

C. P. Rep.]

EX REL. CLEMENT V. WENTWORTH.

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CANADA REPORTS.

ONTARIO.

COMMON PLEAS.

REG. EX REL. CLEMENT V. COUNTY OF WENTWORTH.

By-law in aid of railway—Ratepayers' assent not obtained—By-law quashed.

A by-law of a County Council, in aid of a railway, to the extent of \$20,000, which had not been submitted to the ratepayers under the Municipal Institutions Act of 1866, was on that ground quashed.

[22 C. P. 300.]

In Hilary term last *F. Osler* obtained a rule to quash By-law No. 210, entitled "A by-law to aid the Hamilton and Lake Erie Railway Co., by a free grant or donation of debentures, by way of bonus, to the extent of \$20,000," on certain terms, &c., on the ground that it was passed by the County Council without having been submitted to the vote, and without securing the assent of the ratepayers, and on other grounds.

It was admitted that the by-law had not been submitted to the ratepayers.

The by-law recited the desire of the council to aid the railway by a free grant or donation of debentures to the extent of \$20,000, and that it would require \$2,200 to be raised annually by special rate to pay the debentures and interest. The debentures were to be payable within twenty years, interest at six per cent., half yearly.

Burton, Q. C., now shewed cause, and urged, first, that on the construction of the Act, it was not necessary to submit any by-law granting a bonus to a railway to the ratepayers, irrespective of the amount.

Secondly, that, as this by-law was for an amount not exceeding \$20,000, it need not be so submitted. He cited *Bramston v. Mayor of Colchester*, 6 E. & B. 246.

Osler, contra, referred to *McLean v. Cornwall*, 31 U. C. 314; *Jenkins v. Corporation of Elgin*, 21 C. P. 325; *Dwarris Statutes*, 568.

HAGARTY, C. J.—Section 349 of the Municipal Act of 1866, declares that a municipality may pass by-laws, 1st For subscribing for shares or lending to or guaranteeing the payment of any sum of money borrowed by a railway corporation, to which section 18 of 14 & 15 Vic. ch. 61, (By. Consol. Act), or sec. 75 to 78 of the Consolidated Railway Act have been, or may be, made applicable by any special Act. 2nd. For endorsing or guaranteeing debentures of railway companies. 3rd. For issuing debentures therefor. 4th. For prescribing the manner and form of debentures, and how they are to be signed. "But no municipal corporation shall subscribe for stock or incur a debt or liability for the purposes aforesaid, unless the by-law, before the final passing thereof, shall receive the assent of the electors of the municipality in the manner provided by this Act."

By the Ontario Act 34 Vic. ch. 30, sec. 6, the following sub-section is added to section 349 of said Act, "For granting bonuses to any railway, and to any person or persons, or company, establishing and maintaining manufacturing establishments within the bounds of such

municipality, and for issuing debentures payable at such time or times, and bearing or not bearing interest, as the municipality may think meet, for the purpose of raising money to meet such bonuses."

Mr. Burton urged that this new sub-section was to be added to section 349, and would properly come after and not before the proviso as to submitting the by-law to the ratepayers.

We are fully satisfied that this view cannot be sustained. The last Act gives a further power to pass by-laws under a new sub-section, which we think is to form one of the group of sub-sections, and that the added sub-section, equally with the original subsections, is to be followed by and subject to the general proviso as to the assent of the electors.

We cannot understand any other construction according to the rules for interpretation of statutes, and apart from anything to be learned from authority, the natural construction of writing would place the sub-section in such a position. "No debt shall be incurred for the purposes aforesaid, unless," &c. These purposes were set forth in the preceding sub-sections, and here it is declared, not that a new section shall be added to the Act, but that a new sub-section shall be added to the 349th section.

It is, we think, to form part of that section, to be one of the "purposes" of the section, and must be subject to the general proviso as to "the purposes" aforesaid.

We can hardly concur that the Legislature could have designed, while forbidding the council from taking stock in a railway company without the electors' consent, to permit the council to make a present to the company of any amount they might please, without such assent.

The charter of this company (33 Vic. ch. 36, sec. 7.) makes it lawful for any municipality to aid the company by loaning, guaranteeing, or giving money, by way of bonus, or other means; provided that no such aid, loan, bonus, or guarantee shall be given except after the passing of by-laws and their adoption by the ratepayers as provided by the Railway Act, and provided also that such by-law be made in conformity with the Municipal Acts.

Section 77, Consolidated Railway Act Canada ch. 36, provides that no municipality should subscribe for stock, or incur any debt or liability under this Act, except by by-laws passed with the assent of the electors, &c.

It is then argued that counties can pass any by-law for a debt not exceeding \$20,000 without such assent.

Section 227 of the Municipal Act enacts that every by-law (except for drainage under section 282) for raising upon credit any money, not required for ordinary expenditure and not payable within the year, must receive the assent of the electors, except that in counties the councils may raise by by-law, without submitting the same to the electors, for contracting debts or loans, any sum or sums over and above the sums required for its ordinary expenditure, not exceeding in any one year \$20,000.

The decision of the first question seems to involve the second also.

If, as we think, the council cannot incur a debt by by-law to grant a bonus to a railway