Supreme Court of Canada

The Town of Saint Stephen *v.* The County of Charlotte (1895) 24 SCR 329

Date: 1895-05-06

The Town of Saint Stephen (Defendant)

Appellant

and

The Municipality of the County of Charlotte (Plaintiff)

Respondent

1894: Nov. 8, 9; 1895: May. 6.

Present:—Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick and King JJ.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

Canada Temperance Act—Application of fines under—Incorporated town—Separated from county for municipal purposes.

By Order in Council made in September, 1886, it is provided that “all fines, penalties or forfeitures recovered or enforced under the Canada Temperance Act, 1878, and amendments thereto, within any city or county *or any incorporated town separated for municipal purposes from the county* \*\*\*shall be paid to the treasurer of the city, incorporated town or county,” &c.

*Held,* reversing the decision of the Supreme Court of New Brunswick, King J. dissenting, that to come within the terms of this order an incorporated town need not be separated from the county for all purposes; it includes any town having municipal self-government even though it contributes to the expense of keeping up certain institutions in the county.

APPEAL from a decision of the Supreme Court of New Brunswick upon a case stated for the opinion of the court as follows:

The following special case is stated for the opinion of the Supreme Court by agreement between the above parties, and it is consented that the Supreme Court should determine the law and the rights of the plaintiff and defendant respectively set forth.

1. The town of Saint Stephen is situate within the boundaries of the parish of Saint Stephen, one of the parishes in the county of Charlotte, and was

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incorporated by Act of Assembly, thirty-fourth Victoria, chapter 26, which Act and the several Acts in amendment thereof were further amended and consolidated and the incorporation of the town continued by Act of Assembly, forty-eighth Victoria, chapter 47.

2. Section four and subsequent sections of the said incorporating Act vest the administration of all fiscal, prudential and municipal affairs of the town, and the whole legislative power and government thereof, in the mayor and council, and the town council has under the Act the sole authority to make by-laws for the good rule and government of the town, and for the several purposes in the said Act declared.

3. The jail of the county of Charlotte is by section 54 of the said Act made the jail of the town of Saint Stephen, and all the assessments which may be required to be levied in the town for county purposes are to be made under section 61 by the town assessors.

4. Section 9 of chapter 99 of the Conaolidated Statutes of Municipalities makes provision for the election of five county councillors from the parish of Saint Stephen one of which, styled an *ex officio* councillor, is authorized to be elected by the town council of Saint Stephen; and section 57 of forty-eight Victoria, chapter 47, together with section 109 of chapter 99, Consolidated Statutes, treat of the levying and appropriating upon the town by the county council the amount to be paid by the town towards county contingencies, and sections 32, 33 and 34 of chapter 100 of the Consolidated Statutes make further provision in respect to the levying of that portion of the charge for county contingencies payable by the town.

5. The town council of the town has each year since the passing of the said chapter 99 elected an *ex officio* county councillor, who has attended the meetings of

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the county council and acted as such *ex officio* councillor.

6. The town of Saint Stephen has annually paid an amount into the county funds for county contingencies and its proportion into the county school fund.

7. The Canada Temperance Act, 18\*78, came in force in the county of Charlotte on the second day of August, A.D. 1879, and has remained and is still in force in the said county.

8. That by order in council dated 29th day of September, 1886, under the provisions of 49 Victoria, chapter 48, section 2 D, the Governor General in council ordered that

“All fines, penalties or forfeitures recovered or enforced under the Canada Temperance Act, 1878, and amendments thereto, within any city or county which has adopted the said Act, which would otherwise belong to the Crown, for the public uses of Canada, be paid to the treasurer of the city or county, as the case may be,, for the purposes of the Act.”

And by order in council dated 15th November, 1886, after reciting the said second section of 49 Victoria, chapter 48, it was ordered that the order in council of 29th September, 1886, relating to the application of fines and penalties unpaid under said Act, be and the same was thereby cancelled, an d that

“All fines, penalties or forfeitures recovered or enforced under the Canada Temperance Act, 1878, and amendments thereto, within any city or county or any incorporated town separated for municipal purposes from the county, which would otherwise belong to the Crown for the public uses of Canada, were directed to be paid to the treasurer of the city incorporated town, or county, as the case may be, for the purposes of the said Act.”

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9. A large number of persons have been prosecuted by the town authorities since the passing of the last mentioned order in council for violations of the said Act, and while a considerable sum has been received into the town treasury for fines under the Act, a large sum has also been paid out for the purposes of and connected with its enforcement; all sums collected under the said Act within the town have been put into the town treasury to the credit of a special fund called the Scott Act Fund, and there now remains a balance of such fund unexpended in the treasury of the said town.

10. No portion of the funds so collected within the town have been paid into the county treasury.

11. The county council has not expended any money for the purposes of the said Act or of enforcing the same in the said town of Saint Stephen since the coming into operation of the Act in the said county, and the expense of such enforcement in the town has been wholly borne by the said town, except it may be the expense incidental to the imprisonment of persons convicted under the said Act in the county jail, of which expense the town bears its portion in the tax imposed for county contingencies in the county.

12. It is admitted and mutually agreed that in case of judgment for the plaintiffs, the municipality shall only receive and be entitled to such funds as have not been expended *bonâ fide* for the purposes of the Act and remain in the hands of the town treasurer of the town of Saint Stephen at the time of such judgment,

The question to be determined by the court is whether under the above statement of facts the town of Saint Stephen is liable to pay over to the municipality of the county of Charlotte the said balance of Scott Act funds, and if it shall be of opinion that the town is so liable then judgment is to be rendered for

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the plaintiff, otherwise judgment to be for the defendants.

Upon this case the Supreme Court of New Brunswick held that the town of St. Stephen is not separated from the county of Charlotte for municipal purposes within the meaning of the order in council of September 1886, and therefore not entitled to the fines collected on prosecutions under the Canada Temperance Act. The town appealed.

*Blair* Q.C, Attorney General of New Brunswick, for the appellants referred to *Caledonian Railway Co.* v. *North British Railway Co.[[1]](#footnote-2)* on the construction of the order in council.

*Pugsley* Q.C. and *Grimmer* for the respondents relied on *Leeds & Grenville* v. *The Town of Brockville[[2]](#footnote-3)* where the same order in council was under consideration.

THE CHIEF JUSTICE.—I concur in the judgment prepared by Mr. Justice Sedgewick.

TASCHEREAU J.—I expressed my opinion at the argument that this appeal should be allowed. A further consideration of the case has confirmed me in that opinion. I agree in Mr. Justice Hanington’s reasoning. I cannot see that the appellant is incorporated at all but for municipal purposes so as to make it a legal entity separate and distinct for such purposes. The words “separated for municipal purposes” in the order in council are meaningless. I do not know of any incorporated town that is not separated from the county for municipal purposes; and I might, perhaps, add that there are very few, if any, that are so separated absolutely and for all municipal purposes whatsoever.

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GWYNNE J.—By the Dominion statute 49 Vic. ch. 48, it was enacted that where no other provision is made by any law of Canada for the application of any fine, penalty or forfeiture imposed for the violation of any such law the same shall belong to the Crown for the public uses of Canada; and,

2. That the Governor in Council might, from time to time, direct that any fine, penalty or forfeiture or any portion thereof which would otherwise belong to the Crown for the public uses of Canada should be paid to any provincial, municipal or local authority which wholly or in part bears the expenses of administering the law under which such fine, penalty or forfeiture is imposed or that the same should be applied in any other manner deemed best adapted to attain the objects of such law and to secure its due administration.

By an order in council made in pursuance of this enactment bearing date the 13th day of November, 1886, it was ordered that:

All fines, penalties or forfeitures recovered or enforced under the Canada Temperance Act of 1878, and amendments thereto, within any city or county or any incorporated town separated for municipal purposes from the county which would otherwise belong to the Crown for the public uses of Canada should be paid to the treasurer of the city, incorporated town or county, as the case may be, for the purposes of the said Act.

In the treasury of the town of St. Stephen there is a sum of money collected within the town as and for fines inflicted upon persons prosecuted within the town for breach of the Canada Temperance Act which sums have been paid into the said treasury to the credit of a special fund called the Scott Act fund; it is admitted that the prosecutions in which these fines were inflicted were conducted wholly at the expense of the town except only such expense as may have been incidental to the imprisonment in the county jail of persons convicted under the Act; and the question now

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is whether the town of St. Stephen or the county of Charlotte is entitled to those moneys; the contention of the town being that it is; and of the county that it is not, the contention of the latter being that the town of St. Stephen is not an incorporated town separated, for municipal purposes from the county, within the meaning of the above order. This question must, in my opinion, be answered in favour of the appellant, the defendant in the court below, in whose favour judgment must be rendered upon the case stated.

By the New Brunswick Act 34 Vic. ch. 20, the inhabitants of that part of the parish of St. Stephen particularly specified in the Act were declared to be a town corporate in right and in name by the name of the town of St. Stephen. By the 3rd section of the Act it was enacted that the administration of the fiscal, prudential and municipal affairs and the whole legislative power and government of the said town should be vested in a mayor and six other persons, styled councillors, and in no other power or authority whatever. By the 69th section it was enacted that the jail of the county of Charlotte should be the jail of the said town of Saint Stephen, and that notwithstanding the same should be without the limits of the said town all warrants, commitments, &c. awarded under the Act whereby any person might be ordered to be confined in the common jail should have like powers and effect as if the common jail was within the limits of the town. This provision that the common jail of the county should be also the common jail of the incorporated town necessitated that the town should contribute to the expense of the maintenance of the common jail in some reasonable proportion to its use of the jail, but such use did not in the slightest degree detract from the completely independent, autonomous character of the corporation as established by the Act.

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So neither do the provisions of sections 64 and 65 detract from such autonomous character, the former of which enacts that the overseers of the poor for the parish of St. Stephen and the overseers of the town should make such arrangements for the support of the poor of the said town and parish as they or a majority of them might deem equitable, and the latter of which enacts that in any assessment for county purposes to be made in the parish of St. Stephen the sessions or county council should apportion the amount to be levied between that portion of the parish not incorporated and the town of St Stephen. So neither do the provisions of the Common School Act passed in the same session, 34 Vic. ch. 21, by which a fund called the county school fund was established composed of an amount equal to 30 cents for every inhabitant of the county according to the last preceding census, the duty of ascertaining which was imposed upon the clerks of the peace of the several counties, detract in the slightest degree from the complete independence of the incorporated town of St. Stephen as an autonomous municipal corporation separate for municipal purposes from the municipality of the county of Charlotte. Unless therefore there be some Act which qualifies the very precise terms of the Act of incorporation, and the provisions of section 61 of the St. Stephen incorporation amendment Act, 48th Vic. ch. 47, which enacts that all assessments required to be levied for town or county purposes shall be made by the assessors elected under that Act and shall be levied, assessed and collected under the provisions thereof, those Acts are conclusive upon the point that the town of St. Stephen is an incorporated town, separated for municipal purposes from the county of Charlotte on which territorially it is situate, and upon this point the 3rd section of ch. 99 of the Consolidated Statutes of New Brunswick,

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which is the Act relating to the general incorporation of county municipalities, has been referred to as enacting that:

This chapter shall not extend to nor include within the municipality of any county any city or incorporated town in the county, which by Act of Assembly is “wholly withdrawn” from the jurisdiction of the county.

The argument, as I understand it, is that no incorporated town in the province of New Brunswick, unless by Act of Assembly it be expressly or impliedly “wholly withdrawn” from the jurisdiction of the county council, can be said to be separated for municipal purposes from the county. The very same section, however, enacts that nothing in the chapter contained shall interfere with, limit or restrain the corporate powers or privileges of any city or incorporated town. It is plain, therefore, that the provision in the Act that the town council of the town of St. Stephen shall annually send one of its own members to the county council as an *ex officio* county councillor, does not, nor does any other provision in the Act, in the slightest degree qualify, limit or restrain the corporate powers and privileges of the incorporated town of St. Stephen. With great deference I do not at present see the difficulty in holding, if it were necessary, that the inhabitants of the town of St. Stephen are a corporate body incorporated by the name of the town of St. Stephen and are by the terms of their acts of incorporation “wholly withdrawn” from the jurisdiction of the county council, although certain funds and property, in which as being distinct, independent corporations, they are mutually interested, are not so withdrawn, but are (for the very reason that they are wholly distinct municipal corporations separated one from the other but mutually interested in such funds and property) placed under special legislation in the interest

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of both. But we are not, I think, concerned in inquiring what distinction, if any, there was in the opinion of the legislature of New Brunswick, between a town separated for municipal purposes from the county in which it is territorially situate and one wholly withdrawn from the jurisdiction of the county council or what was intended by the two provisions of the same section in the Act 48 Vic. ch. 47, namely, that nothing in the Act contained should interfere with, limit or restrain the corporate powers or privileges of any incorporated town, and that the Act should not extend to nor include within the municipality of any county an incorporated town in the county by Act of Assembly wholly withdrawn from the jurisdiction of the county council. The question before us is not as to the construction of that Act, but as to the true construction of an order of the Governor General in Council made upon the authority of a statute of the Dominion Parliament, the statute declaring that the Governor in Council may, from time to time, direct that any fine, &c., &c., or any portion thereof which would otherwise belong to the Crown for the public purposes of Canada should be paid to any provincial, municipal or local authority which wholly or in part bears the expense of administering the law under which such fine, &c., &c., is imposed and the order in council directing that:

all fines, &c., &c., recovered under the Canada Temperance Act of 1878, and the amendments thereto, within any city or county, or any incorporated town separated for municipal purposes from the county, which would otherwise belong to the Crown for the public uses of Canada, shall be paid to the treasurer of the city, incorporated town or county, as the case may be, for the purposes of the said Act.

Now that the incorporated town of St. Stephen is a provincial, municipal and local authority within the meaning of the statute cannot be questioned and that it is an incorporated town separated for municipal purposes from the county of Charlotte within the meaning

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of the order cannot, in my opinion, admit of any doubt notwithstanding that both corporations have a joint interest in the common jail which is situate within the limits of the county but outside of the limits of the town, and in the funds called the county contingencies fund and the county school fund, which funds are not wholly withdrawn from the jurisdiction of the county council, for both county and town corporations are interested therein, but the town corporation may notwithstanding be well said to be wholly withdrawn from the county municipality as it most undoubtedly, in my opinion, is separated for municipal purposes from the county. The appeal must therefore, in my opinion, be allowed with costs and judgment be ordered to be entered for the defendant in the court below as the party entitled to the moneys in question.

Reference was made in argument to certain sections of chapter 100 of the Consolidated Statutes of New Brunswick, which is a statute regarding the assessment and levying of taxes in the several municipalities and parishes in the province, but I have not referred to them as they do not, in my opinion, in any manner affect or prejudice the right of the town of St. Stephen to the moneys in question.

SEDGEWICK J.—The sole question upon this appeal is as to whether the town of St. Stephen is an incorporated town, separated for municipal purposes from the county of Charlotte within the meaning of an order of the Governor General in Council of the 15th November, 1886, whereby it was ordered that all fines, penalties or forfeitures recovered or enforced under the Canada Temperance Act, 1878, and amendments thereto, within any city, or county, or incorporated town, separated for municipal purposes from the county, which would otherwise belong to the Crown for the

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public uses of Canada, were directed to be paid to the treasurer of the city, incorporated town or county as the case may be, for the purpose of the said Act.

The Supreme Court of New Brunswick decided that St. Stephen was not a town separate from the county for municipal purposes within the meaning of that order in council. Palmer and Landry JJ. dissenting, and it is from that judgment that this appeal is taken.

In my judgment this appeal should be allowed. The evident policy and intention of the Governor General in Council in making the order in question and specifying the authority entitled to all fines recovered under the provisions of the Canada Temperance Act, was doubtless to give effect to the principle expressed in the converse of the maxim *qui sentit commodum sentire debet et onus* (he who sustains a burden ought to derive the advantage.) It was intended that where a city, county or town with a view to the public welfare undertook to and did incur the expense of enforcing the Canada Temperance Act, the enforcing authority should receive the moneys recovered thereby which would otherwise belong to the Crown. This manifest intent must be borne in mind in giving a meaning to the order in council, and effect must be given to that aim if it can be done consistently with the terms in which that order is expressed. The question then is: Is the town of St. Stephen separate from the county for municipal purposes? The county of Charlotte was an incorporated municipality years before the incorporation of the town of St. Stephen. The regulation of its municipal affairs was given to its county council. That council had municipal control for all the territory within its limits. Its jurisdiction was coterminous with those limits. Its power to make by-laws (now regulated by section 96 of chapter 99 of the Consolidated Statutes of New Brunswick) was clearly defined,

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covering in a general sense all those subjects in respect of which municipal bodies throughout Canada are usually given jurisdiction. Such was the state of affairs when by an Act of Assembly (34 Vic. ch. 26) the town of St. Stephen was incorporated, the full charter of the town being now contained in the Act (48 Vic. ch. 47). By this charter the limits of the town were defined, section 3 providing:

That the fiscal, prudential and municipal affairs and the whole legislative power and government of the said town shall be vested in one principal officer who shall be the mayor of the town of St. Stephen, and in six other persons, and in no other power or authority whatever, two of whom shall be annually elected for each ward and shall be styled councillor, and all of whom shall be severally elected.

Section 47 of the charter gives authority to the town council to make by-laws. The jurisdiction thereby given to the town council in respect of the territorial area of the town is substantially the same as the jurisdiction which the county council possessed in regard to its territorial area. There can benoquestion but that immediately upon the incorporation of the town the jurisdiction of the county council in regard to the area comprised in the town substantially ceased, the authority of the town council supervening and taking the place of the authority previously exercised over the town limits by the county council. Did the whole matter rest here there could not, I think, be any question but that the town, by the mere fact of its incorporation, and by its having been given the powers to which I have referred, thereby became separate from the county. There was an absolute destruction of the ordinary and general powers of municipal legislation so far as the town limits were concerned which the county council had previously exercised. There was, in effect, a legislative declaration that thereafter the territorial area of the county should be separated or divided for municipal purposes, and that for the one

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portion the county council should alone have jurisdiction and for the other the town council should alone have jurisdiction; a legislative declaration, too, that in so far as the town council had power to enforce law and order within the town it might use municipal funds for that purpose, funds derivable from such persons and property only as were within its domain, the county council having the like power in respect to persons and property within its domain. So far and for these purposes it cannot be disputed that the town is separate from the county. The contention, however, is that before the town could take the benefit of the order in council it must not only be separate from the county territorially and for the ordinary and common powers of municipal self-government, but it must be wholly separate from the county for all purposes; the two must have nothing in common; they must have separate and different machinery for the carrying on of their respective purposes; that inasmuch as in the present case the town of St. Stephen by express statutory provision sends a councillor to the county council; that the valuators appointed by the county council have certain jurisdiction within the town; that the county council may order the town to assess for purposes common to both county and town, and the county jail, court house and record office are jointly maintained by the town and county; and that the salary of the sheriff, clerk of the peace and other officers, are made up by the joint contribution of town and county alike; it is contended that these and other similar facts sustained the contention that the town is not separate (that is wholly separate) from the county for municipal purposes and that therefore the fines in question belong to the county.

I have not been able to appreciate the strength of this contention. The object of the legislature in

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setting apart St. Stephen as a town was to give it the advantage of municipal town government. It was practically impossible to absolutely separate the town from the county to the same extent as two contiguous counties are separated. The town when created did not require a county jail for its own exclusive use, nor a court house, nor a sheriff, nor a registrar of deeds, nor a special sittings of the court of assize. There were of necessity a few matters, such as the maintenance of these institutions and the payment of these officials and expenses, that were common to both corporations, and therefore special provisions were made in the statute in relation to them, the general power of municipal government within their respective areas being exclusively given to the respective councils. If the other contention is to prevail and no town can take the benefit of the order in council unless wholly separate from the county for all municipal purposes, then, so far as I know, there is not a town in Canada that would be covered by the order in council. So far as I know, there is not a city inCanadathat is wholly separate for all municipal purposes from the county of which it forms a part. Halifax, St. John, Ottawa, are all connected by legislative enactments in some way or other with the county of which they each territorially form part. Every city in Canada has to a greater or less extent some connection, some joint function to perform, with the county in which it is situated and of which it forms a part, and this is to a much greater extent true of the connection for common purposes between towns generally through Canada and the counties from which they for municipal purposes have been set apart.

In my view it is a perfectly accurate use of language to say that towns such as St. Stephen, and there are scores of them throughout the Dominion, are separate

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from the counties in which they are situate, for municipal purposes, notwithstanding the fact that there may be many common objects in which the two councils have a common interest and must therefore act together.

In coming to this view I have not overlooked the meaning which by express definition the Municipal Act of Ontario gives to the phrase used in the order in council, but the phrase in that Act must be interpreted as therein defined. Other rules must govern, ordinary principles of interpretation must be observed, when the true meaning of this document is to be ascertained. The order has all the force of and is in effect a statute of Canada and must be interpreted by rules applicable to the whole of Canada, and not by a provision in a provincial statute made especially applicable to that province and that statute alone.

I am of opinion that the appeal should be allowed and that judgment should be entered for the defendants with the costs of this appeal and of all costs in the court below.

KING J.—I regret to have to differ. The question is whether the town of St. Stephen is an incorporated town separated from the county of Charlotte within the meaning of the order in council of 15th November, 1886. It is convenient first to inquire into the meaning of the words of the order in council “any incorporated town, separated for municipal purposes from the county.” All towns that are incorporated are *ex vi termini* to some extent separated for municipal purposes from the county. The object of civic incorporation is municipal self-government, greater or less according to the circumstances. But this is not enough to fill the terms of the order in council. Not all incorporated towns are meant. The

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incorporated town must be therefore in a fuller sense separated. It must be separated wholly for municipal purposes from the county, or what amounts to the same thing separated from the county for all municipal purposes. An incorporated town is not separated for municipal purposes from the county if there is any organic union between it and the county for any municipal purpose whatever. This, I think, is the natural meaning of the words, and is supported and illustrated also by a state of facts existing in this province at the time of the passing of the order in council. Under the Ontario municipal system, as I understand it, there were and are two classes of incorporated towns. Both classes have large powers of self-government, but they differ in this, that the one has, and the other has not, an organic union with the county for some municipal purposes. Incorporated towns may, upon certain conditions, pass from one of these states to the other. The term used in the order in council, “incorporated towns separated from the county for municipal purposes,” is an expression found in section 460 of the Municipal Act as indicating that class of incorporated town that has no organic union with the county for any municipal purpose.

Now let us look at the state of things in New Brunswick where this appeal comes from. There, by chapter 99, Consolidated Statutes, every county in the province is erected into a municipality, and the municipality includes every city and incorporated town “not wholly withdrawn from the jurisdiction of the county council.” Within the meaning of that Act there is only one city or incorporated town in the province to which that expression applies, viz., the city of Fredericton, in the county of York. Every other city and every incorporated town in the province is (under the municipal system of New Brunswick) an integral part of the municipality and is represented in

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the county council. Such is the case with the town of St. Stephen; such also the case of the city of St. John. The town of St. Stephen, like the city of St. John, has very wide powers of self-government; these extend to cover almost every subject of a municipal nature. Within their range of subjects the power of city and town is supreme and exclusive, but there are some subjects of municipal concern affecting them with which the county council has to do, and which are regulated and dealt with by the county council as representing them and the other parts of the municipality. For instance the city and town are organically united with the rest of the county in the management and control of public buildings used for general municipal purposes; in the appointment and payment of certain officers for general county purposes; in the levying of rates for county contingencies, and in the determination of the amount which the town or city and each parish throughout the county shall contribute to county rates. For instance, one considerable rate imposed upon the county is the county school rate for the support in part of the schools within the county. The proportion that each part of the county, including the cities and incorporated towns (other than the city of Fredericton), shall contribute to this is determined, like other county rates, by a valuation of the property of the entire county made at stated intervals by valuators appointed by the county council, and these valuators are paid out of the rates levied upon the entire county. Here is a very considerable and important municipal purpose that is under the jurisdiction of a body of which the incorporated town is organically a part, viz., the municipal council of the county. When the county municipality imposes rates and orders their collection upon the town of St. Stephen for a municipal purpose without the consent of the town, except so far as such consent is implied by its

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being part of the governing body of the county, it is impossible to say that it is, within the ordinary and natural meaning of the term, separated from the county for municipal purposes. It is entirely immaterial that the rate when ordered is levied and collected through the machinery of the town. I conclude, (therefore, that although the town of St. Stephen has a wider range of self-government than the incorporated towns of Ontario that are not separated from the counties for municipal purposes, it has less power of self-government than the incorporated towns in Ontario that come specifically within the meaning of the language of the order in council and of the Municipal Act of Ontario as “incorporated towns separated from the county for municipal purposes.” An incorporated town is not so separated when there is an organic connection between it and the county for any municipal purpose, and when it has or may have a certain share in the government of the county by reason of its being represented in the municipal council and entitled to take part in the municipal affairs of the county.

This is a sensible view too considering the nature of the order in council. Its object is to regulate the application of fines, etc., under the Canada Temperance Act. The legislative unit under that Act is the city and the county. The Act is adopted in city or in county as the case may be. It is reasonable therefore that the fines should go to city or to county, as the case may be, and that in the case of a county they should be diverted from it to an incorporated town within its territorial limits only where there is an entire want of identification or organic union for any municipal purpose between the two.

For these reasons I think that the appeal should be dismissed.

Appeal allowed with costs.

Solicitor for appellant: James Mitchell.

Solicitor for respondent: W. C. H. Grimmer.

1. 6 App. Cas. 114. [↑](#footnote-ref-2)
2. 18 Ont. App. R. 548. [↑](#footnote-ref-3)