

Edgar F. Ladore and others - - - - - *Appellants*

v.

George Bennett and others - - - - - *Respondents*

FROM

THE COURT OF APPEAL FOR ONTARIO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 8TH MAY, 1939

Present at the Hearing :

LORD ATKIN

LORD RUSSELL OF KILLOWEN

LORD MACMILLAN

LORD WRIGHT

LORD ROMER

[*Delivered by* LORD ATKIN]

This is an appeal from a decision of the Court of Appeal of Ontario affirming a decision of Hogg. J. who dismissed the plaintiffs' action. The plaintiffs' claim was for a declaration that two statutes of Ontario providing for the amalgamation of certain municipalities in Ontario were *ultra vires* the legislature of Ontario, and that the corporations created in pursuance of those statutes were not valid or subsisting and a declaration that parts of other Ontario statutes, viz., the Ontario Municipal Board Act, 1932, and the Department of Municipal Affairs Act, 1935, and amendments thereto were also *ultra vires*. The plaintiffs also claimed further and alternative relief. The questions raised in the case arise out of the affairs of four adjoining municipalities, the city of Windsor, the city of East Windsor, the town of Sandwich and the town of Walkerville. Before the year 1935 they were each an independent municipality exercising local government over their inhabitants. They had each of them raised loans for local purposes amounting in the aggregate to many millions of dollars which were represented by debentures. These debentures were simple acknowledgments of debt and gave no charge upon municipal property. In the case of East Windsor some of them were made payable outside the province of Ontario, that is to say in Montreal, in the province of Quebec, and in New York. Large amounts were held by holders resident outside the province. Closely associated with the affairs of the municipalities were various public utility corporations, the Walkerville-East Windsor Water Commission, the Walkerville Hydro-Electric Commission, and the Essex Borders Utilities Commission, whose functions need not be

particularly described. They had each issued debentures which in the case of the Essex Borders Utilities Commission and of the Walkerville-East Windsor Water Commission, for instance, purported to create a charge upon properties named therein. These debentures were in many cases held by persons resident outside the province. These commissions had all been incorporated pursuant to statutes of the Ontario Legislature. By 1935 financial difficulties of these municipalities and their commissions had become acute. In October, 1931, East Windsor defaulted in payment of debenture interest and maturing principal. In March and December, 1932, they were followed by Sandwich and the city of Windsor, and in December, 1934, by Walkerville. Meanwhile, in 1933, the Essex Borders Commission had defaulted, while in June, 1936, the Walkerville-East Windsor Water Commission stopped payment of interest. In December, 1934, by Order in Council a Royal Commission was appointed to inquire into the municipal and other local affairs of the four municipalities in question, particularly with regard to acts to be done and steps to be taken in connection with their amalgamation. The Commission reported in April, 1935. In the Courts in Canada the report, when tendered in evidence by the plaintiffs, was objected to by the defendants, and the objection was upheld. Before the Board the objection was withdrawn, and by consent of both parties the report was placed before their Lordships. The report disclosed a serious financial position. Commercial conditions had so changed in recent years that in 1934 29 per cent. of the total population was, on a daily average, in receipt of relief. Assessments had fallen in value by 38 per cent. of the peak value in 1930; taxation was at breaking point, and something like total default was threatened. The provision for maintenance in every department was entirely inadequate, while if adequate maintenance was received in existing conditions the credit of the area, both public and private, would be destroyed. Neither public money for improvements nor mortgage money for private building would be obtainable, nor would present mortgages be renewable, unless under some form of Government compulsion.

Their Lordships do not cite this report as evidence of the facts there found, but as indicating the materials which the Government of the Province had before them before promoting in the Legislature the statute now impugned, chapter 74 of 1935, an Act to amalgamate the City of East Windsor, The Town of Walkerville, The City of Windsor and the Town of Sandwich. The Act amalgamated the four municipalities into one municipality which was incorporated under the name of The Corporation of The City of Windsor. As from a named date the existing municipal corporations were dissolved. A special body entitled the Windsor Finance Commission was constituted with interim powers of administering the affairs of the new city. By section 6. 1. it was to have and exercise the same rights authorities powers and duties as by the provisions of Part III of the Department

of Municipal Affairs Act are conferred upon the said department, and the provisions of Part III were to apply to the new city. The Finance Commission by section 7 (c) were 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. As far as the public utility commissions were concerned a new commission was constituted by section 12. 1. entitled The Windsor Utilities Commission. Certain powers were confided to it by section 12. 1. and section 16. The Essex Border Utilities Commission, the Waterworks Commission and Hydro Electric Commission of the amalgamated municipalities including the Walkerville-East Windsor Water Commission were dissolved and ceased to exist. In pursuance of the Act the Finance Commission prepared a plan for submission to the Ontario Municipal Board. In 1936, however, an amending Act was passed which did away with the Windsor Finance Commission and transferred its duties to the Department of Municipal Affairs for Ontario. Sections 5, 6 7 and 9 of the principal Act were repealed. The plan prepared by the Finance Commission for funding and refunding the debt was taken under consideration by the Municipal Board. After formulating what appears to have been an interim decision in December, 1936, the Board heard objections from creditors and others and eventually on 15th June, 1937, made an order which had received the consent of the new city and the majority of creditors approving the final scheme. It is unnecessary to state the details of the scheme: generally it may be said that the former creditors receive debentures of the new city of equal nominal amount to those formerly held, but the interest is scaled down in various classes of debentures. Arrears of interest were dealt with by paying a composition in cash. It is not quite clear whether the scheme derives its statutory power from the provisions of the Amalgamation Acts of 1935 and 1936 or from the provisions of Part III of the Department of Municipal Affairs Act, 1935, or from both sources. It was prepared under section 7 of the Amalgamation Act of 1935, but that section was repealed by the Act of 1936. It becomes necessary in any case to discuss the provisions of Part III of the Department of Municipal Affairs Act, 1935, for that Part is attacked by the plaintiffs as invalid and it is expressly applied by the Amalgamation Acts to the new city and its affairs.

The Department of Municipal Affairs Act, 1935, is a general Act setting up a Department of Municipal Affairs whose duty it was to administer all acts in respect of municipal institutions and affairs. By an Act of the same date, an Act to amend the Ontario Municipal Board Act, 1932, 1935, Chapter 51, Part VI of the Ontario Municipal Board Act, 1932, the heading of which is "Special Jurisdiction

over Defaulting Municipalities" was repealed: and the Act in question of 1935 contained in Part III, corresponding provisions under the same heading. In substance the provisions are that if the Ontario Municipal Board is satisfied after request upon inquiry that a municipality has failed to meet its debentures or interest when due, or failed to meet any of its other debts or liabilities when due owing to financial difficulties affecting the municipality: or has or may become financially involved or embarrassed so that default or unusual difficulty in meeting debts or obligations may ensue (as amended by the Department of Municipal Affairs Amendment Act, 1936), the Board may exercise the special jurisdiction and powers conferred by the Act. The powers extend to control over all the affairs of the corporation (section 27 (2)) and include in section 33, powers in respect to the debenture debt and debentures of the municipality and interest thereon and also other indebtedness. These powers include power to order (a) the consolidation of the whole or any portion; (b) issue of debentures in payment and satisfaction of the whole or any portion of such other indebtedness, and compulsory acceptance of such debentures in payment and satisfaction thereof; (c) terms conditions places and times for exchange of new debentures for outstanding debentures; (d) postponement of or variation in the terms times and places for payment of the whole or any portion of the debenture debt and outstanding debentures and other indebtedness and interest thereon and variation in the rates of such interest. It should be noticed that by section 2 (f) of the Act, municipality includes any local board thereof: and by section 2 (b) of the Ontario Municipal Board Act, 1932, "Local Board" includes any public Utility Commission. Counsel for the plaintiffs attacked the whole of the proceedings in connection with these municipalities on three grounds. He said that the relevant statutes and the authorities which they purported to give were *ultra vires* the legislature of Ontario because they invaded the field of the Dominion as to:

(1) Bankruptcy and Insolvency. Section 91 (21).

(2) Interest. Section 91 (19) and were not within the exclusive powers of the Province because

(3) They affected private rights outside the Province.

Before dealing with these contentions it is convenient to state that in the Courts in Canada objection was taken that the action which asks for declaratory relief was premature in as much as the scheme of refunding the debts which it is the object of the action to defeat had not come into operation at the date of the writ. Before their Lordships this objection was wisely waived, as it was of importance to both parties to get a final decision on all the substantial points in issue.

It appears to their Lordships that the provincial legislation cannot be attacked on the ground that it encroaches on the exclusive legislative power of the Dominion in relation to this class of subject. Their Lordships cannot agree with the opinion of Henderson J. A. that there is no evidence that these municipalities are insolvent. Insolvency is the inability to pay debts in the ordinary course as they become due: and there appears to be no doubt that this was the condition of these corporations. But it does not follow that because a municipality is insolvent the provincial legislature may not legislate to provide remedies for that condition of affairs. The province has exclusive legislative power in relation to (section 92 (8)) municipal institutions in the province. Sovereign within its constitutional powers the province is charged with the local government of its inhabitants by means of municipal institutions. If local government in any particular area becomes ineffective or non-existent because of the financial difficulties of one or more municipal institutions or for any other reason, it is not only the right but it would appear to be the duty of the provincial legislature to provide the necessary remedy, so that the health of the inhabitants, and the necessities of organised life in communities should be preserved. If corporation A or B or C is unable to function satisfactorily it would appear to be elementary that the legislature must have power to provide that the functions of one or all should be transferred to some other body or corporation. For this purpose as the corporation could be created by the province so it could be dissolved, and a new corporation created as a municipal institution to perform the duties performed by the old. The result of dissolution is that the debts of the dissolved corporation disappear. Amalgamation of municipalities for the purpose of more effective administration whether for financial or other reasons is a common incident of local government. It is necessarily accompanied by an adjustment of financial relations. Where the former bodies are dissolved it is inevitable that the old debts disappear to be replaced by new obligations of the new body. And in creating the new corporation with the powers of assuming new obligations it is implicit in the powers of the legislature (sovereign in this respect) that it should place restrictions and qualifications on the obligations to be assumed. Efficient local government could not be provided in similar circumstances unless the province were armed with these very powers, and if for strictly provincial purposes debts may be destroyed and new debts created it is inevitable that debtors should be affected whether the original creditors reside within or without the province. They took for their debtor a corporation which at the will of the province could lawfully be dissolved, and of its destruction they took the risk. That for the purpose of keeping control over municipal institutions the legislature provided that a department of the provincial government should have the means of ascertaining whether a particular municipal body was solvent or insolvent does not make its legislative provision in that regard an encroachment on the general

powers of the Dominion over bankruptcy and insolvency. It is of the essence of its control over local government administered by municipalities that it should have these powers of inquiry and decision. In other words the pith and substance of both the Amalgamation Acts and the Municipal Board Act, 1932, and the Department of Municipal Affairs Act, 1935, are that the Acts are passed in relation to municipal institutions in the province. They would also so far as the public utility commissions are concerned be justified as having been passed in relation to local works and undertakings under section 92 (10) of the British North America Act.

It was suggested in argument that the impugned provisions should be declared invalid because they sought to do indirectly what could not be done directly, viz., to facilitate repudiation by provincial municipalities of obligations incurred outside the province. It is unnecessary to repeat what has been said many times by the Courts in Canada and by the Board that the Courts will be careful to detect and invalidate any actual violation of constitutional restrictions under pretence of keeping within the statutory field. A colourable device will not avail. But in the present case nothing has emerged even to suggest that the legislature of Ontario at the respective dates had any purpose in view other than to legislate in times of difficulty in relation to the class of subject which was its special care, viz., municipal institutions. For the reasons given the attack upon the Acts and scheme on the ground either that they infringe the Dominion's exclusive power relating to bankruptcy and insolvency or that they deal with civil rights outside the province breaks down. The statutes are not directed to insolvency legislation: they pick out insolvency as one reason for dealing in a particular way with unsuccessful institutions: and though they affect rights outside the province they only so affect them collaterally, as a necessary incident to their lawful powers of good government within the province.

The question of interest does not present difficulties. The above reasoning sufficiently disposes of the objection. If the provincial legislature can dissolve a municipal corporation and create a new one to take its place it can invest the new corporation with such powers of incurring obligations as it pleases, and incidentally may define the amount of interest which such obligations may bear. Such legislation if directed *bona fide* to the effective creation and control of municipal institutions is in no way an encroachment upon the general exclusive power of the Dominion legislature over interest.

For these reasons their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellants must pay the costs of the appeal.



In the Privy Council

EDGAR F. LADORE
AND OTHERS

2.

GEORGE BENNETT
AND OTHERS

DELIVERED BY LORD ATKIN

Printed by His Majesty's Stationery Office Press,
Pocock Street, S.E.1.

1939