Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hanson and another v. *The Corporation of the Village of Grand Mère, from the Supreme Court of Canada; delivered the 5th August* 1904.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The Appellants are holders of a debenture for $3,125 issued by the Stadacona Water, Light, and Power Company and purporting to be guaranteed by the Respondents, the Corporation of the Village of Grand Mère, under the provisions of a Municipal Bye-law No. 10, passed on the 15th June 1899. The Appellants sue the Respondents on their guarantee. The Respondents plead (amongst other defences) that the Bye-law in question as well as a contract of the 20th June 1899 to give the guarantee were *ultra vires* and did not bind the Respondents on the ground that the Bye-law had not been approved by the majority in number and value of the municipal electors or authorised by the Lieutenant-Governor of the Province. It is admitted that the Bye-law was not even submitted to the electors for their approval or to the Lieutenant-Governor. The only question on this Appeal is whether the approval of the electors and the Lieutenant-Governor or of either of them was necessary to the validity of the Bye-law.

By the provision of the Towns' Corporation Act being ch. 1., Tit. 11, of the Revised Statutes

of Quebec 1888 (which applies to the Respondents) a municipal corporation is empowered to aid in the construction of public works within the municipality by any incorporated Company by guaranteeing, by endorsation or otherwise any sum of money borrowed by such Company, but every bye-law for that purpose before coming into force requires to be approved by the electors of the municipality who are proprietors and authorised by the Lieutenant-Governor, and every such bye-law is required to be submitted for the approval of the electors within thirty days after the Council has passed the same.

The Stadacona Water, Light, and Power Company was incorporated by 60 Victoria, c. 78 of the Statutes of 1897 (Quebec), two clauses of which are material, namely, paragraph *c* of Section 7 and Section 27. These clauses are in the following terms :—

"Section 7 (c). Any contract or arrangement between a "municipal corporation and the company for the construction "and working of water-works systems or other works "authorised by this act, shall, if such contract or arrange- "ment involves financial obligations on the part of such "corporation, be valid only when the bye-law authorising such "contract or agreement has been approved by the ratepayers "and by the Lieutenant-Governor in Council, according to the "laws concerning the issue of municipal bonds."

"Section 27. In the event of the company undertaking the "construction of a system of water-works, drainage, or lighting in any municipality, the Company may make arrangements "with the corporations from which it shall have obtained con- "cessions or franchises for a certain number of years for the "construction and working of such system, in virtue whereof "the revenues of said systems shall be collected or levied by "the said municipal council. And notwithstanding any "provision to the contrary in the charter of such municipality "and provided it be thereto authorised by petition of the "majority in number and in value of the rate-payers of that "portion of the municipality to which the system shall extend, "the Council may, in such cases, bind itself by bye-law to "collect or levy the said revenues, and may, moreover, "guarantee the bonds or debentures issued by the company in "connection with the said systems, to the extent of two-thirds "of the revenues, the collection whereof shall have been con- "fided to it by the Company; but such guarantee shall not be "for a longer period than that of the concession or franchise

"granted to the company by the said corporation in connection "with the said systems. And in the event of the said "revenues not being binding, the Council of the municipality "may cause to be prepared by its secretary-treasurer an "estimate of the probable revenues of the said system, and such "estimate, after having been approved by the Council, shall "serve as a basis for establishing the amount of the said "guarantees. The revenue so collected by the corporation "shall be devoted to the payment of the interest on and the "capital of the bonds or debentures which it shall have so "guaranteed, either in whole or in part, as the municipal "council of such corporation shall decide."

By Bye-law No. 10, dated the 15th June 1899, after reciting that the Council had been authorised by petition of the majority in number and value of the ratepayers of the village of Grand Mère to make with the Company the arrangements thereafter stipulated respecting the collection of revenues and the municipal guarantee on the obligations or debentures of the Company (Art. 2), the offer of the Company to undertake the construction and working of water and sewage works on the conditions thereafter stipulated was accepted and the Company was authorised to proceed to the execution of its obligations; (Art. 3) the Council granted to the Company exclusive rights to use the streets and public places of the municipality for the purposes of their undertaking for a period of 25 years from the completion of the works; (Art. 23) the Council agreed to receive in trust for the Company the water and sewage rates for a commission of 5 per cent. on the amount collected; (Art. 24) the Council agreed to guarantee the debentures to be issued by the Company for an amount not exceeding two-thirds of the probable revenues during the term of the concession and the probable revenues were estimated at a certain sum to serve as a basis for fixing the amount of the guarantee once for all; (Art. 25) the net profits were to be divided equally between the Corporation and the Company; and (Art. 27) in case the revenues were insufficient to meet the

full amount of the guarantee the Company was to make good the deficiency before the due date of the payments.

By the contract of the 20th June 1899 the Company undertook to construct the works on the conditions agreed upon, and the Council agreed to receive the revenues in trust, and to guarantee the debentures on the same terms as are mentioned in the Bye-law.

The learned Judge in the Superior Court on the authority of a case of *Hanson* v. *Corporation of the Village of Gatineau*, Quebec Law Reports, 10 King's Bench (1901), p. 346, held that the guarantee purporting to be given by the Respondents in the present instance was *ultra vires* on the ground that the bonds were issued without authority of the Lieutenant-Governor to the Bye-law. And the Court of King's Bench confirmed this decision.

Mr. Justice Blanchet alone dissented from the Judgment of the King's Bench, as he had done in the Gatineau case, and referred to his Judgment in that case for the reasons of his opinion. It appears from a perusal of that Judgment, which is printed in the Record, that in the opinion of the learned Judge, Section 7 (*c*) applied only to cases in which the Corporation contracts direct financial obligations by causing waterworks to be constructed for the Corporation itself, and at its own cost, and is therefore the principal debtor, and that the Section has no application to a case where the Corporation guarantees the obligations of a contractor or concessionaire who is the principal debtor as in Section 27. Chief Justice Lacoste was of opinion that the provisions of Section 27 must be read together with and subject to those of Section 7 (*c*), and that the petition of the majority of that portion of the municipality to which the system extends (required

by Section 27), is not a substitute for the approval of a majority of the whole of the electors upon whom the burden is imposed.

In the Supreme Court Mr. Justice Girouard dissented from the opinion of the other learned Judges of the Court on the same grounds as those stated by Mr. Justice Blanchet, and he also expressed the opinion that the debentures were negotiable instruments. The majority of the Court concurred in giving judgment for the present Respondents, but gave no written reasons.

Their Lordships are of opinion that the contract of the 20th June 1899 is a contract involving financial obligations on the part of the Corporation within the meaning of Section 7 (*c*) of the Water Company's Act. They are not prepared to say with Mr. Justice Hall that the powers of Section 27 do not extend to giving a personal guarantee by the Corporation. But they think with Chief Justice Lacoste that the two sections must be read together. Section 27 authorises a very special form of contract, in which the giving of a guarantee is an incident, but there is nothing to take such a contract out of the express and unqualified provisions of Section 7. They also agree that the requirement as a condition precedent of a petition by a majority of the ratepayers of a part only of the municipality is not a substitute for the approval of the Bye-law when passed by a majority of the whole body of ratepayers, and it makes no difference in the construction of the Act that in the present case the two bodies were identical. The two conditions seem to be *diverso intuitu*.

Their Lordships will therefore humbly advise His Majesty that the Judgment appealed from ought to be affirmed, and the Appeal dismissed. The Appellants will pay the costs of the Appeal.