

Now the corporation of the County of Pontiac, after having solemnly granted a bonus to the railway company, and after the county council had formally authorized and directed the issue of the debentures in accordance with the by-law granting it, comes into court and asks, not that the bonus be declared illegal and set aside, but that the debentures be declared irregular, illegal and void on a pure question of formality. The position which the county corporation assumes is not one which is entitled to be viewed very favorably. If it had asked to have the debentures set aside because the conditions on which they had been subscribed were not fulfilled, or because the railway company was not in a position to carry out its undertaking, the position of the county corporation would be a much more favorable one.

The reasons for which the court is asked to declare the debentures null is because they were signed by Mr. McNally, whose election, it is alleged, was null and void; because he had no right to sign them on behalf of the corporation, as Mr. Poupore was then the warden of the county; and because, not having been signed by the latter, they are therefore void.

Three questions must be considered in deciding this issue: 1. Whether the resignation of Mr. Poupore was regular and valid, and whether the nomination of his successor was valid? 2. Supposing the nomination of Mr. McNally to have been irregular, what was the position and what were the powers and authority of Mr. McNally in virtue of his informal appointment? 3. What is the effect of the resolutions of the county council confirming its previous proceedings and ratifying the acts of Mr. McNally?

As to the first question: The county corporation rests its case upon the pretension that the resignation of Mr. Poupore was informal and invalid, because it was not made in writing, and because it was tendered at a special session, which was not convened for that purpose. It is not contended that the warden was appointed for a specified term, and that he could not resign during his term of office. The warden is named for one year; but under a provision contained in the municipal code, he may be removed by a resolu-

tion approved of by two-thirds of the members of the council. Although it is necessary to have a vote of two-thirds of the members to remove a warden who is obnoxious, which is a harsh proceeding, and the exercise of the power of amotion, a simple majority of the council can accept his resignation. The code does not, it is true, specifically provide that a warden can resign his office, but there can be no doubt that he can do so. Article 342 of the municipal code declares that the office of mayor becomes vacant when the resignation as such is accepted by the council: and the provisions of this article, which are really definitions of general principles, must apply to the office of warden as well as to that of mayor. The code mentions no mode by which the resignation of a mayor or of a warden should be made. We must therefore refer to the common law; and under its provisions a resignation, unless a special mode is indicated, can be made in any fit manner. Dillon, in his work on municipal corporations, vol. 1, No. 224, says: "If the charter prescribes the mode in which the resignation is to be made, that mode should of course be complied with.... If no particular mode is prescribed, neither the resignation nor acceptance thereof need be in writing or in any form of words." And Angell and Ames, No. 433, say: "Where neither the charter nor by-laws prescribe any particular mode in which the members may resign their rights of membership, and their resignation be accepted, such resignation and acceptance may be implied from the acts of the parties.... To complete a resignation, it is necessary that the corporation manifest their acceptance of the offer to resign, which may be done by an entry in the public books." It is moreover not necessary that the code should provide that a warden has the right to resign, and that the council may accept his resignation, as the right to appoint an officer always implies the right to accept his resignation and to name his successor. Dillon, in the section above referred to, says: "The right to accept a resignation is a power incidental to every corporation.... The right to accept the resignation of an officer is incidental to the power of appointing him." And Angell