

In the Privy Council

No. 103 of 1938

**ON APPEAL FROM THE COURT OF APPEAL
OF ONTARIO**

BETWEEN

EDGAR F. LADORE, BURLEY W. BENNETT, HORACE W. CUNNINGHAM and HARRIE R. DINGWALL,
 suing on behalf of themselves and all other ratepayers of the Corporation of the Town of Walkerville;
 And suing on behalf of themselves and all other holders of debentures of the Town of Walkerville;
 And suing on behalf of themselves and all other holders of debentures of the Walkerville-East Windsor Water Commission;
 And suing on behalf of themselves and all other holders of debentures of the Essex Border Utilities Commission;
 And suing on behalf of themselves and all other holders of debentures of the Walkerville Hydro-Electric Commission;
 And suing on behalf of themselves and all other holders of Local Improvement Debentures issued by the Town of Walkerville;
 And suing on behalf of themselves and all other holders of debentures issued by the Essex Border Utilities Commission and chargeable against the ratepayers of the Town of Walkerville,

Plaintiffs (Appellants)

AND

GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR, RUSSELL A. FARROW;
 THE CORPORATION OF THE TOWN OF WALKERVILLE;
 THE CORPORATION OF THE CITY OF EAST WINDSOR;
 THE CORPORATION OF THE CITY OF WINDSOR;
 THE CORPORATION OF THE TOWN OF SANDWICH;
 THE ESSEX BORDER UTILITIES COMMISSION;
 THE WALKERVILLE-EAST WINDSOR WATER COMMISSION;
 THE WATER COMMISSIONERS OF THE CITY OF WINDSOR;
 THE BOARD OF WATER COMMISSIONERS OF THE TOWN OF SANDWICH;
 THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF EAST WINDSOR;
 THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF WALKERVILLE;
 THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF WINDSOR;
 THE HYDRO-ELECTRIC COMMISSION OF THE TOWN OF SANDWICH;
 THE CORPORATION OF THE CITY OF WINDSOR and
 THE WINDSOR UTILITIES COMMISSION, bodies alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1935, chapter 74, being the City of Windsor (Amalgamation) Act, 1935; and
 THE ATTORNEY-GENERAL OF THE PROVINCE OF ONTARIO

Defendants (Respondents)

CASE FOR THE RESPONDENT, THE ATTORNEY-GENERAL OF
THE PROVINCE OF ONTARIO

Record.
P. 101.
P. 90.

1. This is an appeal by the plaintiffs from the judgment of the Court of Appeal of Ontario dated the 17th day of May 1938 dismissing with costs an appeal from the judgment of Hogg J. dated the 26th day of July 1937 dismissing the action with costs.

2. The appellants were at the material times holders of certain debentures issued by the Town of Walkerville, and of other debentures issued by the Walkerville East-Windsor Water Commission. The Town of Walkerville is a municipal corporation incorporated in 1890 by Act of the Legislature of Ontario, Statutes of Ontario, 53 Victoria, chapter 108. The Walkerville East-Windsor Water Commission is a public utility corporation incorporated in 1930 by Act of the Legislature of Ontario, Statutes of Ontario, 19 George V., chapter 107, with power to purchase and operate on behalf of the municipal corporations of Walkerville and East-Windsor a waterworks system. The debentures owned by the appellants were issued in pursuance of the various by-laws of the corporations authorized by Statutes of the Province of Ontario from time to time.

Record.
P. 237.

3. The Legislature of the Province of Ontario, by a statute cited as "The City of Windsor (Amalgamation) Act 1935" Statutes of Ontario, 25 George V., chapter 74, amended by the City of Windsor (Amalgamation) Amendment Act, Statutes of Ontario, 1 Edward VIII, chapter 66, provided for the amalgamation of the four municipal corporations of East-Windsor, Walkerville, Windsor and Sandwich, and made provision for necessary matters incidental thereto. The appellants direct their attack against these Acts, alleging that they are beyond the competence of the Legislature of Ontario. At the time of passing the Amalgamation Act the municipalities had made default in the payment of interest on their debenture debt, and in some cases had made default in the payment of principal.

P. 243.

P. 237, l. 33.

4. The City of Windsor (Amalgamation) Act of 1935, by section 3, amalgamates the four municipalities and provides that they shall form one municipality, municipal corporation and body corporate under the name of "The Corporation of the City of Windsor".

P. 238, l. 23.

5. By section 5 a commission known as "The Windsor Finance Commission" was constituted.

P. 238, l. 40.

6. By section 6 it was provided that the Finance Commission, with respect to the amalgamated municipalities and each of them, and their local boards, and to the new city, should have and exercise the rights, authorities and powers conferred by Part III of the Department of Municipal Affairs Act 1935, upon the said Department, and the provisions of Part III were made applicable to the amalgamated municipalities and to the new city and to the local boards.

P. 239, l. 8.

7. By section 7 of the Act the duties of the Finance Commission were defined, and in particular the Finance Commission was required to undertake the preparation and submission of a plan for funding and refunding the debts

of the amalgamated municipalities upon the general basis that the debt of each of the amalgamated municipalities should be discharged by the imposition of rates upon the rateable property in that area of the new city which formerly comprised such municipality. ^{Record.}

8. Sections 11, 12, 13, 14, 15 and 22 deal with such matters as a division of the new city into wards, the election of the municipal council in the new city, and the management of parks, libraries, playgrounds, schools and the Board of Health.

9. By section 16 the management, control and operation of the Essex ^{P. 241, l. 21.}
10 Border Utilities Commission and the Waterworks and Hydro-Electric Systems of the amalgamated municipalities and of the new city were vested in the Windsor Utilities Commission, and provision was made for the dissolution of the Waterworks Commissions and the Hydro-Electric Commissions of the amalgamated municipalities, including the Walkerville East-Windsor Water Commission.

10. By section 17 the Finance Commission was directed to determine ^{P. 241, l. 28.}
and adjust the assets of the amalgamated municipalities and also in conjunction with the Council of any other municipality to adjust any assets and liabilities which, by reason of the creation of the new city it was desirable
20 should be adjusted.

11. By section 19 it was directed that any dispute in respect to the ^{P. 242, l. 5.}
adjustment of assets and liabilities was to be determined by the Ontario Municipal Board whose decision would be final and conclusive.

12. By section 20 all the assets of the amalgamated municipalities upon ^{P. 242, l. 8.}
final incorporation in the new city were vested in and became the property of the new city.

13. By section 24 it was provided that the Ontario Municipal Board ^{P. 242, l. 38.}
might, for the purpose of effecting the amalgamation provided for by the Act, and of fully effectuating the provisions of the Act and the incorporation and
30 functioning of the new city, do and authorize to be done such things as might be necessary or incidental thereto, and for such purpose might make rules and regulations and issue orders and directions in respect to any matters not specifically provided for in the Act, and every such rule, regulation, order and direction was declared to be valid and binding upon the amalgamated municipalities, and all persons affected thereby as if enacted by the Act.

14. In pursuance of the provisions of section 7, subsection (c) of the ^{P. 189.}
City of Windsor (Amalgamation) Act, 1935, the Finance Commission prepared a plan for the funding and refunding of the debts of the amalgamated ^{Ex. 2(a).}
municipalities of East-Windsor, Walkerville, Windsor and Sandwich. ^{(73).}

40 15. By the City of Windsor (Amalgamation) Amendment Act, 1 Edward ^{P. 248.}
VIII, chapter 74, sections 5, 6, 7 and 9 of the 1935 Act were repealed, and by sections substituted therefor the Department of Municipal Affairs was given the powers and duties entrusted by the former Act to the Windsor Finance Commission.

Record.
P. 244, l. 8.

16. All acts, transactions, contracts, matters and things done, made, entered into, performed by or in the name of the Windsor Finance Commission, were ratified and confirmed and declared to have been legal, valid and binding for all purposes, notwithstanding any want of authority or irregularity in respect thereto or any irregularity or illegality in the composition of the Commission.

P. 245, l. 7.

17. The amalgamation and incorporation of the new city was declared to have been fully completed and finally become effective on and from the 1st day of January 1936.

18. On the 29th April, 1936, before the said plan was approved or filed 10 or given any force or effect whatsoever, the appellants, suing on their own behalf and on behalf of all other ratepayers and holders of debentures of the Town of Walkerville and of the Walkerville East-Windsor Water Commission, and on behalf of holders of debentures of other utilities commissions, instituted this action.

19. The defendants in the action are the members of the Finance Commission who are the personal defendants named, the four municipal corporations which were amalgamated, the various Water and Hydro-Electric Commissions of these municipalities, the new Corporation of the City of Windsor, the Windsor Utilities Commission, (the two latter corporations as "bodies 20 alleged to be incorporated pursuant to the City of Windsor (Amalgamation Act"), and this respondent, namely the Attorney General of the Province of Ontario.

P. 2.

20. The relief asked for by the plaintiffs, as set out in the prayer of the plaintiff's Statement of Claim, is as follows:

P. 7, l. 18.

"1. A declaration that Statutes of Ontario, 1935, chapter 74, and Statutes of Ontario, 1936, chapter 66, being the City of Windsor (Amalgamation) Act, 1935, is ultra vires and that the defendant, the Corporation of the City of Windsor and the Windsor Utilities Commission, bodies 30 alleged to have been incorporated pursuant to the provisions of Statutes of Ontario, 1935, chapter 74, being the City of Windsor (Amalgamation) Act, 1935, are not valid and subsisting corporations and the assets of their co-defendants, other than George Bennett, Harry J. Mero, W. Donald McGregor, Russell A. Farrow and the Attorney General for Ontario are not vested in the said corporations.

2. A declaration that sections 8 and Part VI of the Ontario Municipal Board Act, 1932, being Statutes of Ontario, 1932, chapter 27, and Part III of the Department of Municipal Affairs Act, 1935, chapter 16, and amendments thereto are ultra vires.

3. A declaration that all proceedings taken and had under the provisions 40 of the City of Windsor (Amalgamation) Act, 1935, are void as against the plaintiffs and those on whose behalf they sue.

4. In the alternative a declaration that the proposed plan for funding and refunding the debts of the amalgamated municipalities of East-Windsor, Walkerville, Windsor and Sandwich is not within the powers

of the Municipalities or of the Windsor Finance Commission and that the Ontario Municipal Board has no authority to approve of the same. ^{Record.}

5. A declaration that the plaintiffs and all other holders of the debentures referred to in paragraph 2 hereof are entitled to a lien, charge or hypothec on the assets and revenues of the corporations by whom or on whose behalf the said debentures were issued.

6. An accounting.

7. A receiver.

10 8. Such further and other relief as the nature of the case may require or this honourable Court may deem meet."

21. The plaintiffs contend that the legislation is invalid on the following grounds:

(a) The legislation relates to bankruptcy and insolvency.

(b) The legislation prejudiced extra-territorial rights of debenture holders residing out of Ontario.

(c) The legislation dealt with the question of interest.

22. The plan of refunding of which the plaintiffs complain is entirely dependent upon the City of Windsor (Amalgamation) Act, 1935, and the amending Act of 1936, and does not obtain any of its force or validity from Part III of the Department of Municipal Affairs Act, 1934, or Part VI of the Ontario Municipal Board Act, 1932. ^{P. 230, l. 15.}

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23. Part III of the Department of Municipal Affairs Act, 1935, takes the place of and reproduces almost exactly Part VI of the Ontario Municipal Board Act of 1932. It defines by section 25 defaulting municipalities to which it applies, and its main provisions are: Section 26 whereby control and charge over the administration of the affairs of the municipality found to be in default within the definition of Section 25 is vested in the Department of Municipal Affairs; Section 30 which provides that upon publication of a notice in the Ontario Gazette that the municipality is subject to Part III of the Act, such publication operates as a stay of all actions and proceedings against the municipality, and further proceedings cannot be commenced without leave of the Ontario Municipal Board; Section 32 which gives the Department control and charge over affairs of the municipality, including the collection, receipt, application and payment of all revenues and expenditures, accounting, auditing, assessments, estimates, borrowings, sale of assets and generally all matters affecting the affairs and administration of the municipality; and Section 33 which provides that the Municipal Board may make orders for the consolidation of the debentures of any municipality which has come under the Act, and the issue of new debentures therefor, and generally in respect to arrangements as to the debenture debt of the municipality. ^{P. 230, l. 28.}

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^{P. 231, l. 6.}

^{P. 231, l. 33.}

^{P. 232, l. 20.}

^{P. 233, l. 12.}

40 24. This Respondent contends that all the statutes of the Province of Ontario impugned by the plaintiffs in this action are intra vires of the Legislature of the Province of Ontario, that no action lies against the Crown for the relief claimed, that the Attorney-General is not a proper party to the

Record.

action, and that the action should not have been commenced without leave of the Ontario Municipal Board.

P. 75.

25. The action came on for trial before the Honourable Mr. Justice Hogg in Windsor on the 28th, 29th and 30th days of September 1936. Judgment was delivered on the 26th day of July 1937 dismissing the action for reasons stated.

P. 160.

26. On the 15th day of June, 1937, an Order of the Ontario Municipal Board was issued which was dated the 14th April, 1937. This gave authority to a plan for refunding the debts of the amalgamated municipalities in accordance with a scheme which is Schedule "A" to the Order. 10

P. 90.

27. By Notice of Appeal dated the 31st day of July 1937, the plaintiffs appealed to the Court of Appeal for Ontario from the judgment of the Honourable Mr. Justice Hogg, upon the grounds set out therein, and further asked that the order of the Ontario Municipal Board issued on the 15th day of June 1937, be filed as part of the evidence in the case upon the hearing of the appeal.

28. The appeal came on for hearing on the 21st, 22nd and 23rd days of March 1938. The Court consisted of Latchford, C.J.A., Masten and Henderson, J.J.A.

P. 94.

29. Judgment was delivered on the 17th day of May 1938, dismissing the appeal. The reasons for the judgment of the Court were delivered by Henderson J.A. 20

30. The sections of the British North America Act revelant to the issues raised are:

Section 91—Powers of the Parliament:

"91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby 30 declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say:—

19. Interest.

21. Bankruptcy and insolvency.

And any matters coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the 40 Provinces."

Section 92—Exclusive Powers of Provincial Legislatures:

"92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:—

8. Municipal institutions in the Province.
10. Local works and undertakings other than such as are of the ^{Record.} following classes:
- (a) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the Province with any other or others of the Provinces or extending beyond the limits of the Province.
- (b) Lines of steam ships between the Province and any British or Foreign country;
- 10 (c) Such works as, although wholly situate within the Province are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.
13. Property and civil rights in the Province.
16. Generally all matters of a merely local or private nature in the Province.
31. Legislation in relation to municipal institutions dealing with subject matters similar to that dealt with by the Acts impugned may be referred to for historical purposes. Legislation in Upper Canada, before Confederation, dealt with the creation, dissolution and financing of municipalities, the terms under which the new municipalities might be created out of those already in existence, the administration of new areas of existing municipalities, the question of municipal borrowing powers, the liabilities of municipal corporations, and the regulation of municipal indebtedness. Vide—*The Municipal Institutions Act of Upper Canada*, Consolidated Statutes of Upper Canada, 1859, chapter 54, sections 23, 24, 210-214, 221, 222, 223, 226, 227, 228, 231, 232, 238, 240. Vide also *The Municipal Corporations Act* of the Imperial Parliament, 1835, 5 and 6 William IV, chapter 76, particularly S. XCII which dealt with similar matters.
- 20
32. This Respondent submits that the appeal should be dismissed as against him with costs for the following
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Schedule of
Statutes.
Infra.
P. 9 et seq.

REASONS

- (a) The City of Windsor (Amalgamation) Act 1935, and the Amending Act of 1936 are within the competence of the Legislature of the Province of Ontario.
- (b) The legislation relates to Municipal Institutions. (B.N.A. Act, section 92 (8)).
- (c) The legislation relates to local works and undertakings in the Province. (Section 92 (10)).
- 40 (d) The legislation relates to property and civil rights within the Province. (Section 92 (13)).
- (e) The legislation relates to matters of a merely local or private nature in the Province. (Section 92 (16)).

(f) The legislation is not in its true aspect legislation in relation to bankruptcy and insolvency. (Section 91 (21)) because—

(1) The true pith and substance of the legislation in question is “municipal institutions”, “local works and undertakings”, “property and civil rights”, and “matters of a merely local or private nature in the Province”.

(2) No legislation has been passed by the Parliament of Canada dealing with the bankruptcy or insolvency of municipal corporations, or covering the same field as that covered by the impugned legislation. 10

(3) The dissolution of municipal corporations and creation of new municipal corporations, the conferring of new rights upon the holders of debentures issued by the dissolved corporations, and all matters relating to the indebtedness of municipal corporations are a subject-matter not within and are excluded from the true intent and meaning of the term “bankruptcy and insolvency” in section 91 of the B.N.A. Act.

(4) Municipal institutions are local self-governing bodies within the Province possessing legislative power to regulate and govern their inhabitants, and are not corporations that could be made the 20 subject of bankruptcy or insolvency legislation in the sense of the true use of the words in the B.N.A. Act.

(5) The legislation in question was not general in its terms, but deals with a local situation and a local undertaking within the Province.

(g) The Amalgamation Acts in essence simply provided for the dissolution of certain municipal corporations, the creation of a new corporation in their place, and the matters incidental thereto.

(h) The effect of the plan attacked, as far as the creditors of the dissolved corporations are concerned, is to confer on their creditors and debenture holders certain new rights against the new corporation in substitution for the rights destroyed by the dissolution of the old corporations. 30

(i) The legislation is not legislation in relation to interest. The matter of interest is dealt with in this legislation only incidentally.

(j) This legislation is not invalid because it affects the rights of holders of debentures who reside outside Ontario.

(k) The Legislature of the Province of Ontario has sovereign powers under the heads above set out to legislate in respect to its own creatures, the debts created by them wherever situate, and to make provision as 40 to the enforcement of such debts within the Province.

(l) No declaration should be made in respect of Part III of the Municipal Affairs Act 1935, and Section 8, and Part VI of the Ontario Municipal Board Act, 1932, because the plaintiffs have not shown that their rights have in any way been affected by such legislation.

- (*m*) Part VI of the Ontario Municipal Board Act, 1932, and Part III of the Municipal Affairs Act, 1935, are within the competence of the legislation of the Province of Ontario under the powers conferred on it by section 92, heads 8, 10, 15 and 16 of the B.N.A. Act.
- (*n*) The legislation conferring certain duties upon the Ontario Municipal Board does not constitute that Board a court. The duties imposed upon it which are here in question are clearly administrative.
- 10 (*o*) This action is improperly constituted because no leave has been obtained from the Ontario Municipal Board in accordance with the provisions of section 30, ss. (1) of the Municipal Affairs Act 1935, made applicable to the City of Windsor by the City of Windsor (Amalgamation) Act, 1936.
- (*p*) The learned Trial Judge was right in exercising his judicial discretion against making any declaration as sought by the plaintiffs on the ground that the plaintiffs' action was premature.
- (*q*) The Attorney-General of Ontario is not a proper party to this action as no relief is claimed against the Crown in the right of the Province of Ontario directly or indirectly, nor is any property or right of the Crown called in question.
- 20 (*r*) The proper procedure in respect to the claim for a declaration as to invalidity of the Statutes of Ontario so far as concerns this defendant, would have been to give the Attorney-General notice under section 32 of the Judicature Act.

J. C. McRUER

SCHEDULE OF STATUTES

The Municipal Institutions Act of Upper Canada, Consolidated Statutes of Upper Canada, 1859, chapter 54:

30 23. In case of the formation of an Incorporated Village, or of the erection of an Incorporated Village into a Town, or of a Town into a City, the Village, Town or City shall remain liable to all the debts and liabilities to which the Village or Town was previously liable, in like manner as if the same had been contracted or incurred by the new Municipality.

24. After an addition has been made to a Village, Town or City, the Village, Town or City shall pay to the Township or County from which the additional tract has been taken, such part (if any) of the debts of the Township or County as may be just; and in case the Councils do not, within three months after the first meeting of the Council of the Municipality to which the addition has been made, agree as to the sum to be paid, or as to the time of
40 payment thereof, the matter shall be settled by arbitration under this Act.

210. All Debentures and other specialties duly authorized to be executed on behalf of a Municipal Corporation shall, unless otherwise specially authorized or provided, be sealed with the Seal of the Corporation and be signed by the Head thereof, or by some other person authorized by By-law to sign the same, otherwise the same shall not be valid.

Transferable by Delivery, etc.

211. Any Debenture heretofore issued, or issued after this Act takes effect, under the formalities required by law, by any Municipal or Provisional Municipal Corporation, payable to bearer or to any person named therein or bearer, may be transferred by delivery, and such transfer shall vest the property of such debenture in the holder, and enable him to maintain an action thereupon in his own name. 10

212. Any Debenture issued as aforesaid, and made payable to any person or order, shall, (after the endorsation thereof in blank, by such person,) be transferable by delivery from the time of the endorsation, and the transfer shall vest the property thereof in the holder, and enable him to maintain an action thereupon in his own name.

213. In a suit or action upon any such Debenture, it shall not be necessary for the Plaintiff to set forth in the declaration or other pleading, or to prove the mode by which he became the holder of the Debenture, or to set forth or to prove the notices, by-laws, or other proceedings under and by virtue of which the Debenture was issued, but it shall be sufficient in such pleading to describe the Plaintiff as the holder of the Debenture (alleging the indorsation in blank, if any,) and shortly to state its legal effect and purport, and to make proof accordingly. 20

214. Any such Debenture, issued as aforesaid, shall be valid and recoverable to the full amount notwithstanding its negotiation by such Corporation at a rate less than par, or at a rate of interest greater than six per centum per annum.

Executions against Corporations.

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221. Any Writ of Execution against a Municipal Corporation may be endorsed with a direction to the Sheriff to levy the amount thereof by rate, and the proceedings thereon shall then be the following:

1. The Sheriff shall deliver a copy of the Writ and indorsement to the Chamberlain or Treasurer, or leave such copy at the office or dwelling house of that officer, with a statement in writing of the Sheriff's fees, and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the date of the service;
2. In case the amount with interest thereon from the day mentioned in the statement, be not paid to the Sheriff within one month after the service, the Sheriff shall examine the Assessment Rolls of the Corporation, and shall, in like manner as rates are struck for general Municipal pur- 40

poses, strike a rate sufficient in the dollar to cover the amount due on the execution, with such addition to the same as the Sheriff deems sufficient to cover the interest, his own fees and the Collector's percentage, up to the time when such rate will probably be available;

10 3. The Sheriff shall thereupon issue a precept or precepts, under his hand and seal of office, directed to the Collector or respective Collectors of the Corporation, and shall annex to every precept the roll of such rate, and shall by such precept after reciting the Writ, and that the Corporation had neglected to satisfy the same, and referring to the roll annexed to the precept, command the Collector, or Collectors within their respective jurisdictions, to levy such rate at the time and in the manner by law required in respect of the general annual rates;

20 4. In case at the time for levying the annual rates next after the receipt of such precept, the Collectors have a general rate roll delivered to them for such year, they shall add a column thereto, headed, "Execution rate in A.B., vs. The Township, (or as the case may be, adding a similar column for each execution if more than one,) and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the time they are by law required to make the returns of the general annual rate, return to the Sheriff the precept with the amount levied thereon, after deducting their percentage;

5. The Sheriff shall, after satisfying the Execution and all fees thereon, pay any surplus, within ten days after receiving the same, to the Chamberlain or Treasurer, for the general purposes of the Corporation;

30 6. The Clerk, Assessors and Collectors of the Corporation shall, for all purposes connected with carrying into effect, or permitting or assisting the Sheriff to carry into effect, the provisions of this Act, with respect to such executions, be deemed to be Officers of the Court out of which the Writ issued, and as such shall be amenable to the Court, and may be proceeded against by attachment or otherwise, to compel them to perform the duties hereby imposed upon them.

DEBTS AND RATES

YEARLY RATES FOR DEBTS

222. The Council of Every Township and the Council of every County and of every Provisional Corporation, and of every City, and of every Town, and of every Incorporated Village respectively, shall assess and levy on the whole rateable property within its jurisdiction a sufficient sum in each year to pay all valid debts of the Corporation, whether of principal or interest, 40 falling due within the year.

BY-LAWS TO CREATE DEBTS, etc.

223. Every such Council may, under the formalities required by law, pass By-Laws for contracting debts by borrowing money or otherwise, and for levying rates for payment of such debts on the rateable property of the Municipality, for any purpose within the jurisdiction of the Council; but no such By-Law shall be valid which is not in accordance with the following restrictions and provisions:

1. The By-Law, if not for creating a debt for the purchase of public works, shall name a day in the financial year in which the same is passed, when the By-Law shall take effect; 10
2. If not contracted for gas or water works, or for the purchase of public works, according to the Statutes relating thereto, the whole of the debts and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such By-Law takes effect; and if the debt is contracted for gas or water works, the same shall in like manner be paid in thirty years at furthest, from the day on which the By-Law takes effect;
3. The By-Law shall settle an equal special rate per annum, in addition to all other rates, to be levied in each year for paying the debt and interest; 20
4. Such special rate shall be sufficient, according to the amount of rateable property appearing by the last Revised Assessment Rolls, to discharge the debt and interest when respectively payable;
5. The amount of rateable property shall be ascertained irrespective of any future increase of the rateable property of the Municipality, and of any income in the nature of tolls, interest or dividends, from the work, or from any stock, shares or interest in the work, upon which the money to be so raised or any part thereof, is intended to be invested, and also irrespective of any income from the temporary investment of the sinking fund or of any part thereof; 30
6. The By-Law shall recite: (1) The amount of the debt which such new By-Law is intended to create, and, in some brief and general terms, the object for which it is to be created; (2) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest; (3) The amount of the whole rateable property of the Municipality according to the last Revised Assessment Rolls; and, (4) The annual special rate in the dollar for paying the interest and creating an equal yearly sinking fund for paying the principal of the new debt, according to this Act.

 HOW ACCOUNTS OF DEBTS AND RATES TO BE KEPT 40

227. The Council of every County, Provisional Corporation, Township, City, Town and Incorporated Village, shall keep in its books two sep-

arate Accounts, one for the Special Rate, and one for the Sinking Fund, of every debt, to be both distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was contracted; and shall keep the said Accounts, with any others that are necessary, so as to exhibit at all times the state of every debt, and the amount of moneys raised, obtained and appropriated for payment thereof.

228. If, after paying the interest of a debt and appropriating the necessary sum to the Sinking Fund of such debt for any financial year, there be a surplus at the credit of the Special Rate Account of such debt, such surplus shall so remain, and may be applied, if necessary, towards the next year's interest; but if such surplus exceeds the amount of the next year's interest, the excess shall be carried to the credit of the sinking Fund Account of such debt.

WHEN BY-LAWS CREATING DEBTS REPEALABLE

231. When part only of a sum of money provided for by a By-Law has been raised, the Council may repeal the By-Law as to any part of the residue and as to a proportionate part of the Special Rate imposed therefor, provided the repealing By-Law recites the facts on which it is founded, and is appointed to take effect on the thirty-first day of December in the year of its passing, and does not effect any rates due, or penalties incurred before that day, and provided the By-Law is first approved by the Governor in Council;

232. After a debt has been contracted, the Council shall not, until the debt and interest have been paid, repeal the By-Law under which the debt was contracted, or any By-Law for paying the debt or the interest thereon, or for providing therefor a rate or additional rate, or appropriating thereto the surplus income of any work or of any stock or interest therein, or money from any other source; and the Council shall not alter a By-Law providing any such rate so as to diminish the amount to be levied under the By-Law, except in the cases herein authorized, and shall not apply to any other purpose any money in the Corporation Treasury, which, not having been previously otherwise appropriated by any By-Law or Resolution, has been directed to be applied to such payment.

REPORT OF DEBTS TO BE MADE YEARLY

238. Every Council shall, on or before the thirty-first day of January in each year, transmit to the Governor General, through the Provincial Secretary, an account of the several debts of the Corporation, as they stood on the thirty-first day of December preceding, specifying in regard to every debt of which a balance remained due at that day:

1. The original amount of the debt;
2. The date when it was contracted;
3. The days fixed for its payment;
4. The interest to be paid therefor;
5. The rate provided for the redemption of the debt and interest;
6. The proceeds of such rate for the year ending on such thirty-first day of December;
7. The portion (if any) redeemed of the debt during such year;
8. The amount of interest (if any) unpaid on such last mentioned day;
and
9. The balance still due of the principal of the debt.

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COMMISSIONS OF INQUIRY RESPECTING MUNICIPAL FINANCES

240. In case one third of the members of any Council petition for a Commission to issue under the Great Seal, to inquire into the financial affairs of the Corporation and things connected therewith, and if sufficient cause be shewn, the Governor in Council may issue a Commission accordingly, and the Commissioner or the Commissioners, or such one or more of them as the Commission empowers to act, shall have the same power to summons witnesses, enforce their attendance, and compel them to produce documents and to give evidence, as any Court has in civil cases.

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In the Privy Council

No. 103 of 1938

On Appeal From the Court of Appeal of Ontario

BETWEEN

EDGAR F. LADORE, BURLEY W. BENNETT, HORACE W. CUNNINGHAM and HARRIE R. DINGWALL, suing on behalf of themselves and other ratepayers and debenture holders of the Town of Walkerville and other Corporations

Plaintiffs (Appellants)

and

GEORGE BENNETT, HARRY J. MERO, W. DONALD MCGREGOR, RUSSELL A. FARROW, THE CORPORATION OF THE TOWN OF WALKERVILLE; THE CORPORATION OF THE CITY OF EAST WINDSOR; THE CORPORATION OF THE CITY OF WINDSOR; THE CORPORATION OF THE TOWN OF SANDWICH, and other Corporations, and THE ATTORNEY-GENERAL OF THE PROVINCE OF ONTARIO

Defendants (Respondents)

CASE FOR THE RESPONDENT
THE ATTORNEY-GENERAL OF THE
PROVINCE OF ONTARIO

BLAKE & REDDEN,
17 Victoria Street,
Westminster, S.W.1.