

it was given under the authority of a by-law of the municipality of Amherstburg.

*Horne contra.*

LEGGATT, Co. J.—Before proceeding to consider this appeal upon its merits, the objection raised by Mr O'Connor, counsel for the municipalities of Sandwich East, Gosfield, Mersea and Maidstone, must be disposed of. If the objection is good there is an end to further proceedings and the appeal drops.

The general principle known to the common law is that a corporation can only act through its seal. A by-law should not be dispensed with except in a very clear case: see *Harrison's Mun. Man*, pp. 135, 136. This common law principle is fully recognized by the municipal statutes, and Mr. O'Connor pointed out a number of instances in the statutes in which municipalities are required to exercise their power by by-law. Blackstone in his commentaries says, "when a corporation is erected they must have a common seal, for a corporation being an invisible body cannot manifest its intentions by any personal act or oral discourse, it therefore acts and speaks only by its common seal. For though the particular members may express their private consents to any act by words or signing their names, yet this does not bind the corporation, it is the affixing of the seal and that only which unites the several assents of the individuals who compose the community and makes one joint assent of the whole." By the municipal act it is declared that every by-law shall be under the seal of the corporation and signed by the head of the corporation, or by the person presiding at the meeting at which the by-law has been passed, and by the clerk of the corporation.

The notice of appeal served upon me by the reeve of Amherstburg, requires me to take notice that the municipality of Amherstburg under and by virtue of the act respecting the assessment of property in the Province of Ontario, being dissatisfied with the action of the County Council of the County of Essex, as taken on the 22nd day of June instant, in decreasing the aggregate of the valuation made by the assessor of the municipality of Amherstburg for the present year, "do hereby give notice that they appeal against the said decision of the said county council, and that the grounds of dissatisfaction and appeal are," &c. The notice proceeds to state the grounds, and concludes with an attesting clause as follows: "In witness whereof the reeve of the said municipality of Amherstburg hath put his hand and caused the seal of the municipality to be attached hereto at Amherstburg, this 23rd day of June, A. D. 1870." The seal of the corporation is affixed thereto, as well as the signature of the reeve, and it is countersigned by the Clerk.

This notice is in every respect in conformity with the requirements of the statute giving the appeal, and we want no better evidence of the dissatisfaction of the municipality of Amherstburg, and of the council's intention and desire to appeal to the county judge. The municipality is in fact made to speak through its seal. We must presume in the absence of evidence to the contrary that the corporation seal was affixed to the notice by the reeve at the instance of the municipality of Amherstburg in council assembled, for he has no power or authority to use the

seal of the corporation without being duly authorized so to do by the council.

The clause of the statute giving the appeal does not require the municipality dissatisfied to authorize the appeal by by-law in so many words: it says the municipality dissatisfied may appeal to the county judge by giving to such judge and the clerk of the county council a notice in writing under the seal of the municipality of such appeal. That is, the notice has to be drawn up and attested in as formal and ceremonial a manner as a by-law. We may indeed look upon the notice as a by-law of the municipality, for it has all the attributes of one, and being good on its face we cannot look behind it to see that all the necessary and legal formula were gone through in passing it.

The courts upon general principles recognize judicially what municipal councils are competent to do, and hold that it is not necessary for them to recite in a by-law all that is requisite to shew that they have proceeded regularly in passing it: *Grierson v. Municipal Council of Ontario*, 9 U. C. Q. B. 623; *Fisher v. Council of Vaughan*, 10 U. C. Q. B. 492. See also *Secord v. Corporation of Lincoln*, 24 U. C. Q. B. 142, and *Gibson v. the Corporation of Huron and Bruce*, 20 U. C. Q. B. 111. In the last case it is said by the late Chief Justice Robinson that the statutes do require that by-laws to be passed for certain purposes shall contain particular recitals and provisions, but from the absence of any such recitals and provisions we are not at liberty to infer anything against the validity of the by-law, unless we can see clearly on the face of the by-law, or have otherwise shewn to us that the by-law was passed for a purpose which required them to be inserted. If for all that appears the by-law may be legal we are not to conjecture the existence of facts that would render it illegal.

This language is peculiarly applicable to the notice in this matter. There is nothing in the act giving the appeal requiring any particular recitals to be made in the notice of appeal, and for all that appears upon the face of it, it is legal, and we are not to conjecture the existence of facts, that would render it illegal. I think the notice served upon me is sufficient warrant and authority for me to proceed and hear the appeal.

Then as to the merits. The late Chief Justice Robinson remarked on one occasion with reference to the equalization of the assessments by the county council, that "it is a thing more easily said than done;" and on the same occasion he said, "I confess I think that although the person who framed the 70th and 71st clauses of chap. 55, Con. Statutes of Upper Canada, may have understood very clearly himself what he intended, he has not succeeded in making his meaning quite intelligible to others;" and again, "the Legislature indeed have not attempted to prescribe by what method of proceeding the townships, towns and villages shall be made to bear a just relation to each other in regard to the assessed value of property. They could hardly have succeeded in any attempt to do so." The Legislature at a later date did make the attempt, but did not succeed however in making the matter any more intelligible than it was before.

Subsection 2 of section 71, 82 Vic., chap. 36, points out the manner in which towns and townships should be made to bear a just relation to