1890-002
Nansemond Co. (Suffolk)

Chancery Causes: C.V. Norfleet etc vs Town of Suffolk

Clerks Cost $5.47

Paid

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON The Town of Suffolk John B. Pinner Mayor, Wm. H. Jones Jr. Burwell Riddick, L. W. Tebo, Geo. W Nunney, D. C. Harrell and W. N. McAnye Councilmen

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the first Monday in September 1890 ~~next~~, to answer a Bill in Chancery, exhibited against them in the said Court by C. V. Norfleet Citizen property owner and Tax payer of the Town of Suffolk suing for and on behalf of himself and all other Citizens, property owners and Tax payers of said Town

and have then and there this summons.

Witness, ~~PETER B. PRENTIS~~ A P Gomer, Clerk of our said Court, at his office, this 18th day of August 1890, in the 115th year of the Commonwealth.

Teste:

A P Gomer Clerk.

Memorandum:

"On motion of the said Complainant, by Counsel, it is ordered that the Town of Suffolk John B. Pinner Mayor, Wm H Jones Jr. Burwell Riddick, L M. Tebo, Geo. W Nuney, D C Harrell and W. N. McAngel Councilmen, said Mayor and Councilmen composing and constituting the Council of said Town of Suffolk and each of them, its, his or their Agents, attorneys and servants be and the same are hereby enjoined and restrained from borrowing any sum or sums of money under authority of the Act of Assembly of Virginia, of date January 25th. 1890 for the purpose of paying for the lot of land on Main Street recently purchased by said Town as a Site for a market-house and Town-Hall, or for the purpose of paying for any labor or material heretofore Contracted for or purchased or to be hereafter Contracted for or purchased in and for the building and erection of a Market-house and Town Hall on said lot, or from appropriating to to said purpose or purposes any sums or sums of money borrowed or to be borrowed under authority of said Act and from diverting any sum or sums of money borrowed or to be borrowed under authority conferred by said Act, from ends and objects prescribed thereby.

But the Complainant shall not have the benefit of this order until She or some one for her, shall execute a bond in the penalty sum of Three Thousand Dollars with good and sufficient security, before the Clerk of this Court with Condition to pay all such Costs as may be awarded against said Complainant and all such damages as may be incurred in case this injunction shall be dissolved."

C W. Hill Judge etc

A Copy. Teste:

A P. Gomes Clerk

Received this 19th. day of August 1890

Sheriff

Norfleet Vals

vs } Summons

The Town of Suffolk etc

1890

Sept Term. first Monday

I have executed and served this process this 19th. day of August 1890 upon the within named, the Town of Suffolk, by delivering a copy thereof in writing to said Town to Geo. W. Nuney, Mayor of said Town, wherein the resides and upon the within named Burwell Riddick, L. M. Tebo, D. C. Harrell and W. N. McAngel Councilmen by delivering a copy thereof in writing to each of them in person.

W. H. Holladay c c

Sheriff

Suffolk, Va. Aug. 6th, 1890.

To

The Town of Suffolk,

John S. Pinner, Mayor,

and Wm. H. Jones Jr., Burwell Riddick, L. M.

Tebo, Geo. W. Murray, D. C. Harrell and

W. N. McAnge; Comcilmen

You and each of you are hereby notified that the undersigned, suing on behalf of themselves and all other residents, property-owners and tax payers of the Town of Suffolk, will, on Wednesday next, the 13th day of August, 1890, at 11 A.M., at the Circuit Court Rooms in the City Hall, in the City of Norfolk, before Judge C. W. Hill, sitting in vacation as the Judge of the Circuit Court of and for the County of Nansemond, move that he issue an injunction, in axxxxx suit in chancery to be instituted against you, by the undersigned suing as aforesaid, to enjoin and restrain you and each of you, your agents servants and attorneys, from proceeding to build or erect a new market house and town hall on a new site recently selected by you for that purpose, and from borrowing any sum or sums of money therefor, or paying, laying out or expending Therefor any sum or sums of money borrowed or to be borrowed under pretended authority of the Act of the General Assembly of Va., of date Jany. 25, 1890, and from diverting any sum or sums of money borrowed or to be borrowed under authority conferred by said act, from the ends and objects prescribed thereby.

Clerk

by John Thos. D. Hughes

Henry L. Chuta

Atty.

I acknowledge legal and sufficient service of this notice

Robert R. Prentis
Counsel for Suffolk and
for its Mayor and Councilmen.

Aug. 8th. 1890.

In the Circuit Court for the County of Nansemond.

In Vacation.

In the matter of

C. V. Norfleet, suing &c.,)
)
against) In Chancery
)
The Town of Suffolk et al.)

This day came the Com-
-plainant, by Harmey L. Christie and Whitehurst & Hughes, her Counsel, and presented ~~xhxix~~ her bill, verified by affidavit a and exhibits, and asked for an injunction according to the prayer of said Bill of Complaint, and the defendants, appear-
-ing by R.R. Prentis, their Counsel, to whom notice of this application had been personally given by the direction of the Judge, and opposed the granting of the same, and filed an-
-swers to said Bill of Complaint, and the matter being fully heard upon said Bill and Answer, and after argument by Coun-
-sel, and the Judge being satisfied of the Complainant's Equi
-ty, is of opinion that the injunction should be granted as prayed for in said bill.

Therefore on motion of the said Complainant, by Counsel, it is ordered that the Town of Suffolk, John B. Pinner, Mayor, Wm. H. Jones Jr., Burwell Riddick, L.M. Tebo, Geo. W. Nurney, D.C. Har-
-rell and W. N. McAnge, Councilmen, said Mayor and Councilmen composing and constituting the Council of said Town of Suf-
-folk, and each of them, its, his or their agents, attorneys and servants be and the same are hereby, enjoined and restrained from borrowing any sum or sums of money under authority of the Act of Assembly of Virginia, of date January 25th, 1890, for the purpose of paying for the lot of land on Main Street recently purchased by said Town as a site for a Market-house

and Town Hall, or for the purpose of paying for any labor or material heretofore contracted for or purchased, or to be ~~con~~ hereafter contracted for or purchasedin and for the build--ing and erection of a Market-house and Town Hall on said lot, or from appropriating to said purpose or pusposes any sum of sums of money borrowed or to be borrowed under author ~~ity~~ of said Act, and from diverting any sum or sums of money borrowed or to be borrowed under authority conferred by said Act, from the ends and objects prescribed thereby.

But the Complainant shall not have the benefit of this order until she, or some one for her, shall execute a bond, in the pe--nal sum of Threethousand dollars, with good and sufficient security, before the Clerk of this Court, with condition to pay pay all such costs as may be awarded against said Complain--ant, and all such damages as may be incurred, in case this in--junction shall be dissolved.

Let the Bill of complaint
and Answer thereto be filed.

C Mott
Judge &c

Northfleet, Swing
v
Town of Suffolk
et als.
} Decree

Order awarding Injunction

J. R. Enbank

Chap. 102. - An ACT to empower the council of the town of Suffolk to borrow money and issue bonds therefor.

Approved January 25, 1890.

1. Be it enacted by the general assembly of Virginia,

That the council of Suffolk be, and they hereby, are authorized to borrow for said corporation, in addition to the amount now authorized by law, for the purpose of improving, enlarging, and rebuilding the market-house and town hall in said town, and for such other purposes of the said town as the council may deem necessary, a sum of money not exceeding thirty thousand dollars by the issue and sale of the bonds of the said corporation.

To the Clerk of the Circuit Court of Nansemond County:

Please issue process as follows:

C. V. Norfleet, citizen, property-owner and tax-payer of the Town of Suffolk, suing for and on behalf of herself and all other citizens property owners and tax payers of said Town. Complainant

Against

The Town of Suffolk, John B. Pinner, Mayor, Wm H. Jones Jr. Burwell Riddick, L. M. Tebo Geo. W. Storey, D. C. Harrell and W. A. McAnge, Councilmen. Defendants

To answer a Bill in Chancery. To Rules on First Monday in September 1890.

Whitehurst & Hughes
& Harvey L. Christie
Counsel for Complainant.

18 August 1890

Memorandum
6 V Norfleet
Vs
Suffolk
Chancy

1870
Oct
Folio

Chancy

Before the Honorable Lunsford L. Lewis, Arbitrator.

C. V. Norfleet v

vs.

The Town of Suffolk &c.

IN CHANCERY.

STATEMENT OF AGREED FACTS:

1. The only authority claimed by the defendants as justifying the expenditure of the money and the erection of the building complained of is found in the Act of the General Assembly of Virginia, approved January 25th. 1890, (Acts 1889-90 page 148 private), the Charter of Suffolk and the general law.

2. In lieu of the charges marked five and six in the bill these are agreed to be the facts; That at the time of the pas-sage of said Act, it was the impression of the Council that a part of the money to be borrowed was to be used in improving enlarging and rebuilding the market-house and town-hall on its site at the corner of Main and Market Streets, where it was then located, but the question of the location of such improved, enlarged and rebuilt market-house and town hall was not discussed or formally considered by the Council at that time. That on the 13th. day of January 1890, the Town of Suffolk commenced proceedings to condemn a parcel of land lying immediately North of the market-house and town hall at the corner of Main and Market Streets in order to secure additional land for the purpose of enlarging imrpoving and rebuilding the market-house and town hall at that location. That the Commissioners to assess the value of such land met on the 27th. day of January 1890, and assessed such value, and on the 10th. day of March 1890, on motion of the Town the proceeding was dis-

missed.

3. The plans of the proposed building are herewith submitted as a part of this statement.

4. That all the other allegations of fact in the bill (except the allegation in the clauses marked 5th & 6th. and the charge marked 2) but not the conclusions of law, are admitted to be true.

5. That all the allegations of fact in the answer, but not the the conclusions of law are admitted to be true.

Whitehurst & Hughes
and Harry L. Christie
Counsel for Complainant.

Alfred P. Thom,
Robert R. Prentis,
for Defendants.

C. V. Storfler

v.

Agreed Facts.

Suffolk.

THIS AGREEMENT, made this 21st day of August 1890, between C. V. Norfleet, of the one part, and the Town of Suffolk, John B. Pinner, Mayor, and William H. Jones Jr., Burwell Riddick, L. M. Tebo, George W. Nurney, D. C. Harrell and W. N. McAnge Councilmen of said Town, said Mayor and Councilmen composing the Council of the Town of Suffolk, of the other part.

WHEREAS, the said C. V. Norfleet, citizen, property-owner and tax-payer of the Town of Suffolk, suing for and on behalf of herself and all other Citizens, property-owners and tax-payers of said Town, has instituted a chancery suit in the Circuit Court of Nansemond County, against the said Town of Suffolk, John B. Pinner, Mayor, and William H. Jones Jr., Burwell Riddick,, L. M. Tebo, George W. Nurney, D. C. Harrell and W.N. McAnge, Councilmen of said Town, said Mayor and Councilmen, composing the Council of the Town of Suffolk, in which suit, the complainant has obtained from the Judge of the Circuit Court of Nansemond County a preliminary injunction.

AND WHEREAS the said parties, are mutually anxious that all issues of fact and questions of law raised in the said Chancery suit, shall be speedily and finally determined.

NOW THEREFORE THIS AGREEMENT WITNESSETH, that the said parties, plaintiff and defendant, have this day agreed to sub-mit the said chancery cause to arbitration and they mutually promise and bind themselves, their ~~successors~~ administrators, assigns and successors, each to the other, that they will on their respective parts, in and by all things well and truly observe, perform and keep the award and determination of Hon. L. L. Lewis ARBITRATOR, chosen by the said parties to arbitrate, award and determine all the issues of fact and questions of law raised in the said chancery suit,

so as the award of the said arbitrator, be made and set down in writing ready to be delivered to the said parties in difference, or their attorneys on or before the day of 1890.

AND IT IS HEREBY AGREED by and between the said parties, that these presents, and the submission hereby made of the said Chancery cause and matters in controversy, shall be made a rule of the Circuit Court of Nansemond County, and the award of the said Arbitrator the judgment and decree of the said Court, to the end that the said parties in difference shall be finally concluded by the said arbitration and award in pursuance of this agreement, according to the Statute in that case made and provided.

Witness the following signatures and seals.

And the Town of Suffolk has caused its corporate seal to be hereto affixed and this agree-ment to be signed by John B. Pinner, Mayor, and W. H. Jones Jr., President of the Council, attested by W. L. McLeod Clerk of the Council this 21st day of August, 1890.

(seal)

John B. Pinner, Mayor. (seal)

W. H. Jones Jr. President of Council.-- (seal)

Attest: W. L. McLeod Clerk of Council.-- (seal)

(seal)

(seal)

(seal)

(seal)

(seal)

C. V. Norfleet

v. Agreement to submit to Arbitration.

Suffolk Sc.

BEFORE THE HONORABLE L. L. LEWIS, ARBITRATOR.

C. V. Norfleet,

vs.

Town of Suffolk &c.

Brief of Counsel for defendants.

------o------

FIRST.

The object of all litigation is the preservation of some right, or the protection of person or property from some real (not imaginary) wrong.

In order to secure the intervention of the Court the plaintiff usually undertakes to show some injury either committed or threatened, and in all the cases referred to and relied upon by the complainants counsel there was a real and substantial wrong alleged, which the Court was asked to right.

The law is that where the exercise of the authority claim-ed by the municipality imposes a burden, tax or assessment, or abridges personal liberty or has the effect of divesting property rights then the authority is strictly construed, and all fair and reasonable doubts are resolved in favor of the tax-payer.

Robinson vs. Mayor of Franklin 34 Am. Dec. 629.

(Note) and cases cited.there.

/. Dillon on Municipal Corporations Section 55 and note.

4th Edition. §91 " "

In the case at bar the complainant has no right to complain and does not complain of the borrowing of the money, but only of the use of it. She puts her judgment against the judgment of the Municipal Authorities and complains of the use of the money upon the proposed building. No additional

burden of any kind is put upon her. She has stated no real grievance because her burden of taxation will be just as great if the money is spent on the ~~new~~ old site instead of upon the ~~old~~ new site. She does not allege that her taxes will be increased by the change of location of the market place. She is simply complaining of the propriety of the expenditure proposed.

SECONDLY.

In effect then, under the guise of asking the Court to prevent the defendants from an alleged unauthorized expenditure of the public money, the complainant is really seeking to induce the Court to interfere with and restrain the Council of Suffolk from ~~changing the location of its~~ erecting a market-house and town hall. To succeed in this contention, which is an interference with a matter of purely local concern, confided by law to the Council, the complainant ought to produce the clearest authority. But in fact and in truth under section 13 of the charter of Suffolk, the Council has the authority "to lay off public grounds, and to provide, contract for and take care of all buildings necessary for the use of the Town; to establish and regulate markets." And by the first section the corporation "may contract and be contracted with, purchase hold and grant estates, real and personal".

These powers include the right to abolish markets, and the right to change the site after the market has been established and the right to have as many markets as the Council in its discretion may determine to be necessary.

4th. ~~Wright~~ Wait's Actions and Defences page 624.

Boone on Corporations Sec. 298.

1. Dillon on Munic. Corp. Sec. 315 (2.Ed).

Wartman vs. Phil. 33 Pa. State 202.
Gall vs. Cincinatti 18 Ohio State 268.

The legislature must be presumed to have known this law at the time the Act of Jany. 25th. 1890, was adopted. If there is an irreconcilable conflict one must give way to the other, but according to a well established principle these powers must be so construed as to give to both acts their full effect if possible. The location of Markets is a matter of police regulation, which has been always left by the legislature to the towns, a matter of discretion with the Councils, with which discretion the Courts will not and ought not to interfere. To sustain the plaintiffs contention will be, in practical effect, to say that the legislature in this instance, has done what it has never undertaken to do before for any other town, that is to fix the site of the market-house and town hall. In effect, it is to say, that so far as the market-house and town hall contemplated by the act is concerned, the act has by implication repealed the charter of Suffolk and the general law with reference to towns and their market-houses. But repeals by implication are not favored. The inference must be irresistible. If such had been the intention of the Act in question, such intent should and would have been clearly expressed. If both Acts can be given effect then effect must be given to both. 1 Dillon (2 Ed.) § 64 1 Dillon on Munic Corp. 4th. Edition § 88.

Is there any doubt about the factthat the Council of Suffolk, under its charter, has the power to remove the old market-house and town hall to the new site selected by them, and there to improve, enlarge and rebuild it--the old building? Taking the words in their most narrow and restricted sense, may not the old building be removed from its old site and on a new site be improved, enlarged and rebuilt? So improved, enlarged and rebuilt as not to leave any of the old building.

If these propositions be true (and they are self evident) then as surely as the greater power includes the less, the Council may do the less, viz: accomplish the purpose of the Act, improve, enlarge and rebuild, without the useless and unnecessary expense of removing the old building. Or vice versa, a new building could be built on the old site, and then moved to the new site, if the Council should see fit to do so. If so, then on the same principle that the greater power includes the less, the building can be put on the new site in the first instance. What the Council can do by indirect means, surely they can do directly and without circumlocution.

As a matter of fact a house, whether new or old, can in most instances be moved. As a matter of common practice houses are frequently moved from one site to another. Hence it isclear that the words "improve, enlarge and rebuild", taken in the most restricted and narrow sense, do not include the site, or point to the site upon which the improved building is to be located.

Previous to the passage of the Act of Jany. 25th. 1890, the Council had the power under the 13th. section of the Charter to change the site of the market-house in question. Within a few weeks after the passage of the said act the same legislature re-enacted the 13th. section of the charter, and in this way clearly emphasized and confirmed the right of the Council to change the location of the building in question.

Acts 1889-90 p.266 private.

So we say that the Act of the 25th. of January 1890, construed along with section 13 of the charter cannot be construed to confine the Council to the old site and no other. If

such had been the intention of the Legislature, the intent would have been expressed in unmistakable terms. Instead of giving the power to borrow money for the purpose of improving, enlarging and rebuilding a market-house and town hall "in said town", it would have said on its present site at the corner of Main and Market Streets in said Town.

THIRDLY.

Another well established principle of law is, that the language of the Act should not be construed so strictly as to defeat its purpose.

What then was its purpose?

In the first place, an established canon of construction is that we should look to the whole act, including its title, to discover its purpose. The object of this law, as shown by its title is, "to empower the Council of the Town of Suffolk to borrow money and issue bonds therefor". One of the purposes of borrowing the money was to enable the Council to provide increased and enlarged town hall and market-house facilities.

No microscopic inspection and dissection of the language used can get any other meaning out of it. It does not allude to the site of the present market-house.

The Legislature is not accustomed to select sites for public buildings, which may be needed by municipal corporations. Such matters are purely of local concern, and the invariable habit of the Legislature, is to delegate such details to the municipal authorities. It no more undertook to say where the improved building was to be located (except that it was to be " in said Town"), than to determine its length, its height, the number of stories it should have, or whether

it should be of brick, stone or wood.

The legislature had no means of wisely determining these mere questions of detail, and cannot be presumed to have undertaken to determine them by the use of general terms.

They intended to authorize the borrowing of money and the issuance of bonds for the purpose of securing better market house and town hall facilities in said town, and for other public purposes, in the discretion of the Council.

The learned editors of the American Decisions in a note to the case of Robinson vs. Mayor of Franklin, say; "The doc- "trine of strict construction while it is in many cases de- "clared to be the rule, is nowhere enforced to the extent of "unreasonably defeating the purpose of the Legislature, as it "appears from the entire charter or enactment".

34 Amer. Dec. 629.

The same principle is announced by Judge Dillon.

1. Dillon on Munic. Corp. 2d. Ed. Sec. 55, note.
1. Ditto 4th Ed. §§ 90 and 91 and note.

Under the "General Welfare" clause, the Supreme Court of Appeals of Virginia, has decided that the City of Richmond, just before the evacuation in 1865, had the legal right to destroy all the liquor in the City, and to bind the City to reimburse the owners thereof.

Jones vs. Richmond, 18th. Grattan p. 517.

And the Supreme Court of the United States has rendered a similar decision.

Richmond, vs. Smith. 15. Wallace 429.

As indicating that such powers granted to municipal corporations receive a fair and reasonable construction, we note the following, cases.

A railroad constructed from the junction of the main line

with another railroad, but extending ina different direction, is a branch road within the meaning of a Statute authorizing the issue of bonds by a County through which it passes for the construction of a branch.

Howard Co. vs. Central Nat. Bank 108 U. S. 314.

L. Ed. 27 page 738.

Under authority to borrow money, bonds delivered to a railroad company and paid for in stock held good.

Myer vs. City of Muscatine, 1. Wallace 384. L. Ed.17-564.

Charter authorizes City "to take stock" in "any chartered company" for making a"road or roads to the said City", a subscription to a road in extension and prolongation of a road, already leading into the City, from another town, is within the power granted.

Von Hostrop vs. City of Madison 1. Wallace 291.

L. Ed. 17 p. 538.

Rodgers vs. Burlington 3. Wallace 654 L. Ed. 18. p. 79.

Mitchell vs. Burlington 4. Wallace 270.L. Ed. 18-351-353

Converse vs. City of Fort Scott 2. Otto 503.

L. Ed. 23 P. 621-987.

"Toll-bridge," a work of internal improvement.

Coamers vs. Chandler. 6. Otto 205. L. Ed. 24. P.625.

Authority to aid in construction of railroad gives authority to aid in building depots and side tracks.

Rock Creek vs. Strong. 6. Otto P. 271, L. Ed. 24. P.815.

Coaming vs. Clark 4. Otto 278. L. Ed. 59.

And even machine shops.

Jarrolt vs. Moberly 5. Dill. 353

In Nebraska Public Grist mills are construed to be works of "internal improvement" 111 U.S. 663.

The Editors of The Lawyer's Edition of United States Supreme Court Reports in a note to the famous case of The Charles River Bridge v. The Warren Bridge Book 9 page 774, in discussing the " strict construction" rule says: "But this rule "is qualified by another: that such grant and the Statute "making it must receive a reasonable construction and not be "so construed as to defeat the intention of the Legislature: "and that the ambiguity must be such as is not removed by the "settled rules of construction."

And refers to the following long list of cases to sustain the fair and reasonable doctrine announced.

Rens. & Sar. R. R. Co. v. Davis, 43 N. Y., 147.

Black v. United Cos., 7 Green, C. E., 130.

S. C. 9 Green C. E., 455.

Rice v. R. R. Co., 1 Black, 358;

Delaware Tax Cases, 18 Wall., 206.

Bradley v. N. Y. & N. H. R. R. Co., 21 Conn., 294.

Boston & L. R. R. Co. v. B. & M. R. R. Co. 5 Cush., 375.

Mohawk Bridge Co. v. Utica and S. R. R. Co., 6 Paige 554.

IN RE N. Y. & H. R. R. Co., 46 N. Y. 456.

Briggs v. Cand., A. R. R. Co., 2 Zab., 623.

Townsend V. Brown, 4 Zab., 80.

Packer v. Sunbury & Erie R. R. Co., 19 Penn. St., 218.

Bank v. Commonwealth, 19 Penn. St., 144.

Penn. R. R. Co., v. Canal Com'rs,, 21 Penn. St., 9.

Com. v. Erie and N. E. R. R. Co., 27 Penn. St., 339.

Wright v. Carter, 3 Dutch., 76.

C. & A. R. R. Co. v. R. & D. B. R. R. Co. 1 Green C. E. 321.

Bridge Prop. v. Hoboken L. & T. Co., 2 Beasl., 81.

S. C., 1 Wall., 116.

Bardstown & L. R. R. Co., v. Metcalfe, 4 Metc. Ky., 199.

Says Mr. Boone upon the same subject "The whole act, including title and preamble, should be examined together, and one part construed by another. The construction should be according to the spirit and meaning as well as the letter of the act; And when the language admits so as to give effect to the general intent. Powers expressly granted or necessarily implied, are not to be defeated or impaired by a stringent construction."

Boone on Corporations Sec. 25.

"Municipal Corporations have, very generally, the power to "establish and regulate markets within their limits; the ex- "tent and limits of the power possessed by a particular cor- "poration depending upon its charter. Grants of power in "this respect will be liberally construed (St. Louis v. Webber 547; Whartman v. Philadelphia 33 Pa. St. 202; White V. Kent 11 Ohio St. 550; Kether v. Buffalo 14 N. Y. 356; Waynesboro V. Smart 11 Rich. 551;) but not so as to warrant an ordinance "in restraint of trade, and tending to create a monopoly. A "charter power to make such necessary ordinances, etc., as may "tend to the " good government of the town" confers discretion- "ary power to build and repair a market-house, and also power "to lease a building for market purposes. And power "to es- "tablish" a market authorizes, as a necessary incident, the "purchase on ground upon which to erect a market house. x x x "Power to establish and regulate markets is a continuing one, "and markets once established may be abandoned or changed at "the pleasure of the corporation. Boone on Corp. Sec. 298.

"Where a municipal corporation is entrusted with the ex-
"ecution of a power, and is not confined to a particular mode,
"but has a discretion in the choice of means, a plain case of
"abuse must be shown resulting in an injury to the petitioner,
"to warrant an injunction against the corporation."

1 Dillon on Munic. Corp. Sec. 58 note. 2d. Edition.
" 94 note. 4th. Edition.

Paige v. St. Louis 20 Mo. 136.

Colton v. Harchett 13 Ill. 615.

Mayor of Baltimore v. Gill, 31 Md. 375.

Holland v. Baltimore 11 Md. 186.

Dodd v. Hartford 25 Conn. 232.

Sheldon v. School District, 25 Conn. 224.

Lockwood vs/ St. Louis 24 Mo. 20.

Dean v. Todd, 22 Mo. 19.

Mayor &c. v. Meserole, 26 Wend. 132.

Power to "repair or pave streets" authorizes a corporation to remove an old pavement and replace it with a new one of a different description. Gurner v. Chigago, 40 Ill. 165.

Williams v. Detroit, 2 Mich. 560.

In Burnham vs. Chicago 24 Ill 496 it was held that the power to pave includes the power to gravel streets.

2 Dillon on Munic. Corp. 2 Ed. Sec. 636-637.
4 Ed. §§ 797-798.-796

~~of "internal improvement."~~

~~111. U. S. p. 668.~~

We contend that the Council is carrying out the intent of the Statute, and that the restricted and narrow construction contended for by the complainant's counsel cannot be the correct construction, because, in the absence of any reason for so doing, and without the necessary means of information on the subject, such a construction makes the Legislature assume to fix the location of the market-house and town hall for Suffolk, and because such a construction will defeat the purpose of the Act: For it is an admitted fact in this case that the land owned by the town upon which the old market-house and town hall is located is not large enough for the erection of an imrpoved and enlarged building, and to attempt to erect such a building on that site would be a useless expenditure and waste of the public money.

The Act in question is permissive and not mandatory.

The Council may borrow or not, and having borrowed the whole of the thirty thousand (30,000) dollars, the only use of the money required is that they shall with a part of it furnish improved, and enlarged market and town hall facilities, by means of a rebuilt house,, i. e. in effect a new house, for a rebuilt house is in practical effect a new house from foundation to roof. The plans and details of this house as well as its location are left with the Council.

FOURTHLY.

The Council by the terms of the Act may use part of the money "for such other purposes of the said Town as the Council " may deem necessary".

We contend that the erection of the building complained

of is strictly a compliance with that part of the Act which contemplates a n improved, enlarged and rebuilt house. Suppose however, for the sake of the argument, that we admit that it is not such a compliance, that it is not the improved, enlarged and rebuilt house contemplated by the act, then surely it follows that it is something different. If it is not something substantially the same, then certainly it is something substantially different.

If then it be something different it is one of the "other purposes" clearly and distinctly contemplated and authorized by the very language of the Act. And as to these "other purposes" the Council clearlyhas the most enlarged and unlimited discretion. In the note to the case of Robinson vs. Mayor of Franklin 34 American Decisions Page 632 this language is used: "Discretionary powers granted to a municipal corporation "to be exercised according to its judgment as to the necessity "or expediency of a given measure, vests the corporation, with- "in the sphere of the powers delegated, with a control as ab- "solute as the legislature would have possessed if it had never "delegated the powers, and the discretion of the municipality "in respect to the powers granted, is as wide as that possessed "by the government of the State."

And in support of the doctrine the following and many other cases are cited.

Gas Co. vs. Des Moines 44 Iowa 509.

Dillon Munic. Corp. (3 Ed) 308.

Ex parte Burnett 30 Ala. 469.

Osborne vs. Mayor 44 Ala. 498.

Hall 48 Cal. 17 Am Rep. 425
Ex parte 17 Am Rep 48 Cal. 321.

Covington vs. E. St. Louis 78 Ill. 550.

Indianapolis vs. Gas L. & Coke Co. 66 Ind. 402.

Perdue vs. Ellis 18. Ga. 591.

Kniper vs. Louisville 7 Bush (Ky) 601.

Mayor vs. Morgan 7 Martin 3.

Portland vs. Water Co. 67 Me. 137.

Heland vs. Lowell 5 Allen 108.

State vs. Dwyer 21 Minn. 513.

St. Paul vs. Coulter 12 Minn. 46.

Taylor vs. Carondelet 22 Mo. 110.

See 34 Amer. Dec. page 632

It cannot be successfully contended that these "other purposes" are any less important than the improving, enlarging and rebuilding the market-house and town hall. Both purposes are contemplated and clearly authorized, with all the details left to the discretion of the Council.

But even if there had been the absolute command to enlarge, improve and rebuild on the old site there would still be no equity in this bill and no ground upon which this injunction could stand, because the record shows that the Council has only attempted to borrow twenty thousand (20,000) dollars for this "other purpose", leaving ten thousand (10,000) dollars still untouched and unborrowed--a sum which is amply sufficient to improve, enlarge and rebuild the market-house and town hall on its old site.

For these reasons we insist that the injunction should be dissolved and the bill dismissed.

C. V. Worfleet

v.

Brief of
Counsel for
Defendants.

Suffolk, ss.

Complainant's Statement & Argument.

I. The Issue.

The Issue is made by the following claim and denial of right:—

Defendants, constituting the Council of Suffolk, claim the right to appropriate, for the purchase of a lot and for the building thereon of a market house and town hall, from fifteen to twenty thousand dollars of a fund of thirty thousand dollars, the same to be borrowed under authority of an Act of Assembly approved Jany 25. 1890. (See Act quoted below.)

Complainant, a citizen, property owner and tax payer of Suffolk, suing for herself and for all other citizens, property owners and tax payers of Suffolk, denies the Council's right to make such appropriation of said fund or of any part thereof.

II. The Facts.

The facts material to the issue are these:

The Charter of Suffolk provides: That the Council shall have power within said town, to provide, contract for, and take care of all buildings necessary for the use of the town; & to establish and regulate markets. (Sec. 13.)

The Charter also provides: That the

Council of said town shall raise, by levy so much money, as, in its discretion, shall be sufficient to meet all just demands against the town on any account ××× provided said levy for all purposes of said town (except for the poor & the public schools) shall not annually exceed three-fifths of one per centum of the assessed value of the taxable subjects or property, nor fifty cents per head per annum upon persons in said town at the time said levy may be made.

(No part of the ordinary revenue thus provided for is available to pay for the lot and building in question).

A Special Act of Assembly ~~The Charter for the~~ provides: That the Council may, in the name and for the use of the said town, contract loans and cause to be issued, certificates of debt or bonds, but the amount of such certificates or bonds outstanding shall not at any time exceed ten thousand dollars. (See Acts 1885-6 p. 247)

(Suffolk's outstanding bonds and certificates of debt amount to ten thousand dollars, and no part of the proceeds thereof, is available to pay for the lot and building in question)

The following Act was approved January 25. 1890:

"Be it enacted by the General Assembly of Virginia That the Council of Suffolk &c,

and they hereby are, authorized to borrow, for said corporation, in addition to the amount now authorized by law, for the purpose of improving, enlarging and rebuilding the market house and town hall in said town, and for such other purposes of the said town as the Council may deem necessary, a sum of money not exceeding $30,000.00, by the issue and sale of the bonds of the said corporation."

At the time of the passage of this Act, a frame building, known as the market house and town hall, and used as such, stood on Market St. (or near the corner of Main and Market) and had been so known, used and located for many years. It is to-day so known, used and located. It is the property of the town, having been built many years ago, under authority conferred by Special Act of Assembly. (See Act quoted below.)

At the time of the passage of this Act of Jany. 25. 1890, and at the time it was prepared for submission to the legislature, it was the impression of the Council of Suffolk that the contemplated market house and town hall improvements were to be made on the site of the existing market; and after the Act became law, the Council proceeded to acquire by condemnation a narrow strip of land adjoining the existing site, for

the purpose of "enlarging" the building in respect to breadth. Afterwards the Council discontinued these condemnation proceedings, and abandoned the purpose of "improving enlarging and rebuilding the market house and town hall", that is to say, of making the contemplated improvements on the site of the existing building. They thereupon bargained for a lot distant from the site of the existing market, for $4000.00, and were about to erect thereon a market house and town hall to cost from $11000.00 to $15000.00, (said lot and building to be bought with the fund borrowed under the Act of Jan 25. 1890) when complainant, suing as aforesaid, applied to the judge of Hawsemond Co. Circuit Court for an injunction restraining such appropriation of said fund. Notice was given to defendants and their Counsel, and after a hearing of argument pro and con upon uncontroverted facts, the injunction was granted according to complainants' prayer.

The injunction order having been duly filed in the Clerk's office, the parties, in order to avoid delay agreed to submit the controversy to arbitration, and to abide by the award, waiving any and all rights of appeal.

III. The Argument

If the Council have authority to do the thing complained of, they have it by virtue of legislative grant.

If there be any legislative grant conferring such authority, it is to be found either in the general law, the town Charter, or the Act of January 25, 1890, or in two or more of these construed together.

In complainants' view of the Charter and of the Act, it is unnecessary to consider the effect of general law.

1. The Charter.

If we understand defendants' contention, they invoke, in aid of the alleged authority they seek to exercise, the following language of the Charter, and no other:-

"The Council shall have power, within said town to provide, contract for, and take care of all building necessary for the use of the town and to establish and regulate markets." (Sec. 13.)

But, in Section 16, the Charter further provides:

That the revenue, for all just demands against the town on any account shall be raised by levy and shall not exceed

three-fifths of one per centum &c."

So far, then, as the exercise of Charter authority depends upon revenue, the Charter itself imposes limitations upon the Council by designating the sole means of raising money for the town Treasury, and by fixing in effect the amount to be raised.

The Charter, read as a unit, empowers the Council to provide such public buildings as are necessary for the use of the town, to establish markets, and to do many other things, but with this manifest proviso: that these things be done within the limits of the town's only available revenue.

It is true, the General Assembly, at its session of 1885-86, authorized the Council to create a maximum bonded debt of $10,000.00, but we do not now stop to discuss that power for the reason that it has already been fully exercised and exhausted. It is of course not denied that by the energy of that Statute a possible sum of $10,000.00 was added to the lawful revenue of the town, and became available for general purposes.

In this connection the language of the 13th section of the Charter deserves careful thought. The words are these: "The Council shall have power to provide, contract for and take care

of all buildings necessary for the use of the town, and to establish and regulate markets."

In order to give full effect to this grant, it is not necessary that the town shall own such buildings or markets. Ownership is a possible & proper incident of the providing and the establishing named in the Act, but it is manifestly not an essential incident.

This point is made in view of an anticipated contention of defendants that the grant of authority to provide buildings and to establish markets, includes, as a necessary incident, authority to buy land and buildings and to appropriate therefor extraordinary revenue.

It would be possible, and might be practicable, by means of renting or leasing, to establish such a market, and to provide such buildings, as are necessary for the use of a town like Suffolk.

A chapter from the history of our present market house may throw light on the issues in this case.

In 1874, the following legislative grant was secured:-

"Be it enacted by the General Assembly of Virginia, That it shall be lawful for the Mayor and Council for the Town of Suffolk, to borrow a sum of money not exceeding

two thousand dollars, and to issue town bonds for the same, bearing interest at a rate of interest not exceeding ten per centum per annum, for the purpose of purchasing land and erecting a market house thereon, and for such other purposes of improvement of the town as may be deemed necessary (Acts of Assembly 1874 p. 375.)

Thus it appears that the town deemed in the absence of available revenue it necessary to secure a special grant of authority to borrow money and to issue bonds for the purchase of land and for the erection of a market house, although Section 13 of the Charter, authorizing the Council to provide buildings and to establish markets, was in force at the time. This is in exact accord with our construction of the Charter powers in question.

In view of all the foregoing facts and legitimate inferences therefrom, ~~town~~ it seems evident enough that the Council has no authority under the Charter alone to do the acts complained of.

2. The Act of Jany 25. 1890.

This Act authorizes the borrowing of $30,000.00, and the issuing of town bonds therefor, "for the purpose of improving, enlarging and rebuilding the market house and town hall in said town [Suffolk] and for such other purposes of said town as the Council may deem necessary".

Defendants, by their answer, admit that, but for this Act, the town would be without means wherewith to pay for the lot and building in question, and allege that the Charter furnishes the authority, while the Act provides the means for the purchase of the lot and the erection of the building.

It is therefore conceded that the means which the Council purpose using for this enterprise are to be had only by virtue of this Act, and that the town is wholly without other means available for such uses.

Complainants contention is that the Act does more than to authorize the borrowing of the money: it just as certainly provides for its expenditure. And if the Act does provide for the expenditure of the fund, it is absolutely controlling in that regard. It designates, first, specifically, then, generally, the uses to which the fund shall be appropriated.

and so far exhausts the situation.

If there be any occasion for an appeal to the Charter in construing this Act, such an appeal can serve to throw light upon but a single point. Since Section 13 of the Charter sets out at length the powers of the Council, it may be that the "other purposes" of the Act are only such as may be accomplished in the legitimate exercise of those powers. This use of Section 13, which, it would seem, is the only possible use in this case, is a loss rather than a gain to defendants.)

If defendants contends that, since Section 13 expressly grants power to provide necessary buildings and to establish markets, therefore the "other purposes" of the Act must include the very purposes which complainant assails as unlawful, our answer is that the Act when considered as a unit forbids the inference that the "other purposes" therein provided for include market house and town hall improvements; for the reason that the <u>specific purpose</u> of the Act is to improve, enlarge and rebuild the market house and town hall.

When a statute provides for the doing of a specific thing and such other things as

may be deemed necessary, the phrase "other things" will not be so construed as to authorize the doing of a thing thereunder which will render useless and superfluous the doing of the specific thing named in the Statute.

The force of the word "other" renders such construction manifestly improper. The "other purposes" are purposes other than those expressed and implied by the specific designation.

Let the Act be now considered simply in respect to its structure.

It naturally falls into two parts:

1st The Specific — granting authority to expend a fund, or part of a fund, for improving, enlarging and rebuilding a certain definite building, viz, the Market house & town hall in Suffolk

2d The General — granting authority to accomplish such other purposes of the town as the Council may deem necessary

The Connective is the copulative conjunction "And", which forbids the idea that the General objects may be accomplished to the exclusion of the specific object.

The fund to be raised under the Act likewise falls naturally into two parts, the amount

of each part being left to the good faith and the good sense of the Council:-

1st The Town Hall & Market house fund, -being so much money as may be necessary and proper for the improving, enlarging and rebuilding designated in the Act.

2? The general improvement fund, - being the balance of the entire loan authorized by the Act.

Complainant contends that the specific object named in the Statute must be accomplished in good faith by the appropriation and expenditure of what has just been denominated the town hall and market house fund. We understand that defendants' Counsel concedes that the specific thing meant by the words, "improve, enlarge and rebuild the market house and town hall" must be done if the Council shall borrow money under authority of the Act.

On the other hand there is nothing in the Act absolutely requiring the accomplishment of the general objects. In the first place, the entire fund might be necessary for the doing of the specific thing, and in the second place the very existence of these general objects depends upon their necessity for town purposes in the opinion of the Council. It follows that the specific object of the Act is su-

perior in dignity to the general objects, and must in a sense control them. The general must wait on the particular and remain subservient to it.

Furthermore, from the structure of the Act this notion can be readily gathered: that whatever other public purposes are committed to the discretion of the Council in their appropriation of this extraordinary revenue, one purpose is placed on such a footing as to be wholly beyond the exercise of the Council's will or discretion. The people of Suffolk, in whose interests this Act was passed, were willing to commit this borrowed money to their servants, the Council, with a single express limitation upon its use: part of the fund, sufficient for the purpose, should be devoted to an improvement, enlargement and rebuilding of the market house and town hall. A market house, in respect to its location more particularly than any other feature of it, is a thing that intimately concerns the comfort and convenience of the people. The Act seems to have been framed in view of this fact. The people who were to bear the burden of increased taxation, who were to carry a debt fourfold larger than any pre-existing debt, were to be assured that so far as the borrowed money should affect the

market house, the latter should be improved enlarged and rebuilt — its location should not be changed.

The position in which defendants seem to have most confidence is this: that, in buying a lot distant from the present market, and in building thereon ~~xxx xxxxxx xxxx~~ a market house and town hall (at the same time abandoning the present market, which intention is admitted) they are "improving enlarging and rebuilding the market house and town hall in Suffolk" within the meaning of the Act.

This claim raises the inquiry: What is the proper construction of the Act?

1st. What is the meaning of that clause which points out a specific thing that is to be done?

As above stated, there was, at the time this Act was framed, and at the time of its passage, and there now is, a building on Market St in Suffolk known to every citizen of the town as the market house and town hall, which has been used, ever since it was built, for the purposes indicated by such designation.

At the time the Act was framed and at the time of its passage, it was the impression of the Council that they would improve, enlarge and rebuild this building, or, in other words,

that they would provide an improved and more commodious market-house and town hall on the site of the existing one. Acting in accordance with this impression, and in the light of the Act and of its unmistakable meaning, the Council commenced proceedings to condemn a strip of land adjoining the building so as secure increased breadth.

Examining, now, the words of the Specific clause of the Act, in the light of their plain, ordinary and well-known definitions; in the light of the Council's intentions at the time when the Act was framed; and in the light of the Council's first interpretation of the Act after it became law, - what must we say as to the legal effect of this clause?

While all the extraneous facts in the case aid our interpretation, we are in no wise dependent on them. It has been laid down, as a rule of construction, that "if the words of a statute are in themselves precise and unambiguous, then no more can be necessary than to expound the words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the law-giver."

Chief Justice Jervis went so far as to say: "If the precise words used are plain and unambiguous in our judgment, we are

bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning."

If there were any extraneous facts in aid of defendants' construction, they could not be invoked because of the rule just stated.

Such aids may not be employed if the words can have effect without them, and are unambiguous.

The words "improve" and "enlarge" when employed in connection with a building, imply to the minds of both the learned and the unlearned, that the building, or some essential feature or element of it, such as its site (which latter, in many cases is the most important element) must be the basis of the improvement and enlargement. These words have no other or different meaning in law.

The word "rebuild" in its ordinary sense, and in its legal sense, when applied to a building, conveys the idea of retention

of site. Suppose, for instance, a lease for a term of years of a building in a town or city, with a covenant to rebuild in case of destruction by fire, would a Court entertain the proposition that this covenant might be observed by erecting a new building on some other lot, or in some other part of the town or city, or in some other city? An Insurance Company reserves the right either to pay the loss or to rebuild the house. May the Company build elsewhere than on the old site, and thus satisfy any lawful claims under the policy?

Look at the three words together. Mos citus a sociis. Is not the idea of retention of site manifestly conveyed?

Defendants strenuously urge this view; that the words now under consideration, when properly construed, convey the general notion of furnishing improved and enlarged market facilities, without any mandatory reference to location.

There is absolutely nothing to support this view, except the fact that the Charter, in authorizing the Council to provide necessary buildings and to establish markets, seems to leave to their discretion the matter of location of such buildings & markets.

The Charter also authorizes the Council to

light the streets. If a special Act should empower the Council to borrow a given sum of money for the purpose of providing for Suffolk an electric lighting plant & for such other purposes &c, could the Council in exercise of such authority, provide a gas plant instead of an electric plant on the ground that the Charter had granted them the unqualified power of lighting the streets in any way they might see fit?

Law is not an exact science, but there are some rules of law so well established that no one questions their binding force. Among them is that rule of construction which provides that powers granted to governing bodies of municipal corporations shall be strictly construed. This rule is rooted in reason. Town Councils are trustees using public money for public ends, and the authority under which they act, should have the characteristic of publicity. When, therefore, an Act is passed conferring special authority on such a body, it is the tax payers' right to have their money expended according to the strict intendment of the grant. In framing such an Act, there is the exhaustless mine of pure English on which to draw, and the faintest shades of meaning may be easily traced.

The Act in question was drawn by no unskilled hand. It declares a purpose which a dullard might easily discover.

The Court of Appeals of Virginia has frequently declared that in construing grants of authority to Town Councils, any doubt as to the existence of a given power under the grant, must be resolved against such Councils and in favor of the tax payer. We claim that the meaning of the Act is unmistakable, but if defendants can, by any possible construction, raise a doubt as to its meaning, then they do but drive us to the application of the rule which resolves the doubt in complainant's favor. Can they, by the most ingenious reasoning, demonstrate the correctness of their position beyond a doubt?

In further aid of our construction, note the contrast between the Act of 1874 and that of 1890, which have been above quoted in full.

The former authorizes a loan "for the purpose of purchasing land and erecting a market house thereon, and for such other purposes of improvement of the town as may be deemed necessary."

The latter, framed in the light of the former, authorizes a loan "for the purpose of improving, enlarging and rebuilding the market house and town hall in said town, and for such

other purposes of said Town as the Council may deem necessary."

Suffolk knew, by experience, how to get authority to borrow money for the purpose of buying a lot and erecting a building on it for public purposes. It is therefore vain for defendants, on the ground of their simplicity, to ask for a liberal construction of the Act of 1890.

Defendants derive some comfort from the title of this Act, which is as follows: "An Act to empower the Council of the Town of Suffolk to borrow money and issue bonds therefor". They argue from this title that the purpose of the Act is to enable the Council to borrow money and issue bonds. So far as the Act goes beyond this purpose, no special weight should be given to it. It is not deemed necessary to answer such an argument as this except to point again to the Act of 1874 whose title is: "An Act authorizing the Mayor & Council of the Town of Suffolk to borrow money." Is not the manifest purpose of both Acts to provide means for the accomplishment of particular ends, and are not the ends as much within the energy of the Statute, as are the means?

One thing, already referred to, seems intolerably grievous to defendants, viz, that

while the Charter gives them the right to provide necessary buildings and to establish markets (which seems to imply the right to fix locations) complainant should so read the Act of 1890, as to discover in it a limitation upon this sacred right in the present instance. They take very high ground at this point, complacently trusting that the Legislature could not have intended any abridgment of their powers.

We have already answered this in part by showing that Charter powers have all the time been limited by Charter means. We answer further by saying that by all the rules of construction known to us, the Act of 1890 does provide that if the Council shall resort to the extraordinary revenue, authorized thereby, they shall, without question, devote the same or a substantial part of it, to a bona fide improvement, enlargement and rebuilding of the present market house and town hall, which improvement, enlargement and rebuilding, of necessity involves the use of the present site therefor. If this be an abridgment of their ancient right, let them make the most of it.

If the right to do the acts complained of do not exist by virtue of the Charter alone, and do not exist by virtue of so much of the Act as authorizes the doing of the spe-

cific thing, does it exist under the general authority to accomplish "such other purposes of the town as the Council may deem necessary"?

We have undertaken to show already that if the authority conferred by the Act be exercised at all, the specific thing designated in it must be done in any event, and we believe defendants' Counsel concedes this. It must be likewise true that this specific thing shall be done in good faith, that is to say, in a manner commensurate with the growing needs of the town. What, then, are the "other purposes" covered by the Act? If it be the expressly defined purpose of the Act to furnish means for providing improved and enlarged market hall facilities on the site of the existing building, and the means must be used for making such provision, can there be within the potentiality of this Act a lot costing $4000.00 and a three-story brick and terra cotta building costing from $11000.00 to $15000.00, and all for market-house and town hall purposes?

As argued above, there is a peculiar force in the word "other" as used in the Act which forbids any such construction. In our view, when an Act authorizes a Council to borrow for specific purposes and "for such

other purposes as may be deemed necessary", the last clause is usually inserted for the purpose of legalizing the expenditure of such balance of the special fund as may remain after the specific object has been accomplished. But if it be true, as defendants allege the fact to be in the present case, that $30,000.00 is a much larger sum than is needed for the one specific purpose named in the Act, and that many public improvements are needed "other" than that, then the general terms, "other purposes", whatever else they may include, cannot, by any proper or reasonable intendment, include a given improvement, which, by common consent, would be absolutely useless, when coexisting with that improvement whose provision is the leading purpose of the Act.

The "market house & town hall fund" must be expended on the present site. Can the "General improvement fund" be devoted to a particular purpose when it was created for purposes "other" than that particular purpose?

Moreover no one has the hardihood to suggest that Suffolk needs or can support more than one market, or more than one town hall, nor has it ever been the intention of the Council to make a twofold provision.

We have already sufficiently indicated our views as to the effect of construing

together the Charter and the Act. Nothing can be thereby added to the force of the Act.

Our conclusion is that neither Charter nor Act, nor the two together, can be lawfully construed so as to confer upon the Council authority to appropriate from fifteen to twenty thousand dollars, or any other sum, of the special fund of thirty thousand dollars, for the purchase of the lot in question or for the building thereon of the contemplated structure. On the contrary, the Act, by an implication too strong to be set aside, and too plain to be misunderstood, forbids any such appropriation. If this conclusion be correct, we believe no general law, whether common or statute, can disturb it.

The plans of the proposed building are submitted by complainant for the purpose of showing that the second floor is intended for a theater rather than a town hall.

Respectfully submitted.

Harvey L. Christie
Whitehurst & Hughes
Complainant's Counsel.

Abstract

OF

The Title

OF

.....

No. .....

Everett Waddey, Mf'g Stationer and Printer, 1112 Main Street, Richmond, Va.

C. V. Norfleet.

vs

Town of Safford

Defendant's

Trial

Argument

Norfleet

v. } Award.

Town of Suffolk et als.--

At the earnest request of counsel, who have represented that both sides are anxious for a speedy determination of the questions involved, I have consented, though reluctantly, to act as arbitrator in this case, and having heard the arguments of counsel and examined the record, I now proceed to announce the conclusion at which I have arrived. I have not thought it necessary to write out an elaborate statement of the pleadings in the case, because, if written, it would not be an authority in any other case, nor is it likely that any other case involving the construction of the act herein mentioned may arise hereafter.

Briefly stated, then, my conclusion is that the proposed action of the town council, which is sought to be enjoined, is not ultra vires and illegal, as claimed in the bill, but that it is authorized by the act of January 25, 1890, above mentioned, construed, as the act must be, in connection with the thirteenth

section of the charter. The object of the act, as expressed in its title, is to empower the council "to borrow money" and issue bonds therefor, and by the first section authority is given to borrow a sum not exceeding thirty thousand dollars for the purpose not only of improving, enlarging, and rebuilding the market-house and town hall, but for such other purposes of the town as the council may deem necessary.

I agree with the counsel for the complainant that the act does not contemplate a removal of the existing market-house from its present site, but I cannot concur with them in their construction of the act in any other particular as to which there is any dispute. I think it would be too narrow a construction to hold that any action by the council under the act must include the improvement or rebuilding of the present market-house. The means to do so are given, if the council shall see fit to do it, but I do not think that the doing it is a sine qua non to the power of the council to use any part of the fund to be borrowed for any other public purpose authorized by the charter and which the council may deem necessary. By the thirteenth section of the charter authority is expressly given to the council to provide all necessary public buildings and to

establish markets, and in the present case the council have determined that a new building to be used as a market-house, mayor's office, and for other purposes of the town is necessary, and upon the record before me I must assume that it is. —

Much has been said, and very well said, in support of the complainant's view of the case, but I feel that that upon what seems to me a fair construction of the act, the case is with the defendants. My opinion, therefore, is, and I do accordingly award, that the injunction be dissolved and the bill dismissed with costs to the defendants.

I have said nothing as to the demurrer, because my opinion upon the merits of the case renders it unnecessary that I should. ~~In view of the fact that in my opinion, the facts of the case which have been presented to me by the complainant's bill do not constitute a cause of action~~

I herewith return to the Honorable Circuit Court of Nansemond County the written agreement under which this cause is made.

L. L. Lewis.

August 28, 1890.

Norfleet

v.

Town of Suffolk et als.

Award.

CIRCUIT COURT OF NANSEMOND COUNTY.

C. V. Norfleet, citizen, property owner and tax payer of the town of Suffolk, suing for and on behalf of herself and all other citizens, property owners and tax payers of said town. Complainant.

vs.

The Town of Suffolk, John B. Pinner, Mayor, and William H. Jones Jr., Burwell Riddick, L. M. Tebo, George W. Nurney, D. C. Harrell and W. N. McAnge, Councilmen of said town, said mayor and councilmen composing the Cpuncil of the town of Suffolk. Defendants.

This cause came on this day to be heard upon the bill and the exhibit therewith filed, the answer of the defendants, with general replication to said answer and the agreement in writing signed by the parties, plaintiff and defendant, submitting this cause to the arbitrament and determination of the Honorable L. L. Lewis, Abitrator, dated August 21st. 1890.

And the said Arbitrator, the Honorable L. L. Lewis, to whom the determination of the matters in difference between the parties was submitted by the said agrement, this day returned his award in these words:

(here copy award)

Whereupon, in confirmation of the same, on motion of the counsel for the defendants, it is considered by the court that the said award be approved, ratified and confirmed, and the Court doth adjudge, order and decree that the bill of the complainant be dismissed, that the injunction heretofore awarded in this cause be dissolved, and that the

defendants recover of the complainant their costs about their defence, in this behalf expended.

C. V. Norfleet

vs. Decree.

Suffolk &c.

Entered Octo. 15. 1890
C W Shea

Entered in Chancery
Order Book No 2
Page 352.

The DEMURRER and ANSWER of the Town of Suffolk, John B. Pinner, Mayor, and Wm. H. Jones Jr., Burwell Riddick, L. M. Tebo, Geo. W. Nurney, D. C. Harrell and W. N. McAnge Councilmen of said Town, said Mayor and Councilmen composing the Council of Suffolk, to the BILL OF COMPLAINT exhibited against them in the Circuit Court of Nansemond County by ~~A. S. Eley and~~ C. V. Norfleet, citizens, property-owners and tax-payers of the Town of Suffolk, suing for and on behalf of ~~themselves~~ herself and all other citizens- property-owners and tax-payers of said Town:

DEMURRER.

The defendants say that the bill is not sufficient in law

ANSWER.

These respondents reserving to themselves the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as they are advised that it is material they should answer, answer and say:

THAT while the location of the market-house and town hall can only be determined by the Council of Suffolk, and while such location may be from time to time lawfully changed by such Council, in its discretion, the allegation of the bill that the old market-house is on Market Street, and that it is proposed to locate the new building on Main Street, is calculated to mislead the Court, because in truth and in fact the old building fronts on Main Street at the corner of Market Street, while the lot selected for the proposed building is on the opposite side of Main Street and closer to the business centre of the Town.

THAT the correct statement of the law involved in the question made by the Complainants' bill is that the Town of Suf-folk can exercise such powers as by its charter, and the Act of January 25th. 1890, are granted in express terms, or by

necessary implication, regard being had to the purpose of the grant. That the purpose of the Act of Jany. 25th. 1890, was, among other things, to enable the Council of Suffolk to provide for the use of the people, improved and enlarged merket and town hall facilities, and all of the acts of these respondents have been with the view of effecting this one of the avowed objects and purposes of the grant. That the land owned by the Town upon which the old market-house and town hall is located is not large enough for the erection of an improved and enlarged building, and to attempt to erect such a building on that site would be a useless expenditure and waste of the public money. Therefore, inasmuch as no land adjacent to the old site could be acquired by purchase, these respondents, in substantial compliance with one of the purposes of the Act of Jany, 25th. 1890, and by virtue of the .authority vested in them by the thirteenth section of the charter of Suffolk, purchased the lot on Main Street referred to in the bill, and have in the exercise of their legislative discretion commenced the erection of the building referred to, which is to contain a Council Chamber and a Mayor's office.

THAT if it be true that the erection of the proposed building will not be a substantial compliance with one of the avowed purposes of the Act approved Jany. 25th., 1890, as the complainants have alleged, then, respondents aver that it is in strict fulfilment of the other expressly avowed purpose of the said act, viz: a purpose deemed necessary by the Council , for the use and benefit of the said Town, plainly authorized by the said act and by section thirteen of the charter aforesaid. That neither the expediency, propriety or wisdom of the determination of the Council to erect such a building, can

be questioned by the complainants, because the law vests in the Council the determination of these questions of public policy, and the actions complained of being within the scope of the powers of said Council cannot be questioned or assailed by the complainants.

THAT under and by virtue of the authority of section 13 of the charter of Suffolk, the Council has express authority, in its discretion, "to lay off public grounds, and to provide contract for and take care of all buildings necessary for the use of the Town; to establish and regulate markets", and if it be true, as is alleged by the complainants, that the Act of the General Assembly of Virginia, approved Jany. 25th. 1890, does not give these respondents authority to erect the building complained of, then the said section thirteen of the Charter gives to the Council of Suffolk, in express and unmistakable terms, the full and ample authority for every act where-of the complainants have complained. Section thirteen, above quoted gives the power, and the Act of Jany. 25th. 1890, furnishes the necessary means for the execution of the power.

These respondents deny that the said Council are now endeavoring to contract for a loan to the said Town of thirty thousand dollars, as authorized by the said act; on the contrary thereof these respondents aver that they are only endeavoring to contract for a loan of twenty thousand dollars under such authority, leaving ten thousand dollars which they have not yet borrowed, or taken any steps to borrow, which amount is more than ample to improve, ~~enlarge~~ enlarge and rebuild, on its present site, the building now used as a market-house and town hall.

These respondents deny that they had exhausted all au-

thority to borrow money for the Town of Suffolk, prior to the 25th. day of January 1890, but admit that but for the said act, approved Jany. 25th. 1890, they would not have authority to borrow a sum of money, sufficient to erect the proposed new building.

These respondents deny that in doing the acts of which the complainants have complained, as set forth in the bill, they have or are in any manner transcending their lawful authority, to the very great and irreparable injury of the complainants, or to the special and irreparable damage of their real estate located near the said new site; on the contrary thereof, these respondents aver that the market value of the said real estate is in no way lessened, and will not be lessened by the erection of the said building. But even if this were true, respondents deny that this would constitute any legal ground whatever for the interference of this Court by injunction.

These respondents deny that they are wilfully disregarding their duties, or violating the plain provisions of the said act; on the contrary thereof, these respondents aver that they are pursuing the plain provisions of the said Act and discharging all their official duties thereunder, to the best of their judgment, skill and ability, with a due regard for all the interests of the citizens, property-owners and tax-payers of Suffolk.

These respondents deny that the said proposed new building is unnecessary and undesirable for the use of said Town, or that it will involve the said Town in a useless, wasteful and extravagant expenditure of the public money; on the contrary thereof they aver that the growing needs of the Town

demand such a new, improved and enlarged building, as is contemplated.

These respondents deny that the said Council or a majority of them do not deem the said purchase and erection of the said building necessary for the legitimate uses or purposes of said Town; on the contrary thereof, after a careful consideration, and full discussion of the whole question involved, the Council has determined that such purchase and such building is necessary for the legitimate uses or purposes of said Town.

These respondents deny that one of the main objects and purposes of the Council in erecting the proposed building is to provide an amusement hall or theatre for the use of such opera troupes and theatrical companies as may desire to rent the said building or a portion thereof for musical, theatrical and other like performances; on the contrary thereof they aver that the main objects and purposes of the Council in erecting the proposed building are to provide a suitable market-house for the people of said Town, a public hall convenient for the use of the people of said town and a suitable Council Chamber and Mayor's office for the officials of said Town.

And having fully answered they pray to be henced dismissed, with their reasonable costs, about thier defence, in this behalf expended.

And they will ever pray &c.

Buffalo by John R. Pinney, Mayor
John R. Pinney, Mayor
Wm. H. Jones Jr
Louis. M. Tebo
H. N. Mange
Robert R. Reulis P.G.
Burwell Riddick
D. C. Hamlin

Virginia,

County of Nansemond, to-wit:

This day personally appeared before me Robert R. Prentis, a Commissioner in Chancery of the Circuit Court for the County and State aforesaid, John B. Pinner,

and made oath that the statements contained in the said answer, so far as made of their own knowledge, are true; and so far as made from knowledge or information derived from others, they believe to be true.

Given under my hand this 13th day of August 1890.

Robert R. Prentis,
Commissioner in Chancery.

C. V. Norfleet

v. Answer.

Suffolk.

Proposals.

NOTICE.—SEALED PROPOSALS WILL be received by the treasurer of the town of Suffolk, at his office in Suffolk, Va., until and including August 14th for $20,000 of Suffolk, Va. twenty year 5 PER CENT. COUPON BONDS, interest payable semi-annually, to be issued by Council of Suffolk, by authority conferred by acts of Assembly 1889-'90, chap 102. The Council reserves the right to reject any or all bids. The denomination of bonds is $500, and bids will be entertained for the whole or any part of the issue. The present indebtedness of the town is only $8 80), and the population is estimated at 3,50 , with revenues under new assessment estimated at $14,000 at present rate of taxation, which is one per centum for all purposes. Said bonds are exempt from town taxation.

CLAUDE W. WRIGHT,
Treasurer

aug7-6t

In the Circuit Court for the County of Nansemond.

A. S. Eley and C. V. Norfleet,
Citizens, property-owners and tax-
-payers of the Town of Suffolk,
suing for and on behalf of herself
~~themselves~~ and all other citizens,
property-owners and tax-payers
of said Town,
Complainants,

against

In Chancery

The Town of Suffolk, John B. Pinner,
Mayor, and Wm. H. Jones Jr., Burwell
Riddick, L. M. Tebo., Geo. W. Nurney
D. C. Harrell and W. N. McAnge,
Councilmen, of said Town, said Mayor
and Councilmen composing the
Council of the Town of Suffolk,
Defendants.

To the Honorable C.W.Hill
Judge of the Court aforesaid:

Humbly complaining, shew unto your Honor your orators A. S. Eley and C. V. Norfleet, citizens, property-owners and tax-payers of the Town of Suffolk, suing for and on behalf of herself and all other citizens, property-owners and tax-payers of said Town, the following case:

1st. That your orators are citizens, property-owners and tax-payers of said Town of Suffolk, and as such are subject to all the burdens, and entitled to all the rights, privileges and immunities thereto attached and belonging.

2nd. That said Town of Suffolk is a municipal Corporation

duly chartered and incorporated under the laws of the State of Virginia, by virtue of an Act of the General Assembly of said State, passed Jany. 5, 1808 (Vid. Hen. Statutes, New Series Vol. III, p. 396), and various Acts passed subsequently thereto, providing new charters therefor and amending the same.

3rd. That all the Corporate powers of said Town are vested in, and exercised by, the Council of said Town, consisting of the Mayor thereof, and six Councilmen.

That at an election duly had and held in and for said Town on the 4th Thursday of May, 1889, the defendant John B. Pinner was elected Mayor, and the defendants Wm. H. Jones Jr. Burwell Riddick, L. M. Tebo, Geo. W. Nurney, D. C. Harrell and W. N. McAnge were elected Councilmen, and have since duly qualified as such, and entered upon the duties of their res-pective offices, and now compose and constitute the Council of the Town of Suffolk.

4th. That among the numerous powers granted to and vested in said Council by the Charter of said Town of Suffolk, said Council are empowered and authorized "to lay off public grounds, and to provide, contract for and take care of all "buildings necessary for the use of the town; to establish "and regulate markets" x x x x.

and that said Charter grants to said Council no other author-ity nor power to contract for or erect buildings in said Town, and makes no other nor further provision in respect of the same.

5th. That no power nor authority is given nor granted, un-der and by virtue of said Charter, to said Town Council

to borrow money or contract loans for and on behalf of said Town, and whenever, for the purposes of said Town, it is neces-sary to raise money other than by the ordinary and usual mode of levying taxes, express authority must be asked of and granted by the General Assembly of Virginia, by Special Enact-ment to that end.

6th. That said Town and Town Council had already exercis-ed and exhausted all such special authority to con-tract loans granted by special enactments prior to the 25th day of January, 1890, and on and immediately prior to said day and date were without authority or power of any kind to con-tract loans or issue bonds therefor, on behalf of said Town, for any purpose whatsoever.

7th. That for many years prior to said 25th day of January 1890, the market-house and town hall, comprised in one building, was, and has been since, hitherto, and is now, situated and located in and on Market Street in said Town.

8th. That it was deemed expedient, for public purposes, to improve enlarge and rebuild said market-house and town hall located as aforesaid, and, for the purpose of rais-ing the necessary funds, resort was again had to the General Assembly of Virginia*. Accordingly, by special enactment of that Body, approved January 25th, 1890, authority to raise mon-ey for such specific purpose was granted to said Council, by Act of Assembly in the following language:

' Be it enacted by the General Assembly of Virginia, that the 'Council of Suffolk be, and they hereby, are authorized to bo-'-row for said Corporation, in addition to the amount now au-

'-thorized by law, for the purpose of improving, enlarging, and 'rebuilding the market-house and town hall in said town, and 'for such other purposes of the said Town as the council may 'deem necessary, a sum of money, not exceeding thirty thousand 'dollars by the issue and sale of the bonds of the said cor--poration.' x x x x x

See Acts, 1889-90, Private, p.148.

9th. That said Council, pretending to proceed under and by virtue of the authority conferred by said Special Act, of Assembly, and being wholly without other or further author--ity, and being provided with no means whatsoever at hand or in immediate prospect, save such sum or sums of money inteded and designed to be raised under the authority of said Act, not regarding the specific purpose and object expressed and stated therein, but wilfully disregarding the same, have pur--chased a vacant lot on Main Street in said Town, and con--tracted to pay for the same the sum of $4,000.00: are now proceeding, by their servants and agents, to make excavations and to build foundation walls, in and on said lot, for a new market-house and town hall, which they propose to erect on said lot purchased as aforesaid: and are proceeding to provide building material for the further erection and completion of the same.

That said Council are wholly without means derived from the ordinary and lawful sources of revenue of said town, where--with to pay for the said lot or the building about to be erected on the same, and must ~~necessarily~~ intend, and do in truth and in fact intend to raise money therefor under alleged au--thority of said Special Act of Jany. 25th, 1890: That said

Council are now endeavoring to contract for a loan to said Town of $30,000.,or other very large amountunder and by vir--tue of alleged and pretended authority of said Act of Assem--bly,to meet such extra-ordinary,unusual and unauthorized expenditure:that the Treasurer of said Town has been by said Council instructed to advertise,and has actually advertised, and is now advertising,for bids for Town bonds to be issued in consideration of said loan~~xxxxxxxxxxxxxx~~,a copy of which advertisement is herewith filed,and asked to be taken as a part of this Bill of complaint,marked Exhibit "A"; And that said Council threaten and intend to use the funds arising from the sale of said bonds,or a very large portion thereof, not for the specific purpose contemplated and prescribed by the Act itself,but for paying for the lot of land purchased as aforesaid,and for the building being erected thereon. And that said Council intend to use no part or no substantial part of said funds for the main and leading purpose prescribed by said Act of Jany 25. 1890, viz:to improve,enlarge and rebuild the market-house and town hall in said town, on Jany. 25, 1890, as they are required and directed to do by the express provisions of said Act.

10th. Your orators ~~are~~ is advised and charges;

1.

1. That the provisions of said Act empowering said Council to borrow money and to issue the bonds of the Town therefor,must be scrupulous--ly and strictly observed.

2. That said Council had and have no authority under and by virtue of said act,to borrow mon--ey and issue such bonds,for the purchase of

a new site for a new market-house and town hall, nor are they, nor have they at any time been authorized or empowered by the Charter of said Town nor by any general ~~or special~~ enactment of the General Assembly, to borrow money and issue bonds, for the purchase of real estate for such purpose; and that all authority granted to that end by special enactment of the General Assembly, at any time, had been fully exercised and exhausted prior to the 25th day of January, 1890.

3 That under the terms and provisions of said act, said Council have no right nor authority to borrow money and issue bonds, for the build -ing of a town hall and market-house, except on the present site on Market Street.

4. That in appropriating and expending said thir -ty thousand dollars derived from the sale of said bonds, or any substantial portion thereof for the purpose of providing a market-house and town hall, said Council are restricted by said Act, to the appropriation and expenditure thereof for the purpose of 'improving, enlarg- -ing and rebuilding the market-house and town hall in said town' on Jany 25, 1890, located on Market Street as aforesaid.

5. Your orator charges the truth and fact to be that the intention of said Town and Con -cil, in securing the passage of said Act, was to obtain authority to borrow money to be us- -ed in improving, enlarging and rebuilding the Market-house and town hall in said town, then and now located as aforesaid on Market Street

that such was the understanding of your ora-
-tors and of a large number of the citizens,
property-owners and tax-payers of said Town: a
and such was the manifest intention and under
-standing of the General Assembly of Virginia.

6. That the purchase of a new site and the erec
-tion of a new building thereon for a market-
-house and town hall was never contemplated
by said Council, your orators nor other citi-
-zens and tax-payers of said Town, at or before or
in view of
the passage of said Act, and that said Council
have now no right nor authority to disregard
and violate the well known intention of said
Act, by diverting the funds raised by its au-
-thority to other and different uses, implied-
-ly negatived and prohibited thereby, such as
the threatened uses herein complained of.

7 That all acts and things done, being done or at-
-tempted to be done by said Council, relating
to the expenditure of said money or of any ma
-terial part thereof, other than to the express
end and for the specific purposes prescribed
by said Act, are ultra vires and of no binding
force and effect.

8 That said Council, in having done and in con-
tinuing to do the acts and things hereinbefore
set forth and mentioned, are transcending their
lawful authority, to the very great and irre-
-parable injury of your orators and other the
citizens, property-owners and tax-payers of

said town of Suffolk; and to the special and inreparable damage of your orators in the depreciation of their real estate located near said new site.

9. That said Council are, against the earnest protests of your oratrxs and other citizens, property-owners and tax-payers of said Town, continuing to commit such illegal acts, in willful disregard of their duties and of the plain and direct provisions of said act, and will so continue, to such very great and irre-parable injury of your oratrxs and other citizens, property-owners and tax-payers of said town, unless prohibited and restrained by injunction issued from this Honorable Court.

10. That the new market house and town hall about to be erected as aforesaid on said new site on Main Street, is not necessary for the use of said Town, but on the contrary, is wholly unnecessary and undesirable; and that the building thereof as proposed and threatened and already begun by said Council will involve said town in a useless, wasteful and extravagant expenditure of the public money; and that no other market house or town hall than the one now in use is needed for the purposes of said Town.

11. That, although said Council have authorized the purchase of said new site, and the erection of said new market house and Town hall thereon; they, the said Council or a majority of them do not deem the said purchase and the erection of the said building necessary for the legitimate uses or purposes of said Town.

That one of the main objects and purposes of the Council in erecting the proposed building as aforesaid is to provide an amusement hall or theatre for the use of such opera troupes and theatrical companies as may desire to rent said building or a portion thereof for musical, theatrical and other like performances; and that it is beyond the authority of said Council to devote the funds of said Town, or any part thereof, to such object and purposes.

(These clauses are stricken out by agreement for the purposes of arbitration)

IN TENDER CONSIDERATION whereof, and forasmuch as your orators suing as aforesaid, are remediless in the premises, save by the aid of a Court of Chancery, where matters of the kind are alone and prpperly cognizable, your orators, suing as afore-said, pray that the said Town of Suffolk, incorporated as a-foresaid, John B. Pinner, Mayor, Wm. H. Jones Jr., Burwell Rid-dick, L. M. Tebo, Geo. W. Nurney, D. C. Harrell, and W. N. McAnge Councilmen, said Mayor and Councilmen composing and constitut-ing the Council of said Town of Suffolk, may be made parties defendant to this Bill, and required severally to answer the same as fully and particularly as if each of them had been thereto specially interrogated: but answers under oath are waived.: that said defendants and each of them, its, his or their agents, attorneys and servants be enjoined and restrain-ed from continuing the building and erection of said new market-house and town hall on said new site, from contracting any debts therefor, from borrowing any sum or sums of money, or paying, laying out or expending thereon, or on account of the purchase money agreed to be paid for said new site any sum or sums of money borrowed or to be borrowed under pretended authority of said Act of Assembly of January 25th, 1890, and from divert-ing any sum or sums of money, borrowed or to be borrowed un-der authority conferred by said Act, from the ends and objects prescribed thereby: and for such other, further and general relief as in equity and good conscience your orators may be entitled to receive.

And your orators will ever pray &c.

May process issue &c.

Stanley L. Christie & }
Whitehurst & Hughes } S. P. Q.

State of Virginia
County of Nansemond } ss:

C. V. Norfleet, the above named complainant, being duly sworn, on her oath says that the allegations of the foregoing bill are all true to the best of her knowledge & belief.

C. V. Norfleet

Subscribed and sworn to before me in said County this 12th day of August, 1890.

E. H. Jenkins

Notary Public

C. V. Norfolk
Eliz. Harvey
Dwing &c
v.
The Town of Suffolk
Exrs.

In Chancery

Bill