

1892
 *Feb. 26
 *May 2.

THE WARDEN AND COUNCIL OF }
 THE MUNICIPALITY OF LUNENBURG, } APPELLANTS;
 WILLIAM H. DE LONG AND OTHERS }
 (DEFENDANTS) }

AND

THE ATTORNEY-GENERAL OF }
 NOVA SCOTIA ON THE RELATION OF } RESPONDENT.
 S. WATSON OXNER (PLAINTIFF)..... }

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Municipal corporation—Maintenance of county buildings—Establishment of county court house and jail—Right to remove from shire town.

By R.S.N.S. 5th Ser. c. 20 s. 1, as amended by 49 V. c. 11, "county or district jails, court houses and sessions houses may be established, erected and repaired by order of the municipal councils in the respective municipalities." In 1891 an act was passed empowering the municipality of Lunenburg to borrow a sum not exceeding \$20,000 "for the purpose of erecting and furnishing a court house and jail for the county of Lunenburg, or repairing and improving the present court house in said county" provision being made for the municipality of Chester and the town of Lunenburg (separate corporations in said county) respectively contributing towards payment of said loan.

The town of L. is the shire town of said county where the sittings of the Supreme Court are held as required by statute, and where the county court house and jail had always been situated. In pursuance of the above authority to borrow the council of the municipality, by resolution, proposed to build a court house and jail at B. another town in the county, intending after they were built to petition the legislature to transfer the sittings of the Supreme Court to B. The corporation of L. caused an injunction to be applied for and obtained restraining the municipal council from erecting a court house and jail, for the general purposes of the county, at B. or expending in such erection any funds in which the municipality of C. or the town of L. or either of them, are interested. On appeal from the judgment granting such injunction :—

*PRESENT :—Sir W. J. Ritchie C.J., and Strong, Taschereau, Gwynne and Patterson JJ.

Held, that the municipality could not, under the statutory authority to establish and erect a court house and jail, remove these buildings from the town of L. and so repeal and annul the statutes of the legislature which had established them in L. Without direct legislative authority therefor the county buildings could only be erected in the shire town. The injunction was, therefore, properly granted.

1892
 THE
 WARDEN
 AND
 COUNCIL
 OF THE
 MUNICIPALITY OF
 LUNENBURG
 v.
 THE
 ATTORNEY-GENERAL
 OF NOVA
 SCOTIA.

APPEAL from a decision of the Supreme Court of Nova Scotia ordering an injunction to issue against the defendants.

The facts of the case sufficiently appear from the above head-note and from the judgment of Mr. Justice Gwynne who sets out the statutes affecting the proceedings and the resolutions of the municipality in respect to the erection of the buildings in question.

The Supreme Court granted an injunction in the following terms:—

“It is ordered that the defendants herein and each and every of them, their and each and every of their workmen and servants, be and they are hereby restrained and enjoined from erecting or causing to be erected a court house and jail for the general county purposes of the county of Lunenburg at Bridgewater, in the county of Lunenburg, under or in pursuance of the resolution of the municipal council of the municipality of Lunenburg, passed on the 7th day of May, 1891, and said defendants and each and every of them are also hereby restrained and enjoined from expending or causing to be expended in the erection of a court house and jail at Bridgewater, in the county of Lunenburg, any funds of the municipality of Lunenburg in which the municipality of Chester and the municipality of the town of Lunenburg, or either of them, are interested.”

From the judgment granting this injunction the defendants appealed.

1892

W. B. Ritchie for the appellants.*Russell Q.C.* for the respondent.

THE
WARDEN
AND
COUNCIL
OF THE
MUNICIPALITY OF
LUNENBURG
v.
THE
ATTORNEY-
GENERAL
OF NOVA
SCOTIA.

Ritchie C.J.

Sir W. J. RITCHIE C.J.—Are the defendants, appellants, in this case not endeavouring indirectly to do that they have no legal authority to do directly, viz., to change the shire or county town of the county of Lunenburg from the town of Lunenburg to the town of Bridgewater? I think the new county court house and jail should not be erected in Bridgewater until the legislature has authorized the change of the place for the transaction of the judicial business of the county from Lunenburg to Bridgewater; and until such legislative action, in my opinion, the county court house and jail cannot be erected elsewhere than in Lunenburg.

Therefore I think the judgment of the Supreme Court of Nova Scotia right and the appeal should be dismissed.

STRONG J.—I am of opinion that this appeal must be dismissed with costs.

TASCHEREAU J.—I am of the same opinion. I think there is nothing in the appeal.

GWYNNE J.—Long prior to the year 1863 the town of Lunenburg was by divers acts of the legislature of the province of Nova Scotia established as the county town of the county of Lunenburg, and the place where the court house and jail for the county were erected and where it was enacted that the sessions of the Supreme Court of the province should be held. In 1863 the township of Chester which constituted a part of the county of Lunenburg was by ch. 52 of the acts of the legislature of that year erected into a separate dis-

trict municipality for certain purposes having a General Sessions of the Peace with the same powers as if it were a separate county, but it was enacted that the district should contribute and pay annually one-fourth part of the sum necessary in each year for the county jail and court house and all expenses connected therewith and with the administration of justice, and it was further expressly enacted that nothing in the act should be construed to exempt the inhabitants of the district from serving as jurors "at the Supreme Court at Lunenburg." At this time the town of Lunenburg where the said jail and court house were erected and where the sessions of the Supreme Court for the county were required to be held was an unincorporated town situate within the county of Lunenburg. In 1879, by an act of the legislature of that year now embodied in ch. 56 of the 5th series of the Revised Statutes enacted in 1884, the inhabitants of the district of Chester were declared to be a body corporate under the name of the municipality of the district of Chester and the inhabitants of the residue of the County of Lunenburg to be a body corporate under the name of the municipality of Lunenburg. In 1885, by chapter 72 of the provincial statutes of that year, the inhabitants of the said town of Lunenburg, within the limits in the act defined, were declared to be a body corporate under the name of the town of Lunenburg for municipal purposes, and it was thereby enacted that the said town thereby incorporated

shall annually pay to the treasurer of the municipality within which the same is situate on the first day of June, an annual sum in lieu of all county rates and assessments hitherto levied or paid, which sum as nearly as may be shall be equivalent to the benefit derived by the town from the public services supported by the revenues of the county. Such sum shall be composed of the following items, that is to say, a *pro rata* proportion of the amount paid by the county on account of the administration of criminal justice an amount equal to

1892
 THE
 WARDEN
 AND
 COUNCIL
 OF THE
 MUNICIPALITY OF
 LUNENBURG
 v.
 THE
 ATTORNEY-
 GENERAL
 OF NOVA
 SCOTIA.
 Gwynne J.

1892 the cost of maintaining in the county jail all prisoners committed
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 THE to jail by sentence of the stipendiary magistrate of the town or  
 WARDEN committed to jail under process out of the municipal court—an  
 AND amount equal to the cost of maintaining all paupers chargeable to the  
 COUNCIL town who shall be maintained in any poor house or like institution  
 OF THE supported by the funds of the county, and its proportion of county  
 MUNICIPALITY OF school rates under the provisions of ch. 29, Revised Statutes.  
 LUNENBURG

v. In the following year the legislature by ch. 27 of  
 THE the statutes of 1886, passed in amendment of ch.  
 ATTORNEY- 58 of the Revised Statutes, 5th series, made provision  
 GENERAL for ascertaining and determining the amounts in each  
 OF NOVA year payable by all incorporated cities, towns and  
 SCOTIA. districts within the limits of a county municipality for  
 Gwynne J. county purposes, and for levying such amounts in case  
 — of default in levying any of them being committed by  
 any of such incorporated cities, towns or district munici-  
 palities. Section 1 of ch. 20 of the Revised Statutes,  
 5th series, enacted that :

County or district jails, court houses and session houses may be  
 erected and repaired by order of the municipal councils in the respec-  
 tive municipalities.

By way of amendment of this section it was enacted  
 by ch. 11 of the statutes of 1886 that the word  
 “established” should be inserted between the words  
 “be” and “erected,” making the section read :

County or district jails, court houses and session houses may be  
 established, erected and repaired by order of the municipal councils in  
 the respective municipalities.

We are called upon now not to give an exhaustive  
 meaning to the word “established” as thus here intro-  
 duced ; that would perhaps be a very difficult task ; but  
 we are called upon to determine whether, by the in-  
 troduction of that word, the municipal council of the  
 municipality of Lunenburg are empowered to repeal  
 in effect the statutes of the legislature which had  
 established the jail and court house for the county in  
 the town of Lunenburg in which court house the ses-

sions of the Supreme Court for the county are by statute required to be held; and by erecting a jail and court house in a different part of the county to establish such place as the county town and the place where the jail and court house for the county should in future be maintained, and at the same time to hold the district of Chester and the town of Lunenburg liable to contribute to the erection and maintenance of such jail and court house in the same manner as they had been obliged to do by the provisions of the statutes which had subjected them to liability in relation to the jail and court house which the legislature had located in the town of Lunenburg. I cannot concur in the contention that the ch. 27 of the acts of 1886 is open to any such construction. We cannot upon such language as is used in that act attribute to the legislature an intention to vest in a municipal council power at their pleasure to repeal, alter, modify or annul acts of the legislature in such a manner. It may be that Bridgewater is a much better place than Lunenburg for the site of the jail and court house for the county, but that is a matter for the legislature expressly to determine and at the same time to say whether the district of Chester and the town of Lunenburg should be subjected to the same liability as to the jail and court house if Bridgewater should be made the county town as they were subjected to while they were maintained at the town of Lunenburg. That neither the municipal council of the county nor the legislature entertained the idea that the chap. 27 was open to the construction now contended for on behalf of the municipality of Lunenburg appears from the following circumstances in the evidence laid before us. On the 22nd January, 1891, the council of the municipality passed the following resolution:—

1892  
 ~~~~~  
 THE
 WARDEN
 AND
 COUNCIL
 OF THE
 MUNICIPALITY OF
 LUNENBURG
 v.
 THE
 ATTORNEY-
 GENERAL
 OF NOVA
 SCOTIA.
 ———
 Gwynne J.
 ———

1892

THE
WARDEN
AND
COUNCIL
OF THE
MUNICIPALITY OF
LUNENBURG
v.
THE
ATTORNEY-
GENERAL
OF NOVA
SCOTIA.

Whereas this council has passed a resolution that they would with the co-operation of the town council of Lunenburg and of the municipal council of Chester take steps to build a court house and jail at as early a date as possible: Therefore resolved, that a committee of three be appointed to obtain information in regard to the kind of building or buildings suitable. Also respecting the cost of the same and the best site for the same, and submit to the council such information at the next semi-annual or special session. This committee to co-operate with a committee to be appointed by the town council for the same purposes.

It was then moved and passed that—

Mr. Chesley draft a bill to borrow money and present for approval
Gwynne J. at evening session.

Accordingly at the evening session of that day, as appears by the minutes of the council,

Mr. Chesley read a bill prepared to be presented at the ensuing session of the local legislature, to enable this municipality to borrow a sum of money not to exceed twenty thousand dollars for the building of a new court house and jail for the county of Lunenburg, and it was thereupon moved, that the bill so read should be placed in the hands of the municipal clerk to be certified and forwarded to the Provincial Secretary.

The session of the legislature commenced on the 2nd day of April, 1891, and the bill so prepared was introduced and upon the 19th day of May became law by an act passed that day intituled "an act to enable the municipality of Lunenburg to borrow money for a court house," whereby the council of the said municipality was empowered to borrow a sum of money not exceeding \$20,000 upon debentures to be issued under the act—

For the purpose of erecting and furnishing a court house and jail for the county of Lunenburg, or repairing and improving the present court house in said county.

And for the purpose of paying the principal and interest of the debentures to be issued under the act, it was enacted that :

The municipality of Chester and the town of Lunenburg shall respectively contribute towards the sums required to pay off the principal

and interest of such loan from time to time, amounts in proportion to the ratios of the total assessment of the municipality of Chester and the town of Lunenburg respectively to the total assessment of the whole county of Lunenburg according to the assessment last made before the passing of this act, &c.

Now, if the municipal council had the power now insisted upon under the ch. 27 of the act of 1886, of erecting the court house and jail at Bridgewater wholly irrespective of the above act, for the municipality now say that they are not at all proceeding under this act, there would have been no occasion for the procuring the passage of the above act. While the above bill was before the legislature, and shortly before it was passed into an act, the council of the municipality of Lunenburg, not in co-operation with the municipalities of Chester and the town of Lunenburg, but in despite of and against the remonstrances of those municipalities, upon the 7th May passed a resolution that the new court house and jail should be built at Bridgewater. It was argued that the municipality of Lunenburg had at any rate the right under that resolution to erect a local municipal court house and jail, but the order for the injunction granted by the Supreme Court does not interfere with their doing so. All that it prohibits is the erecting or causing to be erected a court house and jail for the general county business for the county of Lunenburg at Bridgewater, and it restrains and enjoins the defendants from expending or causing to be expended in the erection of a court house and jail at Bridgewater, any funds in which either of the municipalities of the district of Chester or of the town of Lunenburg is interested. The order and the injunction issued thereon must, in my opinion, be maintained and the appeal must be dismissed with costs. Further legislation must, in my opinion, be obtained before the council of the municipality of Lunenburg can attain the object which

1892
 THE
 WARDEN
 AND
 COUNCIL
 OF THE
 MUNICIPALITY OF
 LUNENBURG
 v.
 THE
 ATTORNEY-
 GENERAL
 OF NOVA
 SCOTIA.
 Gwynne J.

1892
 THE
 WARDEN
 AND
 COUNCIL
 OF THE
 MUNICIPALITY OF
 LUNENBURG

manifestly they have been endeavouring to attain by the course which they have pursued, namely, the removal of the county town and the court house and gaol for the county and the sessions of the Supreme Court from Lunenburg to Bridgewater.

PATTERSON J. concurred.

v.
 THE
 ATTORNEY-
 GENERAL
 OF NOVA
 SCOTIA.

Appeal dismissed with costs.

Solicitor for appellants: *F. B. Wade.*

—
 Gwynne J.

Solicitor for respondent: *S. A. Chesley.*
