

volved in the case, was real or only a sham to enable those who conducted it to exact a greater rate of interest than twelve per centum. Whether the positive testimony of the persons chiefly concerned in the lending of the money ought to be believed or not would have been a question for the jury, and was one for the trial Court; and is one with which this Court cannot now rightly concern itself.

I am also unable to see why one who is not a money lender, within the meaning of the Act, may not be an aider and abettor of one who is, in an infraction of its provisions. It does not follow, from the fact that the person who aids in the commission of a crime is, by the Criminal Code, declared to be a party to and guilty of the offence, that one who could not alone have committed it, cannot be convicted. One may be physically incapable of committing a crime and yet guilty of it, through the act of another who is capable, and whose act is the act of both; and why not equally so where there is legal incapacity? That which the accused did would have been none the more harmful, none the more against the object of the enactment, if the accused, as well as his employer, had been a money lender. Whether any one is merely a manager, agent, or servant of a money lender, can be held to be a money lender, within the meaning of the enactment—can be said to be carrying on the business of money lending—need not be considered.

I would answer the question, as I have stated it, in the affirmative.

OCTOBER 22ND, 1910.

*CITY OF WOODSTOCK v. COUNTY OF OXFORD.

Municipal Corporations—Separation of City from County—Agreement as to Assets—Surplus Fund not Taken into Consideration—Right of City to Share in Fund—Municipal Act, 1903, sec. 408—Trust—Enforcement.

Appeal by the plaintiffs from the judgment of MULOCK, C.J.Ex.D., dismissing the action, which was brought to recover part of a surplus fund, amounting to about \$37,000, standing to the credit of the defendants at the time of the separation of the city from the county.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

* This case will be reported in the Ontario Law Reports.