

make their claim in several forms. . . . But these wide and general claims virtually narrow down to two inquiries: are the plaintiffs entitled to any relief, and, if so, in what form?

As already said, the matter is not to be dealt with as the footing of no fraud or misrepresentation or intentional concealment or overreaching on the part of the defendants. It is also to be observed that the plaintiffs do not in terms ask that the agreement of the 10th February, 1902, be set aside, but assume that it should stand as regards the matters dealt with by it, and on that footing they seek some modification or reformation of its terms. Yet, if the parties are, with relation to the surplus fund, to be put back into the position in which the plaintiffs say they were at the time of their erection into a city, it is difficult to see how this is to be accomplished with the agreement standing in the way.

It is difficult, too, to understand the position which the plaintiffs take with reference to their right to a portion of the fund. Putting it at the highest for them, the legislation did no more than to place them in the position the town occupied with reference to the fund at the date of the erection of the plaintiffs into a city. What was that position?

However or through whatever means the fund was permitted to accumulate—and they are to be assumed not to have been improper or dishonest—it constituted and was a surplus fund. It represented rates received from the municipalities comprising the county provided for and raised by the county as prescribed by secs. 402 to 407, inclusive, of the Municipal Act. Under the provisions of the Assessment Act then in force, these rates were collected by the tax collectors for the various municipalities, and with this duty the councils of the municipalities have nothing to do; it is a statutory obligation which the clerk of the municipality owes to the county and is bound to perform: *Mowat, V.-C.*, in *Grier v. St. Vincent*, 13 Gr. at p. 519; R. S. O. 1897 ch. 224, secs. 129, 130-133, 144, 265.

For several years the sums collected appear to have exceeded the estimates, and so, by operation of sec. 408 of the Municipal Act, the balance would form part of the general fund of the municipality.

Whether or not, by means of an information by the Attorney-General at the instance of one or more of the minor municipalities or of a ratepayer or ratepayers in one of them, the defendants could have been compelled to administer the fund in accordance with the terms of sec. 408, need not be inquired into. No such proceedings were taken. It seems plain that not one of the muni-