Read v. The Municipal Council of the County of Kent.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

(Hilary Term, 19 Vic.)

Registry books—Liability of County Council for—16 Vic., ch. 187, sec. 3.

A., the registrar of Kent, applied to G., the registrar of Huron, to order books for his office: G. ordered two books from the plaintiff in A.'s name, and these were charged to A.; three others were afterwards furnished, which the plaintiff charged in his books to "The County of Kent, for Mr. A."

Held, that the plaintiff had no right of action against the County Council.

Assumpsit for goods sold and delivered, and upon an account stated. Plea, non-assumpsit.

At the trial, before *Burns, J.*, at the last assizes held at London, the facts appeared to be these: The late Mr. Ackland had been appointed registrar for the county of Kent, and at the time of his appointment the office required books for the registry. Mr. Ackland applied to Mr. Galt, the registrar for Huron, to order what books would be requisite, and to assist him to put his office in order. Mr. Galt did order books from the plaintiff for the registry, and ordered them in Mr. Ackland's name; and Mr. Galt said he supposed the plaintiff gave credit to Mr. Ackland, for it was usual, he said, for the registrar to purchase books, and for the treasurer of the county to repay him. The plaintiff furnished at first two books at £5 each, and the original entry of those was against Mr. Ackland. Subsequently three books were furnished at £15 4s. 6d., and the entry made in the plaintiff's books was "The County of Kent, for Mr. Ackland." After Mr. Ackland's death another book was ordered, at £5 10s., and the entry of that was "The County of Kent, for Mr. Knapp," (the newly appointed registrar.) The last mentioned book was paid for by Mr. Knapp, and repaid to him by the treasurer of the county. The amount of the first two books was not paid, but the second bill, £15 4s. 6d., was paid to Mr. Ackland by the treasurer of the county on the 4th of April, 1854, and a few days after that Mr. Ackland died, without having paid the plaintiff. The plaintiff rendered an account of the five books in Mr. Ackland's name. At the time the county of Lambton was set off from the County of Kent, one of the five books was delivered to the registrar of Lambton, with the extracts which the statute requires in such cases; but the plaintiff knew nothing of that, and had nothing to do with it. The plaintiff said when the books were sent that he would supply the county, but not Mr. Ackland.

It was objected, on the part of the defendants, that the plaintiff could not recover, first, because it was not shown that the registrar was authorized by the Municipal Council to make the purchase of the books; secondly, because no contract under seal was proved, in order to bind the corporation.

The jury were asked to find whether the credit was given by the plaintiff to Mr. Ackland or to the county, and they found that the books were furnished by the plaintiff on the credit of the county. Upon this finding the learned judge directed the verdict to be entered for the plaintiff for the amount claimed, £27 5s., subject to the opinion of the court whether the verdict should be entered for the defendants generally, or be reduced to £10, the price of two books, if the £15 4s. 6d. could be considered to have been paid; or reduced further to £5, if the County of Kent was not liable for the price of the book which the County of Lambton obtained.

The case was argued by *John Wilson* for the plaintiff, and by *Boecher* for the defendants.

Robinson, C. J., delivered the judgment of the Court.

If the statute on which the plaintiff relies for supporting this action had been at hand to be referred to on the trial, we think there could have been no hesitation in determining that he could not succeed.

The plaintiff, of course, could not enable himself to recover against the defendants by showing that he had at the time charged the articles to them in his own books, or had delivered accounts against them for the price. It was not with such a view the evidence was given; and indeed, so far as it did go, it rather established a case in favour of the defendants than against them.

It is clear from the evidence that the defendants neither directly nor in any manner gave an order upon the plaintiff to furnish the books, and therefore the case wholly rests upon the effect of the statute 16 Vic., ch. 187, sec. 3, in making the county liable; and it was argued upon that ground.

The provision is, that "whenever a registrar shall require a new registry book, the same shall be furnished to him by the treasurer of the county, on his application therefor, and shall be paid for by such treasurer out of the county funds; and if such treasurer shall refuse or neglect to furnish such book within thirty days after the application of the registrar, the registrar may provide the same, and recover the cost from the municipality of the county."

It was not proved that Mr. Ackland, the registrar, had ever applied to the treasurer of the county for the necessary books, and there could not therefore have been that refusal or neglect to furnish them after application which would entitle the registrar to procure them himself; and if there had been, the consequence, according to the act, would have been, not that the person furnishing them could have sued the county, but that the registrar, when he had bought and paid for the books, could have recovered the amount from the county. Whether, however, in such a case, to prevent circuity of action, the person furnishing the books could have sued the county, is not necessary to be determined in the present case, because here the facts were different. Mr. Ackland did not afford to the treasurer of the county an opportunity to procure the books, but went directly in the first instance and selected such as suited him, and bought them where he pleased.

This was not what the statute authorised, and therefore no right of action can be created under the statute. And the distinction is not an idle one; for we see that the county here, having paid the treasurer for three books out of the five, would have to pay twice for those books if they should be held liable in this action; and this could not have happened if the provisions of the Act had been attended to and followed out, for then they would have either bought them themselves and paid for them, or would by their neglect to buy them have rendered themselves liable to the registrar when he had paid for them, but not before.

No person looking at the clause of the statute could have any right to conclude from it that he could hold a county liable for registry books which were not ordered by the council or the treasurer, or by any authority from one or the other. A verdict should, in our opinion, be entered for the defendants.

Judgment for defendants.

Perry v. The Town Council of the Town of Whitby.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

(Hilary Term, 19 Vic.)

By-law, form of rule Nisi to quash—Insufficient rate.

A rule *Nisi* to quash a by-law, obtained near the end of term, was made returnable eight days after service; the defendants appeared, and objected that the rule should have been to show cause on a day certain. *Held*, that this objection, if fatal, was waived by the appearance.

The by-law in this case was clearly bad, the rate directed to be levied in the first year being insufficient.

M. C. Cameron obtained a rule *Nisi* to quash by-law No. 18, passed on the 27th of November, 1855:

1. Because it does not fix a day within the financial year in which it was passed, when the same shall take effect.