

HAGARTY, J.—The Inspector's certificates of the due performance of the work bear date 16th January, 1867. The accounts had been previously rendered to the Treasurer of York and Peel before the 1st January, when the final separation took place. There is, we think, sufficient evidence of a demand on the York Treasurer, and of a refusal by him. All the work was done before the final separation, and the plaintiff had been for some time applying to the Treasurer of the United Counties for payment.

The objections urged at the trial came, as we understand, from the counsel for the County of York. The County of Peel pleaded never indebted separately, and do not appear to join in the line of defence taken by York. The attorney on record for Peel was examined by the plaintiff as his witness, to prove a demand on the York Treasurer.

There was a demand of payment and refusal, or what would be legally equivalent to a refusal on the part of the Treasurer of the United Counties prior to a final separation. It is quite true that the Inspector's certificates were not given or furnished till after the 1st January, but we do not read section 70 as making the certificates a condition precedent to the right of action on demand and refusal to pay. The act, after giving the right of action, then declares that "the Inspector's certificate of the amount and of the services rendered shall be *prima facie* evidence of the right to recover.

We consider that under the statute the accounts were sufficiently proved, and we do not agree to the objection that the present Registrar was not entitled to do or be paid for the work, as he had not received the memorials.

It was the officer as Registrar receiving memorials, and not any particular individual in his personal capacity, that we think the statute points to and on whom it casts the duty.

Our judgment on the demurrer to the declaration (26 U. C. R. 635) covers many of the objections. We said there, "At the moment of dissolution it is a debt due by all the United Counties." So we hold here, that at the moment of dissolution, on the 1st January, 1867, the action had fully accrued to the plaintiff; and, in the further words of the judgment, "it continues a debt against all, as if, after each had commenced its independent corporate existence, it had been again contracted by them jointly with the other."

This view renders it useless to discuss the necessity of a separate demand on the Peel treasurer.

The result at which we have arrived may produce an effect not probably contemplated on the separation of these Counties, and bearing with apparent hardship on the County of York. We see however no other solution of the legal difficulty.

Rule discharged *

GIBB AND THE CORPORATION OF THE TOWNSHIP OF MOORE.

Town hall—By-law to erect—Provision for payment.

A By-law for the construction of a new town hall in a Township, passed 22nd May, 1867, was moved against, on the ground that it authorized expenditure for a purpose not under the head of ordinary expenditure, without having money in hand or making the necessary

provision by rate or otherwise to meet the demand. It appeared, however, that the sum required was included in the annual by-law for the year, passed on the 19th August, 1867, upon an estimate previously made, also including it, which the applicant had voted to adopt; that the town hall had been completed, accepted and paid for, and the land on which it stood conveyed to the corporation.

Under these circumstances the rule to quash the by-law was discharged with costs.

[Q. B., M. T., 31 Vic., 1867.]

Harrison, Q. C., obtained a rule on the corporation of the Township of Moore to shew cause why their by-law passed on the 22nd May, 1867, entitled a "By-law for the construction of a new town hall in the village of Mooretown, and providing for the expenses thereof," should not be in whole or in part thereof quashed, with costs, because the said by-law authorizes the expenditure of money for a purpose not falling under the head of ordinary expenditure, without having money in hand to meet the demand, without making any provision by rate or otherwise to raise the necessary amount to meet the demand, and without containing the recitals necessary to the validity of a by-law passed to raise money on the credit of the corporation; and on grounds disclosed in affidavits and papers filed.

The application was founded upon the affidavit of the Reeve of the Township, who swore that the funds for building the town hall mentioned in the by-law were taken from the money in the treasury of the township intended for and appropriated to the ordinary expenditure of the township: that no special rate was made to replace the funds so taken, other than a rate of 1½ cents on the dollar to meet the ordinary expenditure for the present year; and that all the funds in the treasury at the time of passing the by-law were appropriated to the repairing of roads and ditches, &c., and no portion of the same were intended to be applied to the building of the new town hall, or any other or different purpose from those mentioned. He also stated that serious inconvenience and loss was occasioned to parties to whom the corporation was indebted for work and labour, by reason of the funds being applied to the building of the town hall.

In answer to the applicant's affidavit, the corporation filed affidavits of the Deputy Reeve, two other Councillors, the Treasurer, and the Clerk of the Corporation, which affidavits all went to shew that, deducting the appropriations made by the corporation during the year 1867, down to the date of the by-law (22nd May) out of the funds in hand at that time, there was in the treasury nearly \$1,200, besides \$858 27 in the County Treasurer's hands belonging to the corporation, ready to be paid on demand, making together over \$2,000, and which sums might be lawfully applied to meet the expenditure on the new town hall. And attached to the affidavits of the Deputy Reeve and Clerk were certified copies of a general estimate of, and shewing in detail, the ordinary expenditure and liabilities of the corporation for the year 1867, made on the 28th June, 1867, and the ways and means to meet the same, the whole expenditure and liabilities amounting to \$8,635, including the \$1,500 for the town hall; the ways and means being \$4,619, composed of \$1,488 in cash on hand and money to be received, and the rate of 1½ cents referred to in the applicant's

* Leave to appeal was granted.