

from the exceptions in the repealing clause.—*In re Chaffey and others*, 30 U. C. Q. B. 64.

SALE FOR TAXES—LANDS IN CITIES—C. S. U. C. C. H. 55.—Under Consol. Stat. U. C., ch. 55, the chamberlain and high balliff in cities had power only to sell the lands of *non-residents* for arrears of taxes.

A sale in 1865, of land belonging and assessed to a resident was therefore held invalid.—*McKay v. Bamberger et al*, 30 U. C. Q. B. 95.

ONTARIO REPORTS.

CHANCERY.

(Reported by ALEX. GRANT, ESQ., Barrister-at-Law,
Reporter to the Court.)

THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF EAST ZORRA V. DOUGLAS.

Principal and surety—Discharge of surety—Appropriation of payments—Suit for account against municipal treasurer and his sureties.

A surety cannot get rid of his liability on the ground of having become surety in ignorance of material facts, unless he can show that information was fraudulently withheld from him.

Merely negligence by the obligee in looking after the principal, in calling him to account, or in requiring him to pay over money, is no defence against either antecedent or subsequent liability of the surety.

A township council tacitly permitted the treasurer of the township to mix the township money with his own. Held, that this conduct was wrong, but did not discharge the treasurer's sureties.

A township treasurer had in his hands a large balance belonging to the township when he gave to the corporation new sureties: Held, that subsequent payments by the treasurer were applicable first to the discharge of that balance.

A bill for an account was held to lie at the suit of a municipal corporation against their treasurer and his sureties.

At the time of the transactions in question in this cause, the defendant, James Kintrea, was, and for many years had been, the plaintiffs' treasurer. On the 7th May, 1868, he as principal, and the other defendants, Douglas and Dunlop, as sureties, executed a bond to the plaintiffs, by the name of "The Municipal Council of the Township of East Zorra" (see *Corporation of Bruce v. Cramahe*, 22 U. C. Q. B. 321), in the penal sum of \$3,500, with a condition thereunder written, that if Kintrea should "duly receive, keep and pay over all moneys coming into his hands, and safely keep and surrender all papers, receipts, vouchers, books, papers and documents to him committed, and do give an account therefor, according to the true intent and meaning of any statute of this Province, or any by-law or resolution of said corporation," the obligation was to be void. The prayer of the bill was for (amongst other things) the rectification of the bond with respect to the plaintiffs' name, and an account. The principal defence was, that the bond was not valid, by reason of Kintrea's having, before the execution of the bond, been unfaithful and dishonest as treasurer; of his having theretofore appropriated to his own use township money, and being then unable to repay the same; and of these facts having been known to the plaintiffs, and fraudulently concealed by them from the

sureties. The answer also set up that, if the facts were not then known to the plaintiffs, the plaintiffs had information which should have led them to a knowledge of the facts, and that such knowledge must be imputed.

The principal facts in proof which bore on this defence, were these: Kintrea, before the execution of the bond, had received considerable sums beyond the sums which he had paid out for the township. According to the printed accounts, the balance against him on the 20th December, 1867, was \$1,556 98; and the balance on the 7th May, 1868 (the date of the bond), was not much less. This balance was not on deposit at any bank to the credit of the corporation, nor did it exist specifically any where. In fact, the treasurer, during the many years that he held office, did not appear to have ever kept a bank account for the township money, or to have ever kept the township money separate from his own money, or from the other money passing through his hands. He was county treasurer as well as treasurer for this township, and he held also the offices of deputy clerk of the Crown and clerk of the Surrogate Court. He had never, so far as appeared, been asked to keep the township money distinct, or made any representation that he was doing so. When asked once by one of the auditors about the balance in his hands, he said that that was not the auditors' business. The auditor mentioned this answer to the reeve and deputy reeve, and it appeared to have been acquiesced in. The auditors did not seem to have ever regarded it as their duty to ascertain that the balance was specifically in existence any where, and, with the one exception, they never made any inquiry about it. The council made no inquiry either; and successive councils appeared either to have assumed that they had no right to make such inquiry, or to have thought the point doubtful. Kintrea had always met all payments which he was directed to make for the township, and had never been in any default which any of the council heard of; and they had great confidence in his integrity and honesty.

It was the practice of this township to appoint annually the treasurer, as well as the other township officers. In the by-law appointing officers for 1867, it was directed that the treasurer and collector should furnish two good and sufficient sureties, to the satisfaction of the council, in double the amount of money passing through their hands as such treasurer and collector. (It was said that the only bond from the treasurer which the corporation held at this time was ten years old; that the defendant Douglas was one of the sureties therein; that he had afterwards obtained his discharge in insolvency; and that the other surety had put his property out of his hands.) It did not appear what, if anything, was done under the by-law of 1867. Kintrea was appointed treasurer again in 1868; and in February, 1868, a by-law was passed reciting that it was "necessary to fix and determine the amount in which the treasurer of the township shall be bound to the corporation of the said township for the faithful performance of his duties as treasurer," and naming \$3,500 as the amount. It appeared that a person (Mr. Grey, of Woodstock) about this time told a member of the township council that he believed Kintrea was "going down hill," but, so far as was shown,