THE CITY OF WOODSTOCK (PLAINTIFF) ..... APPELLANT;

AND

THE COUNTY OF OXFORD (DEFENDANT) ..... RESPONDENT.

1911

*May 15.
*May 18.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Municipal corporation—City and county—Separation—Agreement as to assets—Subsequent discovery of funds not included—Action for city's share.

In 1901 the Town of Woodstock was incorporated as a city and in February, 1902, the City and the County of Oxford entered into an agreement, ratified by their respective by-laws purporting to settle all questions between them arising out of the erection of the town into a city. This agreement was acted upon until December, 1907, when the city, claiming to have discovered the existence of a fund of $37,000, collected from the ratepayers of the several municipalities composing the county, which had not been considered in the settlement, brought action for its share of said fund, but did not ask for rescission or modification of the agreement.

Held, affirming the judgment of the Court of Appeal (22 Ont. L.R. 151) that in the absence of fraud or mutual mistake the agreement was a bar to such action.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment at the trial in favour of the defendant.

The facts of the case are sufficiently set out in the above head-note.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

(1) 22 Ont. L.R. 151.

1911

CITY OF WOODSTOCK v. COUNTY OF OXFORD.

Idington J.

Watson K.C. for the appellant.

Bicknell K.C. and *S. G. McKay* for the respondent.

The judgment of the court was delivered by:

IDINGTON J.—The appellant was created by 1 Edw. VII. ch. 75, a city. Section 6 of that Act provided as follows:

> 6. The provisions of the "Municipal Act" relating to matters consequent on the formation of new municipal corporations, and the other provisions of the "Municipal Act" aforesaid shall, except so far as herein otherwise provided, apply to the said corporation of the City of Woodstock in the same manner as if the said town had been erected into a city under the provisions of the "Municipal Act."

It became the duty of the parties hereto upon said Act coming into effect to take steps for adjusting by agreement or arbitration all matters affecting their respective interests in respect of the assets in which they might have had a joint interest and of the obligations for the indebtedness due by the county and incurred for the common benefit.

They agreed in writing as to all these things, and as to the current expenses relative to the administration of justice, maintenance of buildings, use of and maintenance of the poor-house and of the registry office for the then next five years.

The appellant alleging, five years afterwards, a discovery of what was patent to everybody who cared to read at the time, viz., of an accumulation of surpluses arising out of annual levies, which might well have been taken into account in this adjustment and charged to the county in reduction of the county debt, before apportioning the share of it to be borne by each, has sued herein to recover what it alleges to have been its share of moneys so levied as to produce such surplus.

It is manifest that the agreement was, as on its face it purports to be, a settlement of the financial arrangements between the county and the city, as required by the "Municipal Act."

The "Municipal Act" certainly contemplated that no such outstanding claim should remain unsettled for a year, much less five or six years.

In the absence of fraud or mutual mistake, the agreement must stand as an insuperable barrier to opening up such a matter.

From the day it was duly executed it concluded both parties as to any such outstanding claim unless rescinded or reformed.

There is no case made by the pleadings for rescission, and no case made by the evidence for reformation.

In adjusting matters such as this comprehensive agreement deals with, there is always much to be yielded on each side at every step, and it is looked at in the spirit of compromise by all fair-minded men so engaged. How can we, or any court, say what the result would have been if the committee room had been placarded with the annual statements shewing all this, now claimed to be a discovery ? The result might have been a trifle less on account of annual contribution of appellant to the debt, and a larger contribution on some of the other things bargained for.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *J. H. Nellis.*
Solicitors for the respondent: *McKay & Mahon.*