

G. H. Watson, K.C., and N. Sinclair, for the plaintiffs.
 J. Bicknell, K.C., and G. F. Mahon, for the defendants.

Moss, C.J.O.:—There is now no dispute as to the facts. Most of them appear or are to be gathered from documents. The only dispute on oral testimony was one involving a charge by the plaintiffs against the defendants of fraud, misrepresentation or concealment, and it was determined in the defendants' favour at the trial. Any element of want of good faith or intentional wrongful conduct must now be regarded as eliminated from the case.

In the year 1901 an Act of the legislature was passed, at the instance of the Town of Woodstock, erecting it into and incorporating it as a city. In the month of February, 1902, the plaintiffs (the city) and the defendants (the county) entered into an agreement, ratified by by-laws of both corporations. This agreement was at that time apparently taken and accepted by both parties as comprising and settling all questions between them arising out of the erection of the plaintiffs into a city, and it was subsequently acted upon and its terms complied with by the plaintiffs until shortly before the commencement of this action on the 23rd December, 1907.

The reason for the action was the discovery by the plaintiffs, as they allege, that at the time of their erection into a city there was in existence a surplus standing to the credit of the defendants amounting to \$37,000 or thereabouts, which had been collected through the various local municipalities comprising the county, including the Town of Woodstock, from the ratepayers thereof, and that, in the negotiations preceding, and in the making of, the agreement, this surplus fund was not taken into account or dealt with in any respect.

By the 4th section of the special Act 1 Edw. VII. ch. 75 it was enacted that "the City of Woodstock shall in all matters whatsoever stand and be in the place and stead of the Town of Woodstock, and all property of every kind and all rights, interests, assets, and effects, taxes, rates, dues, revenues, obligations, and income, now belonging to or accruing due to or which may be assessed for by the said town, shall pass, belong to, and be the rights, property, assets, and effects, taxes, revenues, and obligations of the City of Woodstock . . . the meaning and intention hereof being that in all matters and things the said city shall be and stand in the place of the said town."

And the plaintiffs say that, in virtue of the said Act and of the Municipal Act, they are entitled to receive from and be paid by the defendants some part of the surplus fund in question. And they