CORPORATION OF THE COUNTY OF CARLETON (*Plaintiff*) ..... APPELLANT;

AND

CORPORATION OF THE CITY OF OTTAWA (*Defendant*) ..... RESPONDENT.

1965

*Mar. 15
May 25

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Municipal corporations—County responsible for care of indigent person prior to annexation of certain area by city—Indigent's case inadvertently omitted from list of welfare cases for which city assumed responsibility—Claim by county for moneys expended for indigent's care

*PRESENT: Cartwright, Judson, Ritchie, Hall and Spence JJ.

1965

COUNTY OF CARLETON v. CITY OF OTTAWA

subsequent to annexation—Restitution—The Homes for the Aged Act, 1947 (Ont.), c. 46.

On July 31, 1948, one B, an indigent person, was a resident in a part of the Township of Gloucester, in the County of Carleton, which was subsequently annexed by the City of Ottawa. The county was responsible for her care under *The Homes for the Aged Act,* 1947 (Ont.), c. 46. Under an agreement between the County of Carleton and the County of Lanark, B was committed to an institution in the latter county at the expense of the former. B remained in this home until December 11, 1960, when she was removed to a home which had been constructed within the County of Carleton.

The annexation took effect on January 1, 1950, and by an agreement between the City of Ottawa and the Township of Gloucester the city assumed responsibility for welfare cases in that part of the township which was annexed. However, through an oversight, the case of B was not placed on a list of these cases and it was not until some time in December 1960 that the County of Carleton became aware that it had been paying for the maintenance of B from January 1, 1950, while throughout the whole of the period she had been a resident of that part of Gloucester which had become a part of Ottawa. The county took the position that the city was responsible for the payments made by the county on B's behalf from the date of annexation and for maintenance in the home established by the county for such time as she might be left there by the city. The city refused to acknowledge any responsibility for the maintenance or care of B or for the moneys paid out by the County of Carleton to the County of Lanark in the 10-year period from 1950 to 1960 nor for what it had cost to maintain B since December 1960 or would cost in the future. The county's claim was allowed by the trial judge. On appeal, the city was successful and the action was dismissed.

Held: The appeal should be allowed.

The county was responsible for the care of B prior to January 1, 1950, when the area in question was annexed by the city. The city by the act and fact of annexation and by the agreement between it and the township had assumed responsibility for the social service obligations of the county to the residents of the area annexed. The fact that one welfare case was inadvertently omitted from the list of such cases could not permit the city to escape the responsibility for that case. It was against conscience that it should do so. *Brook's Wharf and Bull Wharf Ltd. v. Goodman Brothers,* [1937] 1 K.B. 534; *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.,* [1943] A.C. 32; *Deglman v. Guaranty Trust Co. of Canada and Constantineau.* [1954] S.C.R. 725, referred to.

APPEAL from a judgment of the Court of Appeal for Ontario[1], allowing an appeal from a judgment of Grant J. Appeal allowed.

Mrs. Eileen M. Thomas, Q.C., and *W. D. Baker,* for the plaintiff, appellant.

[1] [1965] 1 O.R. 7, 46 D.L.R. (2d) 432.

R. D. Jennings, Q.C., and *James Reid,* for the defendant, respondent.

The judgment of the Court was delivered by

HALL J.:—On January 1, 1950, the City of Ottawa annexed certain parts of the Township of Gloucester as well as the Township of Nepean, both areas being in the County of Carleton. The annexation was pursuant to an Order of the Ontario Municipal Board dated December 9, 1949, the opening paragraphs of which read:

Upon the application of the Corporation of the City of Ottawa and of the Corporation of the Township of Gloucester in the presence of counsel for the Applicants, counsel for the Corporation of the County of Carleton, counsel for the Ottawa Public School Board, counsel for the Ottawa Separate School Board, counsel for Uplands Bus Line Limited, counsel for Eastview Bus Service Limited and counsel for certain owners of property within the area proposed to be annexed and of certain property owners and residents of the Township of Gloucester who appeared in person and upon reading By-law Number 138-49 of The Corporation of the City of Ottawa and By-law Number 46-49 of the Corporation of the Township of Gloucester, filed with the Board, authorizing this application and upon hearing evidence adduced at a public hearing held at Ottawa on Thursday, the 10th day of November, 1949 pursuant to notice given in accordance with the direction of the Board, and upon hearing what was alleged by counsel aforesaid and by the said property owners and residents.

THE BOARD ORDERS under and pursuant to section 23 of The Municipal Act (R.S.O. 1937, Chapter 266) (as re-enacted by O.S. 1939, Chapter 30, Section 2 and as amended and re-enacted by O.S. 1947, Chapter 69, Section 2) that that part of the Township of Gloucester described in Schedule "A" hereto be and the same is hereby annexed to the City of Ottawa.

By-law No. 138-49 of the Corporation of the City of Ottawa referred to above reads as follows:

BY-LAW NUMBER 138-49

A By-law of The Corporation of the City of Ottawa respecting annexation of part of the Township of Gloucester.

The Council of The Corporation of the City of Ottawa enacts as follows:

An application to The Ontario Municipal Board pursuant to section 23 of The Municipal Act (R.S.O. 1937, chapter 266 and amendments thereto) for an order annexing to the City of Ottawa on the 1st day of January, 1950, or on such other date as may be named by The Ontario Municipal Board or by Act of the Legislature of Ontario in accordance with the provisions of subsection 14 of said section 23, that part of the Township of Gloucester in the County of Carleton described as follows: (description follows).

GIVEN under the Corporate Seal of the City of Ottawa this 3rd day of October, 1949.

1965

COUNTY OF CARLETON v. CITY OF OTTAWA

Hall J.

By-law No. 138-49 had been preceded by negotiations between the Corporation of the City of Ottawa and the Corporation of the Township of Gloucester. An agreement had been reached between the two corporations which was embodied in a Minute of the Ottawa City Council dated September 19, 1949, being Exhibit 11, which shows that the Council of the Corporation of the City of Ottawa approved of Report No. 23 of the Ottawa Board of Control, setting out the terms of the annexation about to be consummated. Exhibit 11 contains in part the following reference:

10. Social Service:

The area of the Township under discussion does not present a particularly difficult or serious problem from the point of view of social service, the population being engaged chiefly in the three categories of civil servants, farmers and market gardeners. However, it is quite likely that expenditures under this heading, including payments to Children's Aid Society and other Institutional costs, will amount to approximately $55,000.00 per year, as compared to a 1948 expenditure in the Township of $22,364.34, to which would be added Children's Aid Society costs now payable through the County.

It may be pointed out that, generally speaking, the expansion of the City—to the extent that it results in the construction of additional low cost housing—will favorably influence the local social service problem.

On July 31, 1948, one Norah Baker, then 42 years of age who was an indigent person incapable of supporting herself because of imbecility, was a resident at Billings Bridge in the Township of Gloucester. She had been a resident there for the preceding seven or eight years. The Billings Bridge area was in that part of Gloucester Township annexed by the City of Ottawa as aforesaid. At that time, the County of Carleton was responsible for her care under *The Homes for the Aged Act*, 1947 (Ont.), c. 46. The County of Carleton, having no institution for indigents of its own, had entered into an agreement on December 27, 1904, whereby the Corporation of the County of Carleton was to be at liberty to send to the institution which had been established in the County of Lanark then known as a House of Refuge all poor and indigent persons of the County of Carleton and the Corporation of the County of Lanark undertook to receive all such persons so sent and to provide them with board, lodging and medical attendance of the same quality and extent as furnished to and for inmates received from the County of Lanark. The agreement provided that the Corporation of the County of Carleton should pay to the Corporation of the County of Lanark for the maintenance of any

person so sent and so received. The agreement was renewed periodically and was in force at the time Norah Baker was committed to the institution. The name of the home was changed from House of Refuge to Home for the Aged by *The Homes for the Aged Act, supra,* but apart from changing the amount which was to be paid for the maintenance of an inmate there were no substantial changes in the basic agreement. Norah Baker became an inmate of the home in Lanark County and the County of Carleton was billed for her maintenance and the County of Carleton paid the County of Lanark the amounts billed as provided for in the said agreement. Norah Baker remained in the home until December 11, 1960, when she was removed to a home which had been constructed that year for the care of patients within the County of Carleton.

At the time of the annexation a list of the welfare cases contemplated by para. 10 of Exhibit 11 previously quoted was prepared by the solicitor for the County of Carleton and delivered to the solicitor for the City of Ottawa. No question arises as to any of these cases. The City of Ottawa assumed responsibility therefor pursuant to the said agreement. However, through an oversight, the case of Norah Baker was not on the list. It was overlooked that Norah Baker had come from the area in Gloucester Township which had been annexed by the City of Ottawa on January 1, 1950, and it was not until some time in December 1960 that the County of Carleton became aware that it had been paying for the maintenance of Norah Baker from January 1, 1950, while throughout the whole of the period she had been a resident of that part of the Township of Gloucester which had become a part of the City of Ottawa. On becoming aware of the true situation as to the residence of Norah Baker, the County of Carleton immediately notified the City of Ottawa and took the position that the City of Ottawa was responsible for the payments made by the County on her behalf from the date of annexation and for maintenance in the home established by the County for such time as she might be left there by the City of Ottawa. The City of Ottawa refused to acknowledge any responsibility for the maintenance or care of Norah Baker or for the moneys paid out by the County of Carleton to the County of Lanark in the 10-year period from 1950 to 1960 nor for

1965

COUNTY OF CARLETON v. CITY OF OTTAWA

Hall J.

what it has cost to maintain the said Norah Baker since December 1960 or will cost in the future.

The amounts claimed by the County of Carleton from the City of Ottawa totalling $9,833.01 for the period from January 1, 1950, until October 31, 1962, are not disputed and if the City of Ottawa is liable the County is entitled to judgment for the amount claimed plus the cost for care and maintenance subsequent to October 31, 1962.

It appears to have been clearly established that as between the County of Carleton and the County of Lanark the County of Carleton was under contractual obligation to pay for the maintenance of Norah Baker throughout the period in issue here, namely, from January 1, 1950, until December 11, 1960, and it was established that for that period the County of Carleton paid to the County of Lanark $6,489.65.

The County of Carleton bases its claim against the City of Ottawa on the doctrine of restitution. Lord Wright in *Brook's Wharf and Bull Wharf Ltd. v. Goodman Brothers*[1] discussed this doctrine at p. 544 as follows:

> The principle has been applied in a great variety of circumstances. Its application does not depend on privity of contract. Thus in *Moule v. Garratt,* L.R.7 Ex. 101, which I have just cited, it was held that the original lessee who had been compelled to pay for breach of a repairing covenant was entitled to recover the amount he had so paid from a subsequent assignee of the lease, notwithstanding that there had been intermediate assignees. In that case the liability of the lessee depended on the terms of his covenant, but the breach of covenant was due to the default of the assignee, and the payment by the lessee under legal compulsion relieved the assignee of his liability.
>
> That class of case was discussed by Vaughan Williams L. J. in *Bonner v. Tottenham and Edmonton Permanent Investment Building Society,* [1899] 1 Q.B. 161, where *Moule v. Garrett,* L.R. 7 Ex. 101, was distinguished. The essence of the rule is that there is a liability for the same debt resting on the plaintiff and the defendant and the plaintiff has been legally compelled to pay, but the defendant gets the benefit of the payment, because his debt is discharged either entirely or pro tanto, whereas the defendant is primarily liable to pay as between himself and the plaintiff. The case is analogous to that of a payment by a surety which has the effect of discharging the principal's debt and which, therefore, gives a right of indemnity against the principal.

And, at p. 545:

> These statements of the principle do not put the obligation on any ground of implied contract or of constructive or national contract. The obligation is imposed by the Court simply under the circumstances of

[1] [1937] 1 K.B. 534.

the case and on what the Court decides is just and reasonable, having regard to the relationship of the parties. It is a debt or obligation constituted by the act of the law, apart from any consent or intention of the parties or any privity of contract.

And again in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.*[1], at p. 61.

Lord Wright's statement in *Fibrosa* was approved by Cartwright J. in *Deglman v. Guaranty Trust Company of Canada and Constantineau*[2], where at p. 734 he quotes from *Fibrosa* as follows:

> It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi-contract or restitution.

And again:

> Lord Mansfield does not say that the law implies a promise. The law implies a debt or obligation which is a different thing. In fact, he denies that there is a contract; the obligation is as efficacious as if it were upon a contract. The obligation is a creation of the law, just as much as an obligation in tort. The obligation belongs to a third class, distinct from either contract or tort though it resembles contract rather than tort.

Norah Baker was an indigent for whose care the appellant was responsible prior to January 1, 1950, when the area in question was annexed by the respondent. The respondent by the act and fact of annexation and by the terms of said Exhibit 11, para. 10 assumed responsibility for the social service obligations of the appellant to the residents of the area annexed, and the fact that one welfare case was inadvertently omitted from the list cannot permit the respondent to escape the responsibility for that case. To paraphrase Lord Wright, it is against conscience that it should do so.

I am in agreement with the conclusion reached by the learned trial judge that the appellant is entitled to recover from the respondent the sum of $9,833.01, being the amount claimed to October 31, 1962. The appellant is also entitled to recover from the respondent the cost of maintaining the said Norah Baker from November 1, 1962. If the parties are unable to agree on the amount payable for this period, there will be a reference to the Local Master at Ottawa to

[1] [1943] A.C. 32. [2] [1954] S.C.R. 725.

1965
COUNTY OF CARLETON
v.
CITY OF OTTAWA
Hall J.

determine the amount payable. The appeal will, accordingly, be allowed and the judgment of Grant J. varied accordingly. The appellant is entitled to its costs here and in the Courts below.

Appeal allowed with costs; judgment at trial varied.

Solicitors for the plaintiff, appellant: Bell, Baker & Thompson, Ottawa.

Solicitor for the defendant, respondent: D. V. Hambling, Ottawa.