

Guelph Evening Mercury

WEDNESDAY EVENING, FEB. 26, 1873.

Important Decision.

COLDEN VS. TOWNSHIP OF LUTHER.
We publish, for the benefit of our readers in the Township of Luther and elsewhere, the following judgment, delivered in an action brought by Thomas A. W. Gordon, Esq., a ratepayer of the Township of Luther, against the said Township of Luther, for the return of the amount of a special rate levied upon him by the said Corporation, to provide for the bonus granted by them to the Toronto, Grey & Bruce Railway. The railway not having completed their contract within the two years allowed by the said by-law, the Court had held that the rat-payers upon whom a levy has been made for this purpose can recover. Mr. Robert Oliver was counsel for the plaintiff, and Mr. Guthrie for defendants.—

This suit is brought to recover a sum of \$50, admitted by defendants to have been paid to them by plaintiff under an assessment levied by virtue of a by-law made in pursuance of the Railway Act and the special act of the Toronto, Grey & Bruce Railway Company. The by-law provides for levying a certain amount to pay debentures to which the Railway Company were entitled on completing certain works within a specified time.

The Company did not complete their works according to stipulation.

And in pursuance of a decree in Chancery in the case of Luther vs. Wood, the debentures have been restored to the Township.

The plaintiff now contends that the object of the by-law no longer existing, he is entitled to a return of the moneys assessed against and paid by him.

If this were the only point raised before me, I should have but little hesitation in disposing of the case.

The defendants received the money to use for a certain specified object, and that object being removed, they are not entitled to retain the money, but must return it to the party from whom it was received. It is a case of failure of consideration.—Chafel vs. Poles, 2 M. & W., 867.

But the by-law contained a provision for disposing of the moneys raised under it (in case of failure of the special object) by transferring such moneys to the Corporation of the Township "to be applied to its own purposes." I think this provision is an excess beyond the power of the Corporation.

The only power they had was under the Railway Act and Special Act before mentioned, which merely enabled them to raise money for the object specified, and if they could hold the moneys under this extra provision they would get into their hands a large sum of money, without any object to which it could be applied. Then, if this part of the by-law is *ultra vires*, can I so hold it? I understand the law to be that when a by-law is upon its face *bad* or *ultra vires*, a court deciding any question arising under it is not bound to give effect to the by-law, or to consider it in force until quashed in the ordinary way.—Regina vs. Wood, 5 E. & B., 50.—Sutherland vs. Nic-souin, 10, E. & B., 626—and I therefore think that I may hold this part of the by-law *ultra vires*, and that the moneys in question cannot be held under it.

It was contended, however, that the plaintiff having voted for the by-law in its present shape, estopped from saying that it was *ultra vires*. I thing not. The doctrine of Estoppel does not apply when the subject matter is attacked upon some collateral ground showing it illegal, void or not binding.—Mellish vs. Braund, 2 U. C. P., 35 & 50. This was an action on a debenture issued by the Corporation, and it was held that defendant was not estopped from settling up the invalidity of the by-law. As a defense see also Doe Proc vs. Howells, 2 B. O. D., 744, and Doe Chandler vs. Ford, 3 A. O. O. E., 619.

It was urged on behalf of the defendants, that in considering whether the objectionable part of the by-law should receive effect or not, I should be guided by the principles recognized by the Court in considering applications to quash by-laws, and that where a by-law had been acted upon it would generally be sustained. This is so where work has been done, or money expended, or by law acted upon. So that it would occasion much inconvenience if quashed, but I do not see that anything of this kind has taken place as regards the part of the by-law in question. The moneys assessed were collected under and with the idea of being used for the part of the by-law in assistance of the Railway, but the Corporation have not engaged in any works, or gone into any expenses, for which the money has been or could be used, so I think that argument entirely fails. It is said that the defendants have been at expense in litigation to determine whether the Railway Company was entitled to the debentures or not, but the by-law does not provide for the payment of such expenses, and if such expenses were properly within the authority of the Corporation, it must follow that the case be paid out of the general funds. Besides this, I think I cannot go into any consideration of that question, for the reasons I am about to state in considering the only point which yet remains.

The defendants contend that until the time for appealing from the Decree in Chancery had elapsed, it is not certain that the debentures can safely be treated as cancelled. The cancellation of the debentures does not depend upon the decree but on the state of facts upon which that decree is based, and further, the decree was made by a court of competent jurisdiction to decide the matter in question, and having decided it, I must treat it as adjudicated, and follow the decision upon law and facts, as it has been given. Suppose, however, that the question had never been before the Court of Chancery, but the facts in evidence there had been proved before me in this case, must I not assume that I should have arrived at the same conclusion as has been already arrived at. If not, no decision less than that of the Court of Error and Appeal, or less than a year's standing, unimpeachable, can form a precedent by which any court can be bound. Upon the whole, though I come to my conclusion after much consideration, I must decide that the plaintiff is entitled to recover, and give judgment accordingly.

(Signed) A. C. CHADWICK.

Arthur Correspondence.

The Rev. W. S. Griffith delivered an able and interesting lecture on temperance, on Wednesday evening, 12th inst. The lecturer endeavoured to impress by powerful and persuasive arguments, upon his hearers, the great necessity of professing Christians being engaged in the grand and glorious work of the temperance reformation. He wound up by urging those present to form a Division of the Sons of Temperance. At the close of the lecture a number of persons signed the pledge. The requisite number of names having been received, the lecturer then and there organized a society to be known as the Arthur Division of the Sons of Temperance.

The favourable manner in which the present Government, including some of

their ablest supporters, have treated the temperance question lately, together with the rumored temperance proclivities of the new Governor General, has given a new stimulus to temperance men in Ontario. That intemperance is the bane of society no one will deny, but the practicability of doing away with it is the great problem. It is generally admitted that, in this Northern latitude, it is necessary to have a house of accommodation, say every six miles, on all our leading roads. Then the difficulty in towns and villages is to be met with. If the temperance men of Ontario would submit a plan, based on temperance principles, to accommodate the travelling public, they would do more toward getting a prohibitory liquor law in one year, than they will in the present way in twenty, as there are hundreds of persons who would vote for a prohibitory liquor law, who would never join a temperance society.

Country-town business in Arthur seems to be played out, or rather it never was played in. All other Villages have been spending large sums of money, and shaming every nerve to accomplish their ends, we have remained inactive. Why our Village fathers have not had the plan of our new County submitted to Parliament, and its claims urged by some able member, is a mystery. Perhaps they think that the nucleus of a new County that we possess in the shape of a Registry office may overcome all opposition, but there is danger in so much apathy on one side and so much activity on the other, and it is possible the prize may slip from us.

A great number of farmers, old and young, left here in the beginning of the winter, to work in the woods in Michigan. They are reported to be getting good wages. Lumberers are taking out timber in Arthur this winter. With the selling of timber and hay, the settlers in that Township ought to be better off than they were last year.

The remains of the wife of Mr. William Ladlow, who died on Feb. 21st inst., were taken to the English Church burying ground on Sunday by one of the largest funeral processions that has ever been in this part of the country notwithstanding it was one of the coldest days this winter.

Feb. 24th, 1873.

Mr. Chauveau will resign the salaried office of Superintendent of Public Instruction.

It is thought in Ottawa that Mr. Speaker Cockburn will be the Ministerial candidate for the Speakership.

BIRTHS.

KERR.—In Arthur Village, on the 13th inst., the wife of Mr. Alex. Kerr, cooper, of a daughter.

BOOTH.—In Arthur Village, on the 16th inst., the wife of Mr. Root Booth, merchant, of a son.

MARRIED

ATCHISON—BAIN—In Pilkington, on the 25th inst., by the Rev. Mr. Hogg, Mr. Wm. Smith, a farmer, after a long courtship to Miss Mary Bain, Pilkington.

FRANK-SMITH.—On the 18th inst., by the Rev. E. Kershaw, Mr. W. A. Franks, to Miss Elizabeth Smith, both of Mount Forest.

DYCE-JACK.—On the 18th inst., by the Rev. J. Morrison, Mr. John Dyce, to Jeanie Jack, both of the township of Princeton.

TUCKER—WILSON.—In Fergus, on the 13th inst., by the Rev. J. G. Laird, Mr. James Thomas, of Guelph, township, to Miss Rachel Tanner, of the township of McInnes.

DIED

LUDLOW.—In Arthur Township, on the 21st inst., the beloved wife of Mr. William Ludlow, aged about 25 years.

GRIMES.—In Arthur, on the 16th inst., from the effects of the fall of a tree, Robert, eldest son of John Grimes, Esq., Ernosa, aged 29 years.

FOSTER.—In Erin Village, on the 14th inst., Mrs. Foster, Mr. James Foster, tanner, aged about 25 years.

GOWLING.—In Saginaw City, Michigan, on the 16th of February, Sarah, wife of the Rev. Mr. Gowling, deceased daughter of Elias Witmer, Pushkin, in her 7th year. Also, on the 19th Feb., at the same place, Georgia, infant daughter.

PEARSON.—In Cedar, Minnesota, on the 6th inst., John, son of Mr. John Pearson, formerly of Haniston, Co. Wellington, aged 26 years.

MONTHLY CATTLE FAIRS.

HARVESTON.—Friday before the Guelph Fair.

BOSWORTH.—Saturday before Guelph.

BRISTOL.—The day before Guelph.

DOUGLAS.—Monday before Flora fair.

GUELPH.—First Wednesday in each month.

CLIFFORD.—Thursday before the Guelph fair.

TEVIOTDALE.—Friday before the Guelph fair.

BERLINS.—First Tuesday in each month.

ELMIRA.—Second Monday in each month.

WATERLOO.—Second Tuesday in each month.

MONTREAL.—Third Wednesday in each month.

HANOVER.—Monday before Durham Fair.

DURHAM.—Tuesday before Mount Forest.

ORANGEVILLE.—Second Thursday in January, March, May, July, September and November.

MONCKVILLE.—Third Wednesday in January, April, July and October.

ERIN.—First Monday in January, April, July and October.

MARLBOROUGH.—First Tuesday in February, May, August and November.

BRAMPTON.—First Thursday in each month.

LINTHORN.—First Friday in each month.

MANITOBA.—May, July, Sept. and November.

MOOSEFIELD.—Monday before Guelph.

ELORA.—Crystal Palace Grounds, the day after Guelph.

DR. GUTHRIE'S WORKS!

Bound Vols Sunday Magazine, "Christ and the Inheritance of the Saints,"

The Gospels of Ezekiel, Studies of Character from the Old Testament,

Out of Harness, Our Father's Business, Man and the Gospel,

Speaking to the Heart, Early Piety,

Angel's Song, Sundays Abroad,

The Parables of Our Lord.

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