

The Local Courts'

AND

MUNICIPAL GAZETTE.

SEPTEMBER, 1870.

BYLAWS—NOTICE AND PUBLICATION.

A By-law was passed by the County of Bruce, in the month of December of last year, to aid the Wellington, Grey and Bruce Railway by a free donation of debentures, by way of bonus, to the extent of \$250,000.

An application to quash this by-law (*In re Gibson v. The Corporation of the County of Bruce*, 20 U. C. C. P. 398,) was made on the following grounds:

First—Because said by-law was passed within less than three months after the same was first published in any newspaper in the said county.

Second—Because said by-law was passed at an ordinary meeting of the council and not at a meeting especially called for the purpose of considering the same, as required by law.

Third—Because the notice required to be given by section 228 of the Act respecting the Municipal Institutions of Upper Canada was not given, nor was any sufficient notice to the effect and purport of such notice given.

Fourth—Because the polls for taking the votes of the electors or qualified ratepayers of the several municipalities were not opened in the proper places in the townships of Greenock and Huron.

Fifth—Because the said by-law was only published, as required by law, from the 8th to 29th October, 1869, inclusive, and not weekly for one month next before the same was passed, and was passed on the 7th December, 1869, and no notice was given of the time and place when and where the said by-law would be considered by the council; and because the said by-law was in other respects passed without the formalities required by law.

And because said corporation acted *ultra vires* in granting a bonus.

As to the first three objections, the Court considered that, in every case in which it is necessary to submit a by-law to the electors for their assent, the provisions, as regards notice, which are required by the 186th section, must be followed, and that section 228 applies only to those cases in which County Councils are authorized to raise money by by-law with-

out submitting the same for the assent of the electors; and that any doubt as to this being the true construction of the sections was removed by the form of notice given in section 228, which is as follows:

"The above is a true copy of a proposed by-law to be taken into consideration by the Municipality of the County of —, at —, in the said County, on the — day of —, at which time and place the *members of the Council* are hereby required to attend for the purpose aforesaid;"

No reference whatever being made to the *electors*. The Court, therefore, in effect held that the requirements of section 228 had no bearing on this by-law, but that it is governed by sub-secs. 1, 2 and 3 of section 196.

The fourth ground of objection was decided as a matter of fact upon the affidavits, in favor of the municipality.

It appeared from the evidence that the first advertisement was inserted on the 8th October and the last on 29th October, when by mistake they were stopped. The notice was, however, subsequently inserted on the 19th and 26th November, and also on 3rd December. It appeared, also, from the affidavits that every effort was made to give publicity to the proposed by-law, and in fact when the vote of the Council was taken, there were twenty-four out of twenty-five members present, and the twenty-fifth made his appearance in the evening, and no complaint was made by him of want of notice.

It had been held in several previous cases that it is *discretionary* with the Courts to quash a by-law; and, following out this doctrine, the Court in this case refused to quash this by-law, thinking they would not be exercising a wise discretion in setting aside so important a by-law as that before them on so trifling an objection, even if they were of opinion that the publication was insufficient.

The remaining objections depended upon the construction to be placed on the "Act to amend the Act incorporating the Wellington, Grey and Bruce Railway Company," and it was contended that the Act only applied to township and not to county municipalities, but it was considered that the words of the second section of that Act, "any other municipality interested in the undertaking," &c., were sufficiently wide to cover this last objection. The by-law was therefore upheld.