This appeal, therefore, must, in my opinion, be dismissed with costs.

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TOWNSHIP OF CHATHAM v. TOWNSHIP OF DOVER.

Appeal dismissed with costs.

Solicitor for appellants: *Charles E. Pegley.*

Solicitors for respondents: *Robinson, Wilson & Bell.*

THE CANADA ATLANTIC RAILWAY COMPANY AND DANIEL C. LINSLEY (PLAINTIFFS) ..... APPELLANTS;

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*Dec. 3, 4.

AND

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*May. 17.

THE CORPORATION OF THE CITY OF OTTAWA AND PIERRE ST. JEAN, MAYOR, AND THOMAS HALDER KIRBY, TREASURER, OF THE CITY OF OTTAWA (DEFENDANTS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Municipal Corporation—By-law—36 Vic. ch. 48 (O.)—Bonus to railway—Vote of ratepayers on by-law for—Premature consideration of by-law—Error in copy submitted to ratepayers—Signing and sealing by-law—To be passed by same council.

A by-law was submitted to the council of the city of O., under 36 Vic. ch. 48, for the purpose of granting a bonus to a railway then in course of construction, and after consideration by the council it was ordered to be submitted to the ratepayers for their vote. By the notice published in accordance with the provisions of the statute such by-law was to be taken into consideration by the council after one month from its first publication on the 24th of September, 1873. The vote of the ratepayers was in favor of the by-law, and on 20th October a motion was made in the council that it be read a second and third time, which was carried and the by-law passed. The mayor of the council, however, refused to sign it, on the ground that its consideration was premature, and on 5th November the same motion was made and the by-law was rejected. Nothing more was done in the matter until April, 1874, when a motion was again made before

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*PRESENT—Sir W. J. Ritchie C.J., and Fournier, Henry, Taschereau and Gwynne JJ.

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the council that such by-law be read a second and third time, which motion was, on this occasion, carried. At this meeting a copy only of the by-law was before the council, the original having been mislaid, and it was not found until after the commencement of this suit. When it was found it was discovered that the copy voted on by the ratepayers contained, by mistake of the printers, a date for the by-law to come into operation different from that of the original.

In 1883 an action was brought against the corporation of the city of O. for the delivery of the debentures provided for by the by-law, in which suit the question of the validity of the whole proceedings was raised.

Held, affirming the judgment of the court below—

1. That the vote of 20th November, 1873, was premature, and not in conformity with the provisions of sec. 231 of the Municipal Act; that the mayor properly refused to sign it, and that without such signature the by-law was invalid under sec. 226.
2. That the council had power to consider the by-law on 5th November, 1873, and the matter was then disposed of.
3. That the proceedings of 7th April, 1874, were void for two reasons. One, that the by-law was not considered by the council to which it was first submitted as provided by sec. 236, which is to be construed as meaning the council elected for the year and not the same corporation; and the other reason is, that the by-law passed in 1874 was not the same as that submitted, there being a difference in the dates.

Semble, that the functions of a municipality in considering a by-law after it has been voted on by the ratepayers are not ministerial only, but the by-law can be confirmed or rejected irrespective of the favorable vote.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment of the Chancery Division (2) in favor of the defendants.

The facts of the case will sufficiently appear from the previous reports and the judgment of this court.

McCarthy Q.C., *O'Gara* Q.C., and *J. J. Gormully* for the appellants.

The by-law was passed on 20th October, 1873, and although it was a few days ahead of time, that was only an irregularity, and the by-law would stand unless

(1) 12 Ont. App. R. 234. (2) 8 O. R. 201.

quashed within a reasonable time. There is a limit of time given to quash a by-law by the Mun. Inst. Act, sec. 241. See *Vanfleet* v. *East Oxford* (1).

The provision that the by-law shall not be taken into consideration before the expiration of one month from publication, is directory only, and not mandatory, and unless damage be shown as a result of non-compliance the court will not invalidate it.

Sealing is not necessary to the validity of a by-law, but is only required for the purposes of indentification: Sec. 226. See *Dunston* v. *Imperial Gas Co.* (2).

The following authorities also were referred to: *Queen* v. *Ingall* (3); *Berks' Turnpike Road* v. *Meyers* (4); Abbott's Dig. of Mun. Cas. (5); Dillon on Mun. Corp. (6); *Brock* v. *Toronto & Nipissing Ry. Co.* (7); *In re Billings* (8); *Moss* v. *Barton* (9); *Buckland* v. *Papillon* (10).

McLennan Q.C. and *McTavish* for the respondents cited *In re Croft and the Township of Brooke* (11); *Mottashed* v. *Prince Edward* (12); *Boulton* v. *Peterborough* (13); *Crossfield* v. *Gould* (14); Fry on Specific Performance (15); *Luther* v. *Wood* (16); *Hammersley* v. *DeBiel* (17); *Jorden* v. *Money* (18); *Maddison* v. *Alderson* (19); *Citizens Bank of Louisiana* v. *First National Bank* (20).

O'Gara Q.C. was heard in reply.

The judgment of the court was delivered by—

GWYNNE J.—I am of opinion that this appeal must be dismissed with costs upon all the grounds urged by

(1) 3 Ont. App. R. 131.
(2) 3 B. & Ad. 125.
(3) 2 Q. B. D. 199.
(4) 6 Serg. & Raw. Penn. 10.
(5) Pp. 725 to 727.
(6) P. 235 sec. 131.
(7) 17 Gr. 425.
(8) 10 U. C. Q. B. 273.
(9) L. R. 1 Eq. 474.
(10) 2 Ch. App. 70.
(11) 17 U. C. Q. B. 269.
(12) 30 U. C. Q. B. 79.
(13) 16 U. C. Q. B. 380.
(14) 9 Ont. App. R. 218.
(15) P. 474 ses. 1070 et seq.
(16) 19 Gr. 348.
(17) 12 C. & F. 45.
(18) 5 H. L. Cas. 185.
(19) 8 App. Cas. 473.
(20) L. R. 6 H. L. 361.

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the respondents against the appellants' demand.

By the 471st section of the Municipal Institutions Act of the province of Ontario of 1873, 36 Vic. ch. 48, the council of every township, county, city, town and incorporated village, were empowered to pass by-laws for granting bonuses to any railway company in aid of such railway, and for issuing debentures for raising money to meet such bonuses, but it was enacted that no municipal corporation should incur a debt or liability for the purposes aforesaid, unless the by-law, before the final passing thereof, should receive the assent of the electors of the municipality in the manner provided by the act. This manner was provided by the 231st section which enacted that in case a by-law requires the assent of the electors of a municipality before the final passing thereof, the council shall by the by-law fix the day, hour, and place for taking the votes of the electors thereon at every place in the municipality at which the elections of the members of the council therein are held, and shall, before the final passing of the proposed by-law, publish a copy thereof in some public newspaper published within the municipality, or, if there is no such newspaper, in the public newspaper published nearest the municipality, and also, in either case, in a newspaper published in the county town, if there be any such newspaper, the publication to be continued in at least one number of each of such papers for three successive weeks, and shall also put up a copy of the by-law at four or more of the most public places in the municipality, and that appended to each copy so published and posted shall be a notice signed by the clerk of the council stating that such copy is a true copy of a proposed by-law which will be taken into consideration by the council after one month from the first publication in the newspaper, stating the date of the first publication, and that at the hour, day, place, or places

therein fixed for taking the votes of the electors, the polls will be held. And by the 248th section it was enacted that no by-law for contracting a debt by borrowing money or otherwise, or for levying rates for payment of such debts on the ratable property of the municipality for any purpose within the jurisdiction of the council, should be valid unless the by-law should name a day in the financial year in which the same is passed when the by-law shall take effect, and that the whole of the debt and of the obligations to be issued therefor should be made payable in twenty years at furthest from the day on which such by-law takes effect; and that the by-law should settle an equal special rate per annum, in addition to all other rates to be levied in each year, and that such special rate should be sufficient, according to the amount of ratable property appearing by the last revised assessment rolls, to discharge the debt and interest when respectively payable, and that the amount of ratable property shall be ascertained irrespective of any future increase of the ratable property of the municipality, and of any income in the nature of tolls, &c., &c., or of any income from the temporary investment of the sinking fund or of any part thereof.

On the 24th September, 1873, the clerk of the council of the city of Ottawa published in two newspapers published in the city of Ottawa, and also put up at four of the most public places in the city for the length of time required by the 231st section of the above act, what he certified under his hand as city clerk to be true copies of a proposed by-law to authorize the issue of debentures, to the extent of $100,000, to be given as a bonus to the Montreal and City of Ottawa Junction Railway, in which proposed by-law as so published were the clauses following :—

2. "The said debentures" (those authorized by the previous sec-

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tion) shall be payable on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and ninety-three, at the office of the Quebec Bank in the city of Ottawa, and shall have coupons attached for the payment of the interest as it falls due.

5. This by-law shall take effect and come into operation on the thirteenth day of December in the year of our Lord one thousand eight hundred and seventy-three.

And this final clause:—

And whereas this by-law requires the assent of the electors of the city of Ottawa aforesaid before the final passing thereof, therefore, for the purpose of taking the votes of the said electors thereon the corporation of the city of Ottawa in council assembled do hereby appoint the sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-three, at the several places hereinafter mentioned.

Here follow the places named for taking the poll of votes and the names of the persons to be returning officers. And at the foot is the notice required by the statute to be signed, and which was signed by the city clerk, as follows:—

TAKE NOTICE

That the above is a true copy of a proposed by-law which will be taken into consideration by the council of the corporation of the city of Ottawa after one month from the first publication thereof in the *Free Press* newspaper, the date of which first publication was the twenty-fourth day of September in the year of our Lord one thousand eight hundred and seventy-three, and the votes of the electors of the said municipality will be taken thereon at the following places within the city of Ottawa, namely, (here follows an enumeration of the places as in the published by-law,) on the sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-three, at the hour of nine of the clock in the forenoon of the same day.

WM. P. LETT,
City Clerk.

City of Ottawa,
24th September, A.D. 1873.

Between the 16th and 20th October, 1873, the city clerk reported to the council, as required by the act, that the proposed by-law was approved by a majority of the votes polled, and upon the said 20th October a

motion was proposed in council and carried to the effect that the by-law granting a bonus of $100,000 to the Montreal and Ottawa City Junction Company be read a second and third time and passed, suspending all rules of council to the contrary. At the time this motion was put the original of the proposed by-law was not before the council, it having been then lost, as it, in fact, so continued to be until just before the re-hearing of this cause, when a clerk of the plaintiff's made an affidavit, to which was annexed a document which he swore he found on the 11th February, 1884, in the office of the *Free Press*, which, as he said, he was informed by the proprietor of that newspaper was on file in his office since the 23rd or 24th September, 1873, and which had the appearance of being the original of the said proposed by-law as read a first time in council. The motion of the 20th October never was acted upon, the same having been found to be premature, in consequence of which, as appears by the evidence of the city clerk, the mayor declined to act upon the motion by signing the by-law, and as it was then lost he could not have signed it, nor was it, in fact, read a second and third time in council, and under the circumstances the motion although entered in the minutes, was treated, as it, in fact, was, as nugatory, the time when by the notice, as required by the statute attached to the proposed by-law as submitted to the ratepayers they were notified it would be taken into consideration by the council, not having arrived. In consequence of this defect in the proceedings of the 20th October, a motion was made in council on the 5th of November, 1873, as follows:—

Whereas the by-law granting $100,000 to the Montreal and City of Ottawa Junction Railway Company passed by the ratepayers of the city having been passed by this council previous to the time required by law, the same be now read a second and third time and passed, suspending all rules of this council to the contrary, and that the said by-law as so passed be signed and sealed by his worship the mayor

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according to law.

Which motion having been put to the council was lost by a vote of seven against three.

Nothing further was done in the matter until the 7th April, 1874, when in the minutes of council of that year, at a time when, to all appearance, all progress with the work of construction of the railway was abandoned, the following entries appear:—

Alderman McDougall introduced the by-law to grant a bonus of $100,000 to the Montreal and Ottawa Junction Railway Company, read a first time on the 20th day of October, 1873.

Moved by Alderman McDougall, seconded by Alderman Bangs:

That whereas the by-law granting $100,000 to the Montreal and Ottawa City Junction Railway Company passed by the ratepayers of the city having been passed by this council previous to the time required by law, the same be now read a second and third time and passed, suspending all rules of this council to the contrary.—Carried.

Now, it is to be observed here that no by-law of the nature of that recited in the above minutes of council had been read a first time on the 20th of October, 1873, and that on this 7th day of April, 1874, the original of the proposed by-law which had been introduced into the council and read a first time on the 22nd of September, 1873, was not forthcoming; it still remained lost; it was not before the council of 1874; neither was the copy which was submitted to the ratepayers; all that was before the council of 1874 was what the clerk of the council testified to as being a copy of the proposed by-law as originally introduced in 1873, with the exception of the final clause providing for its submission to the ratepayers and which, by the statute, is required to be a part of the by-law, but which was omitted from the document which the council was professing to read a second and third time, and to pass, upon the 7th April, 1874. In effect, then, the document which the council of the year 1874, purported to read

a second and third time, and pass on the 7th April, 1874, had never been read a first time in the council of that year, and, moreover, it was not the proposed by-law which had been originally introduced and read a first time in the council of 1873, if the council of 1874 could read that by-law a second and third time and pass it, nor was it the proposed by-law as submitted to the ratepayers on the 16th of October, 1873, for in the copy before the council on the 7th April, 1874, the clause as to the time when the by-law should take effect was stated to be the thirtieth day of December, 1873, and not the thirteenth day of December of that year, as stated in the proposed by-law submitted to the ratepayers.

It is contended now that the date of the thirteenth day of December, 1873, was a mistake of the printer in the copies as submitted to the ratepayers, those copies having been printed, and that in the original as introduced into the council the date was the thirtieth of December. As an independent matter of fact that may be so, and, if we should look at the paper said by the clerk of the plaintiffs to have been found in February, 1884, in the office of the *Free Press*, would appear to be so, but in an action of this nature, which is not instituted for the purpose of supporting the validity of debentures issued under the provisions of the by-law upon the assumption of its being valid, and disposed of for value, but for the purpose of having the proceedings of the council and the by-law of the date of the 7th April, 1874, declared to be valid after the lapse of twelve years without anything having been done under the by-law, as if it was valid, or any rate collected under it, although, if valid, rates should have been collected every year from the ratepayers on the rolls of those years, who, and not those now on the roll, should have been the persons to pay the moneys leviable dur-

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ing these years, I doubt whether we should or can receive any evidence which would contradict the statutory notice and certificate of the clerk of the council required to be appended to the proposed by-law, as submitted to the ratepayers, to the effect that the copy so submitted which names the thirteenth day of December, 1873, as the day when the proposed by-law shall take effect is a true copy of the proposed by-law, which, after the ratepayers shall have voted thereon, shall be taken into consideration by the council.

The effect of this statutory notice and certificate is, as it appears to me, to provide that the proposed by-law, as submitted to the ratepayers, is to be the one to be taken into consideration by the council after one month from the first publication in the newspapers.

It has been argued that the alteration from the thirteenth of December, as inserted in the proposed by-law as submitted to the ratepayers, to the thirtieth of December, as in the document alleged to have been passed, signed and sealed on the 7th April, 1874, was the mere correction of a mistake of a most formal nature which it was quite within the power of the council to make for the reason that, as is suggested, the mistake cannot be supposed to have influenced the ratepayers in recording their votes; but, with submission, in an action of this nature I do not think we can enquire whether the mistake could or could not have influenced the ratepayers in recording their votes; the question appears to me to be simply has the statute been complied with. If a by-law of this nature, in order to be a valid by-law, must name a day within the financial year in which the same is passed when the by-law shall take effect, and if it must be approved by the ratepayers before the council can pass it, it appears to me that the proposed by-law which is to be

taken into consideration by the council after having been voted upon by the ratepayers, and to be passed as having been approved by them, must be the very one which was submitted to them. The proposed by-law as submitted to the ratepayers and voted upon by them, and the only one of which they approved, and which, as approved by them, the council could pass, was upon the face of it absolutely void, because that proposed by-law being declared to take effect and to come into operation on the thirteenth of December, 1873, and the debentures authorized to be issued thereunder being made payable on the 29th December, 1893, such debentures were not, as the statute required them to be, made payable within twenty years from the day on which such by-law takes effect. Then it was argued that, notwithstanding the proceedings of the 7th April, 1874, the by-law which was introduced into the council of 1873 in September of that year was substantially passed in fact and in law upon and by the vote of the ratepayers of the 16th October, 1873, approving of its being passed by the council, and that all further acts of the council to give validity to the by-law were purely ministerial; but in presence of the provisions of the statute that to the copy of the proposed by-law there shall be appended a notice to the effect that the proposed by-law so submitted will be taken into consideration by the council after one month from the first publication, I cannot think that the council were divested of their legislative deliberative character, and that they had no power to express an opinion upon a matter which the legislature said they should take into their consideration; or that the vote of the ratepayers converted their office from being one of a deliberative and legislative character into one purely ministerial, the execution of which could be enforced by *mandamus* against their deliberate conviction that there were

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abundant reasons why the by-law should not be passed. As for example, suppose that after the vote of the ratepayers in favor of the proposed by-law should be taken the council should discover that the recital of their debts in the proposed by-law already incurred was incorrect, or that they had already exhausted their statutory power of incurring pecuniary obligations; or that there was a verbal agreement with the company which constituted a condition upon which the bonus was proposed to be given, and which the company refused to put into shape of a legal obligation; or that the bonus was proposed to be given upon the faith of the city being the terminus of the railway, and that after the vote of the ratepayers was taken the company had amalgamated with another company, by the terms of amalgamation with which it was provided that the city should not be a terminus, but should be a mere way station, and not receiving the benefit, which, as a terminus, it would have received; or that the company had wholly abandoned their projected railway, or for other like reasons; can it be held that the corporation could be compelled by *mandamus* in such cases to read a second and third time, and to pass, the by-law, and to sign and seal it, and so give it validity contrary to their own judgment as to the propriety of so doing? And at whose suit could the application for a *mandamus* be made? Not, I think, at the suit of the railway company, for the money proposed to be given being by way of a bonus and voluntary grant the company could have no interest, giving them a *locus standi in curia*, until the by-law should be passed by virtue of which alone could they assert any claim. It is contended that the 236th section of the act shows that after a vote by the ratepayers giving the approval of a majority to the proposed by-law being passed, the office of the council is merely ministerial. That section provides that:

Any by-law which shall be carried by a majority of the duly qualified electors voting thereon shall, within six weeks thereafter, be passed by the Council which submitted the same.

This section must be read in connection with section 231, which provides for the notice being given that the proposed by-law will be taken into consideration by the council after one month from the first publication in the newspaper, and construing them together, it appears to me to be more consistent with the constitution and deliberative character of municipal councils to construe section 236 as prescribing the time within which the consideration to be given by the council to the proposed by-law should be perfected, or in default thereof, that it should drop. The case of *Harwich* v. *The Erie Railway Co.*, cited in the judgment of the Court of Appeal for Ontario, proceeded upon a wholly different act; a private act incorporating the Erie and Huron Railway Company, which act contained most extraordinary and exceptional provisions in the interest of that company, which expressly divested the councils of municipalities giving bonuses to that company of their legislative deliberative character, for it was made compulsory on those councils, upon receiving a petition from a prescribed number of qualified voters, to submit to the ratepayers a by-law for granting a bonus to the amount named in such petition, and in case such proposed by-law should be approved by a majority of the votes given thereon it was imperatively enacted that the council should, within one month after such voting has taken place, read the said by-law a third time and pass the same, and should, within one month thereafter, issue the debentures for the bonus thereby granted and deliver the same to trustees to be appointed under the act. The Municipal Institutions Act not having any such imperative enactments does not, I think, require that it should be construed as divesting the council, upon

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these questions of granting bonuses, of all discretion and of their constitutional character as deliberative bodies. But however this may be, this section 236 shows that the proposed by-law does not become a by-law by the vote of the ratepayers approving of it, but that to become a by-law it must be passed by the council of the municipality and by the same council which submitted it to the ratepayers. It has been argued that this expression "shall be passed, &c., by the council which submitted the same," is to be construed as meaning that a proposed by-law introduced into a municipal council, and by them submitted to the ratepayers, must be passed by a council of the same municipality, and not by the council of another and different municipality; but this contention cannot prevail for there would be no sense in enacting that a by-law introduced into the council of (for example) the city of Ottawa, and read a first time there and by them submitted to the ratepayers of the city, should not be passed by the council of another municipality. It could not be passed by the council of any municipality but that of the city of Ottawa. Such a construction as that contended for involves the reading of the word "council" in the section as if it were "corporation." The council is a fluctuating body varying from year to year and having existence only for the year for which the members composing it are elected to serve; and that the word means the council which was the governing body of the municipality in the year in which the proposed by-law was introduced, and by which it was submitted to the ratepayers, there can, I think, be no doubt whatever. The statute provides that the proposed by-law, as submitted to the ratepayers, shall settle an equal special rate per annum in addition to all other rates to be levied in each year, which special rate shall be sufficient, according to the

amount of ratable property appearing in the last revised assessment roll, to discharge the debt and interest, and it shall name a day in the financial year in which it is passed when the by-law shall take effect. It is apparent from these provisions that the last revised assessment rolls which are to regulate the special rate to be named in the by-law when passed are the rolls of the year before the passing of the by-law, and as this provision must be in the proposed by-law when first introduced, the introduction of the proposed by-law, and its submission to the ratepayers, and its final passage, must take place in the same year.

To my mind, I confess, there seems to be strong reason for holding that until the by-law is signed and sealed, as required by the 226th section of the act, it does not become a valid by-law. That section enacts that :

> Every by-law shall be under the seal of the corporation, and shall be signed by the head of the corporation or by the person presiding at the meeting at which the by-law has been passed, and by the clerk of the corporation.

The word "presiding" here used applies to "the head of the corporation," as well as to any other person presiding at the meeting at which the by-law has been passed, the object to be attained being that it shall be signed by the person presiding at the meeting at which the by-law is passed, whether such person be the head of the corporation at that time or any other person presiding in his place, and I think the signature should take place immediately upon, or shortly after, its being passed while the very by-law, as passed, is in the presence of the meeting by which it is passed. But that this section was not enacted for the mere purpose of affording proof of the by-law in any action arising in respect of it appears from the 227th section, which enacts that :

> A copy of any by-law, written or printed, without erasure or inter-

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lineation, and under the seal of the corporation, and certified to be a true copy by the clerk and by any member of the council, shall be deemed authentic, and shall be received in evidence in any court of justice, unless it is specially pleaded or alleged that one or both of the signatures have been forged.

The former of these sections appears to me to point to an act material to be performed for the purpose of the by-law coming into complete existence, the latter to the mode by which the fact of its having acquired existence under the 226th section shall be authenticated. The by-law itself, when signed and sealed as required by the 226th sec., becomes a record to be preserved among the archives of the municipality to be proved, whenever proof of the existence of the by-law should be required in any court, by the copy sealed with the corporate seal and certified to be a true copy by the clerk for the time being and any member of council, and such certified copy should, as it appears to me, show that the original by-law filed among the records of the municipality had the corporate seal annexed to it and was signed, or appeared to be signed, as required by the 226th section. If, ten or fifteen years after a by-law was passed, proof of it was required in a court of justice when the head of the corporation and the clerk and the members of council were wholly different persons from those who filled those respective offices when the by-law was read a third time and passed and if, upon referring to the original by-law filed of record among the archives of the municipality, it should appear that it never had been sealed with the corporate seal, nor signed by the head of the corporation at the time of its having been passed, nor by any person as presiding at the meeting of council at which it was passed, nor by the person who was then clerk of the corporation, the certified copy showing these defects would, as it appears to me, be defective as proof, and I cannot think that such defects

in the original by-law could be cured, and that the provisions of the 226th section would be complied with, by the persons who filled the respective offices of head and of clerk of the corporation when the certified copy was required signing the original by-law on record among the archives of the municipality with their own names, and setting the corporate seal to it, ten or fifteen years after the third reading of the by-law in the council of that time

Now, the only document in the present case which there is any evidence of having been signed and sealed is the document alleged to have been read a second and third time and passed on the 7th April, 1874, and of this document we have no proof under the seal of the corporation. The original apparently no longer exists, and no proof under the 227th section has been, if such could be now, given. But this is of little importance as it manifestly appears, I think, for the reasons already given, that the proceeding of the 7th April, 1874, was wholly void. Admitting, apparently, this difficulty the learned counsel for the appellants endeavored to rest the appellants case, first, upon the contention that upon the vote of the majority of the ratepayers who voted upon the proposed by-law as submitted to them the by-law became passed and a valid by-law, and failing in that contention, that the proceedings in council of the 20th October, 1873, made the by-law valid. But the proposed by-law as submitted to the ratepayers, and as voted on by them, was, as already shown, void upon its face, and even if it had been an exact copy of the proposed by-law as introduced into the council, it did not, as I think I have also shown, become passed and valid in law upon the vote of the ratepayers being taken; and as to the proceedings of the 20th of October, 1873, they, as it appears to me, were null and void and were,

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very properly as I think, so treated to be; for the statutory notice appended to the proposed by-law which was submitted to the ratepayers having declared that the proposed by-law so submitted would be taken into consideration by the council after one month from the first publication of the proposed by-law, amounted to an enactment, by implication, that it should not be taken into consideration before the lapse of that month. The mayor, therefore, of that year acted, as I think, in a very proper manner when he declined to recognize what was done on the 20th October, 1873, as having any validity and refused to sign the by-law as passed; when, then, the motion was made on the 5th November, 1873, in council that the by-law should be read a second and third time and passed, it was competent for the council to take the matter then into their consideration, save in so far as the difference between the proposed by-law as originally introduced and that submitted to the ratepayers may have affected the validity of the proceeding of the council; and we must treat them as having then taken the matter into their consideration, which consideration, whether they had or not power so to exercise it, they did exercise, with what motive is not open to enquiry, by refusing to read the by-law a second and third time and to pass it. So that in point of fact and of law the by-law never was passed by the council which submitted it, and never acquired any force or validity in law.

In the view which I have taken it is unnecessary to dwell upon the point relied upon in the judgments of some of the learned judges in the court below, namely, that the completion of the railway within the eight years from the 14th April, 1871, prescribed by the 18th section of the company's act of incorporation, must be taken to be an implied term or condition of the by-law, assuming it to have ever had any validity; but in that

opinion I entirely concur. The right of the company at this distance of time to compel the delivery to them of debentures under the by-law, and to require a rate to be now levied sufficient to meet them, must, I think, if such right can exist at all, be maintained only upon the ground that it was the duty of the corporation to have levied the rate as specified in the by-law during the last thirteen years since the passing of the by-law, and that the corporation is now just as responsible as if the rate had been duly levied; but in view of the utter abandonment of the work of construction of the railway during all the time that elapsed from the month of January, 1874, before the first year's rate was leviable under the by-law, until the month of February, 1881, all claim of the company, if any they ever had, to any benefit under the by-law was, in my opinion, forfeited before the work was recommenced in 1881, and the corporation was justified in regarding the project, which they proposed aiding, as abandoned, and they were not only justified in not levying any rate under the by-law and in regarding it as having no force, but they would not have been justified in levying the rate under the circumstances. Upon all the grounds of objection, therefore, which have been urged against the claim of the appellants, the respondents must succeed, and the appeal must be dismissed with costs.

Sir W. J. RITCHIE C.J. and FOURNIER, HENRY and TASCHEREAU JJ. concurred.

Appeal dismissed with costs.

Solicitors for appellants: *Gormully & Sinclair.*

Solicitors for respondent: *Scott, MacTavish & MacCraken.*