

Essex Circuit Court.

EDWARD HECKELL, TREASURER OF
THE TOWNSHIP COMMITTEE OF
BELLEVILLE,
v.
THEODORE SANDFORD.

} *In Debt.*

DECLARATION.

Essex Circuit Court, of the thirty-first day of May,
A. D. one thousand eight hundred and seventy-six.

ESSEX COUNTY, SS.

Edward Heckell, Treasurer of the Township Committee of the township of Belleville, in the County of Essex, the plaintiff in this suit, complains of Theodore Sandford, the defendant therein, who has been summoned to answer the said plaintiff, of a plea that he render to him the sum of ten thousand dollars, which he owes to and unjustly detains from the said plaintiff: For that, whereas, heretofore, to wit, on the first day of May, in the year eighteen hundred and seventy-three, in the township of Belleville, in the county of Essex aforesaid, under and by virtue of an act, approved the fourth day 10 of April, eighteen hundred and seventy-three, entitled "An Act to revise an act authorizing the appointment of commissioners to institute and make local improvements in that portion of the township of Belleville included within the boundaries of the Belleville Polling District," approved the sixth day of April, in the year eighteen hundred and seventy-one, also to a supplement of the said act, approved the fourth day of April, in the year eighteen hundred and seventy-two," the said defendant, one of the Commissioners of the Belleville Polling District, was duly elected 20 Treasurer of the Commissioners of the Belleville Polling District, under and by virtue of said act; and whereas the said defendant, afterwards, to wit, on the eighth day of April, in the year eighteen hundred and seventy-four, in the township of Belleville aforesaid, as Treasurer of the said commissioners, had in his hands, unexpended, the sum of three thousand two hundred and seventy-nine dollars and seventy-seven cents, balance of moneys raised by tax-

ation by authority of said commissioners, under and by virtue of the twenty-sixth section of the above entitled act, and which sum of three thousand two hundred and seventy-nine dollars and seventy-seven cents still remains in his hands unexpended; and whereas the above entitled act was, afterwards, to wit, on the twenty seventh day of March, in the year eighteen hundred and seventy-four, repealed by the act entitled "An Act to reorganize the local government of the city of Belleville," approved on the day and year last aforesaid, and has not since been re-enacted or

10 revised; and whereas, by reason of the premises, the said moneys so raised by taxation as aforesaid and remaining in the hands of the said defendant cannot be used for the purpose for which it was raised; and whereas, afterwards, to wit, on the fifteenth day of May, in the year eighteen hundred and seventy-six, in the township of Belleville aforesaid, the said plaintiff was and now is a member of the township committee of the township of Belleville aforesaid, and was, by said township committee, heretofore, to wit,

20 on the day and year last aforesaid, duly elected treasurer of the said township committee, under and by virtue of the act entitled "An Act concerning Townships and Township Officers," approved the twenty-first day of April, in the year last aforesaid, and still holds the said office of treasurer; and whereas afterwards, to wit, on the twenty-eighth day of May, in the year last aforesaid, in the township aforesaid, the said plaintiff, as such treasurer, did demand of the said defendant the said moneys so remaining in his hands unexpended, and require him to pay the same to the said plaintiff as such treasurer, pursuant to the fourth section of the last above entitled act, whereupon, and by force of the last mentioned act, it became t^hen and there the duty of the said defendant

30 to pay the said moneys to the said plaintiff, to wit, in the township aforesaid; nevertheless the said defendant, not regarding the statute in such case made and provided, did not nor would on demand so made as aforesaid, pay, to the said plaintiff the said moneys so raised by taxation and in the hands of the said defendant unexpended, but on the contrary wholly neglected and refused and still neglects and refuses so to do; by means whereof an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of three thousand two hundred and seventy-nine dollars and seventy-seven cents, parcel

40 of the sum above demanded. Yet the said defendant, although often requested so to do, hath not paid the said last mentioned sum or any part thereof to the said plaintiff, so being treasurer as aforesaid, but to pay the same, or any part thereof, the said defendant hath hitherto wholly refused and still refuses so to do, to the damage of the said plaintiff as such treasurer as aforesaid, of five hundred dollars, and therefore he brings his suit, &c.

JOHN W. TAYLOR,

Att'y for Plf.

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P L E A S .

And the said Theodore Sandford, by A. Q. Keasbey & Sons, comes and defends the wrong and injury when &c. and says that he does not owe the said sum of thirty-two hundred and seventy-nine 10 dollars and seventy-seven cents in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

And for a further plea in this behalf, the said defendant by leave of the Court for that purpose first had and obtained according to the form of the statute in such case made and provided, saith that the said plaintiff ought not to have or maintain his aforesaid there- against him, because he saith that the said sum of money in the hands of said defendant as treasurer of the commissioners of the Belleville polling district, was not raised by taxation of the taxa- 20 ble property of the township of Belleville, or held in trust for said township, but was raised by taxation of the taxable property of that portion of the said township of Belleville, which was at the time of the raising of said money embraced within the boundaries of the Belleville polling district, which boundaries then embraced a part of the said township of Belleville as it now exists, and also the present township of Franklin, which was afterwards, to wit, on the eighteenth day of February, eighteen hundred and seventy- four, set off by an act of the legislature of New Jersey, from the said township of Belleville, and created the new township of 30 Franklin, and the said money was raised and paid by the owners of taxable property within the said district, including the said township of Franklin, for the purpose of public improvements to be made within the said district, in the manner provided by the act entitled "An Act authorizing the appointment of commissioners to institute and make local improvements in that portion of the township of Belleville included within the boundaries of Belleville polling district," approved April 6, 1871, and the supplement there- to, approved April 4, 1872, and was held in trust by said commis- sioners through the said defendant their treasurer, for the purposes 40 provided in said act and the said supplement thereto, and not in trust for the said township of Belleville; and the said defendant further saith that by the said act creating the said township of Franklin, it was provided that certain commissioners therein named should allot and divide between the said townships of Belleville and Franklin, all moneys on hand or due in proportion to the tax- able property and rateables as taxed by the assessor of said town- ship of Belleville at the last assessment; wherefore this defendant saith that the said act of the legislature in the said declaration mentioned entitled "An Act concerning townships and township 50

officers," whereby it is provided that the treasurer of the township committee may sue for and collect all moneys raised by taxation, and held in trust for the township, which remain unexpended, and cannot be used for the purpose for which the same was raised, and not apply to the moneys in the hands of said defendant, raised as aforesaid by taxation, in a portion of said township, and in another township for purposes of local improvements therein, and that the said plaintiff as treasurer of the said township of Belleville, had no lawful authority to demand and receive the said moneys or any
 10 part thereof from the said defendant, and this he is ready to verify. Wherefore, he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

A. Q. KEASBEY & SONS,
Def'ts Att'ys

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ESSEX CIRCUIT COURT.

EDWARD HECKELL, Treasurer, &c., }
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REPLICATION.

And the said plaintiff, as to the said plea of the said defendant, by him first above pleaded, and whereof he has put himself upon
 30 the country, does the like.

And the said plaintiff as to the said plea of the said defendant by him secondly above pleaded, says, that the said plaintiff by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, because he says that according to the statutes in such case made and provided, and especially by the several provisions of an act of the legislature of the State of New Jersey, approved the fourth day of April, in the year eighteen hundred and seventy-three, in the declaration aforesaid referred to,
 40 and entitled "An Act to revise 'An Act authorizing the appointment of commissioners to institute and make local improvements in that portion of the township of Belleville included within the boundaries of the Belleville Polling District, approved April sixth, one thousand eight hundred and seventy-one,' also to the supplement to the said act, approved April fourth one thousand eight hundred and seventy-two," and of the act of the legislature of the State of New Jersey, entitled "An Act to set off from the township of Belleville, in the county of Essex, a new township to be called the township of Franklin," approved the eighteenth day of
 50 February, in the year eighteen hundred and seventy-four, and in

said plea mentioned, (to the several provisions of which statutes and acts reference is hereby made,) the boundaries of the said polling district, the jurisdiction of the said commissioners thereof and the territory within which the moneys raised by taxation and in the hands of the said defendant as aforesaid were authorized and required to be expended or applied, were and continued to be, from and after the day and year last aforesaid, and by the operation and as the result of the act last mentioned, wholly and exclusively within the territorial limits of the township of Belleville aforesaid, as the same were reduced by, and have been constituted since the passage of, the last aforesaid act, and were not nor was any portion thereof in said township of Franklin, and no part of which moneys last mentioned and in the said declaration mentioned were authorized or required by the last mentioned act to be divided or allotted by the commissioners therein named and in said plea referred to, between the said townships of Belleville and Franklin. 10

And this the said plaintiff is ready to verify, wherefore he prays judgment and his debt aforesaid, together with his damages by him sustained, on occasion of the detention thereof to be adjudged to him, &c. 20

JOHN W. TAYLOR,
Att'y for Pltf.

ESSEX CIRCUIT COURT.

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REJOINDER.

And the said defendant, as to the said replication of the plaintiff to the said second plea of the said defendant, saith that the said plaintiff by reason of anything by him in that replication alleged ought not to have or maintain his aforesaid action thereof against the said defendant, because he says that according to the said statutes in the said replication referred to, the boundaries of the said polling district, the jurisdiction of the said commissioners thereof, and the territory within which the moneys raised by taxation, and in the hands of the said defendant, were authorized and required to be expended or applied, were not and did not continue to be from and after the eighteenth day of February, eighteen hundred and seventy-four, by means of the act of the last mentioned date in the said replication mentioned, wholly and exclusively within the territorial limits of the township of Belleville aforesaid as the same were reduced by and have been constituted since the passage 40 50

of the said act, but that on the contrary thereof the said boundaries and territory were and continued to be after the passage of the said act in part within the township of Franklin as constituted by the said act, and the said moneys were required by the said act to be divided by the commissioners therein named between the said townships of Belleville and Franklin, to the end that the same might be expended in such portions of the said townships respectively, as were embraced in the Belleville polling district at the time the same were raised by taxation in said district, for the purposes of local improvements therein as provided by the act which authorized the raising and collection thereof, and this the said defendant prays may be inquired of by the country, &c.

10 And the said plaintiff doth the like.

A. Q. KEASBEY & SONS,
Att'ys of Def't.

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TESTIMONY.

Before Depue J., and a jury J. W. Taylor, for Plaintiff, and A. Q. Keasbey, for Defendant.

Plaintiff's counsel opened the case.

It is admitted there is no question about the sum of money at all: that Mr. Sandford had the money: that it was raised by taxation under the Belleville polling district.

30 Plaintiff's counsel called and examined

Theodore Sandford, sworn :

Q. Were you a member of Belleville polling district ?

A. I was.

Q. When were you elected ?

A. I cannot tell you ; I was twice elected ; I think my last election was previous to the date of my report—April 8th, 1874.

Q. What was the term of the commissioners ?

A. The first year if I recollect right, we were appointed by act of legislature ; two of us for one year, two for two years, and two

40 for three years.

Q. You were elected under the first election of the act ?

A. Yes.

Q. And you held it so long as the act was in force ?

A. Not under the first election.

Q. When were you appointed treasurer ?

A. In December, 1874.

Q. Your report is in April.

A. My report there given covers part of moneys given by the previous treasurer.

50 Q. Why ?

A. The previous treasurer having resigned, it became necessary I should report, and there was no one to do it but myself.

It was December, 1873, I was appointed treasurer, not 1874—and I made the report in 1874.

Q. And that not only related to money you received whilst treasurer, but moneys received by your predecessor?

A. Yes.

Q. Your predecessor was Mr. Jerolomon?

A. Yes.

Q. When you made that report, how much money had you in hand?

A. \$3,279.77.

Q. You had received that from whom?

A. A part from my predecessor Mr. Jerolomon in August, and a part of it from the collector of the township of Belleville.

Q. Can you tell how much from each?

A. I cannot.

Q. Can you tell by looking at the report.

A. No; it does not itemize it.

Q. Is that a copy of your report?

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A. Yes.

[Paper marked Exhibit No. 1.]

It is admitted that the moneys were raised under sections 26 and 27 of the act.

[Plaintiff's counsel read in evidence 27th section providing for appointment of commissioners.]

Q. Did the commissioners keep any minutes?

30

A. Yes.

Q. Have you got that here?

A. No; they are in the hands of the secretary, I presume.

Q. There appears on the minutes of the commissioners resolutions for raising this money.

A. Yes.

The Court: Let the minutes be put in as part of the case at any time.

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By the Court:

Q. You were a member of the commissioners?

A. Yes.

Q. And during all the time?

A. Yes.

Q. Were there any new highways opened?

A. None opened, I think.

Q. Were there any assessments made by commissioners themselves, or bonds issued by the commissioners?

A. There were bonds issued by the commissioners.

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Q. The moneys now in your hands, were they moneys raised for opening new streets ?

A. They were moneys raised under the new sections of the act.

Q. Cannot you answer me that question—whether the moneys were raised for opening of new streets ?

A. They were not so exclusively—they were in part.

Q. Can you tell in what part ?

A. I cannot ; I think approximately one half for each purpose.

Q. And have new streets been made ?

10 A. Not actually opened—many laid

Q. Were any lands condemned ?

A. Commissioners were appointed to condemn lands, but previous to performing their duties the act was abolished.

Further Examined :

Q. Was the money demanded of you ?

A. Yes.

Q. And you declined ?

20 A. Yes.

By the Court :

Q. When was the demand made ?

A. About the date of the summons .

Q. What is the date of the summons ?

A. The committee informed me they had just come from Mr. Taylor's office, and the summons had just been issued.

30 *Further Examined :*

Q. Did you not come into my office before the suit commenced ?

A. Yes.

Q. And come in response to a demand from me on account of the township ?

A. I think I did. At the interview between yourself and me, I came in response to a letter written by you to me, at which time it was suggested when the question was raised as to the propriety of paying the money to the township committee. A suggestion was raised by yourself that the matter should be submitted to the Court on argument, and I said I would do so when I obtained an answer from my counsel to the effect I would be safe in doing so.

40 Q. That arose from a demand for the money ?

A. No.

Q. I wrote to you ?

A. Yes.

Q. What about ?

A. That the town committee had left in your hands this matter, and to pay the money.

Q. The money remains in your hands ?

50 A. Yes.

Cross-Examined :

- Q. Was William street paved, and bonds issued ?
 A. Yes.
 Q. Does the report show the amount paid for that ?
 A. Yes.
 Q. And the amount paid, and the amount assessed as road tax ?
 A. Yes.
- | | | |
|----------------------------------|-----|------------|
| Amount assessed, incidental tax, | - | \$2,554.14 |
| Amount assessed for road tax, | - - | 1,934.00 |

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By the Court :

- Q. What do you mean by incidental tax ?
 A. Moneys raised for the purpose of employing surveyors, making survey maps and setting monuments, and everything necessary for the proper foundation of work we proposed to do.
 Q. By road tax, what do you mean ?
 A. Moneys raised to be expended within the limits of that district for the ordinary repairs of highways.

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Further Cross-Examined :

- Q. Are those purposes—both of them, and the purpose for which the moneys was actually applied, specified in the items of your reports ?
 A. Yes.

Re-Examined :

- Q. This money was all raised under the 26th and 27 sections ?
 A. So I understood.
 Q. It was assessed and collected by the collector of the township, and paid over to the treasurer after a time ?
 A. Yes.
 Q. Part was raised before you were made Treasurer ?
 A. Yes.
 Q. And part after, but the other came into your hands ?
 A. Yes.
 Q. And the balance is \$3,279.77 which you say remains in your hands ?
 A. Yes.
 Q. Why has not that been expended for the purpose for which it was raised ?
 A. Because an act was passed whereby the powers of the commissioners were cut off, as we understood the act.
 Q. The commissioners have done nothing since the charter of the city of Belleville was passed ?
 A. No.

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[Plaintiff's counsel offered in evidence act 22d February, page 481 ; also an act to define the status of the township officers of the township of Belleville, in the county of Essex," April 10, 1876, page 495.]

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Witness : I would like to qualify what I said in relation to one matter by saying that we did not recognize the city charter but thought our powers were doubtful. I did not state that correctly. It was so doubtful as to make it unwise to jeopardize the interest of the township by doing it.

10 A question has been asked me, whether the assessment was made and collections also made by officers of the township of Belleville ; I answered, yes. It is a matter of fact I had much to do with the drawing of that act and in conversation with all parties in relation to it, and the object was not to create two bodies who might conflict with each other in the collection of taxes.

Plaintiff rests.

Mr. A. Q. Keasbey opened the defence.

Plaintiff's counsel interrupted the opening of defence :—I want to show what was raised in Franklin.

20 Plaintiff's counsel called

Henry Osborn, sworn :

I have been assessor, collector, &c., from 1870 to 1876. I was collector in 1873.

Q. Are you acquainted with that part of the original Belleville Polling District boundaries of which now township of Franklin ?

A. Yes.

Q. Trace it out with your pointer.

30 Defendant's counsel : May I ask that I may finish my opening ?
The Court : Certainly.

[Defendant's counsel completed his opening.]

Mr. Keasbey : I have no evidence to offer.

The Court : You have made your argument ?

Mr. Keasbey : Yes.

40 It is agreed that of the moneys in the hands of the defendant not over \$100 were assessed and collected in that part of the polling district that is now within the limits of the township of Franklin.

It is admitted that the people within that part of Woodside re-annexed to Belleville voted in Belleville Polling District after they were annexed.

50 Defendant's counsel offered to prove that the Treasurer of Belleville Polling District has given notice and is preparing to obtain an act of legislature authorizing payment of this money to the treasurer of the township, to be expended in such manner as the inhabitants of Belleville Polling District, out of which it was raised, shall direct at a meeting called for that purpose.

I also offer to prove that he has expended \$300 in counsel fees which he claims should be deducted from the amount to be paid by him to any person out of these funds.

I don't know whether the acts of legislature cover all the facts to which I have referred.

I offer in evidence all the acts to which I have referred.

I also offer in evidence the map

The Court : A map is not evidence, but may be used as an aid to the jury. 10

Plaintiff's Counsel : I offer to prove the township committee has offered to indemnify Mr. Sandford in bonds of \$100,000, if he would pay this money.

I offer it *now* I am authorized to offer it.

It is admitted that the inhabitants of the little triangle marked Z on the map, voted in Belleville polling district after that Franklin was set off.

Defendant's counsel : The reply to plaintiff's offer to indemnify is, Mr. Sandford will pay the money upon sufficient indemnity and payment of the expenses, and all costs paid by him. 20

Case closed.

CHARGE.

DEPUE J., charged the jury. 30

Gentlemen of the jury : In this case there is really nothing involved but a question of law ; there are no disputed facts requiring the verdict of a jury to settle them in order to present the legal questions for judicial determination. I will therefore in this case, direct a verdict in accordance with the law affecting the rights of these parties.

With regard to the legislation that is involved in this cause, it is very doubtful whether another example can be found in the State of New Jersey of legislation in a more confused and unintelligible condition than that which relates to the township of Belleville. 40 And it is not surprising that the parties who are interested in the matter now in controversy, found it necessary to resort to the Courts to obtain a legal determination of their rights.

This action is brought by the treasurer of the township of Belleville against the defendant, who was treasurer of the commissioners of the Belleville polling district, to recover the sum of \$3,279.77, moneys which remain in his hands, and which have not up to the present time been expended. The declaration contains the general counts, and the only plea that I shall regard is, a plea of the general issue. And I shall regard the case as presenting 50

the rights of these parties without regard to the form of the pleading.

The action is brought under the 4th section of the act of 1876, which provides for bringing an action in two cases; first, where money which has been raised by taxation remains in the hands of any person or persons unexpended; and second, where the money so raised is held in trust for the town and township, and cannot be expended for the purpose raised.

The act provides for two classes of cases: First, where the
 10 money is raised within the limits of the township by taxation, which cannot for any reason be expended; and the other, in cases where the moneys have been raised in trust for the town or township, and not needed for the purpose raised,—the one is a case where the money cannot be used, and the other where it is not needed to be used, although raised for the benefit of the township. In order to the decision of this case, these two questions are involved: First, whether these moneys are moneys raised by taxation which remains in the hands of the defendant within the meaning of this act; and secondly, whether those funds in his hands
 20 cannot be expended for the purpose for which they were raised; and that involves a consideration in the first place of the law with regard to corporations of the class to which the body, which these parties represent, belonged; and also a consideration of the character of the duties, and character of the corporation, which was created for the purpose of _____ in the Belleville polling district.

The general rule of law upon the subject is this, that with regard to a municipal corporation of that kind, it is competent for the legislature to repeal the act creating the corporation, and extinguishing
 30 it whenever the legislature in its judgment sees fit to do so. This rule is subject to only one exception, that is, that it is not within the power of the legislature to extinguish a corporation of that kind where there are creditors, and the extinguishment would impair the obligation of contract with the creditors, or deprive creditors of any remedy which existed when the debt was contracted. That exception is not involved in this case, and so far as the controversy now before the Court is concerned, the power of the legislature to extinguish either one of the corporations is not involved; no rights such as would require the application of the exception in
 40 favor of creditors has been mentioned to the Court.

Another principle of law is well settled; that is, when a corporation is dissolved, extinguishing the real estate belonging to such corporation, at its extinguishment, reverts to the original grantor, and the personal property of such corporation goes by common law to the king,—by the law of this state, to the state, as representing the sovereignty, subject to be disposed of at the will of the legislature. So that if the commissioners of the Belleville polling district be regarded as a corporation, the legislature had the power to extinguish that corporation, and upon its extinguishment, the
 50 moneys on hand would belong to the state, and the legislature

would have the power to order it paid into the public treasury, or to such persons as the legislature saw fit to select.

I propose now to consider the question as to the character of the corporation created in this polling district, and as to whether the funds raised within that polling district, be considered as moneys raised by taxation in the hands of any person or persons, and unexpended within the meaning of the statute.

It does not require that the moneys should be raised within limits co-extensive with the township acts: if that be so, it must necessarily be moneys raised within, and held in trust for the township: but I hold that this act must receive a reasonable construction, and that it means moneys raised, which are in the hands of some official as public moneys incapable of being expended, who at the time of the passage of the act represented a department of the local government within the boundaries of the township which is authorized to bring a suit—not co-extensive with, but a department of the municipal government existing within the boundaries of the township. 10

It appears that on the 17th of April, 1868, the township of Belleville was divided into three polling districts, by two separate acts of the legislature, one of which simply created the Franklin polling district, leaving the residue of the township to be the other polling district: and secondly, an act was passed either the next day or within a day or two, setting off the Woodside polling district, and leaving the intermediate territory between Franklin and Woodside as a polling district. 20

A general act was passed in April, 1868, conferring the power to create polling districts where a township had more than a certain number of voters.

On the 16th of April, the commissioners of the Belleville polling district were incorporated, whether they were created a corporation by that act I do not now recollect, but it is immaterial for present purposes. 30

The commissioners of the Belleville polling district became re-organized in 1873. An act was passed the title of which is, "An Act to revise the act authorizing the appointment of commissioners to institute, and make local improvements," and so forth.

Now the territory over which these commissioners were authorized to perform these duties, was the territory comprised within the Belleville polling district. It would be the territory embraced within the township of Belleville, excluding the Franklin, and also the Woodside polling district. This act created these commissioners a corporation,—expressly calls them a corporation. Now that it was not intended by the act of 1873 to create this body into a separate and independent corporation is manifest, from the provisions of the act: it was intended to give them a qualified corporate existence, making it what is known in law as a quasi corporation, such as overseers of the poor, and many of the bodies that are created by common law for the purpose of performing duties that would devolve upon large municipal bodies. 40 50

The act authorized this body of men so incorporated, to undertake two classes of public improvements within the limits of the polling district, or ordered the performance of all classes of public duties of that nature which ordinarily devolve upon the township,—one the creation of new highways, and the other the mending and repairing of existing highways. It provided that for the purpose of creating highways, opening highways, they should be authorized to acquire lands by condemnation, they were authorized to make assessments for the expenses incident to the improvement and to issue what are called improvement bonds, which are declared to be a lien on all lands within the whole district, and to be paid by assessment made by commissioners, and collected by the collector of the township.

In addition to the duties that are so imposed upon this corporation, this department of the local government, by the 26th section were authorized to raise a certain amount of money for the purpose of making of original and other surveys, and maps for doing of work necessary for laying different streets and highways within said district, and to expend a sum of money not exceeding in the whole, \$5000 in one year.

I understand this to relate, not to the execution of any public work or improvement that is projected, but making provision for defraying the expenses of the preliminary proceedings, that is, the surveys and maps, and the laying out,—not the opening of streets and highways. The act provides that the moneys so required, are to be assessed, not by the commissioners, but assessed by the assessor of the township of Belleville, and the assessor of the township of Belleville was to be required to assess so much thereof from time to time, as may be required and directed by the commissioners, by a general assessment upon all the assessable property within said district, that is, within the Belleville polling district.

The moneys that are now in controversy, are moneys I might remark in passing, raised under the 26th and 27th sections of this act for the keeping and repairing of those highways.

It is very manifest in referring to the provisions of this act, that these commissioners were not created a separate and independent corporation having its boundaries simply defined by the limits of the road district, as the polling district at the time the corporation was created. If that were so, that is, if this was a separate, independent corporation, having limits defined simply by reference to the limits and boundaries of the polling district, then it would be clear that this corporation would still be a corporation, with limits co-extensive with limits of the polling district at the time it was incorporated, without regard to subsequent changes that might have been made by subsequent legislation, and that the corporation after the township of Franklin was set off in 1874, would be a corporation, whose limits would extend up and include *that* [the Court pointing to the map], the whole polling district that was within the township of Franklin, after the township was set off.

Now it seems to me, that is not the character of this corporation. In the first place, I have adverted to the duties the corporation is to perform; they are such as devolve by the general law of New Jersey exclusively on township authorities, and if an overseer of the road had been elected for the township of Belleville, and the township of Woodside had been set off from the township of Belleville, that moment by force of the separation of that portion of the territory of the township of Belleville, the jurisdiction of such overseer of the road would be at an end within the limits of the new township, because he is a township officer, and his duties and the extent of his authority would be within the limits of the township. 10

Again, aside from the character of the duties to be performed by these commissioners, they are required to make their assessments and collections such as are now in controversy, by using the officers of the township of Belleville, and they are required to give bonds to the township of Belleville, and are authorized to issue bonds which are to be a lien upon all the lands within the Belleville polling district. In addition to that, they are required to be elected by the electors at their next annual town election. They are elected by the electors of the polling district at the annual township election. Now when that portion of the polling district was set off from the township of Belleville, there ceased to be an annual township election, which would include the electors which were set off in the new township. 20

It seems to me, this corporation was a mere department of the local government, of the township government, confined within limits co-extensive with the township, and at the same time confined within the limits of the township as it actually exists, and the lines of the township limits are changed that very moment the territory contained in the polling district which was in the new township, and is cut off from it, and ceased to be part of their district. 30

That being so, in my judgment, this corporation at the time of the passage of the act of 1876 under which this law was passed, became such a corporation as that, the moneys that were in their hands, and had been raised by taxation, and remained in their hands, was such a corporation as was within the meaning of this statute.

The next question arises whether those moneys in the hands of Mr. Sandford are moneys that cannot for any reason be used for the purposes for which it was raised: it was raised for the purposes for which it was described by the 27th section of the act, and not needed—not actually expended for the purposes of that act. 40

The next question that will arise in determining whether this money could be expended, is the inquiry whether this corporation, the commissioners of the Belleville polling district, was at the commencement of this suit, in existence, having still a capacity to perform the duties for which they were originally created; the contention on the part of the plaintiff is, that this corporation was extinct by force of the acts of the legislature passed in relation to 50

the same territory or townships of Belleville, and to the polling district. When I examined these acts before when the matter was in demurrer, I had very considerable difficulty in finding out whether this corporation was dead or not, but on a more careful examination of the act incorporating the city of Belleville and the act repealing the city charter, in my judgment there is a repeal if not in express terms, by implication, and my reasons for that are these: in the first place, the charter of the city of Belleville provided for a new public body co-extensive with the boundaries

10 of the entire township, and expressly giving that body all the powers that were by the original act conferred upon the commissioners of the Belleville polling district. It declares further than that, that all laws and parts of laws inconsistent with the provisions of the act be repealed. Now the act creating the commissioners of the Belleville polling district, was inconsistent with the act incorporating the city for the reason that the act incorporating the city created a new body having identical powers in all respects with the powers that were conferred upon the commissioners. And

20 the two acts could not stand without depriving the new municipal body created by the government of the city of Belleville, of powers and authority that by this act, the legislature declared they conferred upon them.

The following clause upon that act seems to me to lead by implication to the same result. "This repeal shall not affect any lawful proceeding had or commenced when this act takes effect, nor any rights, dues or privileges which the township of Belleville or Belleville polling district, or any person or persons are entitled to by virtue thereof."

We cannot construe the expression "rights or privileges," to

30 mean the right of this corporation as the commissioners of the Belleville polling district to exist, because that would lead to incongruity not to say absurdity of two governing bodies, each having the same identical power to make improvements wherever they thought necessary, and to impose taxation, having the people subjected to the taxation of both bodies, and each of them for the same purpose, for which the two corporations were to exist.

In addition to that it seems to me the legislative declaration of its intent is very clearly expressed in the act of 1876, which repealed the charter of the city of Belleville, and especially when

40 taken in connection with the subsequent act of the 1st April, 1876, concerning the township government. The act repealing the city charter was passed 22d February, 1876. The act to organize the local government was to be repealed, provided that this repeal should not in any revive and put in force the act entitled "An Act to authorize," &c., which is the act under which these commissioners were in operation. Now it seems to me, taking the act creating the city government, the declaration of an intention to repeal all inconsistent acts, and looking at the object for which

the of the polling district were created, the

50 object the legislature intended to conserve by creating another

municipal government for the township of Belleville, the language used in the act repealing the city charter, that there cannot be any doubt as to the legislative intent. It seems to me, taking all these things into consideration, there cannot be any doubt as to the legislative intent to extinguish the corporation which had been created for this official purpose within the limits of the polling district.

I have gone over the several acts that occur to me now as acts that are applicable to the principle involved in this litigation. I have not referred to some of the other acts of the legislature, for the reason that in my judgment the cause was brought down to the determination of the two points mentioned by the Court at the outset of these remarks. 10

That is, whether this was money raised by taxation of any department of the local government whose limits of jurisdiction were within the boundaries of the township, and the determination of the question whether the moneys that are now in controversy are incapable of being used for that purpose.

I may make one other observation with regard to the act of 1876, in which this action is brought, and that is this: this is a statute, and is one that ought to be liberally construed, 20 especially where there are no conflicting claims, no debts still in existence, no trusts unexecuted; and clearly, in my judgment, no rights in anybody else than the plaintiff in this case, or the State. I cannot conceive in looking over this case, who would have a right to this money, unless it be the State of New Jersey, or the local authorities of the township of Belleville. The State, in my judgment has clearly waived any right it may have by the passage of this act, and it would be very inequitable to give this act such a construction as to hold that these moneys should go into the State treasury; whereas to give it a construction that they should go into 30 the hands of the township authorities where they could be used, and no doubt would be used for substantially the same purposes for which the moneys were raised, would not only carry out the intent of the legislature in 1876, but that which the Court always aims at,—the doing of justice.

I shall therefore direct a verdict for the moneys in the hands of Mr. Sandford with a proper calculation of interest from the commencement of this suit, and will give any opportunity which the defendant's counsel desires for objections. 40

Defendant's counsel asked the Court to charge, if on the 26th of March, 1874, the law expressly providing that none of the provisions of the polling commissioners act, applied to that part of the township of Belleville, which was then, by that law, included in the Montgomery polling district, being one-half of the township of Belleville, as it then existed; and if at that time the township of Belleville was still in existence as it was, and after that a city ordinance which extinguished the polling commissioners corporation was passed, and after that repealed. The reviving township to which the rights of the whole territory reverted, received such 50

rights subject to the law, which had before the establishment of the statute, declared that none of these provisions should apply to the commissioners of the township embraced in the Montgomery district.

The Court : In my judgment, the act of the 10th April, 1876, which recognized the revival of the township government, operated to re-establish a township government co-extensive with the limits of the former city, and that the treasurer of the township is
 10 under the act of 1876, authorized to bring suit for these moneys although the moneys had previously been such as could only be expended within a portion of the township of Belleville, to wit: the old territory of the Belleville polling district, not embraced within the township of Montgomery, and notwithstanding the fact that prior to the establishment of the suit.

The Court refuses to charge as requested.

Defendant's counsel prayed exceptions, and same granted.

20 The Court to the jury :
 Gentlemen :—I have disposed of this case you are aware, on a question of law, there being nothing else involved in the case, and your verdict will be for debt, \$3,279.77, and damages for detention, \$147.58, making a total of \$3,427.35.

The jury returned a verdict accordingly.

30 Defendant's counsel prayed exceptions to the overruling of the testimony offered in the part of the defence to the effect that he had been obliged, in consequence of the doubtful character of this legislation, to expend \$300 in counsel fees for his own safety.

The Court granted the exception.

40

BILL OF EXCEPTIONS.

1. The said defendant, by A. Q. Keasbey & Sons, his Attorneys, excepted to that part of the charge of the Court, in which it charged the jury that the moneys in the hands of the defendant as Treasurer of the Belleville Polling District, were moneys raised by taxation, which remain in the hands of the defendant within the meaning of the act concerning townships and township officers, approved April 21, 1876, and he prays that this exception be
 50 sealed, and the same is sealed accordingly.

2. And the said defendant excepted to that part of the charge in which the Court charged the jury that the said moneys remaining in the hands of the said Theodore Sandford, Treasurer of the Belleville Polling District, were moneys raised by taxation which could not be expended for the purpose for which they were raised, and he prays that this exception be sealed, and the same is sealed accordingly.

3. And the said defendant excepted to that part of the charge in which the said Court charged the jury that the said act of April 21, 1876, does not require that the moneys referred to in the fourth section thereof, should be raised within limits co-extensive with the township, and he prays that this exception be sealed, and the same is sealed accordingly. 10

4. And the said defendant excepted to that part of the charge in which the said Court charged the jury that the said corporation known as "The Commissioners of the Belleville Polling District," was a mere department of the local government of the township not co-extensive with the township, and at the same time confined within the limits of the township, and that when the lines of the township were changed, that very moment the territory contained in the polling district, which was in the new township, and was cut off from it, ceased to be a part of the said polling district, and he prays that this exception be sealed, and the same is sealed accordingly. 20

5. And the said defendant excepted to that part of the charge in which the said Court charged the jury that at the time of the passage of the act of April 21, 1876, the said corporation became such a corporation, as that the moneys that were in their hands and had been raised by taxation, were within the meaning of said act, and he prays that this exception be sealed, and the same is sealed accordingly. 30

6. And the said defendant excepted to that part of the charge in which the said Court charged the jury that at the commencement of this suit, the said corporation had no legal existence or capacity to perform the duties for which it was created, but that the same had been extinguished by subsequent legislation, and he prays that this exception be sealed, and the same is sealed accordingly. 40

7. And the said defendant excepted to that part of the charge in which said Court charged the jury that the extinguishment of the said corporation prevented the use of the said moneys remaining in the hands of its Treasurer for the purposes for which they were raised, and he prays that this exception be sealed, and the same is sealed accordingly.

8. And the said defendant excepted to that part of the charge in which said Court directed the jury to render a verdict for the plaintiff for the full amount of the said moneys in the hand of the defendant with interest from the commencement of this suit, and he prays that this exception be sealed, and the same is sealed accordingly.

9. And the said defendant excepted to that part of the charge in which said Court refused to charge the jury as requested by the counsel for the said defendant (pro ut the charge), and he prays that this exception be sealed, and the same is sealed accordingly.

10. And the said defendant excepted to the ruling of the Court whereby said Court refused to admit evidence on the part of the defendant to the effect that in consequence of the doubtful character of the legislation concerning said corporation, he had been obliged to expend three hundred dollars in counsel fees for his own safety, and he prays that this exception be sealed, and the same is sealed accordingly.

20

ASSIGNMENT OF ERRORS.

And the said Theodore Sandford, by A. Q. Keasbey & Sons, his Attorneys, comes and says that in the record and proceedings aforesaid, and also in the giving of judgment, there is manifest error in this :

1. That the declaration aforesaid and the matters therein contained are not sufficient in law for the said Edward Heckel to have or maintain his aforesaid action thereof against him.
2. And there is also error in this, that at the trial of said cause, the charge of the Court to the jury was contrary to law, in the Court charged the jury that the moneys in the hands of the said Theodore Sandford as Treasurer of the Belleville Polling District, were moneys raised by taxation, which remain in the hands of the said Theodore Sandford, within the meaning of the Act of the Legislature, entitled "An Act concerning Townships and Township Officers," approved April 21, 1876.
3. And there is also error in this, that the said Court charged the jury that the said moneys remaining in the hands of the said Theodore Sandford, Treasurer of the Belleville Polling District, were moneys so raised by taxation which could not be expended for the purpose for which they were raised.

4. And there is also error in this, that the said Court charged the jury that the said act of April 21, 1876, does not require that the moneys referred to in the fourth section thereof, should be raised within limits co-extensive with the township.

5. And there is also error in this, that the said Court charged the jury that the said corporation known as "The Commissioners of the Belleville Polling District," was a mere department of the local government of the township not co-extensive with the township, and at the same time confined within the limits of the township, and that when the lines of the township were changed, that very moment the territory contained in the polling district, which was in the new township, and was cut off from it, ceased to be a part of the said polling district. 10

6. And there is also error in this, that the Court charged the jury that at the time of the passage of the act of April 21, 1876, the said corporation became such a corporation, as that the moneys that were in their hands and had been raised by taxation, were within the meaning of said act. 20

7. And there is also error in this, that the Court charged the jury that at the commencement of this suit, the said corporation had no legal existence or capacity to perform the duties for which it was created, but that the same had been extinguished by subsequent legislation.

8. And there is also error in this, that the said Court charged the jury that the extinguishment of the said corporation prevented the use of the said moneys remaining in the hands of its Treasurer for the purposes for which they were raised. 30

9. And there was also error in this, that the said Court directed the jury to render a verdict for the plaintiff for the full amount of the said moneys in the hands of the defendant with interest from the commencement of this suit.

10. And there is also error in this, that the said Court refused to charge the jury as requested by the counsel for the said defendant (pro ut the charge). 40

11. And there is also error in this, that the said Court refused to admit evidence on the part of the defendant to the effect that in consequence of the doubtful character of the legislation concerning said corporation, he had been obliged to expend three hundred dollars in counsel fees for his own safety.

12. And there is also error in this, that the said judgment was given against the defendant, whereas it ought to have been in his favor. 50

Wherefore the said Theodore Sandford prays judgment, and that the judgment aforesaid for the errors aforesaid and other errors found and being found in the record and proceedings aforesaid, may be reversed, annulled and for nothing holden, and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

A. Q. KEASBEY & SONS,

Attorneys of Plaintiff in Error.



