

TAYLOR, C.J.]

[Oct. 18]

RE RURAL MUNICIPALITY OF MACDONALD.

Municipal law—Ultra vires resolutions of council—Ordinary or special meeting—By-law or resolutions.

In this case a ratepayer of the municipality applied by summons under s. 358 of the Manitoba Municipal Act to quash two resolutions of the council, one of which was passed to provide for payment of the expenses of counsel and witnesses in attendance upon a commissioner appointed by the Lieutenant-Governor in Council to inquire into the financial affairs of the corporation, and the other to authorize the employment of counsel and payment of other expenses in opposing a bill introduced into the legislature to dismember the municipality and to apportion its territory among the adjoining municipalities.

These resolutions had been passed at special meetings of the council, but the notices calling them did not in any way specify the business to be taken up as required by ss. 284 and 288 of the Act.

Held, that the first resolution was *ultra vires* of the council, but that the second might not be.

Held, also, that both resolutions should be quashed on the ground that the notices calling the meetings at which they were passed did not specify the business to be taken up.

Semle, that if the council had power to apply the funds of the municipality for any of the purposes dealt with in the resolutions, it should have proceeded by by-law.

J. R. Haney for the applicant.

Joseph Martin for the municipality.

THOMPSON v. DIDION.

TAYLOR, C.J.]

[Oct. 18.]

Set-off of costs against judgment—Solicitor's lien.

The plaintiffs, creditors of the defendant Edmund Didion, having brought this suit to set aside a judgment recovered against him by his wife, the co-defendant, as fraudulent and void, the bill was dismissed with costs. In settling the minutes of the decree the plaintiffs asked to have their judgment obtained after the filing of the bill set off *pro tanto* against the costs payable by them to Edmund Didion, who had defended separately from his wife. This was opposed by his solicitor on the ground that his costs were unpaid.

Held, that the solicitor's lien could not be interfered with in such a case, and the application was refused.

Webb v. McArthur, 4 Ch. Ch. 63, and *Collett v. Preston*, 15 Beav. 458, followed.

Semle, however, that when costs in a particular suit are payable to and by different parties to it there may be a set-off, and no question of the solicitor's lien will be entertained to prevent it.

Darby for the plaintiffs.

Baker and Bradshaw for the defendants.