

MARIE LEDA LAFONTAINE (*De-* }  
*fendant*) ..... } APPELLANT;

1964  
 \*May 25  
 Oct. 6

AND

RURAL MUNICIPALITY OF MONT- }  
 CALM (*Plaintiff*) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

*Municipal corporations—Welfare payments to indigent resident of municipality—Whether payments recoverable by action for debt—The Municipal Act, R.S.M. 1954, c. 173, s. 947(2) to (5).*

The respondent municipality brought action against the appellant, an indigent resident of the municipality, claiming the sum of \$2,594.92 being moneys expended by the municipality on behalf of the appellant by way of maintenance and welfare. The appellant admitted liability for the sum of \$151.45 for hospital premiums and expenses paid on her behalf under the Manitoba *Hospital Services Insurance Act*, but as to the balance she took the position that any amounts expended on her behalf by way of maintenance and welfare did not constitute a *debt* recoverable by action. Judgment at trial was given against the appellant for \$2,000. This amount was fixed by counsel and was made up of \$151.45 for hospital expenses and premiums and \$1,848.55 for welfare payments. An appeal, restricted to the amount awarded in respect of welfare, was dismissed by the Court of Appeal, one member of the Court dissenting. With leave, the appellant further appealed to this Court.

*Held:* The appeal should be allowed.

Section 453(1)(c) of *The Municipal Act*, R.S.M. 1954, c. 173, empowers a municipal corporation, by resolution or by-law, to regulate and prescribe the conditions under which relief is to be given. This would enable such a corporation, if it so desired, to stipulate that any moneys

\*PRESENT: Abbott, Martland, Judson, Ritchie and Hall JJ.  
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which it paid out in the form of relief payments should constitute a loan and create a debt owing by the recipient to the corporation.

In the present case, however, no resolution or by-law of the respondent was pleaded. The question in issue was, therefore, whether the expenditure of moneys by way of maintenance and welfare, *per se*, gives to the municipal corporation the right to claim for the same in debt as against the person on whose behalf such payments were made. In the absence of a provision by resolution or by-law of the kind above mentioned, the respondent must establish that a right of recovery is conferred upon it by the statute.

In the absence of an express stipulation by resolution or by by-law that relief payments are in the form of a loan creating a debt owed by the beneficiary to the municipal corporation, the rights of such corporation to recover the same are limited to those prescribed in subss. (2) to (5) of s. 947 of *The Municipal Act*.

APPEAL from a judgment of the Court of Appeal for Manitoba<sup>1</sup>, dismissing an appeal from a decision of Bastin J. Appeal allowed.

*J. F. O'Sullivan* and *S. I. Schwartz*, for the defendant, appellant.

*K. G. Houston*, for the plaintiff, respondent.

The judgment of the Court was delivered by

HALL J.:—The respondent municipality brought action against the appellant, claiming the sum of \$2,594.92 being moneys expended by the municipality on behalf of the appellant, who was an indigent resident of the municipality, by way of maintenance and welfare from the month of March 1942 until the month of July 1961.

The appellant admitted liability for the sum of \$151.45 for hospital premiums and expenses paid on her behalf under *The Hospital Services Insurance Act*, 1962 (Man.), c. 30, s. 17(7), but as to the balance she took the position that any amounts expended on her behalf by way of maintenance and welfare did not constitute a *debt* recoverable by action.

The relevant provisions of *The Municipal Act*, R.S.M. 1954, c. 173, are to be found in ss. 453 and 947 which read as follows:

453. (1) Any municipal corporation may provide, by resolution or by by-law,

(a) for aiding in maintaining any indigent person who is a resident of, or found within the limits of, the corporation, at any workhouse,

<sup>1</sup> (1963), 43 W.W.R. 219.

hospital, or institution for the insane, deaf and dumb, blind, or poor, or other public institution of a like character; or

- (b) for granting outdoor relief to the resident poor or those found within the limits of the corporation, and to such persons as are afflicted with any contagious or infectious disease who are unable, through poverty or other causes, to care for themselves; or
- (c) for regulating and prescribing the conditions under which such relief is to be given.

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(2) A municipal corporation, by by-law, may enter into an agreement with another municipal corporation providing that all or any portion of the liability for any indebtedness by reason of a person being a resident of the corporation or having a residence therein shall be assumed and paid by one or more municipal corporations in the proportions fixed by the agreement.

\* \* \*

947. (1) Every municipal corporation, including the cities of Winnipeg and St. Boniface, shall, in addition to, or concurrently with, any other remedies, have the following remedies for the recovery of any debt, statutory or otherwise, within the jurisdiction of the County Court from any person indebted to it, other than another municipal corporation, that is to say:

- (a) It shall not be necessary for the corporation to issue a summons, but it may serve by registered mail upon the person indebted to it a certificate signed by the head of its council or, if directed by resolution of the council, by the treasurer of the corporation, and under its corporate seal, setting out the name of the person so indebted and the amount of the indebtedness and endorsed with a notice to the debtor that if he disputes the amount claimed he must file his statement of defence in the County Court, specifying it, within twenty days from the mailing of the certificate, otherwise judgment will be entered against him.
- (b) It shall, upon serving the certificate, file with the clerk of the County Court a duplicate thereof together with an affidavit proving that the certificate has been so served upon the debtor.
- (c) The serving and filing of such a certificate shall take effect, and judgment may be entered and all subsequent proceedings in the court be had thereon in the same manner, as if a special summons had issued out of the court.

(2) Where any moneys are paid out or expended by a municipal corporation in connection with the maintenance, relief, support, hospital account, or burial, of a person or his or her husband or wife, or his or her child under twenty-one years of age, a statement over the signature of the head of the corporation or, if directed by a resolution of the council, by the treasurer of the corporation, and certifying what moneys have been so paid out or expended, may be recorded in any land titles office in the province.

(3) From the time of the recording thereof the statement shall bind, and form a lien and charge for the amount so certified on, all the lands owned by that person or his or her husband or wife, or his or her executors or administrators, in favour of the corporation; and the lien or charge may be realized in the same manner as if it were a mortgage on the land executed by the owner thereof.

(4) The certificate shall be recorded on its mere production without any affidavit of execution.

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(5) The statement, when recorded, shall from the time of its being so recorded be held to cover all moneys paid out or expended by the corporation in connection with the maintenance, relief, support, hospital account, or burial of the person, or his or her husband or wife, or his or her child under twenty-one years of age, after the date of recording thereof as well as before; and the statement and the lien or charge created thereby shall remain in force without renewal until discharged.

(6) The lien or charge created by the statement may be discharged by the registration in the same office or a discharge executed by the head of the corporation or, if directed by resolution of the council, by the treasurer of the corporation.

The action was tried by Bastin J. who gave judgment against the appellant for the sum of \$2,000. This amount was fixed by consent of counsel and was made up as follows:

Premiums and hospital expenses paid under The Hospital	
Insurance Act .....	\$ 151.45
Welfare payments .....	1,848.55

The appellant appealed to the Court of Appeal restricting the appeal to the amount awarded in respect of welfare, \$1,848.55. The Court of Appeal<sup>1</sup>, Freedman J.A. dissenting, dismissed her appeal with costs. Leave to appeal to this Court *in forma pauperis* was granted on October 16, 1963.

Section 453(1)(c) of *The Municipal Act* previously quoted empowers a municipal corporation, by resolution or by-law, to regulate and prescribe the conditions under which relief is to be given. This would enable such a corporation, if it so desired, to stipulate that any moneys which it paid out in the form of relief payments should constitute a loan and create a debt owing by the recipient to the corporation.

In the present case, however, no resolution or by-law of the respondent was pleaded. The statement of claim claims for moneys "expended on behalf of the defendant by way of maintenance and welfare." The question in issue in this case is, therefore, whether the expenditure of moneys by way of maintenance and welfare, *per se*, gives to the municipal corporation the right to claim for the same in debt as against the person on whose behalf such payments were made. In the absence of a provision by resolution or by-law of the kind above mentioned, the respondent must establish that a right of recovery is conferred upon it by the statute.

<sup>1</sup> (1963), 43 W.W.R. 219.

Freedman J.A. in his dissenting judgment dealt with the question in issue as follows:

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The common-law position supports the defendant. *Pontypridd (Guardians) Union v. Drew*, [1927] 1 K.B. 214, 95 L.J.K.B. 1030, makes it plain that at common law there was no obligation upon a poor person, who has received relief, to repay what he had received. Unless, therefore, some statutory provision confers upon a municipality the right to recover by action moneys paid by way of relief, no such right can be taken to exist. It is the contention of the plaintiff—and one that was upheld by the learned trial judge—that such statutory authority is to be found, if not expressly at least by implication, in sec. 947 of *The Municipal Act*, R.S.M. 1954, ch. 173. It is accordingly necessary to examine this section and that contention.

Under sec. 947 (1) every municipal corporation is declared to have, in addition to, or concurrently with, any other remedies, the remedies thereafter set forth in the section for the recovery of any debt, statutory or otherwise. I pause here to say that before this section can be of assistance to the plaintiff it must first be shown that moneys paid out by way of relief constitute “a debt”. Nowhere, however, does the statute so provide.

It is largely upon the provisions of subsec. (2) and (3) of sec. 947 of *The Municipal Act* that the plaintiff relies. Subsec. (2) specifically permits a municipal corporation to record in any land titles office in the province a statement certifying as to the moneys which have been paid out or expended by the municipal corporation for maintenance, relief or support of any person. Subsec. (3) then goes on to say that from the time of the recording thereof, the statement shall bind and form a lien or charge for the amount so certified on all the lands owned by that person, or his or her husband or wife, in favour of the corporation, and that the lien or charge may be realized in the same manner, as if it were a mortgage on the land executed by the owner thereof.

In short, the legislature has specifically provided that a municipality may charge a person's land or real property with the amount received by him or her by way of relief. This is a specific remedy which the legislature saw fit to provide. The defendant says that this remedy is exhaustive of the rights of a municipality, and that no right of suit for a debt is permitted.

Freedman J.A. accepted this submission and, in my opinion, correctly. In the absence of an express stipulation by resolution or by by-law that relief payments are in the form of a loan creating a debt owed by the beneficiary to the municipal corporation, the rights of such corporation to recover the same are limited to those prescribed in subss. (2) to (5) of s. 947 of *The Municipal Act*.

The appeal should, therefore, be allowed. The judgment of the learned trial judge will be varied by reducing the amount awarded to the sum of \$151.45. As this amount was never in dispute, the appellant should have her costs

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*Appeal allowed with costs as provided in R. 142(4).*

*Solicitors for the defendant, appellant: Walsh, Micay and Company, Winnipeg.*

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*Solicitors for the plaintiff, respondent: Arpin, Rich, Houston & Karlicki, Winnipeg.*

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