

# MUNICIPAL DEPARTMENT

## AN INTERESTING JUDGMENT.

The Ontario Court of Appeal gave judgment recently in an interesting case, dismissing the application for an injunction made last summer in Ottawa to stop the asphalt paving on Wellington street. In giving his decision, Judge Osler said that the plaintiff, who is a ratepayer of the city of Ottawa, on the 13th July, 1897, commenced this action against the corporation of the city of Ottawa and the Canadian Granite Company, claiming an injunction to prevent the defendants from proceeding with the construction of asphalt or other pavements on Wellington and other streets. The ground specially alleged was that

"The contract for the works had been given to the defendants, the Canadian Granite Company, without tenders for the work having been advertised for and in violation of by-law 1073."

By-law 1073 required the council to ask tenders for work over \$250. Judge Osler continued;

"Prior to the 20th May, 1897, the board of works committee of the city council, in accordance with the provisions of city by-law No. 1073, advertised for tenders for paving Bank street. Several tenders were received, among them being that of the defendants, the Canadian Granite Company. The committee, which consisted of five members, one of whom was Ald. J. C. Roger, the manager of the Granite Company, reported the tenders to the council and recommended the acceptance of that of the Granite Co., which was the lowest. A meeting of the council was held on the 3rd of June, 1897, at which the report was considered, and a resolution passed in the following terms.

"Moved by Alderman Wallace, seconded by Alderman Butler, that report No. 8 of the board of works just read be received and adopted conditionally upon the successful tenderers agreeing that in the event of any other rock asphalt pavement being constructed by the city this year it shall be held to be covered by and included in the contract for Bank street on the basis of the same prices and conditions."

"The resolution was carried on a division of 14 to 5, Alderman J. C. Roger not voting or taking, if present, any part in the proceedings of the council.

Then on June 10 the council passed a by-law to confirm the award to the Granite Company. After work commenced on Wellington street, Mr. Dwyre applied for the injunction. "The plaintiff and his solicitor, proceeds Judge Osler, "deposed to their information and belief that if tenders had been called for, the work on Metcalfe, Queen and Wellington streets could have been done at much lower prices than the lowest tender for the work to be done on Bank street, that the other works were given to the Granite

Company in order to avoid competition and through the 'manipulation and manoeuvring of J. C. Roger, the manager of the company and member of the corporation and the board of works.' A second affidavit of the plaintiff stated that there was no urgent necessity for the work being performed during 1897, and that it was initiated and the petitions procured through the manipulation and wire-pulling of Edward Wallace, the chairman of the board, and of Roger, the manager and principal owner of the stock in the Granite Company, who believed the present corporation of the council to be favorably constituted for their purpose, which was to secure for the company as much work as possible at their own price and without competition.

"On behalf of the defendants was filed the affidavit of Robert Surtees, the city engineer, who deposed that he had advised the course adopted by the resolution of the 3rd of June as one which from his experience he considered best and most likely to secure other works of the same character which the council might require to be done during the year being done at the lowest prices. The Engineer further deposed that before the works were let he certified to the council, and his opinion still was, that the prices of the Granite Company were reasonable and the lowest at which the works could be done by responsible contractors who would guarantee them, as this company had done, for fifteen years.

Judge Robertson granted the injunction, but Judge Osler holds that was a mistake on account of the great public inconvenience and loss. Further Judge Osler says:—

"There is absolutely no evidence of the charges so freely and loosely made in the affidavits of the plaintiff and his solicitor of 'manipulating,' 'manoeuvring' and 'wire-pulling' on the part of the company or any member of the council. It was a gross impropriety on the part of both these deponents to make such imputations, knowing, as it must now be assumed that they did not know, that they were unable to produce, as they did not attempt to produce, any evidence in support of them. Their affidavits indeed ought to have been disregarded entirely, as the deponents swear simply to their information and belief and do not state, as the rule of court requires, what are the grounds of their information and belief.

"It is true that Ald. J. C. Roger did as a member of the works committee, sign, together with the other members of the committee, the report of the 3rd of June recommending the acceptance of the tender for the Bank street paving. This he ought not even as a matter of form to have done, but that contract is not attacked and he is shown to have taken no part in

the resolution of the council by which it was authorized."

Proceeding to deal with the by-law which required committees to call for tenders for all work over \$200, Judge Osler says:

"It is clear that it was in the power of the council by a bare majority—since no restriction requiring more than a bare majority is imposed upon them by a by-law itself—to repeal the by-law or any particular clause or clauses of it. It was equally within their power to repeal it 'pro hac vice' by over-riding it by a by-law inconsistent with any regulation imposed by it, as had been done by the by-law awarding all the work to the Granite Company."

A waterworks system has recently been completed at St. Hyacinthe, Que.

In the township of Front of Leeds and Lansdowne, the Council have just purchased a car-load of sewer pipe to be used for culverts across the roads. This seems to be a good idea, and we note the fact for the benefit of township councils. The pipe is laid at least two feet below the surface, or more if necessary, and simply covered with whatever material the roadway is composed of. The job is permanent, and is much cheaper in the end than common culverts.

Mr. A. W. Campbeil, Ontario Road Instructor, has received intimation that between 30 and 40 townships municipalities have this year adopted his plan for making the best of the statute labor system of road-making. His method is to appoint a road supervisor for the township who will be a paid official. The roads are then divided into five-mile districts and a foreman appointed for each. All the roads and road-making in the township will be under the direction of the supervisor. The townships are buying machinery, and, altogether, a decided forward step in the direction of good roads is evident.

Under Mr. George Janin, an engineer of Paris France, a system of sewage disposal was recently completed at St. Laurent college, near Montreal. An inspection of the work proved it to be giving satisfaction. The sewage of the college is conducted to a tank by gravitation, from whence it is pumped up to an acre field over which it flows through a series of ditches. Beneath the earth two or three feet are a number of perforated clay pipes, which conduct the liquid residue to the river, by this time absolutely harmless. Dr. Laberge, medical health officer of Montreal, says that this fact has been attested. It requires three acres of land for every 1,000 persons. Montreal is about to adopt the principle in some of its suburbs as an experiment.

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