1910

*May 18, 19.
*June 15.

THE CITY OF SYDNEY (DEFENDANTS) ..... } APPELLANTS;

AND

CHAPPELL BROTHERS AND COMPANY (PLAINTIFFS) ..... } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Municipal corporation—Public library—Offer of funds—Special legislation—Contract for plans—Municipal powers.

A sum of money was offered the City of Sydney for a public library on condition that the city procured the site and provided for its maintenance. An Act of the legislature authorized the purchase of the site and a special tax for its cost and future maintenance of the library. The City Council invited tenders for plans of the building and accepted that of C. Bros. & Co. The scheme, however, fell through, the money offered was not paid nor the library built. C. Bros. & Co. sued the city for the cost of their plans.

Held, that the city had no authority to enter into any contract involving the expenditure of municipal funds in respect to the said building and the action could not be maintained.

APPEAL from a decision of the Supreme Court of Nova Scotia maintaining the verdict at the trial in favour of the plaintiffs and increasing the amount thereby awarded.

The facts are sufficiently stated in the above headnote.

O'Connor K.C. and *Finlay McDonald* for the appellants.

Newcombe K.C. for the respondents.

*PRESENT:—Girouard, Davies, Idington, Duff and Anglin JJ.

GIROUARD J. agreed with Duff J.

DAVIES J.—For the reasons given by Chief Justice Townshend, who dissented from the judgment rendered by the majority of his colleagues I am of opinion that this appeal should be allowed and the action dismissed with costs in all the courts. I desire to add a few words.

I am quite unable to agree with the reasons of Mr. Justice Drysdale, concurred in by a majority of the court appealed from, that the special Act relating to the proposed Carnegie Library "conferred upon the defendant corporation legislative authority to *erect a public library,* purchase a site therefor, and assess to the limit mentioned for its annual maintenance."

The enacting part of the statute is strictly confined to authorizing the Town of Sydney to include in the estimates of the amount required for the general purposes of the town, $1,900 per annum for three years, to be expended in the *purchase of a site* of a free public library in Sydney, and an annual sum of $1,500 for the *support and maintenance* of the library when built.

The preamble recited the reason for the grant of these limited powers to the corporation. They were substantially that Andrew Carnegie "had donated to the town the sum of $15,000 for the erection of a free public library, conditioned on the Town of Sydney contributing annually towards its support $1,500 and that the ratepayers "had approved of the acceptance of the said gift" and of the expenditure of $5,700 for the purchase of a site.

As a fact the gift of $15,000, for reasons unnecessary to refer to, was never paid by Mr. Carnegie or received by the corporation.

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Davies J.

If the money had been paid over and received there might possibly have been implied the necessary powers to expend it for the purpose given and to authorize the creation on the part of the corporation of a liability which could be enforced against it. But whether that would be so or not we have not to determine. The money never was paid over and no implication of legislative authority to erect a library at the expense of the citizens of the town could in my judgment possibly be implied from the statute in question.

In this view of the case it is unnecessary for me to say anything on the point raised and argued by Mr. O'Connor that whether the city corporation had the power to do so or not they never did as a fact enter into any contract with the plaintiff.

IDINGTON J.—The appellant is a municipal corporation to which a proposal had been made if it furnished a site for a library that Mr. Carnegie would donate fifteen thousand dollars to erect a building thereon.

The promoters of the scheme induced the legislature to confer upon appellant's council the power to buy the site needed and to levy the price thereof and an annual sum named for maintenance.

Without a vestige of authority beyond this it is contended there was implied therein the power to tax the ratepayers to pay for plans and specifications, although in the face of the transactions involved the cost thereof was to come out of the said fifteen thousand dollars if and when received, and as the scheme fell through, never was received.

There is not, so far as I can see, the slightest ground for any such implication.

There was never a legal duty imposed upon the municipal authorities to do anything relative to procuring or building or maintaining a library. If some such duty had existed then the acts relied upon, though done by a committee possessing no legal right to create any such liability, but which made a report which was adopted by the council, might have lent some colour to this suggestion of implication.

In the entire absence of any such duty the council's authority did not extend beyond the mere exercise, when it saw fit, of the limited power given.

But on the face of this report relied upon and said to have been adopted by the council as if that would add to the council's powers, no final determination or acceptance of such plans and specifications appears.

Indeed, the contrary is implied.

The appeal should be allowed with costs.

DUFF J.—I think this appeal should be allowed. It is conceded very properly by Mr. Newcombe that the authority of the municipal council to pledge the credit of the municipality in respect of payments for the services of the respondents must be derived from the Act of 1903, ch. 169; and that no such power being expressly conferred by that statute it can only be found in such implication as is necessary to give effect to the objects of the statute. I do not think there is anything in the enactment implying such authority. The statute authorizes the purchase of a site for a library and the levying of the cost of it within a specified limit and of a specified annual grant as a part of the ordinary taxation of the inhabitants. The Act is passed upon the assumption, as the preamble shews, that the necessary funds to defray the cost of erecting

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a building are at the disposal of the municipality; and it was manifestly not the design of the legislature by this statute to authorize the levying by taxation of the moneys required for that purpose. The legislature did obviously contemplate the erection of a building to be used for housing a library and I think in view of the preamble it is fair to say that the municipality was expected to undertake the administration of the fund in hand for that purpose. But while it might be a convenient thing that in such circumstances the municipality should have power to enter into contracts by which its general credit should be pledged — that was by no means necessary to enable it effectively to apply the fund for the purpose of attaining the object in view. In the absence of such necessity there is, in my opinion, no satisfactory foundation for the implication which the court below has drawn from the provisions of the Act.

ANGLIN J.—It is not a reasonably necessary and, therefore, in my opinion, in this case not a proper implication from the statute passed by the Nova Scotia Legislature (3 Edw. VII. ch. 169) that the corporation of the Town of Sydney was clothed with authority to make any expenditure or to incur any liability for or in connection with the projected building for a library — at all events until the sum of $15,000 promised for that purpose by Mr. Andrew Carnegie had been placed at its disposal. In the absence of such legislative authorization, the municipal corporation lacked the power to enter into the contract sued upon.

On this short ground I think this appeal must be allowed.

Appeal allowed with costs.

Solicitor for the appellants: *Finlay McDonald.*

Solicitor for the respondents: *W. H. Covert.*