LEGAL DEPARTMENT.

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BRUNKER V. THE CORPORATION OF THE TOWNSHIP OF MARIPOSA.

A by-law passed by the council of the defendant corporation pursuant to Ont. Stat., 53 vic., chap., 56, sec. 18 was entituled a by-law to prohibit the sale by retail of spirituous liquors in the township of Mariposa; and enacted "that the sale by retail of spirituous liquors, is and shall be prohibited in every tavern, inn, or other house, or place of public entertainment, and the sale thereof is altogether prohibited in every shop or place other than a place of public entertainment. It was held that the last part of the clause must be read in connection with the previous part so as to limit the prohibition to a sale by retail, which is now put beyond question by Ont. Stat. 54 Vic., chap.46, sec. 1. It was also held that the quantity of liquor to be considered a sale by retail need not appear in the by-law, being defined by the statute: that the locality within which the liquor could be sold was sufficiently indicated; and that the want of penalty in the by-law did not invalidate it. The day named in the by-law for the appointment of agents to attend at the final summing up of the votes was nearly three (3) weeks after the first publication of by-law, and the day named for the clerk to declare the result of the polling was the second day after the said polling. It was held that both days were sufficient. The notice at the foot of the by-law, after certifying that the foregoing, (viz: the copy of the by-law published) was a true copy of the proposed by-law,which had been taken into consideration by the council, and which would be finally passed in the event of the electors' assent being obtained thereto after one month's publication in a named paper, stated that all persons were required to take notice that on the fourth of January, 1892, a poll will be opened, naming the statutory hours, at the several places named in the by-law for the purpose of receiving the votes of the electors on the same. Two of the days of publication were Christmas and New Year. It was held that the formal notice was sufficient and the fact of publication on the days named did not render the publication invalid: publication not being a judicial act so as to prevent publication on those days.

TRUSTEES OF ROMAN CATHOLIC SEPARATE SCHOOL SECTION, NO. 10, OF THE TOWNSHIP OF ARTHUR VS. THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF ARTHUR.

Six Roman Catholics, some of whom were supporters of an existing Roman Catholic Separate School, No. 6, and others, public school supporters in several adjoining public school section, convened a meeting for the purpose of establishing a Roman Catholic separate school, which they thereupon assumed to do, but only three of them were residents of the same school section, and heads of families. It was held that the requirements of Ontario Statutes, 49 Vic., chap. 46, secs. 22 and 24, were not complied with, and consequently there was no valid incorporation of the trustees elected at such meeting, Chancellor Boyd remarking, "that the creation of corporations is a prerogative act, and where the power to make them is, as in this case, delegated to private persons, the question prescribed by the legislature should be substantially followed. In such case, form is of the substance,and blunder in form means invalidity." It was also held that a question as to the valid incorporation of trustees of a Roman Catholic separate school does not come within the range of 49 Vic., chap. 46, sec. 68, Ontario Statutes; R. S. O., 1887, chap. 223, sec. 67, which pre-supposes incorporation. Mr. Justice Meredith also held that the incorporation must be by Roman Catholics within an existing public school section, and, therefore, apart from the informality of the proceedings, there could be no valid incorporation here; that the relief of the dissatisfied supporters of Roman Catholic Separate School, No. 6—if they were entitled to any—was in additional school accommodation, under R. S. O., 1887, chap. 227, sec. 28, subsec. 11, and not as here sought; that no provision is made for the withdrawal of a Roman Catholic separate school supporter from one section to support another; and that the plaintiff's remedy, if duly incorporated, was not in an action to recover rates collected by the defendants for others, but in proceedings to compel the collection of their rates. It might be added that the action was brought to recover the amount of certain school rates, which the plaintiffs alleged the defendants had received as trustees for them.

M'GILL V. THE LICENSE COMMISSIONERS OF THE CITY OF BRANTFORD.

License commissioners, appointed under the provisions of chap. 194, R. S. O., 1887, on the 17th April, passed a resolution providing that after the first of May following, in all places where intoxicating liquors are,or may be sold by wholesale or retail, no such sale or disposal of the same shall take place therein, etc., between midnight and 5 a. m., which was afterwards amended by substituting 11 p. m. for midnight. It was held that under sec. 4, enabling the license commissioners to pass resolutions for regulating taverns and shops there was power to pass the resolutions here; and that such power was not interfered with by sections 32 and 54. No by-law on the subject having been passed by the municipal council.

THE QUEEN EX REL.—M'GUIRE VS. BIRKETT.

The defendant had a contract for the supply of iron up to the end of 1890, but on the 26th November, 1890, he wrote, informing the corporation that he withdrew from his contract, and enclosing his account up to date. On the 9th December, 1890, the then mayor of the city notified the defendant that he would be held responsible for any expense the corporation should be put to in consequence of his refusal to fulfil his contract. On the 15th of December, 1890, the city council adopted a resolution, cancelling defendants' contract and releasing him from any further obligation in connection therewith. At the same time a notice of reconsideration was given, which, by the rules of the council, had the effect of staying all action on the resolution until after reconsideration. There was no reconsideration and no subsequent meeting of the council till the 7th January, 1891, previous to which the defendant had been elected mayor for 1891. At the time of his election his account above-mentioned had not been paid. It was held that the resolution had no direct effect in releasing the defendant from liability under his contract either at law or in equity, and whether or not the resolution was to be considered in force, it did not touch the account, the existence of which unpaid was sufficient to invalidate the election, under the other circumstances of the case. The election was, therefore, set aside, but although the relator had notified the electors of the objection to the defendant's qualification, the seat was not awarded to the candidate having the next largest vote, on account of the resolution of the council, which led the electors to disregard the relator's warning, and a new election was ordered.

THE CANADA SOUTHERN RAILWAY CO., V. THE CORPORATION OF THE TOWN OF NIAGARA FALLS, ET AL

The act of incorporation of a railway company, the predecessors in title of the plaintiffs, and which was incorporated for the purpose of constructing and operating a certain line of railway, conferred upon the company, as regards the disposition of lands acquired by them, powers of letting, conveying and otherwise departing therewith for the benefit and on account of the company from time to time as they should deem necessary. Nearly forty years before the commencement of this action the predecessors in title of the defendants laid pipes for conveying water along the railway track of the plaintiffs' predecessors, using them for such purposes almost continuously up to the present time, said privilege having been given to them by resolution of the directors of the company, who, a few years afterwards,passed another resolution, and in pursuance of the same, executing a deed granting, releasing and confirming such right and privilege, which, at the time this action was brought, had become vested in the plaintiffs, who, a few years before the commencement of the action, desiring to alter the position of