

1907  
 \*Nov. 20.  
 \*Dec. 13.

THE TOWN OF NEW GLASGOW } APPELLANT;  
 (PLAINTIFF) .....

AND

DAVID P. BROWN AND OTHERS } RESPONDENTS.  
 (DEFENDANTS) .....

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Municipal corporation—Sale of corporate property—Committee of council—Authority to sell—Ratification.*

A committee of a municipal council cannot, unless authorized by the council, sell corporate property and if they do an action lies against them by the corporation for any loss incurred thereby. Such illegal sale cannot be ratified by resolution of the council carried by the votes of the members of the committee.

**A**PPEAL from a decision of the Supreme Court of Nova Scotia reversing the judgment at the trial in favour of the plaintiffs and dismissing the action.

This action was brought by the plaintiff, the Town of New Glasgow, against the defendants, to recover damages for the wrongful conversion by the defendants, of 37 tons, 875 pounds, of water pipe and also for a declaration that the defendants (respondents) had no right or authority to convert or sell the same.

At the time of the conversion and sale the defendants were members of the council of the plaintiff town, and three of them, namely, Brown, Jackson and Murray, were members of the Water Committee of the said council.

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

On or about the 5th day of December, the four defendants, without authority of the town council, and without submission of the question to the town council, and acting independently of the council, undertook to sell, and did sell, the 37 tons, 875 pounds, of water pipe, the property of the said town, to William Cooke, of Glace Bay, N.S.

The pipe in question was acquired by the Town of New Glasgow under the authority of a special Act of the Legislature of Nova Scotia—chap. 114, Acts of 1903—by which the Town of New Glasgow was empowered to borrow \$40,000 for the purpose of improving, repairing and extending the water system of the town and “for laying a new 12-inch main pipe from the pumping station to the reservoir.”

The pipe was part of the 12-inch pipe bought for the purpose of laying a new main from the pumping station to the reservoir and was not required for that purpose.

Seven days after the sale the question of the sale of the pipe was for the first time brought before the town council and a resolution purporting to ratify the sale was introduced by the defendant Brown. The mayor refusing to put the resolution, it was put by the defendant Brown and declared by him carried, the defendants alone voting for it, the remaining two councillors voting against it and the mayor declaring it unconstitutional.

Subsequently this action was entered by the town under authority of a resolution of the town council claiming the difference between the price received and the actual value of the pipe. The action was tried at Pictou before Mr. Justice Meagher, who found for the plaintiff appellants, holding that the defendants had

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no authority to sell the pipe, and that the subsequent attempt to ratify the sale by Brown's resolution was of no effect.

An appeal was asserted from this judgment to the Supreme Court of Nova Scotia, and was heard by a court composed of Townshend, Graham, Russell and Longley JJ. Mr. Justice Russell read an opinion allowing the appeal with which opinion Mr. Justice Graham concurred. Mr. Justice Townshend, with some doubt, concurred in the opinion of Mr. Justice Russell, and Mr. Justice Longley dissented, holding that the defendants had no right to sell the pipe.

The plaintiffs appealed to the Supreme Court of Canada.

*C. E. Gregory K.C.* and *Mellish K.C.* for the appellants.

The defendants had no authority to sell the pipe in question and could not lawfully do so: *Pictou School Trustees v. Cameron* (1); and, necessarily, they could not themselves ratify the sale.

The town corporation has only the powers given it by the charter and the sale of personal property is not one of them. See *Attorney-General v. Great Eastern Railway Co.* (2); *Ashbury Railway Carriage and Iron Co. v. Riche* (3).

*W. B. A. Ritchie K.C.* for the respondents. The sale in question was incidental to the construction of water works authorized by statute and so within the powers of the council. See *Liverpool and Milton*

(1) 2 Can. S.C.R. 690.

(2) 5 App. Cas. 473, at p. 481.

(3) L.R. 7 H.L. 653.

*Railway Co. v. Town of Liverpool*(1). Brice on  
Ultra Vires (3 ed.), pp. 117-8.

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THE CHIEF JUSTICE concurred with Maclellan J.

DAVIES J. concurred with Idington J.

IDINGTON J.—The appellants are, as the name indicates, a municipal corporation. The Legislature of Nova Scotia passed an Act enabling this corporation to construct water works.

In the course of some months after works begun thereunder it became apparent that there was more pipe on hand than the corporation had ready money to make immediate use of.

The respondents were members of the council of the said corporation. Three of them constituted a committee which, I infer from its name and references to it in the evidence, had charge of this work.

It is not pretended, however, that they ever had any authority to sell or dispose of any of the pipe in question. Neither the mayor, nor the council, so far as appears, had ever considered the question of what should be done with what had become, for the present moment, pipe that we may for argument's sake call surplus pipe.

Whether it would be a wise thing to sell it, if the power existed to do so, or retain it awaiting future developments was clearly a question for consideration by the whole council, at a meeting properly constituted for the consideration of such business.

This seems so clear that one is at a loss to comprehend the frame of mind of those who, unauthorized

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and quite unwarranted in any way, took the steps the respondents did to sell this part of the town property.

Brown, who was chairman of the committee I have referred to, tells how, as a result of his meeting with one Cooke, a contractor at Glace Bay, the negotiations came about, and then says:—

This is how the sale originated. The pipe was shipped under the instructions of the four of us to Cooke. That is all the authority we had at that time.

I may suggest that he might as well have added to the last sentence "or any other time" and completed the story.

Eight or nine days later at a meeting of the council when, on these facts, this very cause of action now before us had arisen in appellants' favour and all four respondents were liable to be adjudged in a suit for, and in trial of suit for, such cause of action as Mr. Justice Meagher, the learned trial judge, afterwards did adjudge them liable, to pay the town over twelve hundred dollars, they ask the mayor to submit to the council meeting the resolution I am about to quote, and on his refusal they had it put by themselves, and voted for by themselves, and entered on the minutes duly signed by themselves, as follows:—

Resolved, that the sale of 37 tons, 875 pounds of water pipe to Wm. Cooke, contractor, Glace Bay, at the rate of \$31.00 (thirty-one dollars) per ton of 2,000 lbs. f.o.b., New Glasgow, be confirmed, and that the proceeds be placed to the credit of the "water construction account."

(Sgd.)	DAVID P. BROWN.
"	G. S. JACKSON.
"	H. MURRAY.
"	JOHN J. GRANT.

New Glasgow, Dec. 12, 1905.

Resolution *re* sale of pipe voted on.

After which Councillor Brown put the resolution to a vote of the council and passed on the following vote, viz.: For resolution—

Councillors Grant, Murray, Brown and Jackson. Against resolution—Councillors Fraser and Glendenning.

Minute book, page 165.

Nobody ventured to assist them or countenance their proceeding.

What could they expect to gain legally by such a proceeding?

I am not surprised that counsel have failed to find precedent to fit such a case.

The legal principles that do fit it are old and are just as much in force to-day as when first applied.

When men are named as committee men on behalf of a municipal council or any other body of men, they are but agents of, with such authority as, those nominating them choose (acting within and no further than their legal power of such nomination may extend) to give.

No one acting on or as such committee exceeding the limits of such agency or authority can ratify his own wrongful act, and make it legally right or effective or release himself from the consequence of his own wrong.

It seems idle to discuss the statutory authority, of the town to sell, when the town never did sell.

It may not be out of place to refer to what was pointed out by eminent judges such as the late Chief Justice Hagarty in the case of *Baird v. The Village of Almonte* (1), at p. 419, and the late Chief Justice Harrison at pp. 424 *et seq.*, followed by Mr. Justice Osler, now of the Court of Appeal for Ontario, in the case of *Vashon v. Township of East Hawkesbury* (2), at pp. 202 and 203, in cases where statutory prohibition existed against municipal representatives, who are trus-

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(1) 41 U.C.Q.B. 415.

(2) 30 U.C.C.P. 194.

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tees for the public, acting when their interest and duty came in conflict. It appears from them that apart from the statutory prohibition there existed no right to act.

Of course we express no opinion on the need of assent by the Lieutenant-Governor to a sale.

I think the appeal should be allowed with costs here and in the court below and the judgment of Mr. Justice Meagher restored.

MACLENNAN J.—I am of opinion that, quite irrespective of the statute requiring the consent of the Governor in Council, to a sale of property by the municipality, the respondents had no power, without the previous authority of the municipal council, to make the sale in question.

They not only made a contract of sale, but actually shipped the pipes to the purchaser at Glace Bay; acts which constituted a conversion of the property, and gave rise to a good cause of action on the part of the municipality.

The appeal should, in my opinion, be allowed with costs here and below.

DUFF J. concurred with Idington J.

*Appeal allowed with costs.*

Solicitor for the appellant: *H. K. Fitzpatrick.*

Solicitor for the respondent: *H. C. Borden.*