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SUPERIOR COURT.

SHERBROOKE, October 31, 1887.

Before BROOKS, J.

THE CORPORATION OF THE TOWNSHIP OF CLIFTON
V. THE CORPORATION OF THE COUNTY OF
COMPTON.

Action—Interest—Verification of Payment.

Held:—*That if A pays a debt which he owes to B, and takes from B a receipt sous seing privé, and the latter afterwards deny that such a payment has been made, and dispute the genuineness of the receipt, A may bring an action against B for the purpose of having the receipt verified.*

Plaintiffs alleged, that they are a municipal corporation within the County of Compton, that a certain by-law had been passed by the county council of the defendant corporation, whereby the County of Compton took certain shares in the capital stock of the International Railway Co. That the said County of Compton issued debentures to pay for its said shares; and that to meet the interest and sinking fund of the said debentures, there had been imposed upon the plaintiffs in common with the other municipalities then within the said county, a certain annual tax. That plaintiffs had paid the said tax for the year 1882 to the secretary-treasurer of the said Corporation of the County of Compton, and taken in acknowledgement of said payment the *sous seing privé* receipt of the said secretary-treasurer. That notwithstanding such payment and the giving of such receipt, defendants had denied that the said tax had been paid, and declared that the said receipt was a forgery. And plaintiffs asked that the judgment declare the receipt to be verified, and that defendants be ordered to direct their secretary-treasurer to credit plaintiffs with the payment of the tax in question on the books of the Corporation of the County of Compton.

Defendants among other pleas, filed a demurrer, alleging that the plaintiffs disclosed by their declaration no such interest as would entitle them to bring their action, and that the conclusions of the declaration did not flow from the allegations.

At the argument, it was argued on behalf of defendants, that they could not be called upon to direct their secretary-treasurer to make the entries in the books of the corporation, as asked for by plaintiffs; because the secretary-treasurer, is, as regards the manner in which he must keep the books of the corporation, the servant of the Provincial Secretary; and article 162, M. C., was cited in support of this pretension. The court, however, was of opinion that the article cited formed no obstacle to the granting of plaintiffs' conclusions.

The sole question to be determined, in the opinion of the court, was that of plaintiffs' interest. Supposing the allegations of the declaration to be proved; had plaintiffs such an interest as would support their action? The court thought they had. If forced to wait till defendants brought an action, they might be unable to make their proof, on account of the death or absence of necessary witnesses. Interest and right of action are co-extensive, and an action may be brought when the right arises. Ramsay's appeal cases, 16 and 20. It had been objected that the secretary-treasurer's signature had never been formally denied in the manner provided by article 145, C. C. P., but this article applied only to the procedure in cases before the courts. It had been further argued that the denial of payment and receipt, to give plaintiffs a right of action, would have to be made by resolution of the county council, and no such resolution had been alleged. The corporation could not be bound by what individual councillors might have said. This question, the court said, might arise, after the proof had been made, but the denial (though the plaintiffs might fail to prove it) had been sufficiently alleged. The demurrer must be dismissed.

The following is the written judgment of the court:—

"The Court considering that the plaintiffs have disclosed in their declaration