this matter, that there was nothing left which the corporation could be restrained or prevented from doing, and that consequently the writ of injunction was without cause, object or effect.

By a second plea, the corporation contended that the by-law was valid and authorized by its act of incorpora-

1884

QUEBEC WAREHOUSE Co. v. LEVIS.

tion, and by the statute above referred to; that the only possible effect of the variance between the by-law and the statute, would be to restrict the liability of the corporation, and that the Warehouse Company have no interest in setting it up.

Upon the issue thus joined between the parties, the Superior Court in the first instance declared the injunction perpetual, on the ground that the by-law was *ultra vires*. Upon appeal to the Court of Queen's Bench for Lower Canada, this judgment was reversed and the injunction was dissolved, the respondent being declared authorized by law to adopt the by-law.

Irvine Q.C., for appellants.

Languedoc for respondents.

The points of argument relied on by counsel and cases cited are reviewed in the judgments hereinafter given.

Sir W. J. RITCHIE C.J.—The questions to be decided in this case are entirely points of law, there being no controversy as to the facts.

An Act was passed by the Legislature of the Province of Quebec, in the year 1881, amending the charter of the Quebec Central Railway Company. This Act authorized the company to extend their line to the deep water of the river St. Lawrence, and obliged them to continue it "from the present terminus of the said Levis and Kennebec Railway, in the parish of Notre-Dame de Levis, into Notre-Dame ward, in the town of Levis, and erect a station there; thence, traversing Lauzon ward, in the said town of Levis, and the villages of Bienville and Lauzon, to arrive at deep water in said Lauzon ward; provided that, within thirty days from the sanction of the present Act, the corporation of the town of Levis furnishes the said company with its valid guarantee and obligation to pay all excess over thirty

thousand dollars of the cost of expropriation for the right of way upon the said described route, in so far as said route traverses the parish of Notre-Dame de Levis, Notre-Dame and Lauzon wards, in the town of Levis, and the villages of Bienville and Lauzon, following the brown line shown on the plan of the said company to be deposited for reference in the Public Works Department of this province, to the point of intersection with the red line upon said plan."

After passing of this Act, the council of the town of Levis passed a by-law, which is as follows:—

By-law concerning the railway to be built by the Quebec Central Railway Company:

Seeing that by the Statute of this province, adopted at the last Session of the Legislature of the Province of Quebec, and entitled "An Act to amend the plans of the Quebec Central Railway," it was, amongst other things, declared that the intended road to be constructed should be according to the plans mentioned in the said Act, provided that within thirty days of the sanction of the said Act the corporation of the town of Levis engages by its legal authority to pay to the said company, and guarantees to pay to it, for the whole cost, over and above the thirty thousand dollars appropriation, for right of way on the line mentioned in said Act, always providing the said line passes through the parish of Notre-Dame de Levis and Notre-Dame and Lauzon wards, in the town of Levis, and villages of Bienville and Lauzon, according to the brown line marked on the plans of the said company, deposited for reference in the Department of Public Works of this province, just to the point of intersection with the red line on said map.

Considering that it is opportune to give the said guarantee and obligation, in order to secure in the interests of this town, the building of the said road according to the brown line in the said plan, it is by the present by-law declared and enacted:—

The corporation of the said town fully appreciating the value and advantage which will accrue to it by the said Act, and in order to give effect to it (the corporation) engages by these presents to pay, and guarantees to pay to the said company, the whole cost over and above the thirty thousand dollars expropriation, for right of way on the line mentioned in said Act passes through the parish of Notre-Dame de Levis and Notre-Dame and Lauzon wards, in the town of Levis, and the villages of Bienville and Lauzon, according to the

1885

QUEBEC WAREHOUSE CO. v. LEVIS.

Ritchie C.J.

brown line marked on the plan deposited as aforesaid. just to the point of intersection with the red line on said plan. The whole such as shown in the said plan at the time of the passage of said Act, and according to the breadth and depth at the time estimated and reported on by the engineers of the grounds to be expropriated on said survey. The present obligation and guarantee must be applied to and cover the cost of expropriation of the necessary ground to erect a station of the said road, such as projected, in Notre-Dame ward of this town.

GEORGE COUTURE,
Mayor.

The appellants being ratepayers of the town of Levis, and having an interest in the expenditure of the funds of the corporation, applied for and obtained an injunction to stay further proceedings on this by-law, on the ground of its illegality, and it is the legality of that by-law which is now in question.

The parties admitted that the various publications of notice required by law to be made respecting the by-law were duly made. The inclination of my mind was to confirm the judgment of the court below and dismiss the appeal, but the rest of the court being strongly of opinion to reverse, I do not feel sufficiently strong in my opinion to differ from them; I, therefore, assent to the dismissal of the appeal, but with hesitation and doubt.

STRONG J.—The decision of this appeal depends entirely upon the question whether the 2nd section of the Act of the Province of Quebec, 44 and 45 Vic. chap. 40, conferred power upon the corporation of the town of Levis to give the guarantee mentioned in that clause to pay the excess over $30,000 of the costs of expropriation required for the extension provided for by the Act, and concurring in opinion with the minority of the Court of Appeal, and the judgment of Mr. Justice McCord in the Superior Court, I am of opinion that no such authority was conferred. It is manifest that such

a guarantee would be altogether *ultra vires* of the general statutory powers of a municipal corporation in the Province of Quebec, and that the by-law authorizing it must be altogether void unless it can be referred to some special legislative authority. Then the only authority of the kind which has been or could have been invoked is this section 2, which appears to me to be altogether insufficient for the purpose. There are no enabling words in this clause, the material part of which is as follows:

> Provided that within thirty days from the sanction of the present Act the Corporation of the Town of Levis furnishes the said company with its valid guarantee and obligation to pay all excess over $30,000 of the cost of expropriation.

This provision does not assume to give the power; it rather assumes that the council already had or would obtain it. It is impossible, having regard to the general principles upon which private acts of parliament and acts imposing taxation and public burdens are to be construed, to say that a provision of this kind contained in a private act—to which the general public are in no sense parties—expressed in this indirect way, can have the effect of authorizing the imposition of a serious public burden. Such a power is not even necessary to be implied from the language used, and even if it were, necessary implication would be insufficient, direct and express words granting the power being indispensable in such a case. I construe the act as saying that the extension may be constructed, provided the Levis Council, either already having or procuring by legislation the right so to do, shall give the required guarantee; just this and no more is what is said, and this is insufficient to sustain the impeached by-law. It is well established by authority that an erroneous assumption in an Act of Parliament of a particular state of the law has not the effect of altering the law so as to make it

1885

QUEBEC WAREHOUSE CO. v. LEVIS.

Strong J.

conform to the mistaken impression of the legislature. See the cases collected in Maxwell on Statutes (1).

I am of opinion that the appeal should be allowed, the injunction discharged and the action dismissed in the Superior Court with costs to the appellants in all the courts.

FOURNIER J.—I am of the opinion expressed by Mr. Justice McCord in his judgment. It is shown very clearly that the town of Levis had not the power to vote money for the railway. We find no special statute—except that passed at the instance of the Quebec Central Railway for their own purposes—in which it is incidentally assumed that if the corporation pass a by-law for $30,000, such work shall be done. Evidently the writer of the bill thought the power existed, but it is clear that the town had no such power, and Judge McCord has given very strong reasons for the decision that there is no authority in the town to pass such a by-law.

HENRY J.—I am of opinion that the corporation of Levis had not the power to impose the tax that has been contested here, and I am also of opinion that the proceedings by injunction were justifiable. The time had passed, of course, for the carrying out of what was intended, provided the railway company objected to it; but, if they chose to consent to it, it was within the power of the corporation to have passed the resolution for taxation at any time afterwards. Therefore, in my opinion, the injunction was the proper remedy to stop them from agreeing with the railway company to carry out what was mentioned in the Act of Parliament. It is true, the Act of Parliament laid an obligation on the railway company to take a particular course, provided the corporation were willing and took the proper means for

(1) Ed. 2, p. 374 to p. 381.

paying a certain amount. I presume it was understood and believed at that time that the corporation had power under its charter to impose the tax; so no power was given by that Act to impose that tax. As there was no power given to the corporation to impose the tax upon the inhabitants, and their charter did not give it to them, I hold, therefore, that there was no authority for imposing the taxation upon the inhabitants of the town. Under the circumstances, then, I think the plaintiff is entitled to recover, and that the injunction should not have been dissolved.

GWYNNE J.—This is a proceeding by petition under the provisions of the statute of the Province of Quebec, 44th and 45th Vic. ch. 40, at the suit of the Quebec Warehouse Co. as ratepayers of the town of Levis, praying for an injunction to restrain the corporation of the town of Levis from proceeding further with carrying out the requirements of a certain by-law, passed by the council of the corporation, and which as is contended is *ultra vires*, or in any way to act thereon. The only objections made to the right of the petitioners to maintain the proceeding instituted by them are:—1st. That the by-law, the validity of which is impugned, is a good and valid by-law, and is authorized by Act of the Legislature of the Province of Quebec, 44th and 45th Vic. ch. 40.

2nd. That the by-law having been passed, as it appeared to have been two days before the filing of the petition praying for an injuction, nothing remained to be done under it that could be restrained by injunction; and

3rd. That no injury can be sustained by the petitioners justifying the interference of the court by way of injunction.

The Manchester, Sheffield & Lincolnshire Railway

1885

QUEBEC WAREHOUSE CO. v. LEVIS.

Gwynne, J.

Co. v. *Worksop Local Board of Health* (1); *MacCormack* v. *The Queen's University* (2); *Pattison* v. *Gilford* (3); and *Evan* v. *The Corporation of Avon* (4); were relied upon by the learned counsel for the respondents for the purpose of establishing, as he contended that they do establish, that according to the practice prevailing in the English courts, as to granting injunctions, the petitioners in the present case have no right to the relief by way of injunction prayed for by them, but these cases, rightly understood, do not support that contention. In *The Manchester, Sheffield & Lincolnshire Railway Co.* v. *The Worksop Local Board of Health*, the plaintiffs, who were owners of the Chesterfield and Gainsborough Canal which runs through Worksop, filed their bill whereby they prayed for an injunction to restrain the defendants, the district board of health, from diverting water from the canal and from fouling and polluting the water in the canal by using it to cleanse drains and sewers; and, also, to restrain them from permitting a sewer already constructed by them to communicate with a covered drain or watercourse at the bottom of the Doncaster road, and a tunnel under the plaintiffs' railway, or from using the same without the consent in writing of the plaintiffs first obtained for that purpose.

V. C. Sir W. P. Wood, before whom the application for the injunction first came, being of opinion that the case, which was peculiar in its circumstances, was properly one for an action at law, made an order which, though not in terms for an injunction, had the effect of an injunction until further order, with liberty to the plaintiffs to bring an action. On appeal from this order the Lords Justices slightly varied it, directing the appli-

(1) 3 Jur. N. S. 304.
(2) 15 W. R. 733 and Ir. L. Rep. 1 Eq. 160.
(3) L. R. 18 Eq. 259.
(4) 29 Beav. 144 and 6 Jur. N. S. 1361.

1885

QUEBEC WAREHOUSE CO. v. LEVIS.

Gwynne J.

cation for an injunction to stand over until further order, with liberty to either party to apply to the Court as they might be advised either before or after the hearing. Upon the case being brought to a hearing before the Master of the Rolls, although he was of opinion that the course suggested by the Vice Chancellor would, under the circumstances of the case, have been the most satisfactory to have been adopted, nevertheless he made a decree granting to the plaintiffs an injunction to restrain the defendants from permitting to remain open, and also from opening or permitting to be opened, any side sewer or other sewer in the plaintiffs' bill mentioned so long as the said main sewer shall run through the said covered drain in the plaintiffs' bill mentioned, or otherwise discharge itself into the canal of the plaintiffs, all parties to have liberty to apply as they might be advised, and the plaintiffs to be at liberty to bring such action as they might be advised. In pronouncing judgment the Master of the Rolls, Sir John Romilly, said:—

I think it impossible for this Court to grant a mandatary injunction to compel the defendants to undo all the works which, as they allege, are absolutely necessary to a plan they will have to form for the drainage of this district under the duties imposed upon them by the Legislature, and by which they will, as they allege, carefully guard against the evil apprehended by the plaintiffs. If it should hereafter appear that the defendants are not acting *bonâ fide*, that their assertions are devoid of truth, this court must deal with them as best it can, but at present I am of opinion that this court must give faith to the solemn and repeated assertions that they do not intend to inflict this injury upon the plaintiffs.

And being of opinion that the Acts under which the defendants exercised their power, did not justify them polluting the water of the canal, or entitle them to drain their sewer into it without the sanction and consent of the plaintiffs, he made a decree for an injunction to issue to the extent above stated. That case is obviously distinguishable from the present one, as also is *Mac-*

1885

QUEBEC WAREHOUSE CO. v. LEVIS.

Gwynne J.

Cormack v. *The Queen's University*. In that case a petition was filed by three graduates of the university as petitioners, praying that it might be declared that a royal charter granted to the university in 1866, was inconsistent with one granted in 1864, and that a resolution of the senate accepting the supplemental charter might be declared void; and for an injunction against doing any act to accept the same, or conferring any degrees in pursuance of its provisions; to this suit the university and the members of the senate were made parties respondents, but the attorney general was not a party, and the point adjudged was that the granting of university degrees is a branch of the royal prerogative, as also is the deputing of the power to a university, and that if the acceptance of the supplemental charter by the senate alone was, as was contended by the petitioners, invalid, no degrees could be conferred under it, and if, notwithstanding the university or senate should affect to exercise the power, they would be arrogating to themselves the exercise of the Queen's prerogative, and moreover, there would be injury to the public by the giving of titles which were represented to be valid degrees, but which upon the supposition would be worthless, and if, on the contrary, the petitioners were wrong in their view as to the invalidity of the acceptance of the charter, then they would be, by their suit, seeking to interrupt the due exercise of the Queen's prerogative by those to whom she had deputed it, and to deprive all the Queen's subjects who might claim degrees under the powers conferred by the supplemental charter, of the advantages to which they are entitled; and so that the rights either to be asserted by the petitioners, or to be defended against them, were those of the Queen and the public, and that the attorney general alone was the proper person to represent such

rights. Upon the authority of *Evan* v. *The Corporation of Avon*, it was held that a graduate as a member of a corporate body, equally as any other plaintiff, in order to maintain a suit against the corporation must show some injury to himself as an individual to be redressed or prevented, and it was held that the conduct of the majority of the senate in assuming to accept the supplemental charter on behalf of the university, and proceeding to act under it and grant degrees under it, was not an injury to an individual graduate which the law could recognize. In *Evan* v. *Avon* it was decided that a suit, against a corporation not within the operation of 5 & 6 Wm. IV. ch. 76, to enforce public trusts, must be filed by the attorney general and not by an individual. In that case a single burgess filed his bill against a municipal corporation not within the Municipal Corporations Act, and praying for an injunction to restrain them from selling certain property and for an account. The Master of the Rolls, pronouncing judgment dismissing that bill upon a general demurrer filed thereto, says:

Primâ facie an ordinary municipal corporation, which is not within the Municipal Corporations Act, and it is admitted that this corporation is not within that Act, has full power to dispose of all its property like any private individual, and the burthen of proof lies on the person alleging the contrary to establish a trust. The trust may be of two characters, it may be of a general character or of a private and individual character. For instance, a person might leave a sum of money to a corporation in trust to support the children of A.B., and to pay them the principal upon attaining twenty-one, that would be a private and particular trust which the children could enforce against the corporation if the corporation applied the property for their own benefit; on the other hand, a person might leave money to a corporation in trust for the benefit of the inhabitants of a particular town, for paving, lighting or such like, that would be a general trust for the benefit of all the inhabitants, and the proper form of suit in the event of every breach of trust, would be an in-

1886

QUEBEC WAREHOUSE CO. v. LEVIS.

Gwynne J.

formation by the attorney-general at the instance of all or some of the persons who were interested in the matter. If there was a particular trust in favor of particular persons, and they were too numerous for all to be made parties, one or two might sue on behalf of themselves and the other *cestuis que trustent* to enforce the private and particular trust.

And the Master of the Rolls being of opinion that no trust in favor of the plaintiff was sufficiently alleged on the face of the bill, dismissed it. In *Pattison* v. *Gilford* the plaintiff, who was tenant for a term of years of the right of shooting over an estate the owner of which advertised it for sale in lots as suitable for building on, but gave full notice of the right of shooting, filed his bill for an injunction to prevent the intended sale, and the Master of the Rolls, Sir G. Jessel, dismissed the bill. In delivering judgment, he likened the notice of the intended sale which had been published by the defendant to information expressly given to the public who might contemplate becoming purchasers, that "there were some plots, one of which was particularly pointed out very eligible for building purposes, but recollect there is a right of shooting over all the plots, and you take subject to that right, and you must be careful not to make such an erection as will interfere with the right of shooting." The principle upon which he proceeded was that laid down by Lord Cottenham in *Harris* v. *Taylor* (1), where it was held that if an act threatened to be done could by any possibility be done in such a way as not to prejudice the right of the party complaining, it would not be restrained. The principle, says the Master of the Rolls, is this:—

> If you say the defendant is going to do an unlawful act you must prove that it is necessarily unlawful, it is not enough to say it may be unlawful.

The case of *Winch* v. *The Birkenhead, Lancashire & Cheshire Ry. Co., and others* (2), has more application to

(1) 2 Ph. 209. (2) 16 Jur. 1035.

the present case than any of the above cited cases. What was asked by the plaintiff, who was a shareholder in the B. L. & C. Ry. Co. was that an injunction should be granted restraining that company from acting upon an agreement, which, as was contended, was *ultra vires*, entered into by and between them and two other railway companies, who were also defendants, and the injunction was granted. The Vice-Chancellor, Sir James Parker, giving judgment, says:—

I can see nothing in all that has taken place to prevent Mr. Winch, who is a shareholder in this company, from coming and seeking to restrain an infringement of the constitution of this company as it is established by law. Seeing that upon the evidence there was an intention, not disputed or contradicted, to act on this agreement on obtaining the sanction of a meeting of shareholders without going to Parliament, I think the plaintiff is entitled to an injunction in the terms of his notice of motion to restrain the Birkenhead Company from making over to the London & North-Western Railway Company, the Birkenhead Company line of railway, plant, or property, or any part thereof, on the footing of the agreement, and that the L. & N. W. Ry. Co. may in like manner be restrained from taking possession of the said lines of railway, &c., &c., on the footing of the agreement.

In *Hoole* v. *The Great Western Railway Company* (1) Lord Cairns L. J. and Sir John Rolph L.J were of opinion that if an individual shareholder of a company, having an interest, complains of an act of the whole company or the executive of the company as *ultra vires*, he may maintain a bill in his own name without suing on behalf of others to restrain the corporation from doing any act which is *ultra vires*.

In *Russell* v. *Wakefield Water Works Company* (2) Sir G. Jessel M. R., pointing out the exceptions to the rule laid down in *Foss* v. *Harbottle* (3), says:—

There are cases in which an individual corporator sues the corporation to prevent the corporation either commencing or continuing the doing of something which is beyond the powers of the corporation. Such a bill may be maintained by a single corporator not suing

(1) L. R. 3 Ch. 262.
(2) L. R. 20 Eq. 481.
(3) 2 Hare 461.

1885

QUEBEC WAREHOUSE Co. v. LEVIS.

Gwynne J.

on behalf of himself and of others as was settled in the House of Lords in a case of *Simpson* v. *Westminster Palace Hotel Company*. If the subject matter of the suit is an agreement between the corporation, acting by its directors or managers, and some other corporation or some other persons, strangers to the corporation, it is quite proper and quite usual to make that other corporation or person a defendant to the suit, because that other corporation or person has an interest, and a great interest, in arguing the question and having it decided once for all, whether the agreement in question is really within the powers or without the powers of the corporation of which the plaintiff is a member, so that in those cases you must always bring before the court the other corporation.

In *Simpson* v. *Westminster Palace Hotel Company* (1) the Lord Chancellor, Lord Campbell, states the law to be that if an attempt to do an act which is *ultra vires*, is made by a joint stock company, although the act be sanctioned by all the directors and by a large majority of the shareholders, any single shareholder has a right to resist it, and a court of equity will interpose on his behalf by injunction. In *Cohen* v. *Wilkinson* (2) Lord Chancellor Cottenham held the right of an individual member of a company to restrain the company from applying its funds to a purpose different from that to which he had subscribed, to be well settled by the court; and in *Carlisle* v. *The South-Eastern Railway Company* (3) he held the right to file a bill to restrain a railway company from declaring a dividend under circumstances which would be a violation of the Act of parliament incorporating the company, was a right common to all the shareholders, and that such a bill upon behalf of a plaintiff and all other shareholders, except the directors, would be one of the ordinary description in which the practice of the court permits such representation in pleading. In *Patterson* v. *Bowes* (4) the Court of Chancery for Upper Canada in 1853 held the principle upon which *Winch* v. *Birkenhead Railway Co.*; *Cohen* v.

(1) 6 Jur. N. S. 185.
(2) 1 McN. & G. 481.
(3) 1 McN. & G. 689.
(4) 4 Gr. 170.

Wilkinson, and *Carlisle* v. *The South Eastern Railway Co.*, were decided to be applicable in the case of a municipal corporation, and entitled a ratepayer of the city of Toronto to maintain a bill on behalf of himself and all other ratepayers of the city against the mayor and the corporation of the city, to compel the former to account to the corporation for various large sums of money alleged to have been realized by him by the purchase of certain debentures of the corporation from persons who became entitled to them for value, such sums so alleged to have been realized by the mayor being alleged to have accrued by reason of certain by-laws of the corporation to the passing of which the mayor had been a party.

This practice has been pursued in the courts of Upper Canada and Ontario ever since, and upon the authority of what is said by the Lords Justices in *Hoole* v. *The Great Western Railway Co.*, by the Master of the Rolls in *Russell* v. *The Wakefield Waterworks Co.*, and by Lord Campbell in *Simpson* v. *Westminster Palace Hotel Co.*, and upon principle, it appears to me that a corporator, who is or may be injuriously affected in his rights or property by an Act of the executive of a municipal corporation which is *ultra vires*, may seek redress by process of injunction to restrain the corporation from committing the act, if it be not yet committed, or from doing any thing under or in furtherance of such act, if already committed, equally as such person could apply for and obtain an order of the court for the quashing of a by-law of the corporation, which was not within the power and jurisdiction of the corporation to pass; and as the Act 41 Vic. ch. 14 specially authorizes the proceeding by way of injunction in such a case in the courts of the Province of Quebec, it cannot, I think, be doubted that in the present case the complainants have such an interest, and are or may be exposed

QUEBEC WAREHOUSE CO. v. LEVIS. Gwynne J.

to such prejudice as entitles them to maintain the proceeding instituted by them in this case, if the obligation purported to be entered into by the executive of the corporation of the town of Levis, with the Quebec Central Railway Company be, as it is charged to be, *ultra vires*.

It is urged that the obligation having been completely entered into, as it appears to have been, just two days before the proceedings in this case were instituted, the complainants are now too late to object; but what is complained of is that the entering into the obligation was illegal as *ultra vires*, and as it purports to be an obligation to pay in a future event what may prove to be a very large sum of money, which could be paid only out of trust funds under the control of the executive of the corporation, in which every corporator is interested as a *cestui que* trust, if any such funds there be, or by levying a rate upon all the ratepayers of the town, the levying of which might involve the ruin of all of such ratepayers; what the complainants have a right to restrain and what they seek to restrain, is the doing of anything under or in furtherance of, or in discharge of the illegal obligation so entered into, and among such things to restrain the delivery of the document purporting to be the obligation of the corporation of the town of Levis to the Quebec Central Ry. Co., and to restrain that company from receiving and acting under it as a legal obligation or agreement. For determining whether it be or be not a legal obligation or agreement the present proceeding seems to be the most proper, the most convenient and effectual to be adopted, instead of the complainants standing by and looking on without complaint at the railway company incurring, it may be, an enormous expense upon the faith of the obligation and agreement being legal, and only taking proceedings to

avoid the obligation and its effect after such expense should be incurred. The case of *Blake* v. *The City of Brooklyn*, decided by the Supreme Court of the State of New York (1) and the cases upon which it proceeded, to which we have been referred by the learned counsel for the defendants, are quite distinguishable from the present case. In *Blake* v. *The City of Brooklyn* the matter complained of was an alleged injury to certain real estate of the plaintiff, which the corporation of the city of Brooklyn were proceeding to have filled up under authority claimed to be vested in them to make local improvements in the city, and the court held that in the absence of an allegation that the injury occasioned by the filling up of the lots would be irreparable, or that such filling up would cause any damage or injury whatever to the lots, an injunction to forbid the filling up would not be; but that the plaintiff should assert his remedy, if any, at law. And it was also held that an injunction to restrain the collection of an assessment not yet laid for the expense of such filling up ought not to be granted, and that the court would not interfere by injunction to review or correct such proceedings of a municipal corporation unless they were productive of peculiar or irreparable injury or must lead to a multiplicity of suits. In that case the plaintiff was the sole person concerned in the injury complained of. In the present case the obligation and agreement which is impugned, if enforced, may produce irreparable injury to all the ratepayers of the town of Levis, and unless the validity of the agreement shall be enquired into and determined in a suit instituted like the present, the questioning its validity would of necessity lead to a multiplicity of suits. But as the Act 41 Vic. ch. 14 specially authorizes the proceeding by injunction if the act complained of is *ultra vires*, and

(1) 26 Barb. 301.

1885.

QUEBEC WAREHOUSE CO. v. LEVIS.

Gwynne J.

as the Superior Court in the Province of Quebec dispenses law equally upon equitable as upon legal principles, the above cases can have no application whatever to the present suit. The only point, therefore, open to enquiry is whether the obligation or agreement which is impugned was or not *ultra vires* of the municipal council of the corporation of the town of Levis. That town was incorporated and has its powers defined and prescribed by the Statute of the Parliament of Canada, 24 Vic. ch. 70, as consolidated and amended by the Act of the Province of Quebec 36 Vic. ch. 60, and it is admitted that under these Acts the corporation had not any power or authority whatever to enter into the agreement purported to be entered into with the Quebec Central Railway Company, nor had it any power to enter into such an agreement unless such power be given by an Act passed by the Legislature of the Province of Quebec, entitled "An Act to amend the charter of the Quebec Central Railway Company," 44 & 45 Vic. ch. 40. The second section of that Act enacts that the said company shall be bound to continue their line from the present terminus of the Levis and Kennebec Railway along a particular course specified in the Act.

Provided that within thirty days from the sanction of the present Act, the corporation of the town of Levis furnishes the said company with its valid guarantee and obligation to pay all excess over thirty thousand dollars of the cost of expropriation for the right of way upon the said described route, and in default of said guarantee and obligation being so furnished, the said company shall be relieved of the obligation to adopt the route and erect the station described in this section, and shall have the right to avail itself of the provisions of section one of this Act.

Now, this Act does not profess to confer upon the corporation of the town of Levis or upon the municipal council thereof any greater powers than were already conferred, nor to subject the ratepayers of the town to any greater burthen than were already imposed upon them by the Acts of incorporation of the town. The

1885

QUEBEC WAREHOUSE CO. v. LEVIS.

Gwynne J.

clause in question seems to have been inserted in this Act, which is an Act, as its object indicates, promoted by and in the interest of the Quebec Central Railway Company, under the mistaken impression that the corporation of the town of Levis had power to enter into the obligation and agreement mentioned in the section, but promotors of legislation—and legislators themselves—are not exempt from the human frailty of acting under erroneous impressions. As then it is admitted that, apart from the Act 44 & 45 Vic. ch. 40 the council of the municipality had no power whatever to enter into such an obligation as that which is impugned, and as that Act does not confer any additional powers upon the council nor subject the ratepayers to any additional burthens, but only authorizes and requires the railway company to adopt a particular route in the event of the corporation entering effectually into a legal obligation, into which, as now appears, it cannot legally enter, the plaintiffs are entitled to a perpetual injunction restraining the corporation of the town and the Quebec Central Railway Company from proceeding further in any way by or under or in virtue of the instrument of the 27th day of July, 1881, purporting to be an obligation or guarantee of the corporation of the town of Lévis, and restraining the said railway company from accepting it as a legal obligation or as having any binding effect or validity whatever, and from acting under it.

The appeal, therefore, should be allowed with costs, and a perpetual injunction be ordered to issue in the court below to the above effect.

Appeal allowed with costs.

Solicitors for appellants: *Irvine & Pemberton.*

Solicitors for respondents: *Bossé & Languedoc.*