

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

CHANCERY DIVISION.

Ferguson, J.]

[Sept. 16.]

TOWNSHIP OF ELDERSLIE V. VILLAGE OF PAISLEY.

Municipal law—New municipality—Liability to share of debts created by old municipality—36 Vic. c. 48, s. 56 O.—R.S.O. c. 174, s. 55.

36 Vic. c. 48, s. 56 O. (R.S.O. c. 174, s. 55), provides, that upon an incorporated village being created out of a portion of an existing municipality, "all special rates for the payment of debts theretofore imposed upon the locality by any by-law of the former corporation, shall continue to be levied by the new corporation, and the treasurer of the new corporation shall continue to pay over the amount as received to the treasurer of the senior or remaining municipality, and the latter shall apply the money so received in the same manner as the money received under the same by-law (*i.e.*, the by-law of the senior municipality which created the debt in question) in the senior or remaining municipality."

In this case the township of Elderslie in 1873 passed a by-law for issuing debentures to raise \$6,000 for purposes of a school section, in part comprised in it, and providing for payment of interest, and creation of a sinking fund, and levying of the necessary special rate in the property of the school section.

In 1874 the village of Paisley was incorporated out of a portion of the township of Elderslie, being a portion of the said school section. During the currency of the debentures, and after the incorporation thereof, the corporation of Paisley collected their share of the money required to pay the interest and raise the sinking fund, but they paid over the same to the secretary and treasurer of the school board instead of to the treasurer of the township of Paisley. In 1883 the said secretary and treasurer died, and it was found he had converted the said sinking fund money to his own use, but had left no assets to make good the theft.

In the same year the debentures fell due, and the township of Elderslie paid them, and now sued the village of Paisley for its *pro rata* portion thereof.

Held, that the plaintiffs were entitled to judgment, except as to sums levied and received

by the defendants more than six years before action brought, for the defendants should have paid the moneys over to the treasurer of the plaintiffs' corporation, and even if there had been a positive agreement by and with the township of Elderslie that the money should be paid to the secretary-treasurer of the school section, this would have made no difference; for such an agreement would have been *ultra vires* the township of Elderslie, and void as contrary to the statute law, while the sections of the Municipal Act of 1873 relating to arbitrations in cases of separations of incorporated villages from townships, did not apply in this case, so as to prevent the action lying.

Held, also, that even if it was impossible to make the judgment productive, on the ground that the defendants could not now levy and collect the money, this was no reason why the plaintiffs should not obtain judgment: *Frontenac v. Kingston*, 30 U.C.R. 594 distinguished.

Cassels, Q.C., and *O'Connor*, for the plaintiffs.

C. Moss, Q.C., and *Shaw*, Q.C., for the defendants.

Ferguson, J.]

[October 18.]

ROSS V. MALONE.

Execution—Fi. fa. lands—Sale by sheriff before return nulla bona—R. S. O. c. 66, s. 14, 15.

Held, under the circumstances of this case that a sale under a *fi. fa.* against lands conferred a good title on the purchaser, although the *fi. fa.* against goods had not been returned *nulla bona* under R. S. O. c. 66, s. 15. The want of a return *nulla bona* before the sale of the lands were only an irregularity, and not fatal to the validity of the sale. It appeared the sheriff would have returned the writ *nulla bona* if called upon to do so; that the judgment debtor had no goods in the county during the currency of the writ against goods, and that the plaintiff endeavouring to set aside the sale, being a mortgagee, would, if he had made the proper searches, have found the writ against lands in the sheriff's hands.

Lount, Q.C., for the plaintiff.

Pepler, for defendant W. Boys.

Lennox, for defendant Giffin.