

GRIMMER v GLOUCESTER.

Judgment of the upreme Court of Canada.

In This Case, Which Has Attracted Great Attention Throughout Provincial Legal Circles.

Sedgewick, J.—In 1878 the legislature of New Brunswick passed a statute authorizing the establishment, operation and maintenance of an almshouse in the parish of Bathurst, one of the parishes of the defendant municipality. Its provisions so far as they affect this case are as follows:

The commissioners to be appointed as hereinafter mentioned are hereby authorized and empowered to lease or purchase a suitable building, farm and lands, situate in the vicinity of the town of Bathurst, in some suitable place; the ownership, or title and property to which lands shall be vested in "The Almshouse Commissioners of the Parish of Bathurst," in trust, and to be used and occupied for the purpose of an almshouse and workhouse for the parish of Bathurst, in the said county, and the said commissioners are also hereby authorized to agree for the erecting on the said farm a proper building or buildings for an almshouse and workhouse, and to fix on a certain sum of money for defraying the costs and expense of the purchase of the said farm, or for the annual rent to be paid therefor, and the erection thereon of the said building or buildings, the whole not to exceed, with the expense of assessing and collecting the same, the sum of three thousand dollars; and the county council of the said municipality are hereby authorized, and required, at any regular meeting or at any special meeting called for that purpose, to order the said sum to be assessed on the said parish of Bathurst, either extending over two years or more, but not to exceed ten years, as may be deemed most desirable, which amount so ordered to be so assessed, shall be assessed, levied and collected on the parish of Bathurst as other parish rates are assessed and collected.

The said county council may cause bonds to be issued by the municipality, entitled "Almshouse bonds," parish of Bathurst, which bonds shall be wholly chargeable on the said parish and shall bear such interest, be in such form, and for such amount, and be payable at such time and places as the said commissioners may recommend, but within ten years from the first issue of the bonds of indebtedness, and shall be signed by the warden and secretary-treasurer and have the corporate seal affixed thereto, and be placed in the hands of the secretary-treasurer of the municipality to be disposed of for the purpose of this act; and the proceeds of such bonds shall be placed to the credit of the said commissioners and be paid out on their order for the purpose of this act and for no other purpose.

The said county council are hereby required and authorized to order, make and levy upon the inhabitants of the said parish of Bathurst, liable to be rated or assessed, in any year a sum sufficient to pay the principal sum falling due upon any bond issued under this act in that year, and also a sum sufficient to pay the interest due on the whole loan, until the whole sum and interest be paid off; the said sums, when collected, to be held and paid by the secretary-treasurer for the purposes of this act and no other purpose.

It shall be lawful for the county council, and they are hereby required on the joint recommendation of the county councillors for the parish of Bathurst, to appoint three fit and proper persons, residing in the parish of Bathurst, to be commissioners for purchasing or leasing a farm and lands in the parish of Bathurst, and for erecting thereon a proper building or buildings for an almshouse and workhouse for the said parish of Bathurst, and supporting and managing the same.

The commissioners shall at the meeting of the county council in January in each year, lay before the said council an account, to be audited by a committee composed of the county councillors of Bathurst parish and the county auditor, of the expenses incurred by them for the support and maintenance of the poor in said almshouse and workhouse for the past year, together with an estimate of the sum or sums that may be needed for the maintenance and employment of the poor of the said house, including contingent expenses for the current year; and the amount of the said account, when audited and allowed by the said committee, shall be apportioned on the said parish of Bathurst, and assessed, levied and collected from the inhabitants thereof in the manner provided by law for assessing, levying and collecting parish rates, and when received shall be paid by the collector of the said parish into the hands of the secretary-treasurer for the use of the said commissioners and for no other purpose.

Sections 3, 9, 10, 11 and 12 provide further details for the working out of the act, and by section 13 it is expressly provided that the commissioners may recover from the overseers of any parish in any other county, in an action at law, the amount expended for the support of any pauper belonging to such other parish.

Section 14 provides that any vacancy in the board of death, resignation or otherwise, may be filled by the county councillors from Bathurst.

After the passing of the statute and at the annual meeting of the county council of Gloucester, held in the month of January, A. D. 1878, a resolution was passed whereby, after referring to the statute in question, and that it was desirable to erect the almshouse, it was resolved that the county council should order that bonds be issued for the purpose of the

act, payable from time to time, as the commissioners might recommend, and for such sum or sums as they might deem necessary, not to exceed in the whole \$3,000, and the warden and secretary-treasurer of the municipality were ordered to sign such warrants, and affix thereto the corporate seal of the said bonds to be placed in the hands of the secretary-treasurer to be disposed of by him to the best advantage, and the proceeds thereof to be placed to the credit of the commissioners and paid out on their order for the purposes of the act and for no other purpose.

These almshouse commissioners were also appointed by the county council at said January meeting. At this time John Young was warden and John Sivewright secretary-treasurer of the defendant municipality. The almshouse commissioners in pursuance of sec. 3 above set out, recommended to the municipal officers the amount to be borrowed (\$3,000), the rate of interest—the form of the bonds and the time and place of payment. Thereupon Sivewright, the secretary-treasurer of the parish of Bathurst, an extraordinary statement to make if the parish is not an entity capable of being indebted to anybody, we turn to the statute for relief and instruction, and we there find that the parish is in a certain sense the debtor of Gloucester, inasmuch as it will be from the rate payers of the parish that the money to pay the present loan will eventually come, the bonds authorized by the statute to be issued by the municipality, being "to be repaid by the parish."

And inasmuch as we are bound to give some meaning to the words of a contract unless they are in fact meaningless, we conclude that it was in that sense the words were used. That granted, as there is no express statement that the parish is the debtor, only a statement that the thousand dollars "is payable to Grimmer," we look to the statute and we find that it is payable by the secretary-treasurer of the municipality out of the special fund to be raised from the Bathurst rate payers. That is sufficient authority, therefore, to read into the bond, after the words "which is payable," the other words "by the municipality of Gloucester." And thus we have an absolute covenant for payment on the part of the municipality.

It is not authorized by the contract to be repaid to it, then there is presented to us such an instrument as the legislature in my view most certainly intended as expressed in its language, an instrument which otherwise would be a mockery and snare converted into one of honest intent and legal force—its ambiguities removed, and its obscurities made plain.

But suppose the interpretation I have ventured with great deference to give the bond is erroneous. There is another ground upon which the county's liability may be rested. Take the abbreviated words of the bond:

"This certifies that the parish is indebted to the said Grimmer in the sum of \$1,000, payable to Grimmer with interest on April 6th, 1884." What do these words "this certifies" mean? Give them any meaning at all and they are synonymous or equivalents of such phrases as these "we promise," or "we contract," or "we guarantee," or "we declare to be true." In other words, "we having borrowed from you \$1,000, promise that the parish of Bathurst will repay you with interest."

There is then a contract by the municipality that a third party will pay. It has not paid; the breach has happened, and the municipality must make good its promise.

It may be said that the statute does not authorize the contract, but we must look to the substance rather than to the form. The statute authorized the municipal bond as security for the municipal loan. The form of this obligation was left to the municipality's appointees. Giving effect to this contract so formed gives effect like to the legislative intent, and the bond holder gets his debt from the municipality.

I am of opinion that the appeal should be allowed and the verdict at the trial restored, the appellants to have their costs in all the courts.

OFF TO SOUTH AFRICA.

The Last of Canadian Fourth Contingent Sailed Yesterday.

Short of Horses They Bought Up at Last Moment Almost All the Animals Offered on the Wharf—A Splendid Looking Lot of Men.

(Special to the Sun.) HALIFAX, May 23.—This afternoon the transport Corinthian sailed for South Africa with the last of Canada's fourth contingent. Every man was in line this morning when the call to arms was made. The regiment made a particularly fine showing and it is no reflection on the other troops who have left Halifax for the front, when it is said that the western contingent made the best appearance of all. The hardy, sturdy and stalwart looking men, who had been bronzed by the prairie sun, and made rugged by the roaming life of the plains, certainly looked well. They were men of fine physique, heavy set, yet they swung along with the lightness of the young athlete, and their carriage was perfect. Colonel Macdonnell remarked to your correspondent last week: "Wait until you see our broncho riders in action, you will see a fine regiment." Today as they marched along to martial music, their fine soldierly appearance was remarked on all sides.

On the route to the ship there was little cheering, beyond an outburst now and then from the friends of the men. When the other contingents left, the hardy westerners cheered the loudest. They lined the streets, formed a guard of honor and made the city reverberate with their loud and continued cheering. Today when the broncho riders passed through over the same route their reception was not nearly so enthusiastic, but as they proceeded and when approaching the wharf, the Haligonians did get a little more on their feet. Their reception at the wharf was rather an enthusiastic one. J. W. H. Cameron and his two sons, Charles and Evan Cameron, dressed in full military costume, were on hand with their bagpipes to give Colonel Macdonnell a Scottish salute. The latter, however, was not expected to be there, but at that hour the last contingent of horses was being loaded on the ship. The order went out to hurry all the horses available for charges. In a little while many were on the wharf offering their horses for sale. Canned goods of many Truckmen also sold. Good prices were offered and in this way a large number of animals were obtained.

Colonel Macdonnell was given to understand that all the contingents were to be in Halifax not later than Wednesday, and he gave orders for the regiment to embark on Saturday. The contingent of horses did not arrive, and finding himself in an awkward position, an order was issued to purchase all the horses available.

Chronic Biliousness.

In Its Trail Follow Horrible Dreams, Dependency, Melancholia and General Weakness.

The proper elements needed to promote good digestion, regularity of the bowels, correct action of the kidneys and liver, must be supplied when a bilious condition of the system is once established. Ferrozone can't help but do this. It gives the stomach perfect rest, and allows you to partake of and enjoy the variety of food that is necessary for maintaining health. One Ferrozone tablet taken after each meal will separate the nutritious portions of the food from the waste, which is carried off, thus preventing and curing constipation and its attendant evil, piles. Being a potent blood purifier, Ferrozone cleanses the crimson flood of all bile and impurities, and as a result the complexion is restored to a rosy, healthy hue, and the dark circles under the eyes and the deathly pallor of the cheeks, go away never to return. Taken for disorders of the stomach, commencing with biliousness, and ending with derangements of the liver and kidneys, Ferrozone achieves marvellous results. It is at the same time a tonic and stimulant, and a regulator of all bodily functions, and chronic sufferers should not fail to give it a fair trial. It will do them good without doubt, and if the malady is curable it will yield to Ferrozone.

CAPE BRETON BONDS.

(N. Y. Herald, 22nd.) Attention was called yesterday in a most tangible way to the utter collapse of the Webb-Meyer crash by the sale of a lot of first mortgage bonds of the Cape Breton Railway. A block was offered for sale at the weekly public auction of securities, the par value of which was \$30,000. The bonds were knocked down for \$1,810, or \$53.66 for each bond, the par value of which is \$1,000. These bonds were offered for sale at par by Lockwood, Hurd & Co., one of the firms which went down in the Webb-Meyer crash.

The bonds were a part of the issue of five per cent first mortgage, due 2001. The company, in 1902, began the construction of a line from Sydney to Hawkesbury. In March of the present year the company had completed thirty miles, from Port Hawkesbury to St. Peter. Inasmuch as the bonds are issued after actual construction work is completed, the price at which the bonds were sold yesterday attracted great attention by experts. It was said that either the securities were "slaughtered" or there was something criminally wrong with the property, and it was a matter for a searching investigation. According to the statements of the company, the Standard Trust Company, of this city, is the trustee of the first mortgage bonds, and these were to be issued at the rate of \$90,000 a mile. If thirty miles of track, have been built it will be seen that \$600,000 of the bonds have been issued. The total authorized issue is \$2,400,000. Some of the bonds were placed in loans.

W. Seward Webb is president, and the directors besides that individual are: Robert J. Campbell, Samuel R. Callaway, E. W. Clement, Arthur E. Meyer, Michael Guerin, Edgar Van Ethen and Frank C. Smith.

Children Cry for CASTORIA.

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BOSTON LETTER.

Recent Deaths of Provincialists in City and Vicinity.

Press Disgusted with the Attempt to Kidnap Accused Prisoners from Quebec.

Wool Growing Report from New Brunswick—Sportsmen Must Pay Duty on Salt Water Trout They Send Home from Maritime Provinces—The Fish and Lumber Markets.

(From our own correspondent.) BOSTON, May 24.—The first really warm weather of the season arrived this week. Sunday, Thursday and Friday were hot, the mercury climbing to 70.

Americans have not finished the animated discussion of the worries and responsibilities imposed upon them by the Philippine white elephant, which seems destined to ruffle the temper of public men for some time. In the senate at Washington Wednesday Senator Wellington, bolting republican of Maryland, made a scathing attack on the government. The following day Senator Hoar of Massachusetts, the old republican war horse, delivered what was probably the speech of his life in condemnation of the American Philippine policy. At a mass meeting held Thursday night in Tremont Temple, Boston, to protest against the atrocities and scandalous doings in the islands, a congratulatory message was sent to Senator Hoar. The meeting was addressed by priests, ministers of all religions, representatives of the various denominations and the Jewish church. President Roosevelt has written Bishop Lawrence of the first named church that a thorough investigation is in progress and that all found guilty of the crime will be harshly dealt with.

The general appraiser at Washington in an important ruling decides that persons bringing trout from the maritime provinces, or from any part of Canada for that matter, to have the fish properly classified by the customs officers must produce evidence to show where the trout passed most of their time before being caught. It appears that large quantities of trout have been imported as fresh water fish. The customs people say that trout caught on streams near the salt water line, and which are taken to the coast to pass through an American port as a distinctly fresh water fish. The decision ends a long case, embodying a protest from E. Frank Close against the decision of the Boston collector. Mr. Close sent trout here from Yarmouth, N. S., in 1899, and the higher or "salt water" duty was collected.

Mr. and Mrs. Daniel C. Barle of Lynn observed the 50th anniversary of their marriage last Sunday. Mrs. Barle was Mary E. Johnson of Plymouth, Yarmouth county, N. S., formerly of Steviack, N. S., assumed charge of the Clarendon street Baptist church here on Sunday. Rev. Mr. Francis has nine brothers, five of whom are preachers in this country. His wife was Miss Nellie Stewart of New Glasgow.

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