The Toronto World

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WEDNESDAY MORNING, FEB. 26, '13

CITY COUNCIL COMMITMENTS.

In spite of the usual difficulties that attend city council procedure a considerable amount of business was satisfactorily settled on Monday evening. The skyscraper question was not definitely settled, but the buildings now contemplated will no longer be delayed. This is a step towards setting 250 feet as the limit, a limit which seems to be naturally determined by commercial considerations. The council should see that this vexed question is finally settled, and by legislation if necessary. It would be now less possible than ever to go back to 124 feet.

The so-called cabinet system was adopted by a vote of 12 against 6, three of the controllers dissenting. As a majority of those most concerned object to the will of the council there will probably be lively scenes at future meetings. The whole affair looks like a storm in a teacup and if Controller Foster or Controller Church had thought of the plan first, it is unlikely there would have been any opposition.

Controller O'Neill was personally against the idea, but wished to leave the matter to council. If any responsibility were involved the objections lodged would have more weight, but all that is required of the controllers is such supervision as will give them sufficient familiarity with departmental affairs to enable them to explain to council any matter brought up. Perhaps the moral responsibility as well as the attention required is what the two controllers dislike.

A step was taken towards acquiring the Humber Valley Electric Railway franchise. Some aldermen would let the franchise drop into the hands of the city's rivals in traction, but it is much better for the city to operate the line itself.

The appeal on the Yonge street subway may do good, and can only delay the matter at the worst. The plea of legal consistency would not prevent one of the corporations taking any action that promised an advantage. The question for the city is whether any advantage to be gained, with a large margin, perhaps, as to the gain, would compensate for the delay which always seems to suit the railway companies.

CIVIC MUSICAL GRANTS.

Aldermen made a grave mistake in voting a grant of $2500 to the National Chorus for a jaunt to England. The city council some time ago declined to subsidise the Toronto Symphony Orchestra, a much more important local musical organization, in whose case the money would have been spent locally, and for the benefit of such citizens as cared to take advantage of it. The argument that it will advertise Toronto in England is more than dubious, if the results of a visit of the chorus to Buffalo recently are to be taken as a criterion. There are several other choirs in the city equally well entitled to assistance should they see fit to ask it. The National Chorus is less in need of assistance than any of these. For some time also the Mendelssohn Choir, the premier choral organization of the continent, as New York, Chicago and Boston musical authorities all recognize, has been contemplating a visit to England, and if any official recognition is to be given to a musical organization, it should be to the best, and not to one that has yet to secure distinction. The aldermen are not assumed to be authorities on such questions and probably succumbed easily to an influential lobby. But this does not relieve the city or the citizens from having a precedent set up and an endorsement given for which there is little excuse.

MUNICIPAL HOME RULE

One of the noteworthy movements in the United States is that which The World has frequently advocated, the conference of a large measure of home rule on municipalities. In a democratic country, it does appear not a little inconsistent, that provincial legislatures should be so jealous of their rights as against the federal authorities, and at the same time, no less jealous about maintaining control over the organized communities within their respective jurisdictions. Every argument that can be used in support of provincial rights is equally available on behalf of municipalities. If provinces can judge their needs and provide for them better than the Dominion Government and Parliament can do, why should not municipalities have the same liberty within reasonable limits?

In Prussia, cities and town have long enjoyed the privilege of free action within the bounds of a large enabling statute. That freedom has proved of immense advantage and has greatly facilitated civic development along lines that have enured to the benefit of the general body of people. It is notorious that Canadian legislatures have freely conferred vast powers on private corporations, composed often and mainly of foreign shareholders—powers so great as to override the control of municipalities over their own territory. But even a small measure of the same general powers is refused to public corporations composed of Canadian citizens. There is no reason whatever for this distinction. If any distinction is made, it should be in favor of Canadian and Ontario municipalities, not the companies that are exploiting them for the benefit of foreign shareholders.

OUTSIDE INFORMATION.

Complaint is not infrequently heard about the expense of deputations authorized to investigate methods and processes bearing upon questions with which the city council has to deal. Similar objections have been raised in other cities and the lord provost of Glasgow had recently occasion to refer to the subject. It was a fallacy, he said, to think that everything was better done in Scotland than in any other country. No man could travel in France or Germany without learning that much was better done in these countries, and visitors to Scotland could also learn a great deal.

In this connection he quoted from a letter he had recently received from the mayor of Paris, thanking the Glasgow corporation for the trouble taken with a deputation from the French capital, and also acknowledging the great amount of instruction derived from inspecting the public works of the Scottish city. Therefore, said the lord provost, do not stop deputations. His recommendation is sound, but need not be extended to cases where instruction is not needed or cannot be derived. Within proper limits the collection of information from other cities and the cities of other countries is a public duty and of great value to any city.

PUBLIC OWNERSHIP IN THE WEST.

Largely owing to prejudice and misapprehension seduously fostered by the franchise-holding companies of the continent, acceptance of the principle of municipal ownership and operation of public services and utilities was long delayed in the older provinces of the Dominion. What arguments based on the inherent worth of that principle and on the experience of the municipalities of Britain and the continent of Europe did not alone accomplish, has now, however, been compelled by the action of the private corporations themselves. Stock-watering and the resulting over-capitalization, with its natural consequence in inefficient service and contemptuous disregard for contract obligations and the requirements of social decency, has brought about a tremendous change in the attitude of the long suffering public. Nor can it be overlooked that the first great stimulus applied to the movement came from the hydro-electric policy of the Ontario Government. Public ownership and operation of electric light and power cannot but lead ultimately to the inclusion of all other municipal services.

Fortunately for themselves the new municipalities of the west have mostly emerged into being at a period when they could profit by eastern experience. The volume of protest against the policy pursued by the franchise-holding companies was too insistent and persistent to remain unheard. Not only this, but the influx of old country immigrants, bringing with them knowledge of the high character of the services and utilities provided by British cities, had no doubt its effect on the education of opinion. As the towns grew—and their growth in number and size has been phenomenal—came the necessity of providing water, transportation, light and power, and the time arrived when the option had to be exercised between public and private operation. To the intelligent and enterprising men of the prairie provinces, the choice was easily made. Today the principle of public ownership has been generally established and along with a reformed system of taxation has placed western municipalities on the best of foundations.

In a recent statement made by Edmund T. Baines, head of the Edmonton municipal information bureau, he remarked that "the single tax and public ownership systems have worked veritable wonders in Edmonton." That city owns and operates all its municipal franchises—transportation, light, telephones and water, and has also resolved to retain control of its natural gas supply. All these services showed a profit for last year—the street railway, on account of large expenditures on improvements, for the first time. In 1912 the department reported the carriage of 10,307,400 passengers, or over 100 per cent. more than in 1911. The electric light department has a net surplus of $86,673, and the telephone department's net profit for 1912 of $5206 raises the accumulated surplus to $38,993. Edmonton's charge for telephone facilities is $20 for residence and $30 for business. The city has also the satisfaction of knowing that it can never be involved in difficulties with private companies whose primary consideration is the earning of profits and the capitalization of anticipated increases in profits thru the expansion of population by melon cutting and the various other devices of high finance.

The Philosopher of Folly

By Sherwood Hart

"MR. JENKINS ETAOIN SHRDLU."

When we peruse the daily news, what statements there we find! We long to know if this is so, to ease our troubled mind. We think and think till on the bink as on that line we gaze; we wish we knew if it were true; it fills us with amaze. But in our sight, in black and white, it stands there plain to view. We read it o'er, and then some more, in hopes to find some clue—some little light to cheer our night of ignorant despair; we truly trust it is not just as they have put it there. But if a fact, our thoughts are racked to know what this may be; we never yet this phrase

have met—our minds are all at sea. Is it a fake, or some mistake, or is the fault our own? Does it arise from tangled eyes, or has our reason flown? With anxious looks we search thru books in Spanish, Slav and Dutch; thru Early Greek and Cree we seek, without their helping much; we bend our dome o'er musty tomes and volume hoar with age; thru miles of print we peer and squint and pile up page on page. 'Tis all in vain—they can't explain what Peter Jenkins did—they cannot tell if all is well, or what is in it hid. So, void of hope, we vainly grope, but dimly we believe that news was sent with full intent to puzzle and deceive. Yet, just the same, not all the blame at Jenkins' door may lie; some printer chap has had, mayhap, a finger in the pi.

Sherwood Hart.

A Machine Which Generates an Air Similar to Pine Forests.

A great many people do not know what Ozone means, only in a general way. If they will take the trouble to look up any good encyclopedia and get the full definition it will be good food for thought, especially to people who have lung trouble or blood trouble. Ozone in different forms will within the next few years be very generally used by physicians. An interesting research laboratory is the Neel-Armstrong Co. of Orillia, who are producing an apparatus, which generates pure ozone, which is cooled by a current of pure air and then passes thru pine needle oils, forming a vapor which is inhaled. It is claimed that the oily ozonized vapor has the antiseptic value of the pine needle oils, which heals every particle of the throat and lungs, and the surplus amount of ozone which passes with the oils is at once absorbed by the blood; in fact, it is marvelous what effect it has on the blood after a few days' treatment, and how quickly colds, etc., are overcome by it. This apparatus is in general use thruout the United States, and physicians prescribe it for patients, as it is arranged in sizes for private homes. This company are submitting it to McGill University that they may give out its effectiveness, as when an apparatus in actual work does accomplish such wonderful results as this one does it should go before the highest authorities.

At Osgoode Hall

25th February, 1913.

ANNOUNCEMENTS

Motions set down for single court, for Wednesday, 26th inst., at 11 a.m.

1. Re Maclean Estate.
2. Collis v. Rotkin.
3. Re Wilson Estate.

Peremptory list for appellate division, for Wednesday, 26th inst., at 11 a.m.

1. Strong v. Rimouski.
2. Strong v. Anglo-American.
3. Strong v. Montreal. Canada.
4. Strong v. Crown Fire Insurance Company.
5. Mireault v. Toronto Railway Co.

Master's Chambers

Before J. S. Cartwright, K.C., Master.

Cantin v. Clarke.—J. M. McEvoy (London), for plaintiff. H. J. Martin for defendant. The plaintiff moves for particulars of paragraph 15, of statement of defence, also for order striking out paragraphs 16, 17 and 18, of statement of defence, as embarrassing and irrelevant. Judgment: It was agreed on the argument that the particulars would be given. After reading the pleadings, I cannot say that these paragraphs may not, as against paragraphs 5, 6 and 7 of statement of claim, be available as matter of defence. On their face they seem to be allegations of facts, which may assist defendant, if proved and allowed at trial or on reference. The motion having been partly successful, is dismissed with costs in the cause.

Clarke v. Cantin.—Clark (H. J. Martin), for plaintiff, obtained on consent, order allowing withdrawal of statement of defence and joinder of issue for purpose of filing new ones.

Macdonald v. Toronto Ry. Co.—Langmuir (McCarthy & Co.), for defendants, moved for order allowing amendmen of statement of defence. J. H. Spence for plaintiff. Order made. Costs to plaintiff in any event.

Lewis v. Abbott.—Murphy (Rowan & Co.), for plaintiff, obtained a final order of foreclosure as against defendant by writ.

Blekman v. Wallace.—F. J. Hughes, for plaintiff, obtained order for issue of subpoena duces tecum to registrar of deeds for East Toronto.

Murray v. Thames Valley.—W. J. Elliott, for defendant, moved for order striking out paragraphs 4, 5, 6 and 15 of statement of claim, as embarrassing. Sugarman (Davidson & M.), for plaintiff. Adjourned until 26th inst., at plaintiff's request.

Macon v. Quinlan.—Rumball (Kilmer & Co.), for defendant, moved for order changing name from Ottawa to North Bay. J. I. Grover for plaintiff. Motion enlarged one week by consent.

Hawken v. Taylor.—H. W. Maw, for plaintiff, moved for judgment for possession. D. O. Cameron for defendant. At defendant's request, motion enlarged one week.

Kling v. Lynn.—R. Wherry, for defendant, moved for order vacating lis pendens. M. Grant for plaintiff. Enlarged until 28th inst.

Kocz v. Canada Foundry.—Donovan (S. King), for plaintiff, moved for order for commission to take evidence at Naggbardza, Hungary. B. H. Ardagh, for plaintiff, asks for interrogation only. Order made.

Re Riley (Applicant), Black and Mussen (claimants). Bristol (Buckwell & Co.), for applicant, moved for interpleader order. H. J. Martin, for Mussen. R. McKay, K.C., for Black. Order made for payment into court, less costs fixed. Issue directed in which Black is to be plaintiff and Mussen defendant. To be tried at non-jury sittings at Toronto.

Porterfield v. John Ingles Co.—R. W. Hart, for defendants, moved to strike out jury notice as irregular, being filed too late. McLarty (Robinette & Co.), for plaintiff, and moves to confirm. Defendant's motion allowed, and plaintiff's motion dismissed, both with costs to defendant in any event, without prejudice to any application to trial judge.

Osien v. Canadian Northern Lands—E. C. Ironside, for plaintiff, obtained on consent, order amending name of defendant in style of cause, by addition of "Limited," to York Land Co.

Pierce v. C. P. Ry. Co.—Macdonnell (MacMurchy & S.), for defendants, obtained on consent, order dismissing action without costs.

Judge's Chambers.

Before Middleton, J.

Re Hannah.—F. W. Harcourt, K.C., for infant, moved for an order allowing payment of certain moneys to administrator of deceased, lunatic. Order made.

Re Williams—F. W. Harcourt, K.C., for infants, moved for an order for maintenance. Order made.

Re Watson Estate—F. W. Harcourt, K.C., for infant, moved for order allowing $50 per year for maintenance. Order made.

Re Foorman—F. W. Harcourt, K.C., for infant, moved for order for payment out of $47 to W. D. Dunlop. Order made.

Re Eckhardt—F. W. Harcourt, K.C., for infant, moved for order allowing payment of $148 to infant to complete business college course. Order made.

Re Sauer—F. W. Harcourt, K.C., for infant, obtained order allowing payment of $100 a year for five years for maintenance.

Re Podget—F. W. Harcourt, K.C., for infants, obtained order authorizing mother to remain on farm rent free on condition of maintaining of infants.

Graham v. Coburn—F. W. Harcourt, K.C., for infants, obtained an order for payment out to him of $100, to be paid over from time to time as required for illness.

Re Daly—F. W. Harcourt, K.C., for Frank Daly, obtained an order for payment out of court of $750 for maintenance.

Buhrer v. Crown Portland Cement Co.—Collier (Ross & H.), for Berg Machinery Co., moved for order directing delivery by T. G. T. Corporation, receivers, to applicants, of two machines known as Forsyth pulverizers; E. G. Long for T. G. T. Corporation; W. M. Hall for Forsyth. Order made allowing machinery to be removed upon paying amount of lien into court. Reference to J. A. C. Cameron. Costs reserved until after determination of validity of lien.

Bennett v. Lark—W. D. Gwynne, for beneficiary, moved for order for payment to her of $100, to enable her to take business course; F. W. Harcourt, K.C., for infant. Order made. Money to be paid to eldest brother.

Re Deyall; Sandilands v. Deyall—E. F. Raney, for executors, moved for advice; no one contra. Order declaring it to be duty of executors to invest moneys and pay income to widow during life, and on her death corpus to be divided among children as directed by will.

Sissons v. Christie—S. S. Mills, for plaintiff, obtained order transferring action from county court of York to high court division S. C. of O.

Re Laycock—F. W. Harcourt, K.C., for infants, obtained order giving leave to accountant to give mortgage to secure balance of purchase money.

Re Kelly—F. W. Harcourt, K.C., for infants, obtained order giving mother leave to run farm in consideration of maintenance and payment of certain debts.

Re Thorne—F. W. Harcourt, K.C., for infants, obtained order giving leave to give mortgage to accountant to secure balance of purchase money.

Re Hood—F. W. Harcourt, K.C., for mother, obtained order allowing payment of $75 a year for three years for maintenance.

Sanders v Turner—F. W. Harcourt, K.C., for infant, moved for order confirming appointment of new trustee. Stands to be spoken to again.

Re Stritch—F. W. Harcourt, K.C., for infants, obtained order allowing payment out of moneys in court to guardian of each of two infants.

Rex v. Keenan—T. W. J. O'Connor, for prisoner, moved for habeas corpus and certiorari in aid directed to governor of Toronto Jail; no one contra. Order made.

Single Court.

Re Modern House Manufacturing Co.—W. M. Douglas, K.C., for L. M. Dougherty and R. J. Gouby, appealed from report of master in ordinary, placing them on the list of contributories for 1500 shares respectively; G. F. Shepley, K.C., for liquidator. Judgment: After much consideration I have come to the conclusion that the master's judgment cannot be upheld. The question in this case seems to me to depend upon the contract. The shareholders agreed to take stock only on the terms set out in the document, in satisfaction of the price of certain property to be conveyed. The only obligation assumed was to convey the property, and damages based upon its value is the only liability for the breach. This liability cannot be asserted in these proceedings, and this judgment is confined to the one question, the shareholders' liability as contributory. While I allow the appeal, there is, I think, ample ground for refusing to give the shareholders' costs. The liquidator was justified in his attempt to place the shareholders upon the list, and should be allowed his costs out of the estate.

Re Mara and Wolfe.—W. A. Proudfoot for vendors. S. M. Singer for purchaser. Motion under the Vendors and Purchasers Act to determine a question arising on the will of the late Ann Mara, as to the ability of Charlotte S. Mara, with the concurrence of the surviving trustee under the will to make title. Judgment: The power of appointment being general, and exercisable either by will or deed, the daughter is in substance the sole person beneficially entitled, and when she conveys her life estate and executes a deed of appointment she is entitled to call upon the trustees to convey in pursuance of her appointment. They hold in trust for her and her appointee. There is nothing to prevent the appointment being made at any time, and I think nothing to prevent a conveyance of the legal estate at any time to the appointee, who is solely beneficially entitled. I think a good title can be made by a properly drawn conveyance.

Before Kelly, J.

Rex v. Durocher.—G. F. Henderson, K.C., for defendant. J A Ritchie for the crown and police magistrate. Motion by defendant for order prohibiting police magistrate for Ottawa from taking any further proceedings pursuant to a certain information and complaint of one Emile Joliat, detective, that Joseph F. Durocher did unlawfully and fraudulently put into a ballot box a paper other than the ballot paper which he was authorized by law to put into said ballot box, viz., a paper purporting to be a ballot paper used by one W. A. Besserer, a person who did not vote in said polling sub-division at said election. Judgment: The act prohibited by Sub-section 1 (6) of Section 193 is not indictable per se. It is urged on behalf of the defence that Section 164 of the Criminal Code cannot be applied, as Section 193 under which the proceedings are brought, names a punishment, and that therefore the police magistrate has no jurisdiction. In the present case there is in one clause of the statute a distinct absolute prohibition, the penalty being provided by a separate and substantive clause. It appears to me that the authorities cited are applicable here, and that they are distinctly opposed to the defendants' contention. In that view the application must be dismissed. I see no reason for relieving the applicant from payment of costs, and the dismissal is therefore with costs.

Trial.

Before Falconbridge, C. J.

Canadian Lake Transportation Company v. Browne.—G. L. Staunton, K.C., and T. Hobson, K.C., for plaintiff, E. F. B. Johnston, K.C., and J. G. Gould, K.C., for defendants. Action by plaintiff to recover $1447.72, balance claimed to be due by defendants, as agents of plaintiffs. Defendants' counterclaimed for $3326 for breach of contract as between parties. Judgment: There is no dispute about plaintiff's claim, and they are entitled to judgment for $1447.72, with interest from December 19, 1911, and costs. The dispute is as to defendants' counterclaim. I am not passing on demeanor of witnesses when I find the preponderance of evidence to be in defendants' favor as to all these items of counterclaim. There will be judgment for defendant on the counterclaim, with a reference to the master as to all three items, and costs of counterclaim up to this judgment. Further directions and subsequent costs reserved until after the master shall have made his report. Thirty days' stay.

Before Middleton, J.

Cartwright v. City of Toronto.—G. Bell, K.C., for plaintiff. E. D. Armour, K.C., and C. M. Colquhoun for defendants. Action to set aside a tax sale of certain lands held on April 24, 1901, or in alternative for other relief. Judgment: The lands in question and other lands were mortgaged by Jane Prittie, then owner, to the late Sir Richard Cartwright on Feb. 13, 1892, for $43,000. Nothing in the way of an agreement between Sir Richard and the city is established. Sir Richard made no payment whatever on account of taxes. In 1901, in supposed pursuance of the authority then possessed by the city, the lands were on sale for taxes bought in by the city. Counsel for plaintiff has not succeeded in showing that the lands in question here were not sufficiently described. This branch of plaintiff's case fails also. In alternative plaintiff says that when city purchases land under clauses in question it holds the lands as trustee to pay itself the principal amount due for taxes and subject to the obligation to account to the owner for any surplus. I can find nothing in the statute to justify this. Upon the lapse of the redemption period the city becomes the owner with as absolute a title as any other purchaser at such a sale. The action fails and must be dismissed with costs.

Appellate Division.

Before Meredith, C.J.O.; Maclaren, J. A.; Magee, J.A.; Hodgins, J.A.

Rice v. Proctor.—J. Bicknell, K.C., and M. L. Gordon for defendant. W. H. Irving for plaintiff. Appeal by defendant from judgment of the county court of York of Dec. 16, 1912. An issue to try the ownership of $337.50 paid into court in an action of Proctor v. Baldwin, being the amount of commission payable by R. A. Baldwin in a sale to A. E. Trow of lot 151, Whitney avenue., At trial judgment was awarded Morley S. Price for the said sum and costs of action and issue. Appeal argued and judgment reserved.

Sphinx Manufacturing Co. v. Reesor.—R. T. Harding (Stratford) for plaintiff. R. S. Robertson (Stratford) for defendant. Appeal by plaintiff from judgment of county court of Perth of Dec. 13, 1912. Action on a promissory note for $400. Defendant sets up defence of want of consideration, fraudulent misrepresentation, etc. At trial judgment was given defendant, dismissing action with costs. Appeal partially argued and stands over for production of further papers.

Jackson v. Pearson.—S. C. Smoke, K.C., for defendant. G. Wilkie for plaintiff. Appeal by defendant from judgment of Falconbridge, C. J., of Dec. 6, 1912. Action to recover $1279.45, amount of loan alleged to have been advanced by plaintiff to defendant from time to time. At trial judgment was awarded plaintiff for $1279.45 with interest from Sept. 3, 1912, and costs, Appeal dismissed with costs.

Re McLachlan and Mercer.—W. S. McBrayne (Hamilton) for tenant. J. G. Farmer, K.C., for landlord. Appeal by tenant from the judgment of Monck, C. C. judge of Wentworth, of Dec. 30, 1912, whereby he directed a writ of possession to issue to put landlord in possession of the land with costs against tenant. Appeal dismissed with costs. Order for possession not to issue if within ten days tenant pays all arrears of and current rent and all costs directed below to be paid by him and the costs of this appeal.