

whose adopted daughter was the wife of L., agreeing to pay the indebtedness of the firm. In an action against J. on said bond the defence was that it had been given in consequence of threats by the cashier to prosecute L. for the embezzlement, and was therefore void.

Held, affirming the judgment of the Supreme Court of Nova Scotia, that the evidence established that the only consideration for the bond was to prevent the prosecution, and such consideration being illegal the bond was void.

Appeal dismissed with costs.

Ross, Q.C., for appellant.

Drysdale for respondent.

CITY OF HALIFAX 71. LORDLEY.

Municipal corporation—Duty to light streets—Liability for negligence—Obstruction on sidewalk—Position of hydrant.

L. was walking along the sidewalk of a street in Halifax at night when an electric lamp went out, and in the darkness she fell over a hydrant and was injured. In an action against the city for damages it was shown that there was a space of seven or eight feet between the hydrant and the inner line of the sidewalk, and that L. was aware of the position of the hydrant and accustomed to walk on said street. The statutes respecting the government of the city do not oblige the council to keep the streets lighted, but authorize them to enter into contracts for that purpose. At the time of this accident the city was lighted by electricity by a company who had contracted with the corporation therefor. Evidence was given to show that it was not possible to prevent a single lamp or batch of lamps going out at times.

Held, reversing the judgment of the court below, STRONG and TASCHEREAU, JJ., dissenting, that the city was not liable; that the corporation being under no statutory duty to light the streets the relation between it and the contractors was not that of master and servant, or principal and agent, but that of employer and independent contractors, and the corporation was not liable for negligence in the performance of the service; that the position of the hydrant was not in itself evidence of negligence in the corporation; and that L. could have avoided the accident by the exercise of reasonable care.

MacCoy, Q.C., for the appellants.

Drysdale for the respondent.

MUNICIPALITY OF LUNENBURG AND OTHERS

71. THE ATTORNEY-GENERAL OF

NOVA SCOTIA.

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

The county of Lunenburg, N.S., contains the municipality of C. and the town of L., which are corporations separate and distinct from the municipality of the county. L. is the shire town of the county, and contains the county court house and gaol, and the sittings of the Supreme Court for the county are required to be held there. By R.S.N.S., 5th ser., c. 20, s. 1., as amended by 49 Vict., c. 11, "County or district gaols, 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 by the Legislature of Nova Scotia empowering the municipality of L. to borrow money for the purpose of erecting and furnishing a court house and gaol in the county, or repairing and improving the present court house. The municipality of C. and town of L. were respectively to contribute towards payment of this loan. The municipality, by resolution, proposed to erect the said buildings in B., another town in the county, and an injunction was granted by the Supreme Court restraining the municipal council from erecting a court house for the general purposes of the county at B. or from expending in such erection any funds in which the municipality of C. and the town of L., or either of them, were interested. On appeal from the judgment granting said injunction,

Held, that without direct legislative authority the court house and gaol for the purposes of the county could only be situated at the shire town; that the authority in the municipal council to establish these buildings did not allow their erection in any other place, which would in effect repeal and annul the Acts of the Legislature providing for their establishment in L., the shire town; and that the injunction was properly issued and must be maintained.

Appeal dismissed with costs.

W. B. Ritchie for the appellants.

Russell, Q.C., for the respondent.