1902

*May 15, 16.

*Oct. 7.

EDWIN HANSON *et al.* (PLAINTIFFS).....APPELLANTS;

AND

THE VILLAGE OF GRAND'MÈRE (DEFENDANT) ..... RESPONDENT.

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

Municipal corporation — By-law — Approval of Lieutenant-Governor — 60 V. c. 78, ss. 7, 27 (Que.)

Judgment appealed from (Q. R. 11 K. B. 77) affirmed, Girouard J. dissenting.

APPEAL from the judgment of the Court of King's Bench, appeal side (1), affirming the judgment of the Superior Court, District of Montreal (Curran J.) dismissing the plaintiffs' action.

A company incorporated under special charter granted by the Quebec statute, 60 Vict. ch. 78, obtained from the respondent the franchise for constructing and operation a system of waterworks and sewers within the limits of the municipality of the Village of Grand'mère, respondent, incorporated by 61 Vict. ch. 61 (Que.), and subject to the provisions of the Revised Statutes of Quebec relating to town corporations. The works to be constructed were to be the property of the company and residents of the municipality desiring to become consumers had the right to the use of the works on payment of such rates as might be agreed upon between them and the company. Under the provisions of

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

(1) Q. R. 11 K. B. 77.

sec. 27 of the company's charter and on petition of the inhabitants of the municipality, the respondent passed a by-law by which the franchise was granted and thereby agreed to collect the rates and to indorse a series of debentures to be issued by the company for the purpose of securing funds for the construction of the works. The debentures were accordingly issued, indorsed by the respondent and were sold and delivered by the company to the appellants for $43,513.50, the amount so realized being appropriated for the purposes for which the debentures had been issued. Upon the maturity of the first debenture default was made in payment and the appellants brought the action to recover its amount from the company and the respondent jointly and severally. The respondent resisted payment on the ground that the by-law was *ultra vires*, null and void, and that the debentures had been illegally indorsed and delivered and were not binding as an obligation on the municipal corporation. The company did not contest the action. At the trial the Superior Court, (Curran J.), dismissed the action, the material points at issue being mentioned in the notes of reasons for the judgment referred to at pages 77-78 of the report of the judgment of the Court of King's Bench (1) from which the present appeal is asserted.

T. Chase-Casgrain K.C. and *Falconer* for the appellants. The statute 60 Vict. ch. 78, authorized the corporation to contract with the power company to build the water-works and sewers and to indorse and guarantee payment of the debentures, issued by the company, for carrying out the works. The by-law was duly promulgated and accompanied by all the formalities required by law, a portion of such debentures to be delivered to the company as the work progressed and

(1) Q. R. 11 K. B. 77.

1902

HANSON v. VILLAGE OF GRAND' MÈRE.

the balance when the systems were in operation. The appellants were officially notified by the corporation that the systems were in operation and the debentures were delivered, before maturity, to the appellants, who are the *bonâ fide* holders thereof for value. In the hands of the appellants, they are indisputable and the corporation cannot set up the fraud, laches or negligence of its own officers. Again, if any fraud, laches or negligence existed on the part of the officers of the corporation, or of the company, it is not alleged or proved that the appellants were in any way privy thereto. The corporation is bound by the recitals in the by-law, and by the official documents issued by the corporation and its duly constituted officers, and, even if the appellants were bound to inquire, it would be unreasonable that they should impute fraud, wilful negligence or guilty misrepresentations to the officers of the corporation. They were entitled to rely on the certificates furnished them. We refer to *Parish of St. Césaire* v. *McFarlane* (1); Dillon on Municipal Corporations (4 ed.) ss. 485, 486, 512-549, 936; *In re Blakely Ordinance Co.* (2); *Young* v. *MacNider* (3); *In re Agra and Masterman's Bank* (4); *Wade* v. *The Town of Brantford* (5); *Connecticut Mutual Life Insurance Company* v. *The Cleveland, etc. Railroad Company* (6); *Hackensack Water Company* v. *DeKay* (7); *City of Cairo* v. *Zane* (8); Thompson on Corporations, ss. 4930, 4931, 4932, 5251, 5262, 6068, 6070.

Beaudin K.C. and *Bisaillon K.C.* for the respondent. The respondent, incorporated by 61 Vict. ch. 61 (Que) is declared subject to the statutes affecting town corporations, (R. S. Q. Acts, 4178 *et seq.*,) the

(1) 14 Can. S. C. R. 738.
(2) 3 Ch. App. 412.
(3) 25 Can. S. C. R. 272.
(4) 2 Ch. App. 391.
(5) 19 U. C. Q. B. 207.
(6) 41 Barb. 9.
(7) 36 N. J. Eq. 548.
(8) 149 U. S. R. 122.

material clauses now in question being arts. 4529, 4530 and 4531. These clauses gave the corporation no power to indorse or guarantee the debentures now sued upon; the necessary formalities not having been complied with, the indorsement was *ultra vires*. The special charter of the power company, 60 Vict. ch. 78 (Que.), of which sections 7 and 27 only are material to the issues, never contemplated that the corporation should assume any financial obligation but merely that collections should be made of the revenues from the works, in trust, the proceeds to be applied upon the debentures. The corporation could not and did not give any unconditional guarantee. No such guarantee was authorized by the ratepayers as required by the statute. The appellants were put upon inquiry as to the fulfilment of all necessary conditions for the validity of the debentures and cannot now plead ignorance or that they hold *bonâ fide*, for value and without notice of irregularities or illegalities. The indorsement is also a restricted one and prevented the negotiation of the debentures by delivery. See "Bills of Exchange Act," secs. 18, 19; Simmonton on Municipal Bonds, secs. 191, 192; Dillon on Municipal Corporations, secs. 163, 238, 546; *Village de la Pointe Gatineau* v. *Hanson* (1); arts. 365, 1703, 2279 C. C.; *Geddes* v. *Toronto Street Railway Co.* (2); *Wason Manufacturing Co.* v. *Compagnie du Chemin de Fer de Lévis et Kenebec* (3); *Ville d'Iberville* v. *La Banque du Peuple* (4).

The original by-law being subject to the approval of the electors and of the Lieutenant-Governor-in-Council could not be changed unless the substituted by-law, or its amendments, were again submitted to approval by the electors and the Lieutenant-Governor-in-Council.

(1) Q. R. 10 K. B. 346.
(2) 14 U. C. C. P. 513.
(3) 21 R. L. 161.
(4) Q. R. 4 Q. B. 263.

1902

HANSON v. VILLAGE OF GRAND' MÈRE.

The CHIEF JUSTICE pronounced the judgment of the majority of the court dismissing the appeal with costs but delivered no written reasons.

SEDGEWICK, DAVIES and MILLS JJ. concurred in the result of the judgment dismissing the appeal for the reasons stated in the court below.

GIROUARD J. (dissenting.)—The respondents contend that several recitals contained in the bonds are false, and that they have been the victim of a gigantic fraud. But who is to suffer from the culpable and almost criminal negligence or perhaps simple *naiveté* of their officials? Is it the innocent holder who in good faith has relied upon the statements made in the bonds and paid their par value? It cannot be so, if the issue was authorised by law. Nearly all the judges seem to have conceded this point, which is moreover established by what is considered now a well settled jurisprudence, the debentures being undoubtedly negotiable instruments, by mere delivery like bills and notes. (Art. 1573 C. C.) In fact, being under hand and not under seal, they possess all the essential requisites of promissory notes within the meaning of the Bills of Exchange Act, capable likewise of negotiable guarantee or *aval.*

It is mainly upon the question of authority of the municipal corporation to indorse the bonds that a diversity of opinion exists. In the Superior Court, Mr. Justice Curran, very properly, considered that he was bound by a previous decision of the Court of Appeal in the case of the *Village of Gatineau Point* v. *Hanson* (1). In appeal, this decision was simply re-affirmed, Mr. Justice Blanchet dissenting in both cases. Mr. Justice Hall thought that the present case

(1) Q. R. 10 Q. B. 346.

1902

HANSON v. VILLAGE OF GRAND' MÈRE.

Girouard J.

was distinguishable from the other in all points, except the want of power to guarantee. He said:

I find this case, in so far as the facts and procedure are concerned, much more favourable to the appellants than their previous one against the Corporation of Gatineau Point. The by-law adopted by the Village of Grand'Mère undertakes, unconditionally to guarantee the debentures of the Stadacona Water, Light and Power Company, for an annual amount not exceeding two-thirds of the probable revenues of the water and drainage systems, the amount of which probable revenues, estimated by their secretary-treasurer, was approved and adopted by the municipal council. The debentures thus guaranteed were to be handed over to the Stadacona Company as follows: 90 per cent upon statements approved by the engineer of the village establishing the value of work done, materials furnished and expense incurred to a like amount by the Stadacona Company in the prosecution of their contract for said water-works and sewers, and the balance upon the said systems being put into operation. A preliminary condition of the passage of said by-law, viz. a petition for its adoption signed by a majority in number and in value of the ratepayers of the municipality, was declared by the by-law itself to have been complied with; the debentures were prepared in exact accordance with the terms of the by-law, and were delivered from time to time by the trustees appointed by the by-law or subsequent resolution of the municipal council, such delivery being made in accordance with the opinion or certificates of those officials whom the council had appointed for that purpose, the last 10 per cent of them upon the certificate of the engineer of the village that the systems were in operation, and upon the formal written order of the mayor, the secretary-treasurer and the engineer. Declarations in such forms by the council and officials of a municipality as to the observance of formalities upon which their right to bind the municipality depended and as to the completion of works which it was their duty to inspect, and criticise or accept, must be held to be binding upon such municipality, especially when the rights of third parties are at stake who have incurred financial obligations in reliance upon such certificates and declarations. The appellants and their solicitors were thoroughly justified in my opinion in accepting said debentures as perfect in form and in concluding that said municipality had guararteed and delivered said debentures in strict compliance with its obligations to the said Stadacona Water, Light and Power Company.

Mr. Justice Bossé assented to the conclusion of the majority in the *Gatineau Point Case* (1), only upon the

(1) Q. R. 10 Q. B. 346.

1902

HANSON v. VILLAGE OF GRAND' MÈRE.

Girouard J.

ground that the municipal by-law had not been promulgated. The guarantee of the municipal corporation was therefore set aside as being *ultra vires* and the judgment of the Superior Court (Charland J.) reversed with costs. It appears that a similar judgment was rendered by Mr. Justice Lavergne in another case of the *Stadacona Water, Light and Power Company* v. *The Corporation of Thurso*, not reported. So, upon the main point—the power of the municipal corporation—and that, in my humble opinion, is the only one open to any doubt, the judges so far seem to be at least equally divided.

As put by Mr. Justice Hall and Chief Justice Lacoste, the issue is narrowed down to the one question: had the municipal council of the Village of Grand'Mère the legal power to give the guarantee which is now attempted to be enforced? For if it was given without legal authority, it is absolutely void and can acquire no validity even in the hands of a *bonâ fide* holder. Every one is presumed to know the law of the country where he is dealing, and also whether the parties contracting with him have capacity to do so. (A. & E. Ency. of Law, vo. *Municipal Securities*, 2nd ed. p. 66).

Of course, that power can be conferred to municipal corporations only by the legislature. The appellants quote section 27 of this company's charter, 60 Vict. c. 78, and the respondents rely upon section 7 of the same statute. As the decision of the question turns entirely upon the interpretation of these two sections, it is of importance to place here the wording of these enactments:

Sec. 7, (c) Any contract or arrangement between a municipal corporation and the company for the construction and working of water-works systems and other works authorised by this Act, shall, if such contract or arrangement involves financial obligations on the part of such corportions, be valid only when the by-law authorising

such contract or agreement has been approved by the ratepayers and by the Lieutenant-Governor-in-Council according to the laws concerning the issue of municipal bonds.

Sec. 27. In the event of the company undertaking the construction of a system of water-works, drainage or lighting in any municipality, the company may make arrangements with the corporation from which it shall have obtained concessions or franchises for a certain number of years for the construction and working of such system in virtue whereof the revenues of said systems shall be collected or levied by the said municipal council. And notwithstanding any provisions to the contrary in the charter of such municipality, and provided it be thereto authorised by petition of the majority in number and in value of the ratepayers of that portion of the municipality in which the system shall exist, the council may, in such case, bind itself by by-laws to collect or levy the said revenues ; and may, moreover guarantee the bonds or debentures issued by the company in connection with the said system, to the extent of two-thirds of the revenues, the collection whereof shall have been confided to it by the company ; but such guarantee shall not be for a longer period than that of the concession of the franchise granted to the company by the said corporation in connection with the said systems. And in the event of the said revenues not being binding, the council of the municipality may cause to be prepared by its secretary an estimate of the probable revenue of the said systems, and such estimate, after having been approved by the council, shall serve as a basis for establishing the amount of said guarantee. The revenues so collected by the corporation shall be devoted to the payment of the interest of, and the capital of the bonds or debentures, which it shall have so guaranteed, either in the whole or in part, as the municipal council of such corporation shall decide."

The company was first incorporated by letters-patent which were confirmed by the said statute. The preamble recites that the main object of the corporators is to obtain extended powers, and that it is advisable to grant their prayer. Under the old letters-patent, any town corporation, like Grand'Mère, can guarantee bonds issued by the company in relation to the construction of waterworks and sewers, provided it is authorised to do so by by-law approved by the ratepayers in an election and the Lieutenant-Governor-

1902

HANSON v. VILLAGE OF GRAND' MÈRE.

Girouard J.

in-Council (1). Evidently the statutory charter was passed not to confer this old power, but to extend the same. Art. 12 C. C.

It is contended that this legislation was of a private nature and cannot have the effect of repealing the general law concerning towns, villages and municipalities generally. But it is not given as private, quite the reverse; it is considered as urgent and an exception is even made as to its coming into force; section 30 declares that it will come in force on the very day of its sanction. (Arts. 2 and 10 C. C.)

In construing a statute of this kind, I find a most salutory rule laid down in recent text books and decisions, which strongly appeals to common sense and is highly beneficial, if not altogether indispensable to the public credit of municipal corporations and to the development of municipal works within their limits. It is thus stated in Vol. 21 of the American and English Encyclopœdia of Law, vo. *Municipal Securities*, page 33:

> Statutes relating to the issuance of municipal bonds should, it seems, when it is sought to prevent their issue, be strictly construed, and where it is doubtful whether it was the intention of the legislature to authorise the issuance of bonds, the doubt should be resolved against the authority to issue them. But where bonds have been issued in pursuance of an ambiguously worded statute, it has been held that the court should adopt a liberal construction in order to sustain them, though it would have prevented their issue had application been made therefor in season.

This rule of interpretation was applied in the case of *Woodhull* v. *Beaver County* (2), decided by the United States Circuit Court. See also *Stokes* v. *County of Scott* (3).

But is the language of section 27 of the Quebec statute really ambiguous?

In Mr. Justice Hall's opinion,

(1) R. S. Q. arts. 4404, 4406, 4794.

(2) 3 Wall. Jr. 274.

(3) 10 Iowa, 166.

this section gives no authority to the municipal council to do more than to give a guarantee to hand over to the debenture holder two-thirds of the actual revenue collected and held by them as trustees of of the Stadacona Company.

If so, why limit it to two-thirds only of the revenues?

In the next place, this result could be accomplished by merely enforcing that part of the clause making the corporation trustees without any guarantee.

And what can be the meaning of that part of clause 27 which authorises the municipal council to cause to be prepared by the engineer

an estimate of the probable revenues of the said systems, and such estimate, after having been approved by the council, shall serve as a basis for establishing the amount of the said guarantee?

Evidently to guarantee, unconditionally, a fixed amount. I feel certain that such was the intention of the legislature. The parties and their counsel so understood it. In the by-law it is declared:

Le conseil s'engage à garantir les débentures ou obligations qui seront émises par la compagnie en rapport avec les dits systèmes, pour un montant annuel n'excédant pas les deux tiers *des revenus probables*, et pendant la durée de la franchise.

The aggregate amount of these debentures ($3,125 each) is $43.513.50. The village corporation even took a mortgage or *hypothèque* upon the works and property of the company for the sum of $30,000,—

afin de garantir la dite corporation contre toute responsabilité, pertes, ou paiements, qu'elle pourrait encourir ou faire en conséquence de la garantie à être donnée par la dite corporation sur les débentures de la dite compagnie comparante comme susdit.

Finally, such an interpretation is clearly in harmony with the plain language of the statute. It declares expressly that

the council may, in such cases, bind itself by by-law to collect or levy the said revenues, and may moreover guarantee the bonds or debentures, etc.

1902

HANSON v. VILLAGE OF GRAND' MÈRE.

Girouard J.

If the interpretation given by the Court of Appeal be adopted, these words are simply obliterated and the object of the statute is defeated, namely, to increase the powers of the company.

The endorsation does not necessarily involve financial obligations on the part of such corporations. They are not primarily liable and if the precautions and safe-guards provided for by the statute are honestly and fairly carried out, they will seldom become personally involved.

But, whether so involved or not, I consider that section 27 provides for a special case which does not fall within the reservations made in section 7 for ordinary and general cases.

I quite agree with Mr. Justice Blanchet that the two clauses can be reconciled and applied by holding that clause 7 contemplates direct obligations and clause 27 only indirect or secondary obligations, subject to the conditions therein indicated. To decide otherwise would simply mean the destruction of clause 27.

This conclusion is finally forced upon us by the words

and notwithstanding any provision to the contrary in the charter of such municipality,

which, like section 7, requires the approbation of the ratepayers and of the Lieutenant-Governor-in-Council.

Under section 27, the petition of the ratepayers is substituted for the approbation of the ratepayers and of the Lieutenant-Governor, a course which is adopted in some States of the American Union.

Even if I had any doubt as to the true meaning of clause 27, I do not at all feel inclined to look upon municipal councils of towns and cities in the light of minors, although in this very instance the municipal representatives seem to have acted like children and

foolish children at that. They form important political corporations, elected by the taxpayers, and are in fact part of the internal government of the country, and it would be a very serious blot to the credit of public institutions, if debentures, like those in question, were allowed to be repudiated, for the defence here amounts to repudiation. But even viewed as mere civil corporations, they enjoy no greater rights than individuals. (Art. 356 C. C.) What would be the position of an individual denying his liability on a guarantee like that sued upon in this cause? True, corporations are subject to disabilities; true their capacity to contract is derived from the legislature; but when dealing in the commercial world, they should be treated like individuals, unless clearly disabled; and that is the reason why, if I was entertaining any doubt upon the authority of the Village of Grand'Mère to guarantee the bonds, I would apply the rule laid down in article 12 C. C. and in *Woodhull* v. *Beaver County* (1) and hold that section 27 was passed to meet this very case and that they are bound by the debentures. It seems to me that this court has practically sanctioned that rule in a very recent case. I refer to *Grimmer* v. *The County of Gloucester* (2).

The market value of municipal bonds is of such vital importance that the Supreme Court of the United States, a tribunal standing, in a case like this, almost as high as any British court, refused to set aside a negotiable bond held under an unconstitutional charter by a third party for value and in good faith, after it had been declared constitutional by the State Courts, which for a number of years at least were looked upon as supreme and final in a matter of this character.

(1) 3 Wall. Jr. 274.

(2) 32 S. C. R. 305.

1902

HANSON v. VILLAGE OF GRAND' MÈRE.

Girouard J.

Gelcpke v. *Dubuque* (1). At the time of the issue and transfer, the legality of these bonds had been determined by a series of decisions of the highest court of the State, but some years later this jurisprudence was upset by the same court composed of new judges. Swayne J., speaking for the Supreme Court of the United States, said:

> We shall never immolate truth, justice and the law, because a State ribunal has erected the altar and decreed the sacrifice.

Mr. Daniel, in his learned work on Negotiable Instruments, tells us, par. 1526, that more recently the United States Supreme Court has taken a step further and held that the decisions of the highest court of a State relating to negotiable bonds and securities will not be respected by that tribunal, unless satisfactory to its judges, when the question arises upon a bond in the hands of a *bonâ fide* holder who is a citizen of another State, or a foreigner. *Township of Pine Grove* v. *Talcott* (2).

In England, likewise, the judges seldom overlook the legal prestige of public and semi-public negotiable securities. They look upon them in the same light as their American brethren. Lord Herschell, after quoting a decision of the Court of Appeal of the State of New York, in a case of this description, said a few years ago, while sitting in the House of Lords:

> I do not see any difference between the law of the State of New York and the law of England in this respect. *Colonial Bank* v. *Cady* (3).

I may add that I fail to see in the same respect any difference between the laws of those countries and the law of Quebec, or of any province of Canada. In several cases, the English judges have granted adequate equitable relief to a holder in due course, when the bonds were invalid in law. *Re The Queensland*

(1) 1 Wall 175.
(2) 19 Wall 666.
(3) 15 App. Cas. 267.

Land and Coal Company; *Davis* v. *Martin* (2); *Re The Strand Music Hall Co.* (3).

In this case, it is not strictly correct to say that no consideration whatever was given for the guarantee. Considerable work was done; scores of labourers were continuously employed; a great deal of material had been employed and thousands of dollars were expended. In the month of May, 1900, the council had the report of its engineer certifying that at least $23,929.65 had been expended for work and material, and that $4,000 were deposited to its credit in the Hochelaga Bank, making $27,959.65.

Instead of acting under clause 12 of the by-law and taking possession of and completing the works, or of notifying the appellants or making some effort to protect itself and the bondholders, it allows the whole property to be sold at sheriff's sale for a mere song, ($6,075), and then adopts the course of repudiation. The corporation officials displayed, at this stage of the proceedings, more incompetency and negligence of their obvious duties than at the time of the issuing of the debentures, for they had no longer any reason to rely upon hopes and promises. The true and unfortunate position was laid bare before the whole municipality, and yet they all remain idle and evidently trusted to Providence, but Providence, very merciful to individuals, generally takes little care of corporations, who have no soul.

It is especially in a case of gross neglect like that proved in this instance, that courts of justice should give the benefit of the doubt to the holder in due course when the statute authorising the issue of a bond is merely doubtful or ambiguous. But as I have already stated, I entertain no such doubt. I have

(2) 63 L. J. Ch. 810. (3) 3 DeG. J. & S. 147.

1902

HANSON
v.
VILLAGE OF GRAND' MÈRE.

Girouard J.

come to the conclusion that upon the plain language of section 27, they must pay these debentures.

It is hardly necessary to say anything of the waiver made by the corporation, in the guarantee, to the benefit of notice, division and discussion, without being authorised thereto by the by-law. They got notice and, the obligation being commercial, they were by law jointly and severally liable. (Art. 1105 C. C.) Finally, the council has often ratified these debentures in the very form they now have.

For these reasons, I am of opinion that the appeal should be allowed and the Corporation of the Village of Grand'Mère condemned to pay to the appellants the amount demanded, in principal and interest, with costs before all the courts.

Appeal dismissed with costs.

Solicitors for the appellants: *Fleet, Falconer & Cook.*

Solicitors for the respondents: *Beaudin, Cardinal, Loranger & St. Germain.*