

two-thirds in number, and one-half in value of the owners of the real property to be directly benefited thereby; and such petitions, when found to comply with the provisions of the statute 22 Vic. cap. 40, 1859, he shall among other things endorse thereon his certificate of the correctness thereof, and of the value of the whole of the real property ratable under the by-law. The city engineer is to make a report, showing what real property will be immediately benefited by the proposed improvements, and the proportions determined by him, in which the assessment to defray the cost is to be made on the various portions of the real estate so benefited, and the clerk is to cause a notice to be left at the place of abode of each of the parties to be assessed for such improvement, that the assessment has been made, and the amount thereof, and that a by-law in accordance therewith will be passed by the Council unless appealed from as provided by law.

Among the regulations of the city Board of Works is one that they will only recommend the construction of new works by special assessment, when the petitioners represent two-thirds in number of the proprietors in fee, and one-half of the assessed value of the property.

By the clerk's certificate, attached to the petition for this improvement, it is stated that the total number of persons assessed for property to be directly benefited by this improvement was twenty-three; that sixteen names were signed to the petition; that the total value of the assessed property was \$520,182; that the amount represented by the signers of the petition was \$413,496, leaving unrepresented \$106,686. The petition began thus: "The petition of the undersigned, being owners and occupants of property," &c. All these words were printed except "and occupants," which were interlined in writing.

In Trinity term, *J. H. Cameron, Q.C.*, showed cause. He contended the relator could not go behind the petition and by-law; that the day of the passing of the by-law was a sufficient naming of a day for the by-law to take effect. He showed by affidavits that the debentures were in fact made payable within twenty years, and gave up the 4th section of the by-law moved against, which might be quashed, though the residue stood. He insisted that the relator was only an occupant (a counterpart of the lease to him being by consent put in), and that his lease only subjected him to pay rent and taxes in terms which do not apply to a special rate and if so, as the relator showed no other interest, he was not a person authorized to move against the by-law.

Harrison admitted that if the last objection was sustainable, the case was out of court.

Cameron filed affidavits: 1. From the Chamberlain of the city, stating that all debentures issued by the city were drawn up under his direction, and that all those issued under the by-law in question were made payable within twenty years from the date thereof, being dated on the 16th August, 1859, and made payable on the 1st July, 1879. 2. From the assistant clerk of the Council, proving a copy produced of so much of the assessment roll of 1859 as refers to the stone side-walk in question, as that roll was finally passed by the court of revision for the year; that the roll is the only means whereby the officers of the Corporation can make the necessary computation as to the number of owners of real property to be benefited by any improvement petitioned for, and the value of such real property. That according to the roll, the petition in question was signed by more than two-thirds in number and one-half in value of real property directly benefited thereby, of the owners of such real property; that he made the calculation, and believes the same to be correct, and made the necessary certificate, which was signed by the clerk of the Council; that on the 2nd August, 1859, he filled up and addressed to each of the persons named in the seventh column of the assessment roll, under the head "owners and address," a notice of the application for the improvement, and the intention to pass the necessary by-law for that purpose (annexing a copy), and gave such notices to the messenger of the Corporation to be forwarded to such parties. In this roll the relator's name is entered in the first column as occupant, and in the seventh column, *J. L. Robinson* as owner, and the name of *Mr. R. Gilmore*, who made an affidavit in support of this application, appears in the first column. "*Gilmore & Alfred Coulson*," as occupants, and *John Crawford* in the 7th column, as owner. 3. *Roddy*, the messenger, made affidavit that

all notices given to him by the assistant clerk to be forwarded, were either delivered by him to such persons personally, or left at their places of abode, or put in the post office, and he believes the notices referred to in the foregoing affidavits of the assistant clerk, were placed in the post-office in Toronto, on the day they were delivered to him.

The lease put in was from *James Lukin Robinson* to *George Michie* and *Thomas Kay*, dated 24th April, 1857, made in pursuance of the act to facilitate the leasing of lands and tenements.

Habendum for five years, with a covenant by the lessees among other things to pay rent "and to pay taxes."

DRAPER, C. J.—I am of opinion there is no weight in the objection as to the effect of the covenant to pay taxes. The statute in giving the enlarged sense of the limited expression extends it to all taxes, rates, duties, and assessments whatsoever, whether municipal, parliamentary, or otherwise, charged or to be charged upon the demised premises, or upon the lessor on account thereof. We must therefore treat the relator as a person having an interest in the by-law.

As to the first objection, I have felt a good deal of doubt whether the legislature did not intend that in the body of every by-law shall be stated a day upon which it is to take effect. The date on which the by-law is passed does not necessarily form a part thereof, though it may be the practice for some officer of the corporation to mark the day of its passing thereupon. And I think the legislature meant that it should not be necessary to refer to any thing extrinsic to the by-law for the purpose of learning when it would or had come into operation. The purchaser of a debenture, for instance, would require to see that it and the by-law under which it was issued were legal, and might on that account require to see when the by-law took effect. The third objection is answered by the affidavits in reply, the debentures are made payable within twenty years from the day the by-law was passed, on which day it took effect.

I think the fourth objection that the petition on which the by-law is based, was not signed by three-fourths in number and one-half in value of the owners of the real property to be benefited, cannot be entertained by us. The Municipal Institutions Act, section 300 expressly provides that the number of the owners and the value of the real property is to be ascertained and "finally determined" in the manner and by the means provided by by-law. There is a by-law for that purpose, under which the clerk of the city council has acted. It is not objected that he acted corruptly and fraudulently, and though, as I gather from the unanswered statements in the relator's affidavits, the city clerk has fallen into error, an error easily accounted for, as his conclusions were drawn from the assessment roll only, yet I think we cannot on that account annul the whole proceeding.

The 191 section of the act plainly contemplates that this objection should be heard and disposed of by the Council of the city before the by-law is passed.

I am not to be understood as determining that he should have confined his enquiry to the assessment roll, when he was required to ascertain and finally determine the matter of number and value, but I think that having acted as we must assume, *bona fide*, the legislature intended his determination to be final, as the foundation for the by-law authorising the improvement and imposing the special rate. The fifth objection involves the same consideration.

The sixth objection is sustained in fact as I understand the statements. But the provision requiring notice of the intention to pass the by-law to be given or sent to parties affected by it, is not statutory, nor is the validity of the by-law made dependent on provisions contained only in by-laws. And although the relator states in his affidavit that he had no notice of the by-law "until some time after it was passed," and that he first became aware of the particulars of it, and of the proceedings on which it was based in February last, yet it is difficult to suppose that he was not aware long before that date, that the stone sidewalk was being laid down, or that the work was of that character which was usually paid for by special local rate. This was enough to put any one on enquiry. Then he seems from his own expression to have become aware of the by-law some time before he became aware of its precise contents, but the knowledge of the first was