LEGAL NOTES.

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[This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.]

CONTRACT—CARRIAGE BY WATER—BUSHEL.

Mellady vs. Jenkins Steamship Co.—The defendant company were an American company running steamers of United States registry from Chicago. The vessel they supplied in this case was an American vessel, and of American register. The plaintiffs by agents in Toronto, opened negotiations with the defendants in Chicago for the carriage of oats from Fort William to Buffalo. These communications, after being carried on for a number of days, culminated by the Chicago brokers wiring the Toronto people, offering the steamer named "The Squire" to carry 90,000 bushels of oats at 2½ cents per bushel, and the plaintiffs, in reply, telegraphed, accepting the offer. It then followed that the steamer "Squire" proceeded to Fort William, where she loaded oats (98,163 bushels), which were received by the ship at 34 pounds per bushel. It transpires that 34 pounds to the bushel is the Canadian standard, but the United States standard is 32 pounds to the bushel. The oats were duly carried to Buffalo, and, upon their delivery there, freight was claimed by the vessel and paid by the agents of the consignees at the rate of 2½ cents per bushel of 32 pounds instead of per bushel of 34 pounds, and the shippers brought an action for the additional freight they had been forced to pay, the steamship company, on the other hand, claiming that upon paying the freight all right to object to the amount had been lost.

The Court held that, inasmuch as refusal to pay would have resulted in demurrage and other loss, the amount was paid perforce, and it could not be said it had been agreed to or any rights waived by making the payment.

The case, indeed, calls up an interesting point as to the formation of contract. It is an established principle in English law, which also applies in the United States, that where two parties adopt a common means of communication, as, for example, the post-office, then that common agent is equally identified with both, so that the contract is complete as soon as a letter of acceptance is mailed, and even before that letter has been delivered. Thus, too, in this case, both parties, if not in the earlier stages, did finally accept the telegraph company as their common agent. The offer was wired from Chicago to Toronto and was accepted by the return telegram. Therefore, the contract was completed, or, in other words, made in Toronto, and, therefore, it was to be supposed that the Canadian customs and standards would apply. In addition to this is the fact that the cargo of oats when loaded at Fort William was received by the steamship company as measured by the Canadian standard of 34 pounds to the bushel.

The Courts have held that freight could only be legally demanded at 2½ cents per 34 pounds, and that the balance must be refunded. 18 O.L.R., 251.

CLOSING OF HIGHWAY.

Taylor vs. Village of Belle River.—The council of the village of Belle River passed a by-law in August, 1908, providing for the closing of part of the Tecumseh Road through the said village, and Taylor, one of the ratepayers, moved to quash the by-law as ultra vires of the council. By Sec. 637 of the Ontario Municipal Act, 1903, municipal councils have power "for.....stopping up roads .....**wholly** within the jurisdiction of the council." It was contended that "wholly" applied to the territorial limits of the roadway, and, therefore, the council could not close a road which passed through several municipalities; but the Court held it applies not to the locality of the road, or part of road, but refers to the question whether any other council or person has any control over that particular road or portion of road. They held, therefore, that the council may close that part of a highway lying within its own limits, although the road is a general highway extending from township to township. 18 O.L.R., 330. It seems probable, however, that in closing such a road the council would be bound to open up some other highway in substitution for same.

Any unlawful stopping or diversion of a public highway is an obstruction, and amounts to a criminal offence. "Once a highway, always a highway," and a highway cannot be stopped or diverted except by special Act of Parliament, or following the provisions of some general Act. In Canada this power of Parliament is handed over to the Provincial Legislature. It is the duty of local councils to protect public rights-of-way within their confines, and they cannot proceed to close or otherwise interfere with any highway except by such precise methods as the Legislature has prescribed.

DRAINAGE—OUTLET FOR WATER.

Hiles vs. Township of Ellice.—The Township of Ellice, wishing to drain certain lands within their own township, exercised the powers given by the Municipal Act of carrying the work into the lower adoining Township of Elma, for the purpose of finding an outlet, without any petition from the owners in the adjoining township. The plaintiff claimed that the defendants did not carry the drain to any proper outlet, but brought in the water from the Township of Ellice and deposited it on the land in Elma at a point from which it spread over several lots, eventually reaching his land, where it lay, to the detriment of his farm and crops.

Held, that a municipality constructing a drain cannot let water loose just inside the boundaries of, or, indeed, anywhere within an adjoining township, without being liable for injury caused to surrounding lands.

Held also, that a tenant of the lands injured can maintain an action and recover damages for such injury as results during his occupation. During the term of lease his rights rest upon the same basis as if he were a freeholder. 23 S.C.R., 429.

Where the owner of lands is thus injured he has two means of redress, and may suit himself as to which he will follow. He may apply for arbitration to the drainage referee, and thus assess his damages, or he may issue a writ for the amount of the injury he has sustained and obtain judgment of court. 25 O.A.R., 226.

CONFIDENTIAL RELATIONSHIP—SPECIFIC PERFORMANCE.

Henderson vs. Thompson.—The plaintiff, who lives in Rossland, B.C., visited the defendant, Mrs. Thompson, who lived in Seattle, Wash., and ascertained that she was willing to sell a house and lot which she owned in Rossland; and he offered to act in a friendly way for her in helping her to secure a purchaser. Upon his return to Rossland he opened up correspondence with her, representing that he was in