

holders and proprietors in said townships, or either of them. 5. That it is not alleged or shown, that any by-law was passed by the plaintiffs directing the levy or collection of said moneys according to law.

Plea.—That the alleged direction to the said corporations of the townships of Smith and Harvey, to levy and collect the moneys in said count mentioned, was contained in a certain by-law of the plaintiffs (the corporation of the county of Peterborough), passed on the 24th of June, 1865, and not otherwise, and that so much of the said by-law as directed the said levy and collection was afterwards, and before the commencement of this suit, by the judgment of the Court of Queen's Bench at Toronto, having jurisdiction on the premises, in due course of law ordered to be quashed and set aside as illegal, which said judgment or order is still in full force, and is no way annulled or vacated.

The plaintiffs demurred to this plea, on the grounds that the said direction of the plaintiffs to the corporation of the townships of Smith and Harvey was not by law required to be given by by-law, and therefore the allegation that the said by-law was quashed forms no answer to the said count; that the levy and collection of the said moneys can only legally be made under a by-law of the defendants, and not under a by-law of the plaintiffs.

Hector Cameron, for the plaintiffs, cited *Roach v. Municipal Council of Hamilton*, 8 U. C. R. 229.

Robert A. Harrison, contra, cited *Mallish v. Town Council of Brantford*, 2 C. P. 35.

HAGARTY, J., delivered the judgment of the court.

It is not easy to see with much certainty how the legislature contemplated the collection of the cost of a survey of this description. Section 9 of the Upper Canada Survey Act, ch. 93, directs that the county council shall cause to be laid before them an estimate of the sum requisite to defray the expenses of survey, &c., "in order that the same may be levied on the said proprietors, in proportion to the quantity of land held by them respectively in such concession or part of a concession, in the same manner as any sum required for any other purposes authorized by law may be levied."

Section 75 of the Assessment Act (Consol. Stat. U. C., ch. 55) declares, "When a sum is to be levied for county purposes, or by the county for the purposes of a particular locality, the council of the county shall ascertain, and by by-law direct, what portions of such sum shall be levied in each township, town or village, in such county or locality;" and section 76 directs the county clerk to certify yearly to the township clerk "the yearly amount which has been so directed to be levied therein for the then current year, for county purposes, or for the purposes of any such locality," and the township clerk shall calculate and insert the same in the collectors' roll for that year. Section 187 of the Municipal Act (Consol. Stat. U. C., ch. 54), says "The powers of the council shall be exercised by by-law when not otherwise authorized or provided for."

The nearest approach to the case before us would be in the words, to be levied by the county

for the purposes of a particular locality. This must be done by by-law.

The plaintiffs' declaration is therefore met by the plea, that the direction by them to levy the amount was by by-law and not otherwise, and that the said by-law was quashed before the bringing of this suit.

The plea seems to us to be a good bar. Even if the plaintiffs could require the amount to be levied otherwise than by by-law, still the plea avers, and it is admitted by the demurrer, that the only requirement or direction to levy was in fact by the quashed by-law, and not otherwise; so that the groundwork for the alleged duty is taken away.

As we arrived at the conclusion that the plaintiffs must proceed by by-law, whether they call on the township to make the levy at attempt so to do by their own direct power, if any such power exist, it does not seem necessary to discuss the various points suggested by the demurrer.

It will always be more advisable to discuss the true effect of the statutes whenever the plaintiffs may pass any by-law to direct the payment or levying of this money.

The court can then examine the proposed course of proceeding, and decide on its validity.

Very great difficulties present themselves to the enforcement of this claim, from the loose and uncertain language of the statutes.

This court has decided this term on one of the objections taken, viz., whether a survey of an entire township, and not of a concession or part of a concession, is a survey contemplated by the act, against the validity of such a proceeding.

There is no statement whatever in the declaration that the survey has been made. No objection was urged by the defendants on that ground, and the statute is not very clear as to whether the proprietors of the land can be called on or not before the work is done. If it can be demanded in advance (a matter on which we give no opinion), there would be even a stronger reason for all the statutable formalities of a by-law being required.

We think the defendants are entitled to judgment. We hold the count bad as not shewing a by-law, and also on the ground that the re-survey of the whole township, and the manner of levying the expense, is illegal. We also hold the plea good.

Judgment for defendants.

ENGLISH REPORTS.

BWLCH Y PLWM LEAD MINING COMPANY (LIMITED) v. BAXNES.

Contract—Fraud—Repudiation—Joint-Stock Company—Shareholder—Liability for calls.

To an action for calls, a plea showing that the defendant was induced to take the shares by the fraud of the plaintiffs, and that on discovering the fraud, and before he had received any benefit from the shares, he promptly repudiated the shares, is a good plea at law.

[Ex. 15 W. R. 1108.]

Declaration for calls due upon shares held by the defendant in the plaintiffs company.

Plea, that the defendant was induced to become the holder of the shares by the fraud of the plain-