

SECOND DIVISIONAL COURT.

OCTOBER 3RD, 1919.

ROTHSCHILD v. TOWN OF COCHRANE.

Municipal Corporations—Destruction by Fire of Buildings in Town—By-laws Authorising Issue and Sale of Debentures to Provide Funds for Restoration—Validation by Statute—Remission of Taxes for one Year in Respect of Private Buildings Destroyed—Disposition of Surplus of Fund—Reduction of Taxation in Subsequent Years—Duty of Town Council.

Appeal by the plaintiff from the judgment of MASTEN, J., 16 O.W.N. 60.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

J. M. Ferguson, for the appellant.

E. G. Long, for the defendants, respondents.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that the legislation contained in ch. 9 of the statutes of Ontario passed in 1917 permitted the defendants to borrow \$40,000, in the manner in which they desired to do so as set out in the three by-laws of their council embodied in and confirmed by that legislation; and the substantial question raised by the plaintiff in this action was, whether they were bound to expend a large part of that borrowed money in reduction of the town's taxation in the years 1917 and 1918.

A substantial part of it was used in making good a deficiency in the taxes of the year 1916; and that the defendants admitted they were bound to do; but as to the other two years they asserted: (1) that they were under no such obligation; and (2) that there was no deficiency.

No obligation in respect of the taxes for either of the years 1917 and 1918 was even mentioned in any of the by-laws; and the last two expressly related to and made provision respecting the taxes in 1916 only. But, if either of the first two had created any such obligation, it would be controlled by the last, which alone provided for the circumstances with which the parties to this action were in this action concerned—that is, the disposition of the surplus of such moneys in the defendants' hands; and the last by-law expressly made very plain, in sec. 1, that that surplus which was to be disposed of as set out in it, was what was left of the borrowed \$40,000 after taking out of it the defendants' loss resulting from the forest fires in 1916, and their deficit in 1916 by reason of the cancelling and rebating of part of that year's taxes.