
Ex parte JAMES W. MACDONALD.

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*Habeas corpus—Jurisdiction—Form of commitment—Territorial division—
Judicial notice—R. S. C. c. 135, s. 32.*

*Dec. 29.

*Dec. 31.

A warrant of commitment was made by the stipendiary magistrate for the police division of the municipality of the county of Pictou, in Nova Scotia, upon a conviction for an offence stated therein to have been committed "at Hopewell, in the county of Pictou." The county of Pictou appeared to be of a greater extent than the municipality of the county of Pictou, there being also four incorporated towns within the county limits—and it did not specifically appear upon the face of the warrant that the place where the offence had been committed was within the municipality of the county of Pictou. The Nova Scotia statute of 1895 respecting county corporations (58 Vict. ch. 3, s. 8) contains a schedule which mentions Hopewell as a polling district in Pictou county entitled to return two councillors to the county council.

Held, that the court was bound to take judicial notice of the territorial divisions declared by the statute as establishing that the place so mentioned in the warrant was within the territorial limits of the police division.

The jurisdiction of a judge of the Supreme Court of Canada in matters of *habeas corpus* in criminal cases is limited to an inquiry into the cause of imprisonment as disclosed by the warrant of commitment.

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APPLICATION before Girouard J. in chambers for a writ of *habeas corpus* to inquire into the cause of commitment of the petitioner for the reason that the jurisdiction of the committing magistrate did not sufficiently appear upon the face of the warrant.

The material facts presented to the judge on the application are mentioned in the judgment reported.

Owen Ritchie for petitioner *ex parte*.

The following is the judgment delivered by :

GIROUARD J.—On the 2nd of November, 1896, the petitioner was committed to the common jail in the county of Pictou, in the province of Nova Scotia, under a warrant signed under seal by “James Roy, stipendiary magistrate for the municipality of Pictou.”

The warrant of commitment contains among others, the following allegations: “Whereas James W. Macdonald, of Hopewell, in the county of Pictou, was, on the eighth day of September in the year of our Lord one thousand eight hundred and ninety-six, at the town of New Glasgow, in the county of Pictou, duly convicted before the undersigned James Roy, a stipendiary magistrate for the municipality of the county of Pictou, for that he, the said James W. Macdonald, between the first day of June last past and the thirty-first day of August, in the year of our Lord one thousand eight hundred and ninety-six, at Hopewell, in the county of Pictou, unlawfully did sell intoxicating liquor contrary to the provisions of the second part of the Canada Temperance Act then in force in the said county of Pictou.”

The petitioner contends that the said warrant is defective upon its face, inasmuch as it does not appear that “Hopewell in the county of Pictou” was in the municipality of the county of Pictou. He makes the

following statement in the affidavit which is filed before me :

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The province of Nova Scotia at the time of the making both of the said conviction and warrant of commitment was, and now is, composed of eighteen counties, of which the county of Pictou is and was one, and at the time of the making of the said conviction and warrant and of the taking of the said information on which they are founded, the said county of Pictou was, and now is, composed and made up of the municipality of the county of Pictou, incorporated under chapter 3 of the Acts of the legislature of the province of Nova Scotia for the year 1895 and four incorporated towns existing in law and governed by the Towns Incorporation Act, 1895. The said municipality of the county of Pictou is not now and never was territorially or otherwise co-extensive with the said county of Pictou, but is territorially less than the said county of Pictou and was so at the time of the making of the said conviction and warrant aforesaid. The municipality of the county of Pictou at the time of the making of the said conviction and warrant aforesaid comprised and now comprises that portion of the said county of Pictou, other than the four incorporated towns aforesaid, which said four incorporated towns with the said municipality of the county of Pictou now and at the time of the making of the said conviction and warrant of commitment, made up that geographical division of Nova Scotia known as the county of Pictou.

For this reason (and others which were not urged before me) the petitioner made an application to the Honourable Mr. Justice Graham, one of the justices of the Supreme Court of Nova Scotia, for his discharge from imprisonment under a writ of *habeas corpus*, (R. S. N. S. 4 ser. ch. 99, sec. 3) but the learned judge refused to discharge him.

The petitioner then renewed his application to the Supreme Court of Nova Scotia, sitting in banc, (McDonald C.J., Weatherbe, Townshend and Henry J.J.), but that honourable court also refused unanimously to discharge him.

Mr. Justice Townshend delivered the opinion of the court. He said :

The offence for which he was convicted is stated to have been committed at Hopewell, in the county of Pictou. It is contended that

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this warrant does not show as it should on its face jurisdiction in the committing magistrate. By Acts of 1895, c. 89, s. 1, "The municipality of the county of Pictou is hereby created a police division." Roy was duly appointed stipendiary magistrate for this police division. If Hopewell is within it, jurisdiction is shown. By ch. 3, sec. 1, Acts 1895, the municipality of the county of Pictou is defined to be what at that time was known as the county of Pictou. Although not very clearly expressed, this section—read with other parts of the Act—in my opinion indicates that the area of the original county is designated as the area of the municipality of the county. This is made clear by section 2 which cuts out of this area all cities or incorporated towns and proceeds to define the term "county" as that part of the county or district within the territorial jurisdiction of the county council. The warrant describes "Hopewell" as in the county of Pictou. The question is whether that necessarily means the municipality of the county of Pictou, or may it with equal reason be read as in some of the incorporated towns, or one of the incorporated towns.

It was pointed out that in the schedule to the Act Hopewell in Pictou county is described as polling section no. 17, entitled to return to the municipal council of the municipality of Pictou two councillors. We know from other portions of the same Act that no locality can return councillors except it be part of the municipality, and this in itself seems a conclusive reason for saying that Hopewell is within the police division and therefore within the jurisdiction of the stipendiary of the municipality of the county of Pictou.

The petitioner has filed before me a copy of the warrant of commitment and also of the conviction and information filed before the stipendiary magistrate, and other papers, but I must say that I am not inclined to go into any inquiry behind the warrant of commitment.

I am not disposed to go beyond what appears to me to be the plain words of the Supreme Court Act and the well settled jurisprudence of this court; *Re Boucher*, 1879 (1); *Re Poitvin*, 1881 (2); *Re Trépanier*, 1885 (3); *Re Sproule*, 1886 (4).

The first paragraph of section 32 of the Supreme and Exchequer Courts Act, sec. 32, provides as follows:

(1) Cass. Dig. (2 ed.) 325.

(2) Cass. Dig. (2 ed.) 327.

(3) 12 Can. S. C. R. 111.

(4) 12 Can. S. C. R. 140.

Every judge of the court shall have concurrent jurisdiction with the courts or judges of the several provinces, to issue writs of *habeas corpus ad subjiciendum*, for the purpose of an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada.

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I believe therefore that the jurisdiction of a judge of the Supreme Court in matters of *habeas corpus* in any criminal case, is limited to an inquiry into the cause of commitment, that is, as disclosed by the warrant of commitment, under any Act of the Parliament of Canada.

The question then is whether the warrant of commitment discloses jurisdiction on the part of the stipendiary magistrate. The counsel for the petitioner has referred me to Paley on Summary Convictions, 7th ed., and other authorities, to establish that jurisdiction must appear upon the face of the warrant, and especially as to the locality where the offence is alleged to have been committed. But the learned counsel has forgotten to quote from Paley at page 196 which shows that the court will take judicial notice of the general division of the kingdom into counties.

This is the rule laid down by all the judges of the Supreme Court of Nova Scotia, and I believe it expresses the law not only of that province but of the whole Dominion. Mr. Justice Townshend has most appropriately referred to Taylor on Evidence, sec. 15 :

Courts also notice the territorial extent of the jurisdiction and sovereignty exercised *de facto* by their own government and the local divisions of their country, such as states, provinces, counties, counties of cities, cities, towns, parishes and the like so far as political government is concerned or affected, but not the relative position of such local divisions, nor their precise boundaries further than may be prescribed in public statutes.

The same principle was upheld by Mr. Justice Ramsay of the Quebec Court of Appeals in 1880 in a case very much similar to the present one, *Ex parte Archambault* (1). See also *Sleeth v. Hurlburt* (2).

(1) 3 Legal News, 50.

(2) 25 Can. S. C. R. 620.

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Girouard J. I am therefore of opinion that the application should be rejected, and it is rejected. I have the satisfaction of knowing that the petitioner is not without recourse. He may appeal to the full court under the second paragraph of sec. 32 of The Supreme and Exchequer Courts Act.

Writ refused.

Solicitor for the petitioner: *John J. Power.*
